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**Centre of European Law and Politics (ZERP)
University of Bremen**

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Study

COMP/2006/D3/003

Conveyancing Services Market

Country Fiches

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Preface

In the framework of its work to modernise regulation in the professional services area, in August 2006 DG Competition commissioned a consortium of research institutions co-ordinated by the Centre of European Law and Politics at Bremen University (ZERP) to undertake a comparative study (COMP/2006/D3/003) into the EU conveyancing services market.

The study integrates a legal and an economic perspective to investigate the impact of professional and related regulation on the efficiency and performance of the conveyancing services market. As groundwork, the study had to gather reliable and detailed information on the regulation of the market and its operation in 21 EU countries. This was achieved by means of a detailed questionnaire covering legal and economic topics, which was sent to selected national reporters, in most cases leading professionals, academics or both. 21 EU countries are surveyed in the study: Austria, Belgium, the Czech Republic, Denmark, England and Wales, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Scotland, Slovakia, Slovenia, Spain and Sweden.

The answers received from the reporters were summarised by ZERP into “country fiches”. To render the information on which the study is based more transparent and to provide a basis for future research, it was decided to publish the country fiches as a separate document alongside the main study.

For elaboration of the country fiches, I would like to thank the national reporters who did an impressive job in little time and Dr. Martina Deckert and Antje Kautz from ZERP.

Bremen, December 5th, 2007

Christoph U. Schmid

Director of ZERP

List of National Reporters

Austria – Rudolf Kaindl, Notary, Vienna

Belgium – Luc Weyts, Notary, Mechelen, and University Professor, Leuven

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Contents

I.	Austria	5
II.	Belgium	20
III.	Czech Republic	36
IV.	Denmark	54
V.	England and Wales	75
VI.	Finland	98
VII.	France	114
VIII.	Germany	126
IX.	Greece	141
X.	Hungary	158
XI.	Ireland	172
XII.	Italy	183
XIII.	Luxembourg	207
XIV.	The Netherlands	223
XV.	Poland	237
XVI.	Portugal	254
XVII.	Scotland	276
XVIII.	Slovakia	291
XIX.	Slovenia	312
XX.	Spain	329
XXI.	Sweden	344

I. Austria

1. Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 50 %	Technical survey/evaluation ca. 5 %	Contract drafting 50 %	Contract drafting (40 %), Certification of signatures (95 %)	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (sometimes)	Estate agents (20 %)	Professional involvement neither mandatory nor usual	Maximum fees for notaries Negotiable fees for advocates (but in absence of a fee agreement fees will be based on guidelines for Attorneys' fees, the "Autonome Honorarrichtlinien" (AHK) issued by the Austrian Bar Association)
Preliminary checks (Land register, administrative permits)	- Real estate agent: building permit - Legal draftsman: land register	Professional intervention not mandatory but usual	
Drafting the sales contract and/or deed of conveyance	Legal draftsman: - advocate: 50 % - notary: 40 %	Professional intervention not mandatory but usual	
Legal advice or counselling	Legal draftsman	Professional duty of legal draftsman	
Certification of signatures	Notary (or district court)	Mandatory ¹ certification of signatures by notary or district court; exclusive right	
Contract execution (transfer of payment and registration)	Legal draftsman	Professional intervention not mandatory but usual	
Taxation (esp. transfer tax)	Computation and levying of transfer tax by legal draftsman (notary or advocate)	Professional involvement not mandatory but usual	

¹ § 31 GBG (Grundbuchsgesetz).

1.1 Civil Law Notaries

In Austria, there is **no legally mandatory professional** to intervene in conveyancing. All steps of conveyancing can be done by the parties themselves, including the **mandatory² certification of signatures** (which can be done at court) and the application for recording a title (with the land register).

In practice, however, in more than 90 % of all real estate transactions, it is a **civil law notary or an advocate** who **drafts the sales contract**, carries out preliminary checks, gives legal advice, certifies the signatures and coordinates the execution of the contract.

Especially when a bank is financing the purchase price, the bank in nearly all cases insists on the involvement of a notary or advocate as a professional **escrow agent**. The purchase price is deposited on an escrow account of a civil law notary or an advocate, and the notary or advocate acts as the escrow agent for all parties involved, including the bank. According to common escrow rules, e.g. established by the Austrian Chambers of Civil Law Notaries or Advocates, the escrow agent will only make payment once it has been ensured that the buyer will become owner of the property and the mortgage of the financing bank will be registered with the requested rank.

Civil law notaries (or advocates) also play a role in **taxation**: The **land transfer tax** is normally **calculated by the draftsman** (civil law notary or advocate), and the buyer makes payment to their escrow account. Only in complicated cases might the contract also be sent to the revenue office for calculation of the land transfer tax. Otherwise, the civil law notary or advocate issues the certificate of tax payment and forwards the deposited tax to the revenue office in the name of the buyer.

1.2 Advocates

Advocates may perform exactly the same functions as notaries (see above). However, one exception applies: advocates must not carry out the certification of signatures, for which notaries and district courts are exclusively competent.

² § 31 GBG (Grundbuchsgesetz).

1.3 Real estate agents

Real estate agents services are **not mandatory** in Austria. They are used in about 50 % of all cases to find a buyer or seller. Alongside finding a buyer or seller, Austrian real estate agents have **few other tasks**: only sometimes do they check administrative permits or restrictions, or draft a preliminary contract. All further steps are however usually carried out by the draftsman (civil law notary or advocate).

1.4 Technical services

In Austria, technical services are **rarely used**, and will therefore **not be described** here.

2. Land registration

The Land Register (“**Grundbuch**”) is administered by the **locally competent civil court** (non-contentious jurisdiction) and not by an administrative authority. The “Grundbuch” is administered at court by special **registrars** (“Rechtspfleger”). In the Land Register ownership and other legal rights are registered. The land register is organised as an **electronic database** accessible on the internet. The Land Register is complemented by the “Urkundenkarteien” (data certificates of the buildings which are not accessory to a specific piece of land, but built e.g. on leased estates). These registers are not yet digitally available, but accessible at the individual local court. Furthermore, there is the “Liegenschaftskataster” (**cataster**), where one may find a technical survey (address, size etc.) of the land, part of which is also shown in the electronic land register. Whereas the data of the “Grundbuch” generally confer a presumption regarding the existence of the registered rights and interests, data of the “Liegenschaftskataster” is included for information purposes and does not have presumptive value.

The main **statutory basis** for land registration is the “Grundbuchsgesetz” (statute on land register).

In Austria, **more than 95 %** of all real property is registered.

3. Main steps of the conveyancing process

In Austria, the standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership:** A **preliminary contract** is possible, but not compulsory. If the main content of the sales contract is already agreed upon, that is the object of purchase and the price, then even a preliminary contract is binding. Parties can then be sued to consent to the main contract. Austrian law does **not** require a specific **form** for the agreement of the parties itself so that it can be made orally as well as in writing. Notarial form is not compulsory. However, the **transfer of ownership** presupposes a **valid contract**. Payment does not need to be effected at the same time as transfer of ownership. In order to minimize risks for both seller and buyer, the **purchase price is usually deposited on an escrow account** of a notary or an advocate who transfers the deposit to the seller only when all conditions for registration are fulfilled. Either before signing the contract or on that occasion, the seller signs a request for a **priority notice** (“Anmerkung der Rangordnung für die beabsichtigte Veräußerung”, equivalent to the German “Vormerkung”). By this priority notice, a specific **rank** in the land register is reserved for the buyer.

- **Registration:** In general, the registration is necessary for the creation and the transfer of the right, thereby having **constitutive effect**. Usually a notary or an advocate applies for the registration. For simple applications, it is also possible that the parties come to see the registrar personally and apply for registration orally, without the support of a professional. For registration, a **document** must be presented indicating the specific piece of land, the rights agreed upon, the parties involved and the explicit consent of the parties giving up rights to the effect that they agree on the registration. This declaration (often called “Aufsandungserklärung”) must be done **in writing with certified signatures**, either in a separate document (usually in the sales contract itself) or in the application. Every person directly concerned by the registration as well as the professional applying for it must be informed through a **court order** containing the registration, to be sent by regular mail with proof of reception. Usually, the professional checks whether the court order has been effected according to the application and, if so, sends an extract of the land register to his clients.

4. Professional services regulations

4.1. Legal services: civil law notaries and advocates

A) Notaries

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Austria	5,9	3,2	9,0	2,0	11,0	5,9

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

An Austrian notary obtains his appointment as public official after successfully passing a **university degree in law**, followed by professional exams. The **training period** before professional admittance is at least seven years and also encompasses practical training at court. The **appointment** is pronounced by the minister of justice who delegates public authority to the notary.

Objective requirements

The **total number of notaries** is adjusted by the Federal Minister of Justice in consultation with the competent chamber of notaries in order to ensure the availability of notarial services all over the country.

A notary is appointed for a **particular district** by the federal **Minister of Justice** on the recommendation of the competent chamber of notaries. In Austria there are at present around **470 notaries**.

It is possible for several notaries to join together to form a set of chambers or a notarial partnership. In these cases, too, each notary is appointed to a particular office, so that the total number of notaries is not affected by such associations.

Barriers to cross-border services

Austrian nationality is required, which is motivated by the delegation of public authority to the notarial profession.

Inter-professional co-operation

Interprofessional cooperation in one office between advocates, notaries, real estate agents, tax consultants or auditors is **not allowed**.

Business structure

A cooperation between advocates and civil law notaries may only take a very loose form. A cooperation within a professional partnership thereby forming a company is not possible.

Market conduct regulations

Neutrality

In all areas of activity, the Austrian notary is under a duty to comply with professional standards (“professional etiquette”), to maintain confidentiality, to act impartially and to advise the parties objectively.

Duty to provide services

A duty to provide services exists only to the extent that a notary exercises a public function. This is true e.g. for the certification of documents but not for the draft of the sales contract.

Professional standards

The Law on Notaries Public, the Law on Court Commissioners and the Law on Notarial Instruments lay down also professional standards, the so-called professional etiquette for notaries. Specifications thereof are issued by the **Austrian Chamber of Notaries** or the respective regional Chambers of Notaries.

Compulsory Indemnity Insurance

Civil law notaries and advocates must have a compulsory professional indemnity insurance. The **minimum amount** is 400.000 Euro for each individual case; for advocates’ associations, this sum is even higher.

Continuing education

Civil law notaries must attend continuing education courses according to the professional guidelines, at least six half-days a year.

Advertising restrictions

Former **restrictions** on advertising have been abolished. Exceptions are price advertising or comparative price advertising, which are still not allowed.

Other professional **guidelines** such as collegiality have to be taken into account so that aggressive advertising is forbidden.

Conduct control

For advocates and notaries, membership in the **professional chambers** is **compulsory**. These are allowed to carry out controls in order to verify professional conduct. Also, both chambers have established **customer care departments** dealing with complaints by clients.

Mandatory intervention

There is **no mandatory intervention by any professional** in conveyancing. All steps can be done by the parties themselves, including the (compulsory³) certification of signatures, which can be done by a notary or a district court.

Price and fee regulations

Maximum fees are set forth by the statutes on charges for civil law notaries. Lower prices and fees may be negotiated. The former fixed fees for civil law notaries still serve as **guidelines**.

In **practice**, depending on the purchase price, the draftsman usually charges between **0.5 % to 1.5 % of the purchase price** for the complete transaction including applications and escrow agency. These figures may vary according to the requirements of the individual case.

B) Advocates

Table: Regulation Index for Advocates

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Austria	2,1	2,5	4,6	2,0	6,6	4,0

*Please note: The MII is an index per country and not per profession.

³ § 31 GBG (Grundbuchsgesetz).

Market entry and structure regulations

Subjective requirements

These are: university degree in law, followed by **professional exams**. The training period before professional admittance is at least five years with a minimum of three years practical training at an advocate's office and nine months practical training at court.

Numerus clausus does **not** exist.

Cross-border services

Advocates from the **European Economic Area** have a right to practise in Austria. The Austrian „Bundesgesetz über den freien Dienstleistungsverkehr und die Niederlassung von europäischen Rechtsanwälten in Österreich“ (EuRAG) transposes **Directives 77/249 and 98/5**. Advocates from the European Economic Area and Switzerland may provide cross-border services and establish themselves in Austria. No additional exam is necessary in order to do so. Some restrictions may apply.

Inter-professional cooperation see above (notaries).

Business structure

As notaries, advocates can join together to form a set of chambers (thereby merely collaborating as colleagues) or a **professional partnership** thereby forming a company. Unlike notaries, advocates are also allowed to form a **limited liability company**. Associations of advocates are common.

Market conduct regulations

Neutrality

There are **strict rules** regarding acting on behalf of more than one party. In non-contentious matters, such as real estate transactions, an advocate can act on behalf of all parties, on the condition that he acts **neutrally** and in the interest of all parties involved. In case of a subsequent dispute arising from the transaction, the advocate is not allowed to act on behalf of any party involved.

Duty to provide services

There is **no legal duty** to provide services to all requesting parties.

Professional standards

The most important **statutory source** for professional standards is the Austrian Law on Advocates (“Rechtsanwaltsordnung”). In addition, the activities of the advocate are specified in detail in **guidelines** issued by the Austrian **Chamber of advocates** (ÖRAK).

Compulsory Indemnity Insurance: see above (notaries).

Continuing education is mandatory.

Advertising restrictions: see above (notaries).

Conduct control: see above (notaries).

Mandatory intervention

The intervention of an advocate is not **mandatory in conveyancing**.

Price and fee regulations:

Advocates’ fees are **freely negotiable**. The statute on advocate fees (Rechtsanwaltstarifgesetz – RATG) does neither set forth fixed maximum nor minimum fees. However, if the parties have not agreed on fees, the said statute foresees that fees will be based on the RATG as well as on guidelines for Attorneys’ fees, the “Allgemeine Honorar-Kriterien ” (AHK) issued by the Austrian Bar Association. According to these guidelines, the fees are calculated on the basis of the value of the matter, the time spent and the effort and difficulty of work.

In practice, the fees charged are **between 0.5 % and 1.5 %** depending on the value of the transaction and the volume of services provided. For details see below (5.)

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

Real estate agents have to complete a professional training (different options) which may include an **exam** (“Maklerprüfung”). The requirements are laid down in a regulation by the Minister of Economic Affairs⁴.

⁴ http://www.wkimmo.info/i/wko/service/zugang_it.pdf

Objective requirements (in particular numerus clausus) do **not** exist.

Cross-border services

Every citizen of the **European Economic Area** can work in Austria as a real estate agent.

Inter-professional cooperation

For real estate agents, there are **no restrictions** on inter-professional co-operation. But in practice, there are only co-operations of real estate agents in Austria.

Business structure or geographical location are not regulated.

Market conduct regulations

Neutrality

The real estate agent is acting **on behalf of his client** (usually the seller). The agent has to inform the third party that he is acting on behalf of the client.

There is no duty of neutrality.

Duty to provide services does **not** exist.

Professional standards

The professional standards for real estate agents' services are set out by **statute** in the Austrian "Maklergesetz"⁵. In addition, there is an **regulation⁶ of the Minister of Economic Affairs** about the regulation of prices and the conduct of the real estate agent. As regards conduct, the ordinance describes in general the rule of professional conduct. Further "General guidelines" issued by the Federal Economic Chamber⁷ exist.

Compulsory Indemnity Insurance does **not** exist.

Continuing education is considered a professional duty.

Advertising restrictions

General advertising regulations, e.g. in the Act on Unfair Business Practices Act ("UWG"), apply to real estate agents as well. Certain forms of advertising on the price are considered to infringe professional conduct.

⁵ This Act applies to all kinds of agents.

⁶ <http://www.wkimmo.info/i/wko/service/immv.pdf>

⁷ http://www.wkimmo.info/i/wko/service/allg_rl.pdf

Conduct control does **not** exist.

Price and fee regulations

For real estate agents, there is a **maximum fee** which is **3 % plus VAT (20 %)** and **4 %** if the purchase price is up to Euro 36.336,42. This fee can be charged to both the seller (who is normally the client) and **buyer or the maximum fee may be doubled if charged to only one party**, so fees can be **6 %** respectively **8 %** in total. For other activities maximum fees are between 2 % and 5 %.

In **practice**, it is usual that the maximum fee is charged.

4.3 Technical services

Not relevant in Austria.

5. The Austrian Real Estate Market

5.1 Transaction costs (in €)

Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
Max. 6 %	Not usual	0.5 % to 1.5 % purchase price for complete transaction		1 % purchase price	3.5 %	Average 10 %

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	6,000	Not usual	1,400		1,000	3,500	11,900
100.000 € sales price + 100.000 Euro mortgage	6,000	Not usual	1,400		2,200	3,500	13.100
250.000 € sales price (no mortgage)	15,000	Not usual	1,900		2,500	8,750	28.150
250.000 € sales price + 250.000 € mortgage	15,000	Not usual	1,900		5,500	8,750	31.150

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs
500.000 € sales price (no mortgage)	30,000	Not usual	2,900		5,000	17,500	55.400
500.000 € sales price + 500.000 € mortgage	30,000	Not usual	2,900		11,000	17,500	61.400
1.000.000 € sales price (no mortgage)	60,000	Not usual	4,900		10,000	35,000	109.900
1.000.000 € sales price + 1.000,000 € mortgage	60,000	Not usual	4,900		22,000	35,000	121.900
5.000.000 € sales price (no mortgage)	300,000	Not usual	19,000		50,000	175,000	544.000
5.000.000 € sales price + 1.000,000 € mortgage	300,000	Not usual	19,000		110,000	175,000	604.000
% VAT applicable	20 %	Not usual	20 %		No VAT	No VAT	

5.1.1 Real Estate Agents

At **maximum**, the real estate agent is allowed to charge **3 % of the sales price** plus VAT (20 %) **from each one of the parties** (seller and buyer), in some cases 4 % (see above), so 6 % respectively 8 % total. The legal basis is the statute on real estate agents (“Maklergesetz”).

5.1.2 Technical Services

Technical services are not mandatory; their fees are **entirely negotiable**.

5.1.3 Legal Services

Maximum fees are set forth by the statutes on charges for civil law notaries (*Notariatstarifgesetz*). The statute on advocates’ fees (*Rechtsanwaltstarifgesetz*) does neither set forth maximum nor minimum fees but the Bar Association’s

guidelines on fees is applied if parties have not agreed otherwise on fees (see above).

The legal draftsman usually charges between **0.5 – 1.5 % of the purchase price** for the complete transaction including applications and escrow agency. These figures can vary according to the requirements of the individual case and are **nowadays completely (advocates) or largely (notaries) negotiable** (see above).

5.1.4 Land Register Fee

The land register fees are fixed by the **statute on court fees** (*Gerichtsgebührengesetz*).

Registration fees in the land register are **1 % of the purchase price** for recording of title and **1.2 % of the mortgage amount** for registration of the mortgage.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

Land transfer tax is 3.5 % of the purchase price and 2 % for transactions among family members. Legal basis is the statute on transfer taxes (*Grunderwerbsteuergesetz*).

In all cases, **VAT of 20 %** is applicable apart from taxes and court fees.

The legal draftsman also gives a tax assessment.

5.1.5.2 Capital Gains Taxes

There is **no capital gains tax** except for speculative profits from re-sale within certain time limits.

5.1.6 Commercial or Office Buildings

There are **no differences** for the taxes or the other transfer costs for commercial or office buildings.

5.1.7 Changes in Transfer Costs

The notarial tariffs have been liberalized (see above).

5.2 Service providers

All firms	Total number of firms	Total number of professionals	Total number of employees
Real estate agents	1.866	2537	3338
Advocates	N.a.	4986*	N.a.
Trainee advocates	N.a.	1899*	N.a.
Civil law notaries	N.a.	478	N.a.

* figures as of 31.12.2006

n.a. = not available

5.3 Key market data

Average prices

- Residential apartment:
 - Vienna: up to € 10.000,--/m²
 - Other cities: from € 1.500,--/m² to € 3.000,--/m²
 - Other regions: lower
- Residential house: considerably lower
- Commercial/office property: similar to the costs of residential property

Number of transactions:

Total number about 50.000 per year

Ratio house owners – tenants: 60 %-40 %

General Market Situation

- tendency towards higher prices in better locations:

Within the last few years, a tendency towards higher prices in better locations can be noticed. The question of location of the building is getting more and more important compared to the other attributes of the building.

- important local market divergences:

In regions with bad infrastructure (especially on the job market), prices are very low; in bigger cities (like Vienna, Salzburg and Innsbruck) and well-known tourist places (like Kitzbühel), prices are high. Within the city of Vienna, prices can differ strongly depending on the location.

II. Belgium

1. Professionals involved in the conveyancing market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 60 % (50-75 %)	In some cases mandatory, varying according to the region	Not involved	Dominant role in conveyancing, mandatory for establishing the authentic deed	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (usual)	Estate agent (60%) parties notary or advocate (rare)	Professional involvement not mandatory but usual	Fixed fees for notaries
Preliminary checks (land register, administrative permits)	Notary technical expert (administrative permits)	Professional duty of notary (prior to drafting the sales contract)	
Drafting the sales contract and/or deed of conveyance	Notary public officer or judge	Notary (or public authority or judge) mandatory for establishing the authentic deed as only deeds can be registered	
Legal advice or counselling	Notary	Professional duty of notary (as part of process associated with concluding the authentic deed)	
Certification of signatures	Notary	Certification by notary mandatory as part of the authentic deed	
Contract execution (transfer of payment and registration)	Notary	Professional duty	
Taxation (esp. transfer tax)	Notary	Notary responsible for retention of transfer taxes	

1.1 Notaries

In Belgium, which largely follows the French tradition, the civil law notary plays the dominant **role in conveyancing**. Since only **authentic documents** can be registered with the Mortgage Registry Office, the involvement of a **public authority**, i.e. a notary, a public officer or a judge, is **mandatory** in order to make the transaction **opposable towards third parties**. A deed related to real property can thus be issued by another public officer than the notary (for example, if one of the parties to the deed is a public authority), which however happens only in a minority of cases.

In case of **public sale (auction)**, the notary is the only person liable by law for writing the articles and conditions of sale (*'cahier des charges'*) and for carrying out the sale. Public sale is not only provided by law in case of bankruptcy or private debts, but also prevails when the price of the market is not sufficiently known, or at the convenience of the seller.

The notary guarantees the correct **process of the sale**, i.e. the transfer of the property and payment of the price. The notary fulfils all the necessary **formalities** to ensure completion of the transaction, which s/he then confirms to all parties. The notary also functions as an **escrow** for the parties: S/he receives the payment and hands it over to the seller. Furthermore, the notary guarantees that all **debts** on the sold properties have been paid so that the buyer is certain that the sold property is free of debts. With regard to **administrative permits and restrictions**, the notary checks the standard requirements, in particular building permits, zoning restrictions, soil certificates and oil tank permits. It is also the notary's task to present the transfer deed for **registration** with the Mortgage office. He also needs to verify, post factum, that the registration has effectively taken place. Finally, the notary plays an important role in **taxation**: the notary is responsible for the collection of the transfer taxes and other taxes (e.g. VAT and corporate taxes), and he is personally liable for their payment.

1.2 Advocates

In Belgium, an advocate is **not mandatory** and is usually **not involved** in conveyancing. The advocate may play a limited role in drafting and reviewing the **preliminary sales agreement** on behalf of the seller, the buyer or of both parties. A

preliminary agreement by a professional may be required by the **buyer's bank** which finances the price (or part of the price) with a mortgage loan. Typically, in this case, the preliminary agreement provides that the effects of the transaction are suspended until the bank officially agrees with the price for the house.

1.3. Real estate agents

In Belgium, a real estate agent is **not mandatory**, but is usually involved in order to find a buyer or a seller in **50 – 75 % of the cases**. The real estate agent also often drafts the preliminary sales agreement. Furthermore, the real estate agent may receive the **down payment** (usually 10% of the sales price) when the parties sign the preliminary agreement without the intervention of an advocate or a notary.

1.4 Technical services

Technical services are **in some cases mandatory** in Belgium.

Buyers sometimes ask an architect to have a look at the house that they consider purchasing, but this is not compulsory and does not happen on a systematic basis. However, in case the buyer takes out a mortgage loan, a technical **expert of the lending bank** values the house before the preliminary sales agreement (or within a short period of time after the signature). His role is critical for the buyer, who would have to step back from the transaction (with, consequently, the lost of his down payment), should the expert consider the loan to risky.

The intervention of an independent **architect** is **compulsory** in case of sales of a building on plan (i.e. before it is built) **to a private party**. A statute of 1971 protects the consumer against bankruptcy of entrepreneurs who sell apartment on plans and do not complete the construction.

The (mandatory) intervention of other technical services in conveyancing varies according to the Region:

- In the **Flemish region**, the seller must obtain a **soil certificate** from the Public Waste Company of Flanders. If this certificate is negative, an exploratory soil investigation must take place. Such investigation, and the possible sanitation of the soil that follows, must be carried out by a licensed expert in soil sanitation. The license can be obtained from the Public Waste

Company of Flanders. In the **Brussels region**, a similar obligation applies. However, there is no similar obligation in the **Walloon region**.

- The **EU Directive 2002/91/EC** on the information about the energy situation has been implemented in the **Flemish region** by governmental decree of March 11, 2005. This decree provides inter alia that, when a building for which a certificate of energy performance has been established, is sold, such certificate shall be transmitted by the seller to the buyer. Directive 2002/91 has been partially implemented in the **Walloon region** by governmental decree of June 1, 2006, as regards the certification of the persons entitled to establish energy audits.
- In all three regions (the Flemish, Walloon and Brussels), a permit is necessary to certify the safety of an **oil tank** over a certain capacity (smaller tanks used in individual houses only need to be declared).
- Finally, at federal level, as of July 1st, 2007, the seller of a house/ an apartment will have to obtain a certificate proving that the **low-tension electrical installation** of the building has been controlled. This certificate must be handed over to the notary drafting the sales deed. Such certificates may only be established by experts licensed by BELAC, the Belgian accreditation structure for control and certification bodies.

2. Land registration

In Belgium, there are **three institutions** dealing with land registration, all of which are administrative authorities depending on the Ministry of Finance: the Cadastre office, the Registration office and the Mortgage registry office.

The **Cadastre Office** is an administrative authority whose main purpose lies in the determination of the cadastral income in order to allow the Belgian State to levy the **annual tax on real estate**. The data in the cadastre office are only gathered for **internal use by the State** and do not have any probative value. Transfer of real estate **deeds refer to** the cadastral references of the building/plot of land for identification purposes.

The role of the **Cadastre Office** is to give:

- indications on the identity of owners or titulars of rights *in rem* on land and

constructions of a municipality,

- a description of the land and the building and its surface,
- information on the date of the end of the construction and
- the tax imposed on the building.

The **Registration Office** is in charge of levying the **transfer tax on real estate**. To enable this, every real estate transfer needs to be registered within 4 months from signature **of the preliminary sales agreement or at the signature of the deed**, and the **tax paid upon registration**.

The register administered by the registration office is organised on a personal basis and does not constitute a real estate database. Registration with the registration office **does not have probative value** regarding ownership.

The **Mortgage Registry Office** administers the register bearing the same name which, contrary to what its name may seem to indicate, **evidences towards third parties all real rights over land and buildings**. Thus, in addition to the ownership of a plot of land/building, the mortgage register also shows whether there are any mortgages, rights *in rem*, co-ownership rights, easements, attachments, leases of more than 9 years or legal actions or court decisions regarding the plot of land/building. A registration in the mortgage register does not provide the buyer with a guarantee of ownership, but it ensures that third parties need to consider him as the rightful owner. The mortgage registry is **personal and not real**, i.e. **classified in function of the name of the owner** rather than in function of the real estate (building or plot of land). Therefore, all research has to be done via the owner of a property or the holder of a real right. The registration and inscriptions (mortgages) in the Mortgage Registry Office are made by **registrars** who are not required to possess a law degree (the same holds true for the other personnel working in the office, entrusted with a purely administrative role).

The **statutory basis** for land registration is the **Mortgage Act** dated 16 December 1851. Pursuant to its Article 1, all deeds related to the transfer of real property, lease agreements with a term that exceeds 9 years and the creation of all kind of real rights shall be transcribed in their totality in the Mortgage Registry Office. Therefore, **almost all real property is registered**.

3. Main steps of the conveyancing process

In Belgium, the **standard conveyancing procedure** takes the following main steps:

Conclusion of a preliminary sales agreement

The seller – in most cases through a real estate agent – offers the property on the market. After a buyer has been found and terms of the contract negotiated, the sale is stipulated in a **preliminary sales agreement**. This is usually in writing, dated and signed by both parties. Though the written form is not mandatory, only written evidence is admissible in legal actions among private parties relating to contracts whose value is superior to 375 € (Art. 1341 Belgian CC). In practice, the preliminary sales agreement is **drafted** in most cases by a real estate agent, the parties themselves, an advocate and only in some cases by a notary. There is a custom to make a **down payment** or to give a guarantee of 10 % of the purchase price at the moment of the signature of the preliminary sales agreement. This amount is held on behalf of the parties by the real estate agent or the notary until the signature of the authentic deed. In principle, the preliminary agreement also entails the transfer of property. However, in most cases, the transfer is deferred until the signature of the **authentic deed** and the payment, by the buyer, of the balance of the **purchase price**.

Conclusion of the deed (final sales agreement) by the notary

As only agreements registered in Mortgage Register are **opposable towards third parties** and as only authentic documents can be registered, a **public authority (notary, public officer, judge)** that draws up an **authentic deed** is involved almost always. In most cases, the deed is a notarial contract which usually contains all basic terms including clauses on guarantee. Before the signature of the deed, the notary has to accomplish a large number of **formalities**, e.g. checking the ownership, verifying the identity, the legal capacity and marital status of the seller and the buyer, obtaining (e.g. cadastre or mortgage register) certificates etc.

It should be mentioned that a certain part of transactions are processed under the rules of **public sales**, which may happen not only in case of judiciary sales but also on a voluntary basis. The **notary** has a monopoly on the organisation and realisation of public sales (see above).

Registration

After the conclusion/signature of the preliminary sales agreement, the transfer agreement must be registered and the **transfer tax** paid within a period of 4 months. Both parties are liable for the payment of the tax, even though the buyer alone generally takes over the debt *inter partes*.

The registration **with the Mortgage Registry Office** shall take place **within 2 months** after the issuance of the deed by the notary, public officer or judge. The **authentic form** of the deed ensures that the data transmitted to the mortgage registry are effectively correct as to form and content. Almost always, the public official who drafts the deed **applies for its registration on behalf of the parties**. After registration in the books, the Mortgage Registry Office shall send the certified copy back to the notary, public officer or judge with the data (number and date) of registration.

The tax (registration) is payable, within 4 months from the signature of the preliminary sales agreement or at the signature of the deed, to **the notary in charge of its transfer to the administration**.

4. Professional services regulations

4.1 Legal services: notaries

Table: Regulation Index for Notaries:

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII Mandatory Intervention	MERI +MCRI MII	CPI Consumer Protection
Belgium	5,7	5,0	10.7	4,0	14,7	4,7

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

In order to become a civil law notary in Belgium, according to the Belgian Notary Act, the requirements are: **university studies** (5 years), additional *cursus* (1 year) in notary law, three years of **professional training**, a **state reviewed exam**, **language requirements** for the establishment in the Brussels region (bilingualism

French-Dutch) and in the German-speaking area of Belgium (knowledge of German), and a **morality check** through the courts.

Objective requirements

There is no *numerus clausus* on the number of notaries, but there is a **numerus clausus on the amount of notarial offices**, as well as a restriction on the number of new entrants each year. The maximum numbers are set by the legislator. They are determined for each administrative area (“arrondissement”) based on the population of the area. The yearly numbers for the certification exam are set by Royal decree. An **appointment commission** proposes 3 names (max.) for each vacant office. The Minister of Interior Affairs is competent for the nomination.

Cross-border services

There is, under the Belgian Notary Act, a **nationality requirement for notaries**. This requirement, currently under attack from European law, also applies to judges and civil servants. In contrast, foreign notarial acts and judgements may also be registered in the Mortgage Registry.

Inter-professional cooperation

Inter-professional cooperation is permitted under the form of **nominal partnerships** (“sociétés de moyens”), which is similar to a collaboration as colleagues. They are not very frequent in practice. Even within such partnerships, the notary may only exercise his regular activities as a notary (no activities which are incompatible with his function as public officer). Apart from this very limited exception, a notary is never allowed to enter into any business co-operation with e.g. accountants or lawyers.

Business structure

Notaries may enter into **partnerships with other notaries**, the only restriction being that the partnership may not take the form of a company with share capital. There is no limit on the number of partners.

As to geographical location, the notary is competent for all transactions from Belgium or abroad, but he may only establish authentic deeds within the administrative area (“arrondissement”) in which his office is located (with some exceptions).

Market conduct regulations

Neutrality

Being under a duty of neutrality, the notary always acts **on behalf of all parties** involved and on behalf of the public interest (including third, not represented parties), even if several notaries are appointed by the parties. The parties have in most cases the freedom to choose the notary (except if he is appointed by a court decision).

Duty to provide services

The notary is under a **legal duty to provide services** to all requesting parties. He may only deny his services on specific grounds, which are stated by the Belgian Notary Act.

Professional standards

The notary has a professional obligation to **advise each of the parties** about their rights, obligations and duties arising from the acts to which they are party.

The **Appointment Commission**, i.e. the organ in charge of notary appointment procedures and of complaint proceedings against notaries, has a duty to judge such complaints in accordance with overall quality standards.

Compulsory Indemnity Insurance

The notary has a personal and unlimited liability for his professional activities. **Professional indemnity insurance is compulsory**, with a minimum coverage of 2,500,000 €. The average primes depend on the number of deeds that the notary issues every year.

Continuing education

Specific continuing education is **currently not mandatory**. However, regulation to make it mandatory is being prepared, and the notary has a general obligation to keep his legal knowledge up to date. The participation rate to continuing education seminars by notaries is among the highest of all liberal professions.

Advertising restrictions

There are no general rules on advertising for Belgian notaries. However, there is a **Royal decree** of July 1, 2006 (approving a regulation of the National chamber of

notaries on advertisement and communication) which generally prohibits any individual advertisement by notaries.

Conduct control

Membership in the Provincial **Chamber of notaries** (= public institution created by the Notary Act) is **compulsory**. The national chamber is responsible for the discipline of the notaries. The procedure is provided by law (judiciary code). It is the task of the **Appointment Commission** to exercise a **quality control**. There are no certification systems. The professional organisation runs several projects to improve the quality level of the service in notary offices.

Mandatory intervention

Since only **authentic documents** can be registered with the Mortgage Registry Office, the involvement of a **public authority**, i.e. a **notary**, a public officer or a judge, is **mandatory** in order to make the transfer of real property **opposable to third parties**.

Price and fee regulations

There are non-derogable **fixed fees and minimum fees** for specific notarial services. Parties may not derogate from legally fixed fees. The **legal basis** is the Royal decree of December 16, 1950 on notary fees. The observance of the fees is **controlled** by a professional body (the Provincial chambers of notaries), by the State (courts) and by the clients.

The notary fee is set for certain services and **is based on the value of the deed (decreasing percentage)**. The notary fee consists in a **lump sum covering all expenses** (drafting both the preliminary sales contract and the authentic deed, as well as obtaining the necessary administrative permits and applying for registration with the land register). The notary fee is usually **paid by the buyer**.

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

In order to deliver services as a real estate agent, the requirements in Belgium are: academic qualifications (3 year-degree in real estate, or higher degree e.g. law,

engineering etc.); one year of **professional training**, a **certificate of entrepreneur**, or any other comparable and recognized certificate (also from other EU Member States), or higher degrees/qualifications, and a **license**. Furthermore, real estate agents must have a **financial guarantee** for the funds that they hold on behalf of their clients (bank guarantee). This guarantee amounts to a minimum of 25,000 €.

Objective requirements do not exist.

Cross-border services are not restricted.

Inter-professional cooperation

There are **no specific restrictions** on inter-professional co-operations for real estate agents.

Business structure and geographical location are not restricted.

Market conduct regulations

Neutrality

The real estate agent is acting **on behalf of only one party**. There is **no duty of neutrality** for real estate agents. There are no specific rules on conflict of interests.

A duty to provide services does not exist.

Professional standards

The standards of professional services are regulated by statute. There is a deontological code, which was approved by **royal decree** of September 28, 2000. Parts of it were annulled by the Conseil d'Etat on May 4, 2005. A new **deontology Code** has been approved by Royal decree of **27/09/2006**.

The **most important standards** are: confidentiality, dignity, professional responsibility, acting as a *bonus pater familias*.

Compulsory Indemnity Insurance

In Belgium, real estate agents are **obliged** to insure their professional liability. The minimum amounts recommended by the **directives of the professional organisation** of real estate agents are 1,250,000 € for bodily damages, Euro 250,000 for damage to goods, 250,000 € for immaterial damages, and 30,000 € as a guarantee in case of embezzlement by the agent's employees. The insurance is provided by insurance companies that are controlled by the Commission for Bank, Financial and Insurance Supervision.

Furthermore, real estate agents must:

- prove financial guarantee of 250,000€ minimum for the funds they hold on behalf of their clients
- from January, 1st, 2007, open a special escrow account (so-called CARPA account).

Continuing education

Continuing education is recommended but **not mandatory**. The professional organisation's Deontology Code recommends an average of 10 hours per year.

Advertising restrictions

There are **no specific advertising restrictions** for the profession of real estate agent. The general rules of the Trade Practices Act 1991 apply (rules on misleading and comparative advertising implementing the corresponding EU directives).

Conduct control

Membership of the professional organisation ("Institut professionnel des agents immobiliers") is **compulsory**. The professional organisation has the task of controlling the application of the **deontological rules**.

Price and fee regulations

There are no price or fee regulations.

In practice, the real estate agent's fee is usually **3% of the value of the transferred estate**. The fee is usually paid by the seller.

4.3 Technical services

Professional regulations in general

As mentioned above (1.4.), the various technical experts must always be licensed by either a federal body such as BELAC or a regional body such as the Public Waste Company of Flanders or the Brussels Institute for Environmental management.

These bodies request the fulfilling of various **requirements** to obtain the license, such as **specific (university) degrees**, specific work experience, and/or the possession of professional **liability insurance** and of specific technical knowledge.

Objective requirements, in particular numerus clausus, do not exist.

5. The Belgian Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty (10% Flemish region, 12.5% Walloon and Brussels region)	Totals transfer costs
100,000 € sales price (no mortgage)	3,000	1,593.66		Average 330 (8.72 per page of the deed + 2.13 per formality)	11,500	16,424
100,000 € sales price + 100,000 € mortgage	3,000	2,155		580	12,600	18,335
250,000 € sales price (no mortgage)	7,500	2,448		825	28,750	39,523
250,000 € sales price + 250,000 € mortgage	7,500	3,352		1,275	31,500	43,627
500,000 € sales price (no mortgage)	15,000	2,592		1,650	57,500	76,742

	Real estate agent	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty (10% Flemish region, 12.5% Walloon and Brussels region)	Totals transfer costs
500,000 € sales price + 500,000 € mortgage	15,000	3,609		2,150	63,000	83,759
% VAT applicable	21%	No VAT		/	/	

5.1.1 Legal Services

There are **fixed fees and minimum fees** (only) set for certain services (see above).

The notary fees are a **lump sum** covering all expenses (see above).

The notary fee is usually paid by the **buyer**.

5.1.2 Real estate agents

The real estate agent's fee is usually **3 %** of the value of real estate.

The fee is usually paid by the **seller**.

5.1.3 Technical Services

The fees **vary widely**, depending on the extent of the technical services requested.

The fees are usually paid by the **seller**.

5.1.4 Land Register Fees

The mortgage register fee for the registration of the **transfer of ownership** of a building/plot of land is a **flat fee** that depends on the number of pages of the deed and the number of formalities.

The mortgage register fee for the **registration of the mortgage** on a building/plot of land depends on the value of the registered mortgage, as well as the number of pages of the registration document and the number of formalities.

The fees are usually paid by the **buyer**.

5.1.5 Taxes on Conveyancing

5.1.5.1. Transfer Taxes

The **registration duties** (i.e. tax on the transfer of real estate) amount to 10 % in the Flemish region, and 12.5 % in the Brussels and in the Walloon region (with systems of reductions/discounts in some cases).

In addition, in case of a mortgage, a **mortgage duty** of 0.3 % and a **mortgage registration duty** (for the registration of the mortgage deed) of 1 % are due.

The tax is **based on** the purchase price or on the real value, whichever is the highest: the tax is normally levied on the purchase price but the competent tax authorities may decide to levy it on the real value (that they determine) if they are of the opinion that the purchase price is too low.

5.1.5.2 Capital Gains Taxes

There is no capital gains tax for properties used for private purposes, but there is one for properties used for **professional purposes**.

There is a capital gains tax for properties sold **within 5 years** (the date of the deeds being relevant), except if the property is the residence of the seller. The tax rate is 16.5%.

Should the seller be a **professional in real estate**, capital gain is considered as professional revenue and is taxed as such under the regular tax rate applying to the statute of the professional.

In addition, there can be a **speculation tax** if the building/plot of land is purchased and then re-sold within a short period of time (save for some exceptions such as the family home).

The **average tax** is between 16.5 % up to 50 %, in case of a speculation tax. The capital gains tax is within the regular tax brackets for income tax.

5.1.6 Changes in Transfer Costs

The **Flemish region** has known a **significant reduction** of registration duties (i.e. transfer of real estate tax), from 12.5 % to 10 % (2002). In addition, several regimes of reductions/discounts on the registration duties have been introduced, both in the

Flemish and in the Brussels region. Furthermore, the **notary fees** for conveyancing have not been indexed since 1980.

5.2 Service providers

No data provided

5.3 Key market data

No data provided

III. Czech Republic

1. Professionals involved in the conveyancing market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching the parties ca. 85 %	Energy certificate mandatory; Building appraisals 90 % (only for tax purposes)	Usually involved (65 %) for drafting and executing the contract	Sometimes involved (35 %) for drafting and executing of the contract	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (frequent)	Mostly parties themselves (70 %)	Professional involvement neither mandatory nor usual	Fixed notarial fees Advocate fees negotiable (but in absence of agreement between the parties a State regulation fixing fees applies by default)
Preliminary checks (land register, administrative permits)	Legal draftsman (notary or advocate)	Professional duty of legal draftsman (land register check as part of contract drafting); exclusive right	
Drafting the sales contract and/or deed of conveyance	Legal draftsman: - advocate: 65 % - notary: 35 %	Professional involvement not mandatory but usual exclusive right	
Legal advice or counselling	Legal draftsman (notary or advocate)	Professional duty of legal draftsman (as part of contract drafting)	
Certification of signatures	Notary, advocate or cadastral office	Mandatory certification of signatures by a notary, advocate or the cadastral office	
Contract execution (transfer of payment and registration)	Legal draftsman (notary or advocate)	Professional involvement not mandatory but usual (as part of package and included in price) exclusive right	
Taxation (esp. transfer tax)	Legal draftsman (notary or advocate)	Professional involvement not mandatory, but usual in cases where payment is made via a professional's escrow account and taxes are paid directly	

1.1 Civil Law Notaries

In the Czech Republic, it is **not mandatory** to involve a civil law notary in conveyancing. In practice, this happens only in an **estimated 35 %** of real property transactions. If the parties choose to involve a notary, he s/he may provide the following services: **drafting the sales contract, verifying the signatures** on the sales contract (necessary for registration with the cadastral office, for details see below 3.), and assisting in the **execution** of the contract (payment, application for registration). Notaries can act as substitutes of (one or both) parties in the **registration procedure**. There are **no administrative permits** to be controlled.

Notaries may also provide deposit services (**notarial escrow account**). If these are used (which seems to happen in a minority of cases only), the notary may also be involved in **taxation**, as it is common practice for notaries to withhold the sum due (transfer tax) to the tax authorities by the seller from the monies paid over by the buyer.

1.2 Advocates

An advocate is **not mandatory**, but advocates are **usually involved (70 %)** in conveyancing. If chosen, they provide the same services as notaries. Unlike with notaries, each party may also opt to have his or her own advocate where as notaries act for both parties.

1.3 Real estate agents

A real estate agent is **usually involved** in conveyancing in order to find a buyer or a seller. In the sale of residential property among private persons, a real estate agent is involved **in 75-95 % of the cases**. Real estate agents are not allowed to provide any legal services.

1.4 Technical Services

It is **usual**, and in some cases **mandatory**, to involve a technical expert in conveyancing. In particular, the services of a **building appraiser** are used in an

estimated **90 %** of transfers, because for **tax purposes** an expert estimate on the value of the building is required.

The **EU directive on the information about the energy situation** 2002/91/EC has been transformed into Act 406/2000 Coll., on energy economy. According to this legislation, an energy expert is **mandatory** in cases that fall under the EU Directive.

2. Land registration

The institution dealing with land registration is the **Cadastral Office of Real Estate** of the Czech Republic. The administration of the Cadastral Office of Real Estate is carried out by **14 cadastral offices** in regions and **114 subordinated offices**. The activities of the Cadastral Office of Real Estate constitute 80 % of all activities in the sector by the **Czech Office for Surveying, Mapping and Cadastre (COSMC)**, which is the autonomous supreme body of the state administration for surveying, mapping and cadastre. Since 1993 the cadastral offices have been given the power to make decisions about entries of proprietary and other rights in relation to real estate into the cadastre. Seven **Survey and Cadastral Inspectorates** (90 employees) supervise the performance of cadastral offices and the activities of private companies and licensed surveyors performed for the state administration.

The **statutory basis** for land registration is: Act No. 265/1992 Coll., on Registration of Proprietary and other Material Rights to Real Estates; Act No. 344/1992 Coll., on Cadastre of Real Estates of the Czech Republic (Cadastral Law); Act No. 359/1992 Coll., on Surveying, Mapping and Cadastral Bodies.

In the Czech Republic, more than 95 % of all real property is registered.

3. Main steps of the conveyancing process

In the Czech Republic, the **standard conveyancing procedure** takes the following main steps:

Conclusion of the contract of sale and transfer of ownership: The seller – in most cases through a real estate agent – offers the property on the market. Having found a buyer, the parties themselves often conclude a **preliminary contract** which includes the obligation to conclude the main contract. After all the preparations, including financing and mortgaging issues have been accomplished, the parties sign

the (main) **contract of sale**. This contract must be done in **writing**, and the object of sale and the price need to be specified. The **signatures** of the parties on the sales contract have to be **certified** either by a notary, by an advocate or by the cadastral office (see below), at least on one original copy (the law requires at least two more copies of the sales contract than the number of parties concerned). The **transfer of ownership** requires the consent of the parties and the **registration** with the land register. The Czech law follows the „**abstract system**” (as in Germany) under which the transfer of ownership is valid irrespective of the validity of the sales contract. Property rights relating to real estate are created by registration in the Cadastre of Real Estates (**constitutive effect**).

Registration: The **request for registration** of the right in the Cadastre of Real Estates, including appropriate annexes (sales contract, geometrical drawing - if required, fee, etc.), must be submitted in **written form** and it must meet the conditions **set by statute** (Act No. 265/1992 Coll., on Registration of Proprietary and other Material Rights to Real Estates). The cadastral office has to verify the identity and the signatures of the parties on the contract. In order to do so, it is necessary that the signatures on the contract are **certified by a notary or an advocate** who had drafted the contract, or that the parties in person acknowledge the authenticity of their signatures at the cadastral office. In practice, it is usually a notary or an advocate who applies for the registration on behalf of the parties. The applicants become parties to an **administrative procedure** according to Act 500/2004 Coll. In this procedure, the cadastral office assesses deeds and other documents, decides on granting entry and registers the rights in the Cadastre of Real Estates. Thereafter, the Cadastre sends the original copy of the document with an official stamp back to both parties.

4. Professional services regulations

4.1 Legal services: notaries and advocates

A) Notaries

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Czech Republic	5,6	5,7	11,3	2,0	13,3	4,7

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

In order to become a civil law notary, the requirements are: **university studies** at a Faculty of Law for 5 years (Master degree), followed by 3 years of **legal practice** (working as an employee of another notary), and a state or state reviewed **exam** (“certification”).

Objective requirements

There is a **numerus clausus**: The Czech **Minister of Justice** decides on the number of notaries in terms of Act 358/1992 Coll., on notaries and notary activities. This decision is taken on the basis of objective needs criteria, in order to ensure a sufficient coverage of the whole country with notarial services.

Cross-border services

Only citizens of the **Czech Republic and Slovakia** may be appointed as notaries and provide notarial activities.

Inter-professional cooperation is not allowed.

Business structure

Notaries may practise as sole practitioners only with one exception stated by Act 358/1992 Coll., on notaries and notary activities. In case of two notaries providing services at the same place of business, it is permitted to provide services as “associates”. As to geographical location, the number of notaries in each court district is limited, too.

Market conduct regulations

Neutrality

Czech notaries are under a strict statutory **duty of neutrality**.

Duty to provide services

Notaries can **refuse** the service only exceptionally in the cases specified by § 53 of Act 358/1992 Coll., on notaries and notary activities. These include the exercise of undue influence or pressure on the notary and similar misbehaviour of the client.

Professional standards

The professional standards for Czech notaries are laid down by **statute** (Act 358/1992 Coll., on notaries and notary activities). The **main standards** are: the duty of secrecy; the duty to respect the law and the client's instructions. The client has to be informed about all legal effects of any step taken.

Compulsory Indemnity Insurance

According to Act 358/1992 Coll., on notaries and notary activities, notaries **must be insured** against possible damages. If insurance is not renewed, this may constitute a reason for removal from office by the Minister of Justice. The **minimum** insurance cover is fixed at 48.837 €.

Continuing education

Continuing notary education is **not mandatory**, but the Czech Notary Association organizes many lectures and seminars.

Advertising restrictions

Any kind of advertising for notaries is **prohibited**.

Conduct control

Membership in the **Czech Notary Association** is **compulsory**, pursuant to Act 358/1992 Coll., on notaries and notary activities. The Czech Ministry of Justice and the Czech Notary Association are competent to carry out **conduct control**. If a notary is found guilty of any significant dereliction of duty, sanctions will be imposed (e.g. caution, fine, removal from office).

Mandatory intervention

The intervention of a notary is **not mandatory**.

Price and fee regulations

The fees charged by the notary for conveyancing services are **regulated by Ministerial regulation** 196/2001 Coll., on rewards and compensations of notaries and estate administrators. For most services, **fixed fees** are laid down which cannot be derogated from and which are strictly respected in practice.

B) Lawyers

Table: Regulation Index for Lawyers

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Czech Republic	2,6	2,2	4,8	2,0	6,8	2,6

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

In order to become a lawyer, the requirements are: **university studies** at a faculty of law for 5 years (Master degree), followed by 3 years of **legal practice** (working as an employee (trainee lawyer) of another lawyer), and a professional exam.

Objective requirements do **not** exist.

Cross-border services

Czech nationality is **not a requirement**. Lawyers from **EU Member States** who have obtained in their home state a licence for legal services may be admitted to the Czech Bar Association as “established European lawyers”. An established European lawyer can be admitted to the Czech Bar Association to practice Czech law if his/her knowledge of this field is proven (three years practise or test). Furthermore, lawyers from EU Member States have the right of establishment in the Czech Republic under their **home title**.

Inter-professional cooperation

A lawyer shall act in accordance with generally binding legal regulations and a **code of professional ethics**. This includes an obligation to stay loyal towards his client and defend the client’s interests in the best possible way. **Inter-professional co-operation** is thus only acceptable if the cooperation with another professional does not put the lawyer in a conflict of interests.

Business structure

Under the statutory provisions of the Act 85/1996 Coll., on the legal profession, lawyers may practice either as sole practitioners, in general partnerships or in limited liability companies. There is no limit on the number of partners. There are no restrictions on geographical location.

Market conduct regulations

Neutrality

The lawyer acts usually **on behalf of one party**. The Czech Bar Association has adopted a Code of Professional Ethics (1/1997) with **guidelines** stating the rights and duties of lawyers. According to this code, a lawyer shall not advise his client under circumstances where a conflict of interests exists. A **conflict of interests** is always considered to exist when a lawyer represents more than one client in the same matter provided that the clients have opposing interests. In case that lawyer draws up a sales contract **for both parties** despite the fact that just one party is his or her client, it is the lawyer's duty to inform the other party about the right to have his or her own legal representative.

Duty to provide services

Generally, lawyers are **allowed to refuse** their service. In some special cases, they are even obliged by statute to refuse their service (§ 18-19 Act 85/1996 Coll., on advocacy).

Professional standards

The standards of professional services are regulated by **statute** (Act 85/1996 Coll., on the legal profession). The **main standards** are: protection of the client's interest and rights, duty of secrecy, fair dealing, respecting the ethics code of the bar association. The latter code states rights and duties of lawyers in a more detailed way.

Compulsory Indemnity Insurance

According to Act 85/1996 Coll., on the legal profession, every single lawyer may be included in the **collective insurance scheme** negotiated by the Czech Bar Association. He or she is obliged to pay the insurance premium to the Bar, unless evidence is provided that an equivalent individual insurance cover exists. The minimum **insurance cover is fixed at** Euro 35,548. In the case of a limited liability company providing legal services, the minimum insurance cover is fixed at Euro 1,777,431 for every company associate.

Continuing education

Continuing education is **not mandatory**, but the Czech Bar Association organizes many lectures and seminars.

Advertising restrictions

Advertising for lawyers was not possible until 2003. Since then, it is **permitted under the conditions** stated in the Ethics Code of the Czech Bar; i.e.: the information on legal services must be accurate, not misleading, and respect the lawyers' duty of secrecy and other fundamental values of the legal profession. Furthermore, **general advertising regulations** in the Czech Trade Act apply to lawyers, too.

Conduct control

For lawyers, membership in the Czech Bar Association is mandatory pursuant to the Act 85/1996 Coll., on the legal profession. The Association is competent to supervise that lawyers respect the legal and ethical rules specified in the Code of Professional Ethics. Professional duties laid down by statute are also controlled by the Czech Ministry of Justice.

Mandatory intervention

The intervention of an advocate is **not mandatory**.

Price and fee regulations

Lawyers' fees are **regulated by Ministerial regulation** 177/1996 Coll. on lawyers' fees, which is complemented for civil cases by **Ministerial regulation** No. 484/2000 Coll. As a rule, fees are calculated on the basis of the value of the transaction. However, the fee regulation only applies if there is no fee agreement made between the parties. Information on the question of how often parties actually negotiate lower fees are not available.

Clients may complain against fee agreements by lodging a complaint with the Bar Association.

1.3 Real estate agents

Market entry and structure regulations

Subjective requirements

Real estate agents do not have to meet any subjective requirements apart from a **Trade Certificate** which is easy to obtain.

Objective requirements do **not** exist.

Cross-border services are **not** restricted.

Inter-professional cooperation

Inter-professional cooperation is not restricted and quite common in practice. Many real estate agencies have entered into cooperation agreements with mortgage-credit institutions and/or insurance companies. Real estate agents usually hire advocates for legal services, because they are not allowed to provide legal services by themselves.

Business structure

Establishment of a business in real estate services is **not restricted** to a certain legal form. Real estate agents may practise either as **sole practitioners, in partnerships or in limited liability companies**. There is no limit on the number of partners. Especially in bigger cities, real estate agents cooperate with each other, which often results in sharing the fee earned on a 50 %:50 % basis.

Market conduct regulations

Neutrality

There is **no duty of neutrality** for real estate agents.

Duty to provide services does **not** exist.

Professional standards

There are no standards of professional services regulated by statute, although there are some **professional associations** (e.g. Association of Real Estate Agents of the Czech Republic) on the market, which associate (voluntarily) their members and set rules and professional standards, including an **ethics code**.

Compulsory Indemnity Insurance

A compulsory professional insurance is **not required**.

Continuing education is **not required**.

Advertising restrictions

There are **no specific regulations**. General regulations on unfair competition laid down in the commercial code (Act 513/1991 Coll.) apply.

Conduct control

Membership in a professional organisation is **not mandatory**, and there is no control of quality by the state.

Price and fee regulations

There are **no price or fee regulations**. In practice, the real estate agents fee is usually **3-6 % of the value of real estate**. For details see below (transaction costs).

1.4 Technical services: building appraisers and energy auditors

Market entry and structure regulations

Subjective requirements

The market entry for **energy auditors** is governed by the Act 406/2000 Coll. on energy economy (implementing the EU Directive on the energy performance of buildings, 2002/91/EC). In order to be admitted as an energy auditor, the professional shall meet the following **qualification requirements**: The auditor must have a special education (Master degree in a technical discipline and 3 years of practice or technical education at a secondary school and 5 years of practice). The auditor must have taken and satisfactorily passed an expertise exam.

The Trade Licensing Act 455/1991 Coll. governs the market entry for **building experts**. In order to be admitted as a building expert, the professional shall meet the following **qualification requirements**: The expert must have a university degree and a “lifelong education” degree as provided by Act 111/1998 Coll. on universities (at least 4 semesters), focused on evaluation of property.

Objective requirements do **not** exist.

Cross-border services

It is possible for nationals of other EU member states to become energy consultants or building appraisers, if the requirements of Act 18/2004 Coll. on professional qualifications and other requirements are met.

Inter-professional cooperation is **not** restricted.

Business structure

The licence to practise as an energy auditor or a building appraiser is personal but there are **no limitations** on business structure.

Market conduct regulations

Neutrality

The seller will usually provide and pay for the energy audit by the energy auditor and the property condition survey by the building expert. However, these technical experts do not “represent” the seller (or the buyer) but perform their job **objectively and impartially**. Energy consultants as well as building experts are under a duty of neutrality.

The Czech Chamber of Appraisers (CCA), which is a voluntary association, has adopted a **professional ethics code** with guidelines setting out the rights and duties of building appraisers, including rules for possible conflict of interests.

A duty to provide services does **not** exist.

Professional standards

The services provided by energy auditors are regulated by statute and rules of practice (Ministerial regulation 213/2001 Coll. on energy audit details), which contains detailed provisions on how to draft an energy audit.

The services provided by **building experts** are regulated by the Czech Trade Licensing Act 455/1991 Coll., which contains basic professional standards on building expert services (inter alia on the prevention of conflicts of interest, on confidential information, on mandatory insurance etc.).

Compulsory Indemnity Insurance

Energy auditors as well as building experts must be covered by **professional indemnity insurance**. With respect to energy auditors, the **minimum amount** is not set but the “range of the insurance coverage should be adequate to cover possible damages”. With respect to building experts, no fixed minimum amount exists.

Continuing education is **not** mandatory.

Advertising restrictions

There are **no specific advertising restrictions** concerning energy consultants and building appraisers. General regulations on unfair competition laid down in the commercial code (Act 513/1991 Coll.) apply.

Conduct control

Membership in a professional organisation is **not compulsory**. Act 458/2000 Coll., on conditions of business and state administration in the field of energy branches, regulates the **control** of energy consultants and their services. As to building experts, their control is regulated by the Czech Trade Licensing Act 455/1991 Coll. (Trade Licensing Offices).

Mandatory intervention

The **EU directive on the information about the energy situation** 2002/91/EC has been transformed into Act 406/2000 Coll., on energy economy. According to this legislation, an energy expert is **mandatory** in cases that fall under the EU Directive.

Price and fee regulations

Both for building experts and energy auditors, there are **no price and fee regulations**. Therefore price agreements need to be made.

5. The Czech Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	5,000 (But usually estate agents hire advocates so their clients pays 5000 total)	350	500 (Usually includes also executing)	-----	17	-----	5,867
100,000 € sales price + 100,000 € mortgage			1000 (Fees double when a mortgage is taken out)		17		6,367
250,000 € sales price (no mortgage)	10,000	350	500 (Usually includes also executing)	-----	17	-----	10,867
250,000 € sales price + 250,000 € mortgage			1000 (Fees double when a mortgage is taken out)		17		11,367
500,000 € sales price (no mortgage)	15,000	500	500 (Usually includes also executing)	-----	17	-----	16,017

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs
500,000 € sales price + 500,000 € mortgage			1000 (Fees double when a mortgage is taken out)				16,517
% VAT applicable	19 %	19 %	19 %	19 %	0 %	-----	19 %

5.1.1 Real Estate Agents

The agent's fee usually is **3-6 % of the value** of real estate. Usually the **buyer pays** the agent. However, in bigger cities, it is not unusual to **split the fee** between the buyer and the seller.

5.1.2 Technical Services

The fee for the building appraisal is **freely negotiable** (see above) and it is usually **paid by the seller**, because it is his duty to pay the transfer tax which requires the official price evaluation.

5.1.3 Legal Services

Legal fees are governed by the following **regulations** (see above):

Advocates: Ministerial regulation 177/1996 Coll. on advocate's fees.

Notaries: Ministerial regulation 196/2001 Coll. on rewards and compensations of notaries and estate administrators.

There are fixed fees for specific legal services.

Usually the **buyer pays** the legal fees. The above table is based on average advocate fees. Fixed notary fees tend to be considerably higher.

5.1.4 Land Register Fee

Land register fees are **regulated by statute** 634/2004 Coll. on administrative fees.

The fee depends on the type of registration. There are 3 types of registration:

For every “entry”, a flat fee of 17 Euro is due

“notation” – 0 euro fee

“record” – 0 euro fee

Usually the **buyer pays** the registration fees.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

Transfer taxes amount to **3 % of the value of the real estate** to be transferred. The land value is determined by an **expert opinion** (appraisal of value). According to the law, the **seller has to pay the tax**, but the buyer is liable if the seller does not pay (legal guarantee).

5.1.5.2 Capital Gains Taxes

Capital gains taxes apply to the sale of land, but there are **no special rules** or special speculation taxes. The **average tax** brackets for land sales are 12 %-32 %.

5.1.6 Commercial or Office Buildings

There are **no differences** for tax rates or other transfer costs for commercial or office buildings.

5.1.7 Changes in Transfer Costs

The Czech Republic in 1996 **liberalised** its advocates law which abolished the numerus clausus for advocates and (compulsory) fixed tariffs. The compulsory fixed tariffs were replaced with a fixed fee scale for specific legal services which applies in cases where no fee agreement is made between the client and advocate.

5.2 Service providers

	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm
Real estate agents	1.500-2000 *	N.a.	N.a.	N.a.
Advocates/ solicitors	7.687	10.414	2.727 (articled clerks)	2
Civil law notaries	425	425	N.a.	N.a.
Architects	3.000	N.a.	N.a.	N.a.
Engineers	180 certified engineers	N.a.	N.a.	N.a.

Annotation:

* The Czech Association of Real estate agents estimates the total number of estate agents to be between 1.500 and 2.000. Real estate services do not require any special qualification except the Trade Certificate (see above). So it is estimated that 30.000-40.000 people in the Czech Republic have trade certificates covering also real estate services, but most of them are not actually active in this sector.

5.3 Key market data

Average prices:

No exact data available, but a qualified judgment is:

- 70 euro/m² of old buildings (average)
- 120 euro/m² of new (open-space) buildings (average)

Market share for price segments:

Price in €	Residential property sales	Commercial property sales
U to 100.000.	80 % (qualified judgment)	20 % (qualified judgment)
100.000.- up to 250.000.-	70 % (qualified judgment)	30 % (qualified judgment)
250.000.- up to 500.000.-	50 % (qualified judgment)	50 % (qualified judgment)
More than 500.000.-	20 % (qualified judgment)	80 % (qualified judgment)

Number of transactions (2002-2004):

- 37.604 conveyances of family houses
- 2.325 conveyances of dwelling-houses
- 28.196 conveyances of flats

- 17.718 conveyances of garages

General Market Situation:

- Prague is dominant on the market.
- The demand for larger flats increases.
- The total demand is increasing as well.
- 50 % of the lower market segments are under control of the 6 largest developers.
- There is a big difference between quality projects and – less saleable – low quality buildings/estates.
- The total amount of mortgages has increased by 500 % since 2000.

IV. Denmark

1. Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	- Matching parties: one agent (90 %); two agents (10 %) - For seller (90 %): draft of sales contract and control of deed of conveyance	Energy certificate mandatory; Property condition survey usual	For buyer (80 %): drafting and executing of deed of conveyance	Not existing	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (not usual)	-	-	Negotiable
Preliminary checks (land register, administrative permits)	- Estate agent: land register for seller - Advocate: land register for buyer	Professional duty of draftsman (land register check as part of contract drafting); Exclusive right of licensed agents and advocates	
Drafting the sales contract and/or deed of conveyance	- Estate agent for the seller (90 %): draft of sales contract and control of deed of conveyance - Advocate for the buyer (80 %): control of sales contract and draft of deed of conveyance	Professional involvement not mandatory, but usual Exclusive right of agents and advocates	
Legal advice or counselling	- Seller's agent - Buyer's advocate	Professional duty of draftsman Exclusive right of agents and advocates	

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Certification of signatures	Buyer's advocate or two witnesses	Professional involvement not mandatory, but usual (as part of package and included in price)	Negotiable
Contract execution (transfer of payment and registration)	- Estate agent for the seller (90 %) - Advocate for the buyer (80 %)	Professional involvement not mandatory, but usual (as part of package and included in price)	
Taxation (esp. transfer tax)	Transfer taxes do not exist		

1.1 Notaries

Civil law **notaries** exist but they are not dealing with real estate transactions in Denmark.

1.2 Advocates

Advocates are **not mandatory** in the conveyancing process. However, whereas the seller is mostly represented by an estate agent, **the buyer is usually represented by an advocate**. The advocate assists him throughout the conveyancing process and advises him on the content of the sale and purchase agreement, the property condition survey, and the various ways of financing the purchase price. The buyer's advocate will also conduct a search of the register in order to check whether any **debts** of the seller lay on the land. A normal property transfer will seldom involve the checking of **administrative permits** by a professional. Furthermore, the buyer's advocate is usually involved in the **execution of the contract**: he normally drafts the deed of conveyance, administers the payment of the registration fee, applies for the registration, and works out the completion statement.

The **seller** seeks legal advice from an advocate less frequently in residential transactions, but will **often** do so in respect of **commercial transactions** which are typically more complicated.

Finally, an advocate is also allowed to provide **estate agents services**, but in that case the advocate needs to be registered as a **conveyancer** by the Danish Commerce and Companies Agency.

1.3 Real estate agents

Real estate agents are involved in **90 %** of the sales of residential properties among private persons⁸. **Usually**, the **seller** is represented by a real estate agent whose job is to sell the property at the best price possible and as fast as possible. In the sale of residential properties, the real estate agent must fulfil a **number of duties** specified by statute including the elaboration of an estate agent's **sheet of information**. The real estate agent also **drafts a sales agreement**, and procures a **land certificate** from the Land Register, which shows mortgages and other real rights registered on the property. In addition, the real estate agent often helps arranging the **financing** as well. Occasionally, the **buyer** is also represented by a real estate agent, who then provides services similar to those usually provided by an advocate.

1.4 Technical experts

Two technical experts are involved in private real estate transactions: energy consultants and building experts.

1.5 Energy consultants

The energy consultant's task is to draft a so-called **energy label**, which needs to show the building's energy status. The services provided by energy consultants are **in some cases mandatory**. Pursuant to the Act to Promote Energy Savings in Buildings 2005 (implementing the EU Directive on the energy performance of buildings, 2002/91/EC) an energy label shall be provided in particular when a building or an owner-occupied flat is sold.

1.6 Building experts

The building expert's task is to work out a written report (a so-called **property condition survey**) about the physical conditions of the property, including noticeable defects as well as circumstances that may cause new defects.

⁸ Danish Ministry of Business, "Boligrapport – Nemmere og billigere at handle bolig", 1997, p. 126.

The services provided by building experts are **optional**. However, it should be noted that pursuant to the Danish “**Act on Consumer Protection** when Real Property is Acquired 1995”, the seller of a property assigned for residential use can avoid responsibility for defects in the property only if he provides the buyer with a property condition survey established by a building expert and with further information on warranty insurance against defects.

2. Land registration

The **Danish Land Register** (in Danish: “tinglysningskontoret”) is a **national authority** falling under the responsibility of the Danish Ministry of Justice. It is currently still annexed to local courts, but it is planned to be centralised upon entry into force of a **new law on digital registration**.⁹ The Land Register is competent to record real rights in land, i.e. ownership as well as other interests. The registration takes place in a register named “tingbogen”. The Land Register is not the only institution which deals with the registration of land. There are **additional registers** of land falling under different authorities. These include: the Cadastral Register administered by the National Survey and Cadastre and the Building and Dwelling Register run by the municipality. The different registers interact, e.g. the entries in the Cadastral Register form the basis for the registration of real rights in the land register.

The **Land Registration Act 2006** (Danish Act no. 158 of 9th March 2006 as amended) is the main law that governs land registration. Additional rules for land registration are found in subordinate legislation, including a government order as well as two government circulars, concerning manual and electronic registration respectively.

The Land Register covers almost all real property in Denmark, i.e. **more than 95 %**.

⁹ The Danish Parliament has recently passed a statute concerning digital registration (Danish Act no. 539 of 8th June 2006). The effective date of the statute has not yet been determined, but it is expected to be sometime in 2008. It should be noted that when the statute comes into force, some of the answers to this questionnaire might no longer be adequate.

3. Main steps of the conveyancing process

The standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership:** After the parties have negotiated the contract, the real estate agent draws up a **sale and purchase agreement** to be signed by the parties. The contract is not subject to any formal requirements. In practice, the sales contract will however always be concluded **in writing**. The agreement is legally binding between the parties and outlines all terms and conditions of the transaction. If valid, it also entails the **transfer of ownership** unless, as it mostly happens, the seller has retained title until the **purchase price** has been paid.
- **Deed of conveyance:** In a second step, the buyer's advocate drafts the deed of conveyance which is established primarily as basis for registration. The deed contains an extract of the most important terms and conditions of the sale and purchase agreement.
- **Registration:** The deed of conveyance having been issued, the buyer's advocate pays the registration fee to the State and applies for registration of the deed in the **land register**. To this end, he first sends the deed to the **municipal tax office**, which states the taxation value on the deed and sends it back to the advocate. The application for registration must comply with a number of **formalities** stipulated by the Land Registration Act and subordinate legislation¹⁰.

4. Professional services regulations

4.1 Legal services

A) Advocates

Table: Regulation index for advocates in Denmark

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Denmark	2,1	1,2	3,3	0,0	3,3	4,1

*Please note: The MII is an index per country and not per profession.

¹⁰ It should be noted that the formal requirements mentioned will undergo some changes when a new act on digital registration enters into force (see footnote above).

Market entry and structure regulations

Subjective requirements

In order to practise as an advocate, the professional shall be admitted to the **Danish Bar**. Admission is granted by the Danish Minister of Justice pursuant to the Administration of Justice Act. Candidates must hold a law degree and undergo practical training.

Objective requirements do **not** exist.

Cross-border services

Advocates admitted to a bar in the **EU Member States** will be admitted to the Danish Bar by the Danish authorities provided that they fulfil the terms stated in the **Diploma Directive** (Directive 89/48/EEC). Furthermore, advocates from EU Member States have the right of establishment in Denmark under their **home title**; under certain circumstances, they also have the right to be admitted to the Danish Bar under the Danish title “advokat” (Establishment Directive 98/5/EEC).

Inter-professional cooperation

An advocate shall act in accordance with “good advocate practice”. This includes an obligation to stay loyal towards his client and the client’s interests. Inter-professional co-operation is thus **only acceptable if** the cooperation with another professional does not put the advocate in a conflict of interests. Thus, as advocates may themselves be admitted as estate agents (see below), cooperation with such professionals is allowed.

Business structure

Under the provisions of the Administration of Justice Act, advocates may practise either as **sole practitioners, in partnerships or in limited liability companies**. There is no limit on the number of partners.

Market conduct regulations

Neutrality

The advocate usually acts **on behalf of one party** only. According to the **professional code of conduct** adopted by the Board of the Danish Bar and Law Society, an advocate shall not advise his client in case of a conflict of interests – which is always presumed to exist when an advocate represents more than one

client in the same matter if the clients have opposing interests. Thus, if the parties have agreed on the terms of the sales contract and hence no conflict exists among them, the advocate is allowed to act on behalf of both of them.

Duty to provide services does **not** exist.

Professional standards

Under the provisions of the Administration of Justice Act, an advocate shall act in accordance with “**good advocate practice**”. The **Board of the Danish Bar and Law Society** specifies the content of professional duties, supervises their observance, sanctions violations and handles complaints against advocates.

Compulsory indemnity insurance

The Administration of Justice Act authorises the **Danish Bar and Law Society** to work out rules about insurance against professional liability. According to the **professional code of conduct** adopted by the Board of the Danish Bar and Law Society (see above), all advocates shall contract **professional liability insurance**. The insurance policy must be approved by the board. According to the Danish Bar and Law Society, the **insurance amount** requested will be 335.347 € as of January 2007.

Continuing education is **not mandatory** for the profession.

Advertising restrictions

General advertising regulations in the Danish Marketing Act apply to advocates, too. The **code of conduct** adopted by the Board of the Danish Bar and Law Society also states that advertising is generally allowed, but must not contain incorrect, misleading or unreasonably insufficient information.

Conduct control

Membership in the Danish Bar and Law Society is **mandatory** pursuant to the Administration of Justice Act. The society is competent to supervise that advocates adhere to the legal and ethical rules that apply to the legal profession. As stated, the Board of the Danish Bar and Law Society has to this effect adopted a professional **code of conduct**.

Mandatory intervention

The intervention of an advocate is **not mandatory**.

Price and fee regulations

There is **no specific price regulation** of the fees charged by advocates for services provided in the conveyancing process. Pursuant to the **Administration of Justice Act**, advocates must in general only charge fees considered “**reasonable**”.

If a client finds the fee unreasonable, he or she may **complain** to the **Disciplinary Board** of the Danish Bar and Law Society.

B) Real estate agents

Table: Regulation index for real estate agents in Denmark

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Denmark	2,0	0,3	2,3	0,0	2,3	3,9

*Please note: The MII is an index per country and not per profession.

As previously mentioned **some advocates are licensed** to provide also real estate agent services. These professionals are subject to the regulation applying to advocates as well as the regulation applying to real estate agents.

Market entry and structure regulations

Subjective requirements

Real estate agents shall fulfill a number of requirements in order to obtain a licence to practise. The requirements follow from the Transfer of Real Estate Act and from subordinate legislation. The two **main requirements** are: a special real estate agent education (consisting mainly of courses in law and business matters) and a minimum of two years of practical experience in the industry.

Advocates may practise in conveyancing without any further education or practical experience. However, advocates are not allowed to use the title of real estate agent unless they fulfil the requirements applying to real estate agents.

Objective requirements do **not** exist.

Cross-border services

It is possible for **foreign nationals** to be licensed as real estate agents as the acquisition of a licence to practise does not depend upon the nationality of the

applicant. However, for a foreigner, obtaining a licence is said to be rather difficult and rare in practice.

Inter-professional cooperation

Inter-professional cooperation is not restricted and **quite common in practice**. Many real estate agencies have entered into cooperation agreements with mortgage-credit institutions and/or insurance companies; in a number of cases, agents also act as franchisees of such institutions. The real estate agent must inform the parties about such agreements.

Business structure

Under the provisions of the Transfer of Real Estate Act, real estate agents may practise either as **sole practitioners, in partnerships or in limited liability companies**. There is no limit on the number of partners.

Market conduct regulations

Neutrality

The real estate agent is acting **on behalf of his client**. He is not obliged to act impartially. Pursuant to the Transfer of Real Estate Act, a real estate agent shall never represent both the seller and the buyer of the same transaction.

A duty to provide services does **not** exist.

Professional standards

The professional standards of real estate agent services are regulated by the Transfer of Real Estate Act 2003. Pursuant to this **statute**, the real estate agent must fulfil a **number of duties** specified, in particular establish an estimate of the value of the property, elaborate an estate agent's sheet of information, and draft the sale agreement.

Compulsory Indemnity Insurance

Real estate agents are statutorily required to be covered by professional indemnity insurance.

The **minimum amount** depends on the size of the business. If the business employs 10 real estate agents or more, the minimum amount is 2.682.655 € per year. With respect to other businesses, the minimum amount is 268.331 € per real estate agent per year.

Continuing education is **not** mandatory.

Advertising restrictions

General advertising regulations in the Danish Marketing Act also apply to real estate agents.

Conduct control

Most real estate agents are members of the **Danish Association of Chartered Estate Agents** (around 95 %), but membership of this association is **not** required by law.

In July 2006, a **disciplinary board** for real estate agents was established. It is the board's responsibility to control that real estate agents comply with the duties following from the Transfer of Real Estate Act and also comply with "good real estate agent practice".

Mandatory intervention

The intervention of a real estate agent is **not mandatory**.

Price and fee regulations

As to **real estate agents** there are **no limitations** on fees and no recommendations. The Danish Association of Chartered Estate Agents used to operate with recommended prices but this practice was abandoned in 1993 at the request of the Danish Competition Council.

Advocates with a special licence for agents' services charge as advocates for these services, too.

1.4 Technical services: energy consultants and building experts

The following sections cover both kinds of technical experts relevant in Denmark: energy consultants and building experts.

Market entry and structure regulations

Subjective requirements

The market entry for **energy consultants** is governed by the Act to Promote Energy Savings in Buildings and by subordinate legislation. An energy consultant must be

licensed by the Danish Energy Authority (an administrative entity under the Danish Ministry of Transport and Energy).

In order to be approved as an energy consultant, the professional shall meet the following **qualification requirements**: The consultant must have a special education (e.g. university studies) or must alternatively document to have acquired similar knowledge in another way. The consultant must have a minimum of three years relevant practical experience. The consultant must have taken and satisfactorily passed an admission course.

The market entry for **building experts** is governed by the Act on Consumer Protection When Real Estate Property is Acquired 1995 and by subordinate legislation. A building expert must be **licensed** by the National Agency for Enterprise and Construction.

In order to be approved as a building expert, the professional shall meet the following **qualification requirements**: The expert must have a university degree in building technology or must alternatively document to have acquired similar knowledge in another way, and a minimum of five years relevant practical experience. The expert must have passed an admission course.

Objective requirements do **not** exist.

Cross-border services

It is **possible for foreign nationals** to be licensed as energy consultants as well as building experts. The acquisition of a licence to practise as either one of these professionals does not depend upon the **nationality** of the applicant.

Inter-professional cooperation

There are **no specific legal regulations** on inter-professional cooperation.

If a building expert has entered into an agreement on cooperation with a real estate agent (which is controversial and there are plans to prohibit it) or another person with an interest in the concrete sale, the expert must point this out in the property condition survey pursuant to statutory law.

Business structure

The licence to practise as an energy consultant or as a building expert is personal but there are **no limitations** on business structure. Pursuant to statutory law, an

energy consultant must own, be employed by, or attached to, a registered energy consultancy but this company does not have to be of a certain type.

Market conduct regulations

Neutrality

The **seller** will usually provide and pay for the energy labelling made by the energy consultant and the property condition survey made by the building expert. However, these technical experts do not “represent” the seller (or the buyer) but perform their job **objectively and impartially**.

Energy consultants as well as building experts are under a **duty of neutrality**.

Duty to provide services does **not** exist.

Professional standards

The services provided by **energy consultants** are regulated by statute and by a “Handbook for Energy Consultants” given by the Danish Energy Authority. This regulation contains detailed provisions on how to draft an energy labelling.

The services provided by **building experts** are regulated by statutory law. This order contains detailed provisions on the standards of property condition surveys and establishes a number of requirements, which the building expert must comply with when inspecting a building.

Compulsory indemnity insurance

Energy consultants as well as building experts shall be covered by professional indemnity insurance.

With respect to **energy consultants**, the **minimum amount** is 335.347 € per year. With respect to **building experts**, no fixed minimum amount exists. However, the insurance amount must at least be consistent with the insurances generally obtainable on the market, and the amount is at the moment approximately 335.347 € per year.

Continuing education

Energy consultants and building experts with a licence to practise must participate in **certain mandatory seminars**.

Advertising restrictions

There are **no specific advertising restrictions** concerning energy consultants and building experts. General regulations apply, see above.

Conduct control

The quality of the services provided by **energy consultants** is supervised by the Danish Energy Authority, an administrative entity under the Danish Ministry of Transport and Energy. The quality of the services provided by **building experts** is supervised by the National Agency for Enterprise and Construction, a part of the Danish Ministry of Economic and Business Affairs.

Mandatory intervention

The services provided by **energy consultants** are **in some cases mandatory**. Pursuant to the Act to Promote Energy Savings in Buildings 2005 (implementing the EU Directive on the energy performance of buildings, 2002/91/EC) an energy label shall be provided in particular when a building or an owner-occupied flat is sold.

Price and fee regulations

Danish statutory law fixes the **maximum fees** payable to **energy consultants and to building experts**, lower fees thus being negotiable by the parties.

The maximum fee of an **energy labelling** is between 335 € and 607 € (including VAT), the maximum fee of a **property condition survey** approximately between 670 € and 1.274 € (including VAT), depending on the size and the age of the building.

5. The Danish Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	4,147 € (Fee: 2,400 € Advertising: 1.707 € Documents: 40 €)	1,020 € (Energy labelling: 320 € Property condition survey: 700 €)	Average fee for buyer's advocate: 1,013 €		787 € (Deed: 600 € + 187 € = 787 €)	-	6,967 €
100,000 € sales price + 100,000 € mortgage	4,147 € (Fee: 2,400 € Advertising: 1,707 € Documents: 40 €)	1,020 € (Energy labelling: 320 € Property condition survey: 700 €)	Average fee for buyer's advocate: 1,013 €		2,474 € (Deed: 600 € + 187 € = 787 € mortgage: 1,500€ + 187€ = 1,687 €)	-	8,654 €
250,000 € sales price (no mortgage)	7,747 € (Fee: 6,000 € Advertising: 1,707 € Documents: 40 €)	1,020 € (Energy labelling: 320 € Property condition survey: 700 €)	Average fee for buyer's advocate: 1,013 €		1,687 € (Deed: 1,500 € + 187 € = 1,687 €)	-	11,467 €

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs
250,000 € sales price + 250,000 € mortgage	7,747 € (Fee: 6,000 € Advertising: 1,707 € Documents: 40 €)	1,020 € (Energy labelling: 320 € Property condition survey: 700 €)	Average fee for buyer's advocate: 1,013 €		5,624 € (Deed: 1,500 € + 187 € = 1,687 € Mortgage: 3,750 + 187 € = 3,937 €)	-	15,404 €
500,000 € sales price (no mortgage)	13,747 € (Fee: 12,000 € Advertising: 1,707 € Documents: 40 €)	1,020 € (Energy labelling: 320 € Property condition survey: 700 €)	Average fee for buyer's advocate: 1,013 €		3,187 € (Deed: 3,000 € + 187 € = 3,187 €)	-	18,967 €
500,000 € sales price + 500,000 € mortgage	13,747 € (Fee: 12,000 Advertising: 1,707 Documents: 40 €)	1,020 € (Energy labelling: 320 € Property condition survey: 700 €)	Average fee for buyer's advocate: 1,013 €		10,874 € (Deed: 3,000 € + 187 € = 3,187 € Mortgage: 7,500 € + 187 € = 7,687 €)	-	26,654 €
1,000,000 € sales price (no mortgage)	25,747 € (Fee: 24.000 € Advertising: 1.707 € Documents: EUR 40 €)	1,020 € (Energy labelling: 320 € Property condition survey: 700 €)	Average fee for buyer's advocate: 1,013 €		6,187 € (Deed: 6,000 € + 187 € = 6,187 €)	-	33,967 €

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs
1,000,000 € sales price + 1,000,000 € mortgage	25,747 € (Fee: 24,000 € Advertising: EUR 1,707 € Documents: 40 €)	1,020 € (Energy labelling: 320 € Property condition survey: 700 €)	Average fee for buyer's advocate: 1,013 €		21,374 € (Deed: 6,000 € + 187 € = 6,187 € Mortgage: 15,000 € + 187 € = 15,187 €)	-	49,154 €
5,000,000 € sales price (no mortgage)	No data available	No data available	No data available		Deed: 30,000 € + 187 € = 30,187 €	-	-
5,000,000 € sales price + 5,000,000 € mortgage	No data available	No data available	No data available		Deed: 30,000 € + 187 € = 30,187 € Mortgage: 75,000 € + 187 € = 75,187 €	-	-
% VAT applicable	25 %	25 %	25 %		0 %	-	-

Please note: When converting costs stated in Danish Kroner (DKK) to Euros (€), an **exchange rate of 7,5** Danish kroner for 1 € has been assumed.

5.1.1 Real Estate Agents

The real estate agent's fee is normally based on a percentage of the purchase price. According to a study undertaken in 2004 by the Danish Competition Authority¹¹, the percentage is usually somewhere between **2.5 % and 4 % of the purchase price** (including VAT). This study has however been criticised by the Danish Association of Chartered Estate Agents which commissioned its own study with a consultancy firm, which showed even lower fees.

In addition to this fee, there will be separate **expenses for advertising**, and according to the study the average of these expenses is 2.550 € (DKK 19.000) in

¹¹ Internet: <http://www.ks.dk/publikationer/konkurrenceredegoerelsen/kr2004/>

the Copenhagen area and 1.744 € (DKK 13.000) in the provinces = in general approximately 2.150 € (DKK 16.000) (including VAT).

Finally, the real estate agent will often demand separate payment for the expenses connected with **collecting documents** with relevant information about the property, including a land certificate and information from the municipality. According to the study, the costs for these documents amount to 50 € (DKK 375) (including VAT).

5.1.2 Technical Services

By law, the maximum price of an **energy labelling** is between 335 € and 607 € (including VAT) depending on the size and the age of the building (Danish Order no. 883 of 21st August 2005). The maximum price of a **property condition survey** is approximately between 670 € and 1.274 € (including VAT), depending also on the size and the age of the building (Danish Order no. 190 of 14th March 2006). Some technical experts can provide **both services**, and in that case the fees payable are reduced. Finally, both fees are usually paid by the seller.

5.1.3 Legal Services

There is **no statutory regulation** on the fees for legal services in conveyancing (see above).

Advocates are usually **paid by hour**. However, with respect to real estate transactions the parties will usually agree on a **fixed fee**. In a land sale the fees payable for legal services will depend on different factors, including especially the number of services requested.

According to a study undertaken in 2004 by the Danish Competition Authority¹², the **average fee** incurred by the buyer for legal services is **1.275 €** (DKK 9.500) (including VAT). If the buyer only wants the advocate to draw up the deed of conveyance, the average fee payable is **845 €** (DKK 6.300) (including VAT). These numbers are only very rough estimates as the fee will depend on the complexity of the transaction, the purchase price etc. It is not possible to distinguish between the fee for drafting and the fee for executing.

¹² Internet: <http://www.ks.dk/publikationer/konkurrenceredegoerelsen/kr2004/>

5.1.4 Land Register Fee

The land register fees are fixed by the **Registration Fee Act** (Danish Act no. 382 of 2nd June 1999 as amended).

With respect to the registration of a deed of **conveyance**, the fee depends on the value of the registered property: The registration fee is calculated as **a basic fee of 188 €** (DKK 1.400) **plus a fee of 0.6 %** of the higher of the purchase price or the taxable valuation.

With respect to the registration of a **mortgage** deed, the fee depends on the nominal value of the mortgage: The registration fee is calculated as **a basic fee of 188 €**(DKK 1.400) **plus a fee of 1.5 % of the value of the mortgage**. Two things should be noted: Firstly, the fee is calculated on the basis of a presumption that the seller does not have to redeem existing loans at the same time¹³. Secondly, the mortgage cannot in full be a mortgage-credit loan as these loans can only cover 80 % of the purchase price.

With respect to other **limited rights**, the fee does not depend on the value of the right: The registration fee consists of a basic fee of **Euro 188 €** (DKK 1.400).

Usually, the **buyer** will pay the fee attached to the registration of the deed of conveyance, but the parties may agree otherwise. In the western part of Denmark the fee will often be split between the seller and the buyer.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

There are **no transfer taxes** in Denmark apart from the registration fee.

However, the land register fee is in practice regarded as a kind of property transfer tax. **Payment of the registration fee** is due upon presentation of the deed of conveyance to the Land Register. Under the provisions of the Registration Fee Act, the deed cannot be registered unless the municipal tax office has stated the taxation value on the document for the purpose of calculating the registration fee, but non-

¹³ It is possible to reduce the fee if the buyer obtains a mortgage-credit loan and the seller at the same time redeems existing mortgage-credit loans. In this case, the reducing balances of the seller's mortgage-credit loans can be transferred to the buyer's new loan meaning that the buyer only has to pay the basis fee of DKK 1.400 plus a fee of 1.5 % of the differential amount between the new and the old loans.

payment of the fee does not on the other hand obstruct the registration of the deed in the land register.

5.1.5.2 Capital Gains Taxes

Capital gains taxes do apply to the sale of land, but some transactions are tax-exempt.

In particular capital gains realised on the sale of real property used for **residential purposes by the seller** are normally **tax-exempt**. Special rules on these capital gains follow from the Capital Gain Taxes on the Transfer of Real Estate Act (Danish Act no. 891 of 17th August 2006).

In case capital taxes have to be paid (i.e. where the tax-exempt rule mentioned above does not apply), the **average taxation is about 58 %** of the net capital gain. As a part of the taxation consists of local taxes, the percentage may vary by 1 - 2 % depending on where in Denmark the seller has his habitual residence. In case of **smaller net capital gains** (less than approximately 40.270 € (DKK 300.000)), the percentage may be less (down to approximately 43 %) depending on the seller's personal income and on the seller's total expenses relating to payment on interests on loans.

5.1.6 Commercial or Office Buildings

Generally, the same types of transfer costs apply to residential and commercial property.

5.1.7 Changes in Transfer Costs

There have not been any major changes in the transfer costs recently but **three changes** might be worth noting:

The Danish Association of Chartered Estate Agents used to operate with **recommended prices** but this practice was abandoned in **1993** at the request of the Danish Competition Council.

Until **1997 real estate agents** were by law prohibited from **drawing up the deed of conveyance**, i.e. the document prepared with a view to the registration. Consequently, advocates had a virtual **monopoly** of providing this service. The statutory prohibition was abolished in order to increase competition in the field of

purchasing and selling real property. According to a study undertaken in 2004 by the Danish Competition Authority¹⁴ the abolition has indeed intensified the price competition and led to **lower fees**.

The **rules on registration fees** have been amended, resulting in a **reduction of the transfer costs as regards commercial or office buildings**. Until **1999** the fee attached to the registration of a deed of conveyance have depended upon the nature of the transaction: With respect to owner-occupied residences, the registration fee was calculated as a basis fee of 160 € (DKK 1.200) plus a fee of 0.6 % of the higher of the purchase price or the taxable value, and with respect to other properties, the registration fee was calculated as a basis fee of 160 € (DKK 1.200) plus a fee of 1.2 % of the higher of the purchase price or the taxable value. Today, the registration fee is always calculated as a basis fee of **188 €** (DKK 1.400) plus a fee of 0.6 % of the higher purchase price or the taxable value.

5.2 Service providers

	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm	Average cost per firm	% conveyance/ total services (add up to 100 %)
TOP 10 of real estate agents	10	2 105	N.a.	109,2	Approx. 75 %	N.a.	N.a.	N.a.
Other firms (not TOP 10) of real estate agents	401	624	N.a.	1,02	Approx. 25 %	N.a.	N.a.	N.a.

5.3 Key market data (2004)

Average prices

- Residential apartment: 161.000 €
- Residential house: 179.000 €

¹⁴ Internet: <http://www.ks.dk/publikationer/konkurrenceredegoerelsen/kr2004/>

- Commercial/office property: 1.054.000 €

Development of price index (1995 = 100)

- Residential apartment: 260,7
- Residential house: 188,5
- Commercial/office property: 158,3

Number of transactions: 147.663 (78 % residential, 22 % commercial)

Total value of transactions: 28.770.050.177 €

Ratio house owners – tenants: 53 % - 40 %

General Market Situation: supply outweighs demand after sharp price increases during the last 10 years

V. England and Wales

1. Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 90-95 %	Valuation report by surveyor 75-80 %	Contract drafting and execution 97 %	Not existing	Licensed conveyancers: Contract drafting and execution 3 %

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (not usual)	-	-	Negotiable
Preliminary checks (land register, administrative permits)	Legal draftsman (solicitors 97 %, licensed conveyancers 3 %)	Professional duty of legal draftsman (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	Legal draftsman (solicitor or licensed conveyancer)	Professional involvement not mandatory but usual Exclusive right of solicitors and licensed conveyancers 2 solicitors: 1 for buyer and 1 for seller	
Legal advice or counselling	Legal draftsman (solicitor or licensed conveyancer)	Professional duty of legal draftsman (as part of contract drafting)	
Certification of signatures	Legal draftsman (solicitor or licensed conveyancer)	Professional involvement not mandatory but usual (as part of package and included in price) Exclusive right of solicitors and licensed conveyancer	
Contract execution (transfer of payment and registration)	Legal draftsman (solicitor or licensed conveyancer)	Professional involvement not mandatory but usual (as part of package and included in price) Exclusive right of solicitors and licensed conveyancer	

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Taxation (esp. transfer tax)	Legal draftsman (solicitor or licensed conveyancer)	Professional involvement not mandatory but usual (as part of package and included in price); Retention and payment of transfer tax for tax authorities by buyer's solicitor or licensed conveyancer	Negotiable

1.1 Notary

In England and Wales, civil law notaries in the Latin tradition **do not exist**.

1.2 Advocates (solicitors)

An advocate is **not mandatory** in the conveyancing process, but in practice most conveyancing is done by solicitors or licensed conveyancers. In England and Wales, **solicitors and licensed conveyancers** are the two groups who currently hold a **monopoly of conveyancing for profit**, collectively described as "**conveyancers**". The current market is divided in 97 % solicitors and 3 % licensed conveyancers. The opening of the market to licensed conveyancers in 1985 was important in securing competition.

As for **forthcoming changes** in the legal framework in England and Wales see *below* (5.).

The **seller** instructs a conveyancer who drafts a contract once a buyer has been found. The **buyer** instructs his own solicitor/conveyancer, who puts in hand a local search with the local authority, checks and approves the title and arranges his finance. Solicitors play a significant role in all steps of the **contract and completion process** (exchange of contracts, transfer deed, completion and registration process). After completion, the buyer's conveyancer stamps the transfer, applies for registration of the title, and checks the details of the completed registration. The seller's solicitor accounts for the proceeds.

The buyer's solicitor/licensed conveyancer also plays a role in **taxation**. The basic tax is **Stamp Duty Land Tax** under the Finance Act 2003. It is necessary to submit

a form to the Revenue authorities giving details of a transaction with land and the amount of tax payable must accompany this document. The Revenue will issue a Stamp Duty Land Tax Certificate which must be sent in with an application for registration of the title.

For **capital gains tax** (which usually is not involved in private house sales, but only in the sale of business property or second homes) it would be more common to take advice from an accountant, but a solicitor might give also advice (if registered with the Financial Services Agency to do so).

1.3 Licensed conveyancers

In England and Wales, licensed conveyancers may perform the **same functions as solicitors** in conveyancing. (*see above - solicitors.*)

1.4 Real estate agents

A real estate agent (mostly only called: estate agent) is **not mandatory**, but in practice is involved in **90-95 %** of the sales of residential property in England and Wales¹⁵. Real estate agents help to find a buyer or seller, but they have no role in drafting the contracts. Real estate agents may evaluate the land and/or building.

There is **increasing fragmentation** in the estate agency market. Traditionally, estate agency was conducted through firms with a branch network, now there are also financial institutions with estate agency arms in the market, and some solicitors or conveyancers operating property shops. There are 12.000 estate agency businesses in England and Wales; in addition, around 150 firms of solicitors are engaged in property selling as well as conveyancing and over 15.000 builders or developers market new properties for sale. Increasingly properties are marketed over the internet.

1.5 Technical services

At present, there is **no mandatory evaluating** of the property or the building situation; thus the use of technical services is not compulsory.

¹⁵ TIP 15 (HM Revenue and Customs), 4, with a higher percentage in SE England.

In future, an **energy certificate** which is part of the first phase of the “roll out” of Home Information Packs (*see below* 5.) might become mandatory.

In practice, the only technical expert usually involved is a **surveyor**. One reason is that there is no obligation in English law (as a general principle) to disclose **defects** in a property being sold. Further **lenders** will insist upon a valuation when assessing the risk in lending. Lenders require a **valuation report**, and this is relied upon by the majority of those buying with the aid of a mortgage – 75-80 % of buyers. Around 38 % of all buyers commission an independent **property survey**, but the number of buyers obtaining a full structural survey is very small – around 1-2 %. Lenders may insist on a more specialised survey e.g. survey of drains 1 %, wall ties inspection 1 % or a damp course inspection 2 %. Currently, 563 million € is annually spent on surveys.

2. Land registration

Land registration is conducted by HM **Land Registry**, an **independent body** set up in 1862 and now operating under the Land Registration Act 2002. It registers title to land in England and Wales. The fundamental of registration in England and Wales is that it is a **register of title** (meaning legal title) and is only directed towards conveyancing.

The Land Registration Act 2002 contains a **framework for the introduction of electronic conveyancing**. Transactions such as the transfer of the whole title will be implemented electronically. The price and stamp duty will be paid by electronic transfer and the seller’s conveyancer will then carry out an electronic transfer which will instantaneously discharge the existing mortgage, transfer the land, implement the registration of the buyer, and affect any mortgages used to finance the land. A “virtual register” will be created on exchange of contracts so that conveyancers can see what the register will look like when the transaction is finalised. Software models are currently under development. Use of this system will eventually become compulsory.

3. Main steps of the conveyancing process

In England and Wales, the standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership:** The basic system is “contract and conveyance” i.e. two sequential steps. After the pre-contractual search period a **draft contract** can be agreed upon. The key event then is the **exchange of contracts**. At this stage, the transaction is theoretically secure, with all the necessary preconditions for sale completed. In the **pre-completion period** the transfer is drawn up, funds are secured ready for completion and the buyer's solicitor makes a final Land Registry search, giving a priority period long enough to cover the completion and registration process.

- The **conveyancing is completed** by the execution of the **transfer deed**. A deed is required for any transfer or dealing with a legal estate. The document must be **signed and witnessed**. It comes into effect not on signature, but rather on delivery when the seller's conveyancer hands over the document having received the price. **Transfer of ownership** is valid if by deed. It does not have to be preceded by a contract.

- **Registration:** After completion, the **buyer's conveyancer** stamps the transfer, **applies for registration** of the title in the Land registry, and checks the details of the completed registration. The seller's solicitor accounts for the proceeds.

4. Professional services regulations

4.1 Legal services: solicitors and licensed conveyancers

A) Solicitors

Table: Regulation index for solicitors in England and Wales

	MERI Market Entry	MCRI Market Conduct	MERI+ MCRI	MII * Mandatory Intervention	MERI + MCRI + MII *	CPI Consumer Protection
England/Wales	2	0.8	2.8	0	2.8	4.5

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

In England and Wales, there are **several routes to qualification as a solicitor**: law graduate, non-law graduate, overseas advocate, transfer of barristers, Scots and Northern Irish advocates, Fellows of the Institute of Legal Executives and justices' clerks.

The most frequently used route to qualification as a solicitor is to take a first university **degree in law**, followed by a year taking the full-time **Legal Practice Course** (LPC), followed by a two-year **traineeship**. The second most frequently used route is: **non-law graduates** undertake a one-year full-time **conversion course**, the Common Professional Exam (CPE) – covering the foundation subjects of a degree course - which alternatively can be used to train for the Bar. They then proceed to qualification in the same way as a law graduate. Non-graduates enter the profession via transfer after first obtaining a qualification as a Fellow of the Institute of Legal Executives (FILEX) and passing the LPC.

Solicitors' entry into the **conveyancing market** depends upon holding (personally or via the firm for which they work) a practising certificate from the Law Society. In order to obtain one they will need to apply each year, pay a fee and insure. The renewal will be subject to any disciplinary recommendations.

Objective requirements do **not** exist.

Barriers to cross-border services

There is **no restriction on nationals** of any state becoming solicitors. The procedures would require **proficiency in English**.

Inter-professional co-operation

In England and Wales, the possibility of “multi-disciplinary practices” has been debated over many years.

At present, solicitors are already allowed to practise as estate agents through “**SEALs**”: **solicitors estate agency limited companies**.

Business structure

Traditionally solicitors' practices had to be conducted as partnerships with limited liability. Now a **variety of structures** are being adopted: limited companies, limited

liability partnerships and registration as a *Societas Europea*. The Law Society **Code of Conduct** covers details of structure and ownership. Further changes are likely under legislative proposals for alternative business structures which may allow outside investors to put capital into conveyancing firms.

Market conduct regulations

Neutrality

All conveyancers are **fiduciaries towards their clients**, a status which imposes wide ranging equitable duties, including the duty to act in the interest of the employer and not to make undisclosed profits and to observe confidentiality. These matters are also regulated as an aspect of professional discipline.

Solicitors can only act **for more than one party**, if they are not at arm's length and not in conflict. A solicitor can and usually does act for buyer and lender.

Duty to provide services does **not** exist.

Professional standards

At present standards of professional services are set by the **Law Society** under statutory Practice Rules. In **future** the Law Society will be subject to the oversight of an **independent body** the Legal Services Board, when the draft Legal Services Bill 2006 is enacted.

Compulsory indemnity insurance

Solicitors **Indemnity Rules** are passed each year. The current **indemnity limit** is 4,4 Million € for recognised bodies (with limited liability) and otherwise 2,9 Million €. Firms can either insure with the block policy negotiated by the Law Society or privately.

Continuing education

Solicitors shall continuously upgrade their professional qualifications. The **requirements** are currently 16 hours per year.

Advertising restrictions

Formerly this was controlled but no longer. Solicitors are now **free** to publicise their practices.

Conduct control

It is compulsory to carry a practising certificate before offering conveyancing services to the public. Solicitors are subject to **disciplinary control** currently overseen by the **Law Society** but with future oversight by an **independent body**.

Mandatory intervention

A solicitor is **not mandatory** in the conveyancing process, but **solicitors and licensed conveyancers** enjoy exclusive rights (**monopoly of conveyancing for profit** (for details see above 1.)).

Price and fee regulations

Fees are **left to the market**. Almost always fees are quoted in advance and these reflect the work involved in a standard transaction and the value of the property. Fees may either be calculated on an hourly rate with an uplift based on the value of the property or a fee based on a broad look at all the circumstances, normal for conveyancing work and generally quoted as a fixed fee.

Charges associated with the **legal side** of the purchase average 557 € for the conveyancing and 139 € each for the search fees and fees associated with the Land Registry, that is overall around 830 €. The co-called stamp duty land tax (SDLT) is also levied on residential properties over a certain value and applies at differing rates depending on the value of the property (see later for further details).

In **practice**, fees are not an issue; around 2-3 % of both buyers and sellers complain about conveyancing charges.

B) Licensed conveyancers

Table: Regulation index for licensed conveyancers in England and Wales

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	MII Mandatory Intervention	MERI + MCRI + MII	CPI Consumer Protection
England/Wales	1.7	0.7	2.3	0	2.3	4.2

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

Licensing for conveyancers is carried out by the **Council of Licensed Conveyancers (CLC)**.

A **full licence** is required by a Sole Principal/Partnership/ or Recognised Body (Ltd company) trading on its own account. A full licence is one that enables a licence holder to offer conveyancing services direct to the public. The licence has to be renewed each year. An applicant must submit: the annual licence fee, a stipulated contribution to the CLC Compensation Fund, the premium to the Professional Indemnity Insurance premium under the Master Policy and evidence of continuing education (CPD) Hours.

A **limited licence** enables a Licensed Conveyancer to be employed in conveyancing. In order to obtain a licence, a student must complete all CLC Examinations, Practical Training, be at least 21 years old and must be considered a 'fit and proper person'.

Objective requirements

This is left to the market. There are currently about 850 licensed conveyancers (as against 101 000 solicitors with practising certificates) and 1 300 students. There are currently about 400 practices licensed, as against 9.000 solicitors' firms.

Barriers to cross-border services

For, licensed conveyancers, there is **no provision** for foreign qualified transfer, but of course it is possible to transfer to the solicitor's profession. There is **no requirement of nationality** to become licensed, though no doubt the qualifications require proficiency in English.

Inter-professional co-operation

Licensed conveyancers only provide conveyancing services. A licensed conveyancer could be employed in a legal department that also carries out other legal work.

Business structure and geographical location

Conduct Rules provide for work as a sole practitioner, via an employer or as a director of a recognised body. Where one or more licence holders wish to run a

practice as a limited company, that company will need to apply to the CLC to become a **recognised body**. Recognition will only be granted where the company is under the control of licensed conveyancers and engages solely in the provision of conveyancing services. Currently there are 42 recognised bodies, 11 % of all practices. This formula allows the introduction of capital from non-advocate investors, and 11 firms have outside external investment exceeding 10 %.

Market conduct regulations

Neutrality

Licensed conveyancers must not act when there is a conflict, and not accept instructions from more than one person except under **Guidance Notes**; the current guidance suggests that they must consider the position where several plots on a building estate are involved, but are able to act for both borrower and lender without the restrictive rules affecting solicitors.

Duty to provide services does **not** exist.

Professional standards

CLC (Council of Licensed Conveyancers) **Conduct Rules** require honesty, reasonable care, skill and diligence, and confidentiality. Breaches of these standards are subject to the **disciplinary control** of the CLC.

Compulsory Indemnity Insurance

The CLC negotiates a **master policy**. Licensed conveyancers must pay their premium each year in order to obtain a licence to practice.

Continuing education

A full licence holder must complete 12 CPD Hours each Licence Year. Limited Licence Holders are required to complete 6 CPD hours each Licence Year. In each case this is under the CLC **Continuing Professional Development Rules**.

Advertising restrictions

There are **no specific restrictions**, general rules apply.

Conduct control

The **Council for Licensed Conveyancers** (CLC) is the regulatory body for Licensed Conveyancers (*see above*).

Mandatory intervention

Solicitors and licensed conveyancers are not mandatory in the conveyancing process, but enjoy exclusive rights (**monopoly of conveyancing for profit** (for details see above 1.)).

Price and fee regulations

There is no state control, but **CLC Conduct Rules** require that costs must be set out **in advance** in a durable format. As with solicitors the idea is to expose actors in the market to competition through advance quotation of fees.

Fees in **practice**: *see above*.

5.1.1 Real estate agents

Market entry and structure regulations

Subjective requirements

In England and Wales, anyone can set himself up as an estate agent. Two categories are **barred**: undischarged bankrupts and people barred by the Office of Fair trading.

Objective requirements do **not** exist.

Cross-border services

Foreign nationals can and do set up as estate agents. UK regulations do not apply to estate agents acting in relation to property overseas.

Inter-professional cooperation

There are **no restrictions** from the point of view of estate agents, but many other professions (e.g. solicitors) do have restrictions in respect of estate agents.

Business structure

There are **no restrictions** on business structure, branches or geographical location; most real estate agents are limited companies, but they could be sole traders or partners.

Market conduct regulations

Neutrality

In England and Wales, **all professionals** are subject to **fiduciary duties in equity** which impose the obligation to act in the interests of the principal and not to make undisclosed profits and confidentiality. Agents must inform their client (the seller) if offering services to the buyer (e.g. insurance or removal services), must disclose any personal interest in a transaction and must inform the client promptly of all offers.

Duty to provide services does **not** exist.

Professional standards

As to fiduciary duties in equity *see above*. There is an important duty incorporated in the **Property Misdescriptions Act** 1991 which makes it an offence to make a false or misleading statement when marketing property, whether orally in writing, by picture or in any other way. Furthermore, the basic functions and methods of operation are conveniently summarised in a **revenue document** (HM Revenue and Customs).

Compulsory indemnity insurance is **not** required.

Continuing education is **not** required.

Advertising restrictions

There are **no restrictions** on advertising, but as indicated above advertising of specific properties is subject to the **Property Misdescriptions Act** 1991.

Conduct control

Estate agency is largely unregulated apart from the provisions of the **Estate Agents Act** 1979 and the professional self-regulation of, e.g., the NAEA.

Price and fee regulations

Regulation is left to the **market**. There are provisions to ensure that fees and terms of business are quoted **in advance**.

The general range is **1.5-2 %** for a sole agency. It could be 0.5 % for a sub-agency and 2-4 % for a joint or multiple agency. Figures reduce as percentages as the price increases and may be cheaper for internet marketing.

It appears that fees are high but unexpectedly high bills are not a concern.

5.1.2 Technical services: surveyors

Present situation

As mentioned *above* (see 1.), a **survey** is commonly undertaken because there is no obligation in English law to disclose defects in a property being sold and because lenders require a valuation report. The major player and the most important standard setter for surveyors in England and Wales is the **Royal Institution of Chartered Surveyors** (RICS).

Apart from educational requirements, there are **no market entrance requirements** for surveyors. The **professional standards** for surveyors are set out by byelaws and rules of conduct, especially the Professional Conduct for Chartered Surveyors.

Indemnity insurance is mandatory.

There do **not** appear to be any **other restrictions**.

Price and fee regulations

There are two main kinds of surveys: structural surveys (only 2 % of buyers) and home buyers reports (around 30 % or in the range 20-40 %)

Reform proposals

There is a proposal to include a **Home Condition Report** in the Home Information Pack to be produced when a property is put on the market, but the Government of England and Wales has announced (August 2006) that a survey will **not be a mandatory part** of it.

The **Royal Institution of Chartered Surveyors** estimated that Home Condition Reports on 2 million properties at an average of 444 € would have cost 890 million €, far more than the current sum paid for surveys, and would have required 9,000 home condition inspectors. Currently surveys are conducted by around 2,500 chartered surveyors.

So the current position remains that a surveyor is not strictly necessary but in practice is needed because of the absence of common law disclosure rules and because of lenders' requirements.

Reform

Home Information Pack

Research suggested that 28 % of offers accepted fail to proceed to completion, almost 600,000 each year. The solution adopted by the **Housing Act 2004** is to require sellers marketing a property to produce a pack of information before the property is marketed. Much information about the property can be gathered together in advance when it is marketed in the shape of a **Home Information Pack**.

A statutory duty to provide a seller's pack **will affect most of the professional groups involved** in home buying and selling: estate agents, solicitors acting as estate agents, house builders and any other person or company marketing the sale or transfer of residential property, as well as surveyors, conveyancers, mortgage lenders, local authorities and water companies. Home Information Packs **will be required for** residential properties being marketed with vacant possession, thus excluding sales of commercial or mixed use properties and tenanted properties (e.g. blocks of flats). A pilot scheme in Bristol (1999-2000) suggests that packs increase certainty and approval is higher particularly with buyers (5 % on either side dissatisfied compared to 40 % under the current system).

Implementation of this scheme has proved to be a matter of public and political controversy. The Government first announced a delay and then staggered implementation which so far (September 2007) extends to 4- and 3- bedroomed houses; the intention is to extend the scheme to the remaining 40% of the market as soon as possible. The scheme has met with some resistance from the estate agents profession and lenders, but it is at this moment too early to evaluate its impact on the market and its success.

Legal Services Bill 2006

In England and Wales, the current legislative framework will change under the **Legal Services Bill** which is now before Parliament. This will define reserved legal activities including preparing a land registry transfer or charge, making registry applications, lodging registration documents, preparing contracts etc. Reserved legal activities will be restricted to licensed bodies approved by a licensing authority under the general remit of the Legal Services Board. All solicitors will be authorised if practising when the new legislation is introduced. This framework will potentially

allow new types of conveyancers perhaps banks or even supermarkets. This Bill should be enacted in the autumn of 2007.

Consumers, Estate Agents and Redress Act 2007

Sections 53-57 of this Act provides for greater control of estate agents through compulsory membership of redress schemes, a duty to keep records and increased grounds for prohibitions and warning orders.

5. The England and Wales Real Estate Market

5.1 Transaction costs (in €)

	Estate agent	Technical services	Legal services (seller)	Legal services (buyer)	Land register fee	Stamp duty (SDLT)	Total usual transfer costs
€ 100.000 sales price (no mortgage) £67K	1,651 €	450 € (£300)	455 € (£305)	535 € (£355)	90 € (£60)	£0	3,181 €
€ 100.000 sales price + 100.000 Euro mortgage	1,651 €	690 € (£460)	455 € (£305)	535 € (£355) + 100€ (0.1% mortgage fee)	90 € (£60)	£0	3,521 €
€ 250.000 sales price (no mortgage) £168K	3,579 €	525 € (£350)	550 € (£365)	620 € (£415)	225 € (£150)	2,520 € (£1,680)	8,019 €
€ 250.000 sales price + € 250.000 mortgage	3,579 €	750 € (£500)	550 € (£365)	620 € (£415) + 250€ (0.1% mortgage fee)	225 € (£150)	2,520 € (£1,680)	8,665 €
€ 500.000 sales price (no mortgage) £335K	7,001 €	675 € (£450)	635 € (£425)	715 € (£475)	330 € (£220)	15,075 € £10,050	24,431 €
€ 500.000 sales price + € 500.000 mortgage	7,001 €	900 € (£600)	635 € (£425)	715 € (£475) + 500€ (0.1% mortgage fee)	30 € (£220)	15,075 € £10,050	25,155€
% VAT	17.5 % (excluding LR fee and stamp duty)						

Source: Enquiries on Websites of larger firms and private enquiries with smaller firms.¹⁶

¹⁶ Figures have been cross-checked against the Woolwich/University of Greenwich Cost of Moving Home Survey 2006. A survey by Abbey Mortgages (June 2007) found that the

5.1.1 Estate Agents

The general range quoted by the Office of Fair Trading website is **1.5-2 %** for a sole agency. It could be 0.5 % for a sub-agency and 2-4 % for a joint or multiple agency.¹⁷ Figures reduce as percentages as the price increases and may be cheaper for internet marketing. Private sales are possible especially via the internet, but there are still costs of advertising.

Sellers pay more than buyers for conveyancing because of estate agents' fees which in the Key Research averaged just over £ 1,000 in addition to their own legal fees, as against solicitors' fees paid by sellers averaging £ 345. Of course a large part of the agent's charge may relate to advertising.¹⁸

Although estate agents fees are high, sellers are generally prepared for them since 95% of agents provided sellers with an indication in advance of the fees they would charge.¹⁹

5.1.2 Technical Services

It is assumed that a person not requiring a mortgage will conduct an independent survey and that a borrower will rely on the mortgage lender's valuation. The main technical service is the survey. This is highly necessary because English law does not require the disclosure of defects.

average spent on moving home (including furniture removal is £16K and that an average buyer spends £6K on improvements in the first six months giving a 'real cost of moving home' of £22K.' It should be observed that throughout the vast majority of the country the € 100K price band is purely hypothetical; the market starts around Southampton in the south of England at around £125K.

¹⁷ These figures are given in HM Revenue and Customs TIP 15 (Estate agents). Appendix shows a decline in % as prices have increased and finds for 2004 (average price £150K) an average fee of £ 2.146 = 1,43 % and for 2005 (average price 200K) an average fee of £ 2.843 -1,42 %. This matches closely the OFT report Estate Agency Market in England and Wales, with an average of 1,45 % but very variable with markets. Other sources are Cost of Moving Home Surveys (Woolwich and University of Greenwich School of Architecture and Construction).

¹⁸ Key Research [4.19], available at Prime Minister's Office, Table A4.2.

¹⁹ Key Research [4.21], [4.22], Table A4.4.

There are two main kinds:

- structural surveys (only 2 % of buyers)
- and home buyers reports (around 30 % or in the range 20-40 %)

According to fee tables in the internet, **average costs** are²⁰

Value (to) £	Survey	Home Buyers Report
100K	480	300
200K	560	350
300K	610	440
500K	800	530
1 million	1.100	920

Many buyers rely on the lenders valuation of the property.

Valuation surveys typically costs £ 176 and the arrangement fee (where this is paid) averages £ 294. The basic cost of arranging the mortgage, therefore, is in the region of £ 450 to £ 500. In addition, a minority of those using a broker also say they paid a separate fee for the broker's services, averaging £ 55 where this was paid (although many brokers operate on the basis of the commission received from the lender). Some borrowers also pay other fees and costs associated with the mortgage, averaging £ 250, (presumably premiums for Mortgage Indemnity Guarantees required where loan to value ratio is high).²¹

5.1.3 Legal Services

a) The figures provided in the table above are for sellers and buyers legal fees, each side bearing their own costs. It is thought that solicitors charge largely the same for sales and purchases. The figures may be higher for purchase to reflect search fees.

Fees may either be calculated on an hourly rate with an uplift based on the value of the property or a fee based on a broad look at all the circumstances, normal for conveyancing work and generally quoted as an all inclusive fixed fee which includes contract drafting and thereafter carrying out the conveyance process.²²

²⁰ Rock, Lloyds, Portman - September 2006.

²¹ Key Research [4.11].

²² Law Society Guidance, 10. This guidance recommends (at 12) that an additional 0.25 % should be charged on the value of a loan, or 0.5 % when acting alone, but it is thought that market conditions preclude an additional charge for acting on a mortgage. Fees quoted here are for acting in a purchase and mortgage.

b) It is usual to charge slightly more for acting in a purchase and mortgage combined, though not as much as the Law Society Guidance would allow, that is 0.25% of the loan. Figures for mortgages ignore the premium for a Mortgage Indemnity Guarantee (MIG) required if the loan to value ratio (LTV) exceeds 90 %.

5.1.4 Land Register Fee

Land registry fees may be divided into two. Fees for preliminary services are for obtaining copies of register entries, making searches and obtaining copy documents etc. These are low fixed sums, generally in the range £ 1-10, with the exception of a copy lease which costs £ 20. Fees for substantive registration are based on a percentage of the value of the property.

Value up to £K	Fee £
50K	40
80K	60
100K	100
200K	150
500K	220
1 million	420
1 million +	700

Fees as set out in the LR Fee Order 2006²³ have fallen over the past decade.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

The main tax on land transfer itself is the so-called Stamp Duty Land Tax (SDLT), a recent replacement for stamp duty.²⁴ Stamp duty was a tax on documents but the new tax is a tax on transactions, and embraces for example documentary transfer, contracts, and oral declarations of trust. The tax applies to any acquisition/surrender etc. of a chargeable interest whatever the form: act of parties, order of court, statute, operation of law, whether documentary/non-documentary. It is irrelevant whether the transaction is completed in or out of UK and whether the parties are resident or present in the UK or not, but if it affects land it must be within the UK; land outside the UK is not a chargeable asset. SDLT covers most interests in land but not a

²³ SI 2006/1332.

²⁴ Finance Act 2003 part 4, sections 42 ff., from December 2003, now as amended.

security interest such as a mortgage, and there are exemptions e.g. for transfers following divorce and for gifts by will. The tax will be charged on substantial completion of a contract and again on documentary completion, but the tax on one is offset against the other so that the total consideration is only charged once. The object is to abolish practice of resting on contract – saving stamp duty by not completing transactions. Special rules apply to sub-sales and options and exchanges and the taxation of leases is especially complex.

Stamp duty rises sharply to 4 % at the highest of these price brackets. The lowest value sale is free of SDLT as a result of the 2006 budget (previously 1 %). Amount of tax – rate of tax on chargeable consideration (after March 2006):

Rate	Value of transaction (£)	
	Residential	Non residential
0%	Up to 125K	Up to 150K
1%	125-250K	150-250K
3%	250-500K	250-500K
4%	500K and over	500K

Disadvantaged area relief²⁵ is available in some administrative areas of the country²⁶ with residential property exempt up to £ 150K. Liability for tax is on purchaser with special rules for e.g. joint parties and trustees. He or she must deliver a land tax return within 30 days of the chargeable transaction including details of the transaction, a self assessment and payment of the tax, which results in the issue of a SDLT Certificate. This is essential for registration as explained below. In future payments may be administered through the land registry.

SDLT is paid by the buyer.

It is a strict requirement to show correct figures in all taxable documents. Inclusion of a false figure would lead to prosecution for tax evasion and striking off. SDLT is therefore assessed on the correct sale price.

The land register is barred by statute from processing a document that is neither stamped nor certified exempt.²⁷

²⁵ Finance Act 2003 section 57, schedule 6.

²⁶ www.inlandrevenue.gov.uk or www.neighbourhood.statistics.gov.uk. As a result of EU Commission representations this has been withdrawn for non-residential property.

²⁷ Finance Act 2003 section 79.

5.1.5.2 Capital Gains Taxes

Many other taxes may become payable as a result of a sale of land, notably income tax if land is traded, capital gains tax (CGT) if building land is sold at a profit, or inheritance tax (IHT) on a transfer of a house on death. There is no wealth tax. However, no CGT is payable on the sale of a principal residence. The Revenue give the following figures for the net take from houses:²⁸

	1991/92	1995/96	2000/01
IHT	427	429	684
Stamp duty	630	465	2145
Capital gains tax relief	-800	-200	-1.320
Net tax	694	694	1.509

HM Treasury is proposing a Planning Gain Supplement but details are sketchy.

5.1.6 Commercial or Office Buildings

There are few formal differences apart from CGT and higher levels of stamp duty. Solicitors would charge on a time spent basis and would carry out more searching enquiries. There are tailor made Conditions of Sale. Much commercial property is subject to business leases so there is great importance attached to renewal rights and rent review procedures.

5.1.7 Changes in Transfer Costs

Major liberalisation occurred in the 1980s when the solicitors' monopoly over conveyancing was removed and licensed conveyancers were allowed to offer conveyancing services. The basic structure has been stable since that reform, though the UK market fluctuates wildly and clearly actual price levels respond to the state of the market. Stamp duty levels have been increased substantially over the last decade. The introduction of Home Information Packs will effect major changes in the market.²⁹

²⁸ *Housing Review 2005/2006*, 78, Table 2.6.1 (Homeowner taxes). Source IRC statistics.

²⁹ See above.

5.2 Service providers

Solicitors offices in private practice in 2005

	Head offices	Branch offices
Partnership	9.081	2.665
Incorporated firms	647	257
Foreign advocates	2	6

Solicitors Firms Business Survey 2003

Size firm	Commercial property	Residential conveyancing
Sole practitioner	7	40
2-5	5	19
6-12	12	20
13-40	14	15
41-170	14	5
All	13	9

Residential conveyancing is the largest fee earning sector up to 12 partner firms. Large firms make most money from commercial property and personal injury work. Residential conveyancing is a very small percentage of the work of London firms.

5.3 Key market data

Average prices:

The Land Registry gives these figures for the first quarter of 2006:

	€
Detached house	439,890
Semi detached	260,070
Terraced house	228,860
Flat/maisonette	267,500
All residential	286,766

Market share for price segments:

Price	Residential property sales	Commercial property sales
up to 100,000- €	23 %	30 %
100,000- up to 250,000- €	45 %	40 %
250,000- up to 500,000- €	24 %	22 %
more than 500.000- €	8 %	8 %

Development of prices

House price increases:

Year	% Increase	Year	% Increase
1990	13.8	1997	8.2
1991	4.1	1998	16.5
1992	-1.5	1999	16.8
1993	2.6	2000	5.9
1994	1.3	2001	12.1
1995	-3.6	2002	22.0
1996	4.7	2003	5.4
		2004	20.4

Number of transactions in 2003: 1 341 000Total value of transaction: 317,625,293 €Ratio house owners – tenants:

- 75 % dwellings owner occupied.
- 18 m in GB (excludes Ireland but includes Scotland) as against 12 m in GB in 1981.
- 5 m are rented from social sector landlords (housing associations).

Owner occupation is highest in the South East and Midlands, though it is low in London itself. In the South West of England and Wales 34 % owned their home without a mortgage.

	England		Wales	
1992	No (000's)	%	No (000's)	%
Owner occupied	13,333	67	847	
Private rental	2,012	10	98	
Housing association	646	3	30	
Local authority	3,844	19	219	
	19,836		1,194	
2004				
Owner occupied	15,279	71	955	77
Private rental	2,334	11	115	9
Housing association	1,665	8	64	5
Local authority	2,335	11	162	12
	21,613		1,296	

Property types

Type	Owner occupiers %	Social tenants %	Private tenants %	Total %
Houses	92	57	61	82
Flats	8	43	39	18

General market situation:

Regional variations are very marked. For example the average prices in the North and Wales are around 193,183 – 208,050 €, whereas in Greater London the average for all residential property is 454,723 € and for detached houses 921,370 €.

The **value of UK houses** is now £1 trillion.

VI. Finland

1. Professionals involved in the conveyancing market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	- Matching parties ca. 85 % (75-90 %) - Preliminary checks and contract drafting ca. 85 %	Condition report by condition inspector in ca. 75 %	Only in commercial or complex consumer transactions (ca. 5 %): Contract drafting and advice	Mandatory intervention see below	Bank: when mortgage taken out: often application to the land register

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (not usual in consumer transactions)			Notary: fixed fees; other fees negotiable
Preliminary checks (land register, administrative permits)	- Real estate agent - Bank	Professional duty (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	- Real estate agent (85 %) - Advocate (5 %)	Professional involvement not mandatory but usual	
Legal advice or counselling	Advocate (as part of drafting contract) (5 %)	Professional involvement neither mandatory nor usual	
Certification of signatures	Finnish notary	Professional involvement mandatory; exclusive right of Finnish notary	

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Contract execution (transfer of payment and registration)	- Estate agent - Notary (registration) Actual registration: bank when mortgage taken out; otherwise buyer - Payment: buyer	- Registration: notifying Survey Office is professional duty of notary	N: fixed fees; other fees negotiable
Taxation (esp. transfer tax)	Estate agent (advice on tax requirements) - Payment: buyer	- Professional involvement not mandatory but usual (advice as part of contract drafting)	

1.1 Notaries (Finnish style)

In Finland, it is **mandatory** to involve a notary: To be valid, a contract of sale must be done in writing and **signed in the presence of a notary**. The notary checks the documents and then sends the information about the sale to the District Survey Office.

Unlike continental notaries, the **Finnish style notary** (=kaupanvahvistaja) is limited to these **certification functions** and does not give any legal advice. Therefore, Finnish style notaries are fundamentally different from civil law notaries.

1.2 Advocates

An advocate is **not mandatory**. Advocates are usually involved **in consumer transfers** only when they act as estate agents or when the transfer is otherwise **complex**. For **commercial transactions**, the parties **usually** consult advocates during the negotiations.

1.3 Real estate agents

A real estate agent is **not mandatory**, but is usually involved by sellers in order to find a buyer. Professional real estate agents are involved **in 75-90 %** of all consumer sales and most commercial sales, unless an advocate is handling the

case. Real estate agents are typically not involved in transfers between relatives or transfers in which a branch of government is a party.

A real estate agent usually **drafts the contract**; most real estate agencies use their own standard contract as a basis. The real-estate agent carries out preliminary checks and will notify the parties about what permits are required. The real estate agent is only required to raise issues, not to advise on them.

Furthermore, real estate agents (although not required by law to do so) routinely advise buyers that the payment of **transfer tax** is a requirement for registration.

1.4 Technical services

Technical services are **not mandatory**, but a certified technical expert (“**condition inspector**”) is employed in **about 75 %** of sales of residential property. Especially when a used building or apartment is transferred, both parties usually have an inspection carried out prior to signing the contract. The condition inspector issues a report, which is usually annexed to the contract of sale.

1.5 Banks

Banks handle most registration procedures when the buyer also applies for registration of a mortgage. Often, banks even condition the disbursement of the loan on the buyer using this service. This way the bank can assure that the mortgage documents are issued to itself only.

2. Land registration

The **District court** of *forum sitae* is the registration authority and enters information regarding titleholders of land into the land register in the **title register**. Information on mortgages and leases (special rights) on real property is entered into the land register in the **mortgage register**. After registration of title to a new plot of land, a technical survey of the land is done by the District Survey Office. Information on the physical features of a plot of land including borders, re-formation of real property and certain permanent rights of others are entered into the cadastral register.

The **statutory basis** for land registration is found in the Code of Real Estate of 1996.

More than 95 % of the land is registered.

3. Main steps of the conveyancing process

In Finland, the standard conveyancing procedure takes the following main steps:

- **Conclusion of the contract of sale and transfer of ownership:** The contract of sale must be in writing and must be signed in the presence of a Finnish notary. A **valid contract** is required for the **transfer of ownership**. However, the parties are free to agree when transfer of ownership takes place. Often they render the transfer of title conditional on the **payment** of the purchase price.

- **Registration:** After the conclusion of the contract, the buyer needs to **apply for transfer of title** (acquire rank) in the **land register** and is mandated by law to do so within 6 months from the date of the sale.

4. Professional services regulations

4.1 Legal services: notaries and advocates

A) Notaries

Market entry and structure regulations

Subjective requirements

A Finnish notary may either be a holder of **public office** or a **court-appointed** notary. Acting as a notary is part of the duties of certain legally defined civil servants. There are **no specific** subjective requirements for notaries. A court-appointed notary is required to have “sufficient education and other qualifications”. In practice, especially real estate agents or bank managers are court-appointed notaries.

Objective requirements

There are **no quantitative** restrictions. Courts and other authorities which appoint notaries are however required to appoint enough notaries.

Barriers to cross-border services

Most of the **civil servants** who may act as notaries are required to be **Finnish citizens**. This requirement is motivated by the fact that public authority is exercised. However, there is **no requirement of nationality for court-appointed notaries**.

Inter-professional co-operation is **not** regulated.

There are **no more restrictions on business structure** or geographical location. **Before 1997**, a court appointed notary was authorised to act only in the judicial district of the court which had appointed her.

Market conduct regulations

Neutrality

The notary is acting **on behalf of both parties** (and on behalf of the state). He is under a **duty of neutrality**.

Duty to provide services

Since notaries offer a **public service**, they shall offer these services upon request.

Professional standards

The **ministerial Decree on Notaries** sets out certain professional duties common to all notaries, e.g. duties of control, information of the parties, loyalty.

Compulsory indemnity insurance does **not** exist.

Continuing education is **not mandatory** for Finnish notaries.

Advertising restrictions

Notaries who are **civil servants** are not allowed to advertise.

Court-appointed notaries are not treated differently from other economic actors, i.e. they are allowed to advertise subject to general regulations, especially to the Act on Unfair Business Practices and the Consumer Protection Act.

Conduct control

The **District court** monitors the notaries it has appointed. Civil servants who act as notaries are monitored in the same manner as all other civil servants.

Mandatory intervention

In Finland, it is **mandatory** to involve a notary: To be valid, a contract of sale must be done in writing and **signed in the presence of a notary**.

Price and fee regulations

Notary fees are fixed by a **ministerial decree**. Since 2004, the decree sets the fee for the complete service by the notary at 77 € plus possible travel expenses.

B) Advocates

Market entry and structure regulations

Subjective requirements

Any person can offer legal services, there are **no** subjective requirements. However, many parties employ a member of the **Finnish Bar Association** rather than an advocate who is not supervised by a professional body. To be admitted to the bar, candidates must have a law degree and undergo practical training.

There are **general statutory conditions** for exercising a profession and conducting business in Finland, which apply also to establishing a law firm.

Objective requirements do **not** exist.

Cross-border services

A **natural person** shall be resident within the European Economic Area (EEA). A person who does not have her habitual residence within the EEA may apply to the National Board of Patents and Registration of Finland for a permit to exercise a profession and conduct business.

A **company** domiciled within the EEA is allowed to operate in Finland if it has registered a branch office in Finland. A foreign company from outside the EEA needs a permit from the National Board of Patents and Registration.

There is no legal general **language** requirement.

Inter-professional cooperation is **not** regulated.

Business structure or geographical location are **not** regulated.

Market conduct regulations

Neutrality

The advocate usually acts **on behalf on one party**. However, it is possible to employ an advocate to act for both parties when they share the same interests.

There is **no duty of neutrality**. There are no legal rules for conflicts of interest.

Duty to provide services

There is **no legal duty** to provide services to all requesting parties. However, it is a crime to deny services on a discriminatory basis.

Professional standards

Professional standards of service are not regulated by statute. The **Finnish Bar Association** has set out **guidelines of good professional practice** (“Rules of proper professional conduct for advocates”) for its members.

Compulsory Indemnity Insurance

Only members of the **Finnish Bar Association** are required to have indemnity insurance.

Continuing education is **not** mandatory.

Advertising restrictions

General advertising regulations laid down in the Act on Unfair Business Practices and the Consumer Protection Act apply to advocates, too.

Conduct control

There is no compulsory quality control for advocates in general, but only for those who wish to use the professional title *asianajaja* (“**advocate**”). An advocate is a person who is registered in the Roll of Advocates as a member of the Finnish Bar Association which supervises them.

Mandatory intervention

The intervention of an advocate is **not mandatory**.

Price and fee regulations

When services are offered to **consumers**, it is mandatory to have a price list available. However, there is no general price regulation for advocates' services. An advocate shall observe the rules of good professional practice. According to the Finnish Bar Association's **guidelines** of good professional practice "an advocate's fee shall be reasonable and in accordance with the ratified grounds for fees".

In **practice**, advocates tend to charge their customary hourly rate, unless otherwise agreed.

1.3 Real estate agents

Table: Regulation index for real estate agents providing legal services in conveyancing

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Finland	0,5	0,0	0,5	20,0	0,5	2,1

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

There are **statutory regulations** on market entry in the Act on Real Estate Agencies and Housing Rental Agencies. Only **registered** real estate agencies are allowed to offer real estate agents services. The responsible manager has to pass an **examination** arranged semi-annually by the Board of Examiners for Real Estate Agents of the Central Chamber of Commerce. The examination covers a wide range of legal and economic subjects related to conveyancing.

Objective requirements do **not** exist.

Cross-border services (see above: advocates)

A **practical language-based limitation** lies in the fact that the examinations for the certification of real estate agents are available only in Finnish and Swedish.

Inter-professional cooperation is **not** restricted.

Business structure or geographical location are **not** regulated.

Market conduct regulations

Neutrality

The real estate agent is acting **on behalf of his/her client** (usually the seller). The agent has to inform any third party including the buyer that he is acting on behalf of the client. There is no statutory duty of neutrality. However, a real estate agent has a **duty of loyalty** towards both parties as part of good brokerage practice.

Duty to provide services

There is **no legal duty** to provide services to all requesting parties. However, it is a crime to deny services on a discriminatory basis.

Professional standards

The professional standards for real estate agents' services are set out **by statute** in the Act on Brokerage of Real Estate and Rental Apartments. In particular, real estate agencies are required to follow good brokerage practice.

Compulsory indemnity insurance

A real estate agency is **required by statute** to have indemnity insurance that is sufficient considering the quality and extent of the business.

The statute does not state a minimum amount but usual **amounts** range between 40,000 € and 170,000 €.

Continuing education

There is **no mandatory** continuing education, but there is a requirement that real estate agents must have **sufficient professional skills**. Continuing education is regarded as necessary to maintain these skills.

Advertising restrictions

General advertising regulations in the Act on Unfair Business Practices and the Consumer Protection Act apply to real estate agents as well.

Conduct control

Real estate agencies are monitored by the **Provincial State Office**.

The Finnish Association for Real Estate Agencies has its own quality control system for its member agencies.

Mandatory intervention

The intervention of a real estate agent is **not mandatory**.

Price and fee regulations

When services are offered to **consumers**, it is mandatory to have a price list available. Parties may **bargain** for individual prices.

The **usual fee** for the real estate agent is currently between 1.85-4.88 % of the sale price.

1.4 Technical services: Condition Inspectors

Market entry and structure regulations

Subjective requirements do **not** exist. A certain number of inspectors have nevertheless passed a (voluntary) examination organised by Kiinteistöalan Koulutuskeskus (The Real Estate Education and Training Institute) or the Central Chamber of Commerce.

Objective requirements do **not** exist.

Cross-border services are regulated in the same way as for agents (see above).

Inter-professional cooperation

There is **no regulation** on inter-professional co-operation of condition inspectors. However, it is common that condition inspection firms co-operate with real estate agencies who recommend their services to their clients.

Business structure or geographical location are **not** regulated.

Market conduct regulations

Neutrality

A condition inspector may be employed by both parties or by either one of them. There is **no duty** of neutrality prescribed by law.

Duty to provide services

There is **no legal duty** to provide services to all requesting parties. However, it is a crime to deny services on a discriminatory basis.

Professional standards

There is **no special legislation** on condition inspection services. When those services are offered to consumers, the Consumer Protection Act applies.

Professional standards for inspections are laid down in the **Common Operational Model** for Condition Inspection which has been drafted by a group of experts in cooperation with authorities, private organisations and enterprises on the field.

Compulsory Indemnity Insurance does **not** exist.

Continuing education is **not** mandatory.

Advertising restrictions

General advertising regulations in the Act on Unfair Business Practices and the Consumer Protection Act apply to technical inspectors as well.

Conduct control

There is **no mandatory quality control**. Some inspectors have passed an examination organised by The Real Estate Education and Training Institute.

Mandatory intervention

The intervention of a technical expert is **not mandatory**.

Price and fee regulations

When services are offered to **consumers**, it is **mandatory** to have a **price list** available – a requirement which, in practice, is however reported to be widely not complied with.

In **practice**, the fees range between 500-700 €. It is customary to include the report in the contract and agree to split the cost.

5. The Finnish Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	3,125	600 ³⁰	Notary: 77	65	4,000	7,868
100,000 € sales price + 100,000 € mortgage	3,125	600	Notary: 77 Plus 353.2 Bank charges for registration of mortgage	109 (Transfer of title: 65 Mortgage: 44)	4,000	8,264
250,000 € sales price (no mortgage)	7,813	600	Notary: 77	65	10,000	18,555
250,000 € sales price + 250,000 € mortgage	7,813	600	Notary: 77 Plus 353.2 Bank charges for registration of mortgage	109 (Transfer of title: 65 Mortgage: 44)	10,000	18,952
500,000 € sales price (no mortgage)	15,625	600	Notary: 77	65	20,000	36,367
500,000 € sales price + 500,000 € mortgage	15,625	600	Notary: 77 Plus 353.2 Bank charges for registration of mortgage	109 (Transfer of title: 65 Mortgage: 44)	20,000	36,764
1,000,000 € sales price (no mortgage)	48,860	600	Notary: 77	65	40,000	89,602

³⁰ http://www.kuluttajavirasto.fi/user_nf/default.asp?id=16606&root_id=7436&tmf=7436&mode=readdoc&lmf=&site=34

	Real estate agent	Technical services (if usual)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
1,000,000 € sales price + 1,000,000 € mortgage	48,860	600	Notary: 77 Plus 353.2 Bank charges for registration of mortgage	109 (Transfer of title: 65 Mortgage: 44)	40,000	89,646
5,000,000 € sales price (no mortgage)	244,060	600	Notary: 77	65	200,000	444,802
5,000,000 € sales price + 5,000,000 € mortgage	244,060	600	Notary: 77 Plus 353.2 Bank charges for registration of mortgage	109 (Transfer of title: 65 Mortgage: 44)	200,000	444,846

5.1.1 Real Estate Agents

The **agent fee** is usually between 1.85 % and 4.88 % of the sale price. A middle range fee has therefore been assumed here. Whoever hired the agent pays the agent. This is usually the seller.

5.1.2 Technical Services

According to a recent survey, the fees for technical services range **between 500-700 €**.³¹ The figures available pertain to ordinary consumer sales. Technical experts may charge a higher fee for larger estates.

It is customary to include the report in the contract and agree to **split the cost**.

5.1.3 Legal Services

- The **certification of the signature** by the notary is set by decree currently at 77 €. The notary fee is usually split evenly between the seller and buyer.
- **Advocates** tend to charge their customary hourly rate, unless otherwise agreed. Whoever hires an advocate is responsible for the bill.

³¹ Available at the web-site of the Consumer Board of Finland.
http://www.kuluttajavirasto.fi/user_nf/default.asp?id=16608&site=34&tmf=7418&root_id=7418&mode=readdoc.

5.1.4 Land Register Fee

The land register fees are **fixed by ministerial decree**³²: The registration fee depends on the type of registration.

- The registration of transfer of title costs 65 € and the registration of a mortgage 44 €.
- If additional liens are raised on the same application each additional lien costs 11 €.

Banks charge an additional service fee for handling the application, which varies if the client is a private person or a company.

The buyer usually pays the registration fee.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

The tax amounts to 4 % of the purchase price. The tax upon the sale of shares in an apartment corporation (i.e. a corporation owning an apartment house with the owners of single flats being shareholders) 1.6 % of the purchase price. Buyers purchasing their first residence are exempt from the tax.

The buyer pays the tax.

The tax is based on the purchase price. The parties generally pay full tax, since the seller cannot legally recover a higher price from the buyer in case of non payment than the amount stated in the contract.

A receipt of the tax payment is required for the registration of the land transfer.

Real estate agents are required to advise the buyer on the requirement of paying tax. All banks carry deposit slips for payment of the tax.

5.1.5.2 Capital Gains Taxes

The seller must pay capital gains tax (of 28 %) on the profit from the sale, unless s/he has used the property as her/his permanent residence for at least two years.

³² Ministerial Decree 29.12.2005/1282

5.1.6 Commercial or Office Buildings

The same tax rate applies to commercial and residential property.

5.1.7 Changes in Transfer Costs

A new **Code of Real Estate** entered into force in January 1997, which greatly simplified and clarified the transfer and registration process. The reform did not necessarily directly reduce transfer costs, but encouraged consumers to register their rights and thus enhanced the credibility of the land register. All in all, the reform reduced the number of future conflicts regarding ownership of or rights to land.

5.2 Service providers (2004)

Branch	Enterprises		Personnel		Turnover	
		%	1 000	%	€ mil.	%
Real estate and renting activities	12.226	5.3	28	2.1	6 029	2.0

5.3 Key market data

Average prices

- **residential sales of 2-room apartments/ apartments of 90 square metre or more and single-family homes**

	Average price per transfer	Average price per square metre
2 Room apartment	N.a.	1680-1810
Apartments larger than 90 square metres	N.a.	2000-2120
Single-family homes	150.000-165.000	N.a.

- **built residential real property in planned city area in 2005**

Total number of transfers	Average size in square meters	Average prize per transfer
10.702	1.393	149.452

- **built residential real property in planned rural area in 2005**

Total number of transfers	Average size in square metres	Average prize per transfer
7.247	5.432	98.060

- **built commercial, office and industrial real property in planned city area in 2005**

	Number of transfers	Average size in square meters	Average price/ transfer
Public service property	81	10934	1 517 972
Commercial & office property	173	7403	1 929 951
Industrial property	564	10134	794 193

Number of transactions in 2005: 90.230 real property transactions

Total value of transactions in 2005: 7,3 billion €

Ratio house owners – tenants : 66 % : 33 %

General Market Situation

The market at present is investor and landlord friendly.

There is a shortage of small apartments in most cities and a surplus of large apartments.

VII. France

1. Professionals involved in the conveyancing market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 40 % (25-50 %)	Energy certificate mandatory; 95 %; technical information file	Limited non mandatory involvement in some commercial transactions	Mandatory intervention see below	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (usual)	Notary (80 %); estate agents, parties (20 %)	Professional intervention usual but not mandatory; exclusive rights do not exist	Fixed fees
Preliminary checks (land register, administrative permits)	Notary	Professional duty of notary (prior to drafting the sales contract)	
Drafting the sales contract and/or deed of conveyance	Notary	Involvement of the notary not mandatory, but absolutely usual as only notarial deeds may be registered	
Legal advice or counselling	Notary	Professional duty of notary (as part of the process associated with concluding the notarial deed)	
Certification of signatures	Notary	Notary mandatory as only involvement of the notary not mandatory, but absolutely usual as only notarial deeds may be registered	
Contract execution (transfer of payment and registration)	Notary	Notarial deed mandatory for registration; payment via notarial escrow account usual	
Taxation (esp. transfer tax)	Notary has to compute, levy and forward taxes to the tax authorities	Professional duty of notary (as part of contract execution)	

1.1 Notaries

In France, it is **mandatory** to involve a notary in conveyancing. The French notary (*notaire*) is the specialist in real property law and has a **monopoly over conveyancing**. Property transfers must be concluded by **notarial deed**. Otherwise, future sales of the building(s) are invalid and not enforceable with regard to third parties. In **Alsace-Moselle**, the notary has the additional **monopoly on the sale of property by auction** (which is a remaining influence of the German system to which this region belonged from 1871-1918), whereas in general French law such sales of property by auction take place in court.

The notary advises parties, checks administrative permits, and handles the execution of the contract (price payment, tax collection, registration of the property). The notary checks the mortgage situation of the property; s/he has the responsibility for the legality and the security of the transaction. S/he receives the money from the buyer and transfers it immediately to the seller through an escrow account. When the buyer has taken out a loan, the notary also guarantees the agreed rank to the bank. The notarial act is directly enforceable.

Beyond this, we find a unique specificity among Latin notary systems: notaries are **entitled to act as agents** for the seller to find a buyer. However, this privilege is **strictly regulated**: The agent activity must be accessory to the principal activity of the notary; it may represent only 3.5-4 % of notaries' overall turnover in France; publicity can only be made by certain limited means, and there is a statutory cap on the fees. In practice, notaries take over agent functions in a limited number of cases only (estimated 20 %), though with strong regional variance.

1.2 Advocates

An advocate is **not mandatory** in conveyancing. In residential sales, advocates are therefore **rarely** involved.

1.3 Real estate agents

A real estate agent is in a considerable number of cases (**25-50 %**) involved by the seller in order to find a buyer.

1.4 Technical services

Whilst the intervention of technical experts is **not legally mandatory**, these are nevertheless involved in almost all cases (**90-100 %**) as the seller faces liability risks otherwise.

The **seller** usually presents a **technical information file** on the property which is prepared by a technical expert. Depending on the age of the property and its location, the seller must give information on the presence of asbestos, xylophageous (wood-boring) insects and lead according to Sanitary Law. The **French parliament** is planning to **extend the scope of information**, so as to include e.g. gas installations. This technical file is understood to have the sole purpose of informing buyers and does not engage the seller's liability for incorrect information. If the seller does not present the file of technical information, a mandatory **guarantee of the seller** for defects is provided for by statute. Also, the European energy performance directive applies in France as of 1/11/2006.

2. Land registration

Land registration is regulated by a **Decree** of 4 January 1955. Some exceptions refer to Alsace-Moselle, formerly following the German system. The French system operates **land registration through the so-called "mortgage registries"** ("bureau de la conservation des hypothèques") where all real property transactions (despite its name not only mortgage transactions) are registered, nowadays in computerised form. The most important instrument of the mortgage registries is the "land register" ("fichier immobilier"), which lists plots of land and holders of real rights.

Land registration in the Mortgage Registry is not part of the judicial system in France, but of the **administrative system**, which is under the control of Ministry of Finance. The main actor is the mortgage registrar. There is one mortgage register per geographical district. Today, in France, **95-100 % of all property is registered**.

3. Main steps of the conveyancing process

In France, the standard conveyancing procedure takes the following main steps:

- **Conclusion of the contract of sale and transfer of ownership:** Though not mandatory, a **preliminary contract** is usual in France, as it is generally **required by the buyer's bank** before disbursing the loan. The preliminary contract commits both the seller and the buyer to the transaction (including the stated price and the obligation to transfer the property), subject to a number of conditions ("conditions suspensives") and, if the buyer is a consumer and has not waived that right, to a seven-day cooling-off period. Upon signature of the preliminary contract, the purchaser pays a **deposit**, which is usually between 5 % and 10 % of the purchase price. The deposit is forfeited if the transaction fails for reasons imputable to the buyer. This preliminary contract is usually (estimated 80 % of cases) drafted by the notary, but may also be drafted by an estate agent or the parties themselves.

As a next step, the **deed of sale** must be **drafted by a notary**. The notary controls the legality and the content of the act as well as the identity of the parties, and ensures that both parties have understood its legal and financial consequences (obligations of giving advice and of acting impartially). The notary is fully liable in case of insufficient advice. S/he also controls rights of third parties on the real estate such as pre-emption rights. The deed of sale is **signed before the notary** which takes the form of a notarial act.

The sales price as well as the taxes (capital gains tax and tax on real estate transfer) are then paid through a **notarial escrow account**. The notary receives the money from the purchaser and forwards it to the seller. After this, the notary carries out the payment of the registration fee, the capital gains tax and the tax on real estate transfer.

According to the consensual system adopted by the Code Civil, the **transfer of ownership** requires only a valid contract, which presupposes most importantly the consent of the parties on the object of sale and the price. There is no separate contract on transfer of ownership as e.g. in German law.

- **Registration:** The notary also handles the **registration procedure**. For the application for registration, the **deed** must be submitted in the form of a **notarial act**. The registrar controls the amount of **taxes** perceived by the notary and transferred

to the Registry. Regarding the effects of registration, France follows the **declaratory system** which has been adopted also by Belgium, Luxembourg, Portugal and Italy. This means that the transfer of property results exclusively from the consent of the parties. Registration in the land registry only renders the transfer enforceable **in relation to third parties**.

4. Professional services regulations

4.1. Legal services: Notaries

Table: Regulation index for notaries

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII Mandatory Intervention	MERI +MCRI MII	CPI Consumer Protection
France	5,1	5,2	10,3	4,0	14,3	5,2

Market entry and structure regulations

Subjective requirements

A notary candidate must have passed a **Masters degree in law** and two additional years of **University courses** combined with **practical training** to qualify for the **notarial diploma**.

Objective requirements

There is **no strict numerus clausus**, but a **regulated system** under which the number and location of offices are determined on the basis of economic and demographic criteria in order to ensure a sufficient geographical coverage of the whole country with notarial services. The system is implemented by the **Ministry of justice** with the advice of a commission composed of representatives of the notarial profession and the Ministry itself.

Barriers to cross-border services

French notaries are required to be **French citizens**. This nationality requirement has recently been the subject of infringement procedures by the European Commission under EU Internal Market Law. .

Inter-professional co-operation

Notaries must not work together with other professionals in a common structure. Cooperation is possible, but dividing emoluments is prohibited.

Business structure

The establishment of business is **restricted to certain legal forms**. The number of notaries per office is not limited.

Market conduct regulations

Neutrality

The notary acts on behalf of both parties and has a **duty of impartiality**, even when two notaries work together on one act.

Duty to provide services

The notary is under a **legal duty to provide services** to all requesting parties, except when the parties' request is contrary to the law.

Professional standards

The standards of professional services are regulated by **statutory law, by Ministerial Decrees and by professional regulations**. The **most important standards** are: advising duty, impartiality, pursuing no other commercial activity (except for limited agent services, see above), respect of morality.

Compulsory indemnity insurance

Indemnity insurance is subscribed to for the whole profession by the **Conseil supérieur du notariat** on the same conditions, so that each notary offers the client the same guarantees. The **average prime** is **1,55 %** of the turnover. In addition, a **Notarial Guarantee Fund** exists to cover damages caused by a notary which are not covered by the insurance.

Continuing education

Continuing education is **mandatory**. It is currently fixed at two days per year, observance of which is controlled in yearly inspection.

Advertising restrictions

No advertisement is allowed as such for **individual notaries**, but providing information to clients on the notarial internet site is allowed. **Collective advertisement** by the professional bodies for the whole profession is allowed.

Conduct control

Upon appointment, notaries become automatically members to the **professional bodies of notaries**. There is a **conduct and quality control** by these bodies at a departmental, regional and national level.

Mandatory intervention

The intervention of a notary is mandatory for the registration procedure only, which renders the transaction opposable towards third parties. However, as requests for registration must be accompanied by a notarial deed, the latter becomes quasi-mandatory as well.

Price and fee regulations

Notary fees are **fixed by a Ministerial decree**: décret 78-262 du 8 mars 1978 portant fixation du tarif des notaires. This decree refers to all kinds of services in relation to a deed.

Parties may derogate from legally fixed prices only for fees over **80,000 €**.

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

These are: 3 years of university or special **diplomas** in the real estate sector; alternatively, 3 years professional experience with an agent if the candidate has passed the final secondary school examination; otherwise 10 years of professional experience; proof of a sufficient financial/ bank guarantee.

Objective requirements do **not** exist.

Cross-border services and inter-professional cooperation are **not** restricted.

Business structure or geographical location are **not** regulated.

Market conduct regulations

Neutrality

The real estate agent is acting **on behalf of the client** (usually the seller). There is no duty of neutrality.

Duty to provide services does **not** exist.

Professional standards

The professional standards for real estate agents' services are set out **by statutory law/ Ministerial decree**, and for those real estate agents who are members of federations/professional bodies, by **codes of conduct**.

Compulsory indemnity insurance

A real estate agency is **required** to have indemnity insurance, but **no minimum amount** has been fixed.

Continuing education is **not** required.

Advertising restrictions

General advertising regulations apply to real estate agents as well.

Conduct control is **not** regulated.

Price and fee regulations

The fees for real estate agents are **not fixed or regulated**.

The tariffs have to be **posted** in the office.

4.3. Technical services

Market entry and structure regulations

Subjective requirements do **not** exist.

Objective requirements do **not** exist.

Cross-border services and Inter-professional cooperation are **not** restricted.

Business structure or geographical location are **not** regulated.

Market conduct regulations

Neutrality

A technical expert acts **on behalf of his client**. There is **no duty** of neutrality but one of objectivity.

Duty to provide services and professional standards are **not** regulated.

Compulsory indemnity insurance does **not** exist.

Continuing education is **not** mandatory.

Advertising restrictions

General advertising regulations apply to technical inspectors as well.

Mandatory intervention

Apart from the energy performance certificate, the intervention of a technical expert is **not mandatory**.

Price and fee regulations

There are no fixed fees.

For fees in practice see below (transaction costs).

5. The French Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total transfer costs
100,000 € sales price (no mortgage)	8,000 €	500 €	1,153.75 €		100 €	5,060 €	14,813 €
100,000 € sales price + 100,000 € mortgage	8,000 €	500 €	1,538.33 €		150 €	5,060 €	15,248 €

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total transfer costs
250,000 € sales price (no mortgage)	17,500 €	500 €	2,391.25 €		250 €	12,650 €	21,891 €
250,000 € sales price + 250,000 € mortgage	17,500 €	500 €	3,188.33 €		375 €	12,650 €	34,213 €
500,000 € sales price (no mortgage)	30,000 €	500 €	4,453.75 €		500 €	25,300 €	60,753 €
500,000 € sales price + 500,000 € mortgage	30,000 €	500 €	5,938.33 €		750 €	25,300 €	62,488 €
% VAT applicable	19.6 %	19.6 %	19.6 %		NO	NO	

Annotations to the table: - In France, about 50 % of credits are not guaranteed by mortgage, but by bank guarantee, with equivalent cost.

5.1.1 Real Estate Agents

The agent's fee usually is **6-8 %**.

It is usually paid by the **seller**.

5.1.2 Technical Services

The fees for the technical services provided usually are **600-1,000 €**.

The fee is usually paid by the **seller**.

5.1.3 Legal Services

Notary fees are **fixed by a Ministerial decree**, and parties may derogate from these fixed fees for fees over **80,000 €** (see above).

Notaries **acting as agents** for the seller to find a buyer usually charge 2,5 – 5 % of the transaction price for this service. This fee is not set by law and therefore negotiable.

Legal fees are usually paid by the **buyer**.

5.1.4 Land Register Fee

The land register fees are **fixed** by statute.

The fee depends on the value of the registered property.

The fee is usually paid by the **buyer**.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

Transfer taxes are **5.06 %**, based on the purchase price.

The tax is usually paid by the **buyer**.

Due payment of the tax is a requirement for the registration of the transfer in the land register.

The civil law **notary** collaborates in the tax collection (see above).

5.1.5.2 Capital Gains Taxes

Capital gains taxes apply on the sale of land, except if the property sold was the principal residence of the seller. The tax rate also depends on the duration of ownership. The average tax bracket for a land sale is **27 %**.

5.1.6 Commercial or Office Buildings

There are **no differences** in taxes or other transfer costs for commercial or office buildings.

5.1.7 Changes in Transfer Costs

Transfer taxes have dropped from 7 % for houses to 5,06 % and from 18,20 %, to 5,06 % for commercial buildings.

5.2 Service providers

TOP 10	Total nr. of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm	Average cost per firm	% Conveyance/ total services
Civil law notaries	10	60	962	0	2.9 %	n.a.	n.a.	45-50 %

Other firms (not top 10)	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm	Average cost per firm	% Conveyance/ total services
Civil law notaries	4 492	8 256	46 022	0	97.1 %	n.a.	n.a.	45-50 %

5.3. Key market data

Market share per price segment:

Price (in €)	Residential property sales
Up to 100.000.-	~20 %
100.000.- up to 250.000.-	~58 %
250.000.- up to 500.000.-	~17 %
More than 500.000.-	~5 %

Ratio house owners – tenants : 56 % - 44 %

General Market Situation:

There was a boom in the property market about 10 years ago, but limited to extremely speculative locations (Paris, the Riviera, etc.).

Since that time, a steadily increasing price per square metre may be found in all urban regions in France; the rate of increase has however been less over the last 2 years.

VIII. Germany

1. Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 50 %	Technical survey (5 % buyer, 2 % seller)	Contract drafting (ca. 5 %, commercial cases)	Mandatory intervention see below	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (not usual)	-	-	Fixed fees
Preliminary checks (land register, administrative permits)	Notary: land register	Professional duty of notary (prior to drafting the sales contract)	
Drafting the sales contract and/or deed of conveyance	Notary	Notarial instrument mandatory by law; exclusive right of notary	
Legal advice or counselling	Notary	Professional duty (as part of the process associated with concluding the notarial deed)	
Certification of signatures	Notary	Certification of signatures as part of notarial instrument mandatory by law; exclusive right of notary	
Contract execution (transfer of payment and registration)	Notary	Professional involvement not mandatory, but usual: 95 % (except state employed notaries in Baden-Württemberg): - Permits (application/control); - Payment (5% escrow account), - 95 % notice of payment + control - Registration (application/control)	
Taxation (esp. transfer tax)	Notary: notification to tax authorities	Professional duty of notary	

1.1 Notaries

Contract Drafting

By **mandatory statutory regulation**, the contract has to be made by **authentic act** (§ 311b par. 1 BGB). Thus, almost all land sale contracts are **drafted by the civil law notary**. However, even if the contract has been drawn up by the (advocates of the) parties, the notary nonetheless has to check the whole contract, to advise the parties as to its content and legal consequences and convert it into a notarial deed.

Taxation

The notary authenticating the land sale has to **inform the tax authorities** (§ 18 GrEStG).

Also, the notary has to **inform the parties** that the transfer can be registered in the land register only after the transfer taxes have been paid (and after the tax authority has confirmed receiving the payment, § 19 BeurkG, § 22 GrEStG).

However, the notary does not calculate the amount of tax to be paid or withhold payment directly. Only in cases where a **notarial escrow account**³³ is being used (in about 5-10% of all sales), is the tax paid directly from the escrow account.

Executing the contract

Usually the parties also choose to retain the notary's services for the **execution of the contract** (i.e. application for the necessary permits, checking the contractual requirements for the payment etc.).

The notary authenticating the sales contract also has a legal duty to **inform the parties** about all **permits** which might be required for the sale (§ 18 BeurkG). Usually the parties also retain the notary to apply for these permits on their behalf.

The main exception relates to the state employed notaries in **Baden-Württemberg**; since they do not have sufficient employees to carry out the execution of the contract, most of them do not accept this task; thus it is left to the parties themselves.

³³ According to § 54a Abs. 2 Nr. 1 BeurkG (in force since 1998), the use of a notarial escrow account requires a legitimate safety interest, e.g. doubts regarding the financial reliability of one of the parties.

1.2 Lawyers

In Germany, a lawyer is **neither mandatory nor usual**. An (additional) lawyer is employed only in some commercial land sales (by one company to another company). Lawyers are involved in less than 5 % of all land sales³⁴.

1.3 Real estate agents

Real estate agents are **not mandatory** in Germany. In practice, real estate agents are involved in **about 50 %** of the sales of residential properties, with a higher percentage in urban areas and a lower percentage in rural areas.

Usually the seller gives information about his willingness to sell to one or several real estate agents. However, the **buyer usually pays the agent**.

1.4 Licensed Conveyancers

Licensed conveyancers do **not exist** in Germany.

1.5 Technical experts

It is **neither legally required nor usual** to employ a professional to check the existing buildings. It is estimate is that **only about 5 %** of buyers employ an architect or other technical – expert to check the situation of the premises. Even then, the technical expert usually just checks the technical conditions. Less often he is also retained for checking whether there has been a valid building permit for the house.

The **directive 2002/91/EC** has not yet been implemented in Germany.

2. Land registration

In Germany, land registration is regulated in the *Grundbuchordnung* (Regulation on the land register).³⁵

³⁴ Estimation of the national reporter.

In Germany, there are **two relevant state institutions** for registering real estate:

- In the **Liegenschaftskataster** (cadaster), one may find a technical survey of the land.
- In the **Grundbuch** (land register), ownership and other legal rights in plots of land registered. However, the *Grundbuch* refers to the cadaster for the position, borders and size of the cadastral parcel that make up a plot of land in the *Grundbuch*.

In Germany, the land register (*Grundbuch*) is a **part of the court system** in non-contentious matters (*Freiwillige Gerichtsbarkeit*), i.e. it is not an administrative authority. The register is administrated by the first instance court (*Amtsgericht*) (§ 1 GBO – *Grundbuchordnung* = land register regulation).

The **registration** is made by **registrars** (*Rechtspfleger* - RpflG). The registrars do not have a general law degree (*Befähigung zum Richteramt* – § 5 DRiG), but they have passed a special three years legal training enabling them to work at the register (which also encompasses the company register and some matters concerning execution and succession). The registration procedure is supervised by judges. The **civil law notary** plays an indispensable role in drafting most of the applications for registration.

In Germany, **all real property** has to be registered in the land register (*Grundbuch*) (§ 3 I GBO). The only **exception** applies to property owned by the state, by local authorities and churches, rivers and railways: These properties are registered on the application of the owner only (§ 3 II GBO). In practice, however, most of these properties have also been registered. All in all, in practice, **more than 95%** of the land is registered.

3. Main steps of the conveyancing process

In Germany, the standard conveyancing process takes the following main steps:

Conclusion of the contract of sale and transfer of ownership: When the seller has found a buyer, the parties ask a notary to draft the contract. The **sales contract** is concluded in an oral hearing at the notary's office in the presence of both parties

³⁵ The *Grundbuchordnung* (Land register law) may be found on the internet, edited and updated by the German ministry of Justice: <http://bundesrecht.juris.de/bundesrecht/gbo/>

and laid down in a **notarial document**. Afterwards, the notary applies for registration of a **priority notice** (*Vormerkung*) in the land register (*Grundbuch*). Now, the buyer **pays** the purchase price to the seller. After payment, the seller allows the buyer into possession and the notary has the transfer of ownership **registered** in the land register (*Grundbuch*). According to § 311b par. 1 BGB (German Civil Code) an obligation to transfer the ownership of land or to acquire ownership in land is valid only, if it is made by an authentic act. The registration entails the **transfer of the property**. The transfer of ownership also requires an authentic act by a notary (§ 20 GBO; § 925 BGB).

Registration: The demand for registration does not require any particular form. However, the necessary consent of the owner of the property or of the real right concerned requires a **certification of signature** (§ 29 GBO). As a consequence, in practice almost all applications to the land register are drafted by a notary. Thus, there is **dual control** before any right is registered: First, the notary checks the legal requirements (and drafts the document). Second, the registrar checks the legal requirements.

4. Professional services regulations

4.1 Legal services: Civil Law Notaries

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	MII * Mandatory Intervention	MERI + MCRI + MII	CPI Consumer Protection
Germany	5.6	4.5	10.1	3.6	13.7	6.0

*Please note: The MII is an index per country and not per profession.

The German notary is a **holder of a public office** in the area of preventive justice (*vorsorgende Rechtspflege* – § 1 BNotO – German Notarial Law). Notaries are appointed by the ministry of justice of the respective *Land* (state).

There are three **basic types of notaries** in Germany:³⁶

- Single-profession notaries (*hauptberufliche Notare*) are not allowed to exercise any other profession beside their notarial functions (§ 3 para. 1

index.html.

³⁶ Compare <http://www.bnotk.de/Notar/Berufsbild/Berufsbild.html> - with map.

BNotO – *Bundesnotarordnung*, German Notarial Law).

- Advocate-notaries (*Anwaltsnotare*) exercise the notarial profession as an additional office alongside with their activity as advocates (§ 3 para. 2 BNotO).
- As a special third type, state-employed notaries (Notare im Landesdienst) exists in the State of Baden-Württemberg (in two sub-types: "*Bezirksnotare*" in the district of the higher court – Oberlandesgericht – of Stuttgart, "*Richternotare*" in the district of the higher court of Karlsruhe – the Bezirksnotare alongside with advocate-notaries and with single-profession notaries) (§§ 114, 115 BNotO).

However, the same professional rules apply to all notaries. Procedural provisions, ethics and fees of the notaries are governed by federal law and are therefore the same all over Germany. Approximately 9,000 advocates work as notaries in Germany today.

- 1,610 single-profession notaries,
- 7,265 advocate-notaries and
- 630 state-employed notaries in the State of Baden-Württemberg (partially alongside with single-profession and advocate-notaries).
- Regarding the population,
- The states or regions with single-profession notaries account for about 50% of the total German population (of about 80 million),
- The regions with advocate-notaries account for about 35 % of the population,
- 13 % of the German population lives in Baden-Württemberg with its mixed system of state-employed notaries, advocate-notaries and single-profession notaries.

Market entry and structure regulations

Subjective requirements

- Second state exam (§ 5 BNotO),
- Merit-based selection between the applicants (§ 6 BNotO).
- Single-profession notaries are generally chosen from the top 5 % of graduating

advocates

- For single-profession notaries: 3 years practice as “notarial candidate” (*Notar-assessor*) under the supervision of a notary (§ 7 BNotO),
- For advocate-notaries: 5 years practice as an advocate, 3 of these in the local area, for which he applies to become a notary (§ 6 para. 2 BNotO).

Objective requirements

A **numerus clausus** exists (§ 4 BNotO).

The state ministries of justice usually take the number of notarial acts and in some cases also the population. Minimum numbers for creating new notarial positions usually range between 250 and 400 acts per year for advocate-notaries and between 1,500 and 1,800 per year for single-profession notaries.

Cross-border services

Only **German citizens** may become notaries (§ 5 BNotO).

The sales contract may be authenticated also by a **foreign notary**. However, the transfer of title to real property (§ 925 BGB) can be recorded only by a German notary.

Inter-professional cooperation

Single-profession notaries may cooperate only with other single-profession notaries appointed to the same location (*Amtssitz*); cooperations with other professionals are **prohibited** (§ 9 para. 1 sen. 1 BNotO).

Advocate-notaries may cooperate only with members of the following professions (§ 9 para. 2 BNotO):

- - with other advocate-notaries or with **other advocates**,
- - with **patent advocates**,
- - with **tax consultants** and certified auditors (and alike).

The cooperation must not affect the neutrality or impartiality of the notary (§ 9 para. 2 BNotO). If the notary himself or any of his cooperating professionals have dealt with a subject matter in non-notarial capacity, he is excluded from acting in a notarial capacity (§ 3 par. 1 sen. 1 no. 7 BeurkG – *Beurkundungsgesetz* – German law on notarial authentication).

Business structure

For **single-profession notaries**, the respective state government may limit the maximum number of cooperating professionals by ordinance (§ 9 para. 1 sen. 2 no. 2 BNotO). In most German regions (Länder), cooperations of single-profession notaries are limited to 2 partners.

For **advocate-notaries**, no such restriction applies.

Market conduct regulations

Neutrality

Neutrality is one of the fundamental duties of a German notary (§§ 1, 14 para. 1 BNotO). Neutrality also translates into notarial instruction duties (*notarielle Belehrungspflichten*).

Duty to provide services

The German notary has a **duty to provides services in core functions** such as authenticating documents, certifying signatures or taking the oath (§ 15 para. 1 BNotO). Thus, the notary cannot deny his services.

For **other functions**, such as executing the contract or accepting to handle an escrow account (§§ 23, 24 BNotO), the notary may refuse to act.

Professional standards

Professional standards are regulated by:

- German Notarial Law (BNotO – *Bundesnotarordnung*).
- German law on notarial authentication (BeurkG – *Beurkundungsgesetz*) as a procedural law,

Mostly **details** are clarified by:

- Self regulatory guidelines by the local chamber of notaries (*Richtlinien der Notarkammer*),
- - Regulation by the local ministry of justice (DONot – *Dienstordnung für Notare*).

Compulsory Indemnity Insurance

The compulsory indemnity insurance is 1 million €:

- 500,000 € insurance by the notary himself (§ 19a BNotO),

- Additional 500,000 € by the chamber of notaries (§ 67 para. 3 no. 3 BNotO).

An insurance against willful breach of professional duty ("*vorsätzliche Handlungen*" - which are excluded from the general indemnity insurance) with a mandatory minimum coverage of 250.000 € has to be maintained by the respective chambers of notaries (§ 67 para. 3 no. 3 BNotO); for damages exceeding the insurance coverage the chambers together maintain an additional reimbursement fund ("*Vertrauensschadensfonds*" - § 67 para. 4 no. 3 BNotO).

Continuing education is **mandatory** for the profession (§ 14 para. 6 BNotO).

Some of the chambers' self regulatory guidelines set targets of around 15 hours per year.

Advertising restrictions

Any advertisement contrary to the public office is **forbidden by statute** (§ 29 para. 1 BNotO). Control by the judicial administration used to be quite strict. However, the courts have in some cases struck down sanctions applied by the judicial administration and thus somewhat relaxed the prohibition on advertising within the last years.

Conduct control

Conduct is **controlled** by the president of the intermediate court (*Landgerichtspräsident* – § 92 BNotO). In particular, every notary's practice is checked in his offices by a judge appointed by the president of the intermediate court in intervals of 3 up to 5 years (§ 93 BNotO).

Mandatory Intervention

According to § 311b par. 1 BGB (German Civil Code) an obligation to transfer the ownership of land or to acquire ownership in land requires an authentic act. Such an act is also necessary according to § 925 BGB for the act of transfer itself. Thus, the intervention of a (civil law) notary is **mandatory** for every land sale.

Price and fee regulations

Fees are **regulated by the Court Fee Statute** (*Kostenordnung* – KostO), which applies to court fees as well as to notarial fees.

Generally, **fees are fixed**. Only for some minor fees for contract execution, the notary has some leeway within the statutory range as how to set the fee.

5.1.1 Real estate agents

Market entry and structure regulations

Subjective requirements

Real estate agents need a **license** under the Commerce Control Act (§ 34c GewO – *Gewerbeordnung*). However, the standards for obtaining a license are basically restricted to being a reliable person.

A specific education in real estate business is **not** a requirement.

Objective requirements do **not** exist.

Cross-border services are **permitted**, but not common.

Inter-professional cooperation is **not** regulated.

Business structure is **not** regulated.

Market conduct regulations

Neutrality is **not** regulated.

Duty to provide services does **not** exist.

Professional standards

According to the **Regulation** on Commercial Agents and on the Sale of Immovables to be Built (*Makler- und Bauträgerverordnung - MaBV*), the real estate agents have to keep records on their clients (§ 10 MaBV).

However, most of the duties of the MaBV apply only, if the agent receives money or other valuables from his client in a fiduciary capacity – which real estate agents do not.

Compulsory Indemnity Insurance

§ 2 MaBV regulating the duty to hand over a security to the client, applies only if the agent receives money or other valuable from his client in a fiduciary capacity – which real estate agents do not.

Continuing education is **not** regulated.

Advertising restrictions do **not** exist.

Price and fee regulations

Prices are freely negotiable.

In practice, **local customs** exist in many regions. E.g. in Munich or Würzburg, 3 % (+ VAT) are common practice, in Bremen 5 % (+ VAT).

5. The German Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	4,000.-	Not usual	455.-	123.-	310.-	3,500.-	8,388.-
100,000 € sales price + 100,000 € mortgage	4,000.-	Not usual	683.-	123.-	517.-	3,500.-	8,823.-
250,000 € sales price (no mortgage)	10,000.-	Not usual	905.-	235.-	648.-	8,750.-	20,538.-
250,000 € sales price + 250,000 € mortgage	10,000.-	Not usual	1,360.-	235.-	1,080.-	8,750.-	21,422.-
500,000 € sales price (no mortgage)	20,000.-	Not usual	1,656.-	393.-	1,211.-	17,500.-	40,760.-
500,000 € sales price + 500,000 € mortgage	20,000.-	Not usual	2,482.-	393.-	2,018.-	17,500.-	42,393.-
1 mill. € sales price (no mortgage)	30,000.-	Not usual	3,155.-	723.-	2336.-	35,000.-	71,214.-
1 mill. € sales price + 500,000 € mortgage	30,000.-	Not usual	4,732.-	723.-	3,893.-	35,000.-	74,348.-

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
5 mill. € sales price (no mortgage)	150,000.-	Not usual	13,155.-	3,188.-	9,836.-	175,000.-	351,179.-
5 mill. € sales price + 500,000 € mortgage	150,000.-	Not usual	19,732.-	3,188.-	16,393.-	175,000.-	364,313.-
% VAT applicable	16 %	16 %	16 %	16 %	16 %	None	

Transfer tax is 3.5 % - except in Berlin, where it is 4.5 %.

Note on notarial fees: Notarial fees are higher if the price is paid via a notarial escrow account (Notaranderkonto). The fee depends on the amount paid from the escrow account. If two payments are made, both accounting for half of the total purchase price, the total fee would increase 250 € (for a purchase price of 100,000 €), 550 € (for a purchase price of 250,000- €) or 1,080 € (for a purchase price of 500,000 €) respectively. An escrow account may be used only if in the particular case the parties cannot conclude the transaction safely by direct payment (§ 54a par. 2 no. 1 BeurkG – Beurkundungsgesetz - German law on the recording of notarial documents). We estimate that notarial escrow accounts are used only in about 5% of all land sales.

5.2 Service providers

Other firms (not top 10)	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm	Average cost per firm	% Conveyance / total services (add up to 100%)
Real estate agents	Ca. 11 000	Ca. 15 000	Ca. 50 000		Ca. 45 %			
Advocates/solicitors		Ca. 130 000						
Civil law notaries		8 892						

5.3 Size of the Market

Usage of Land

As of 31.12.2004³⁷

- 53 % agriculture
- 29.8 % forest
- 6.7 % buildings (if possible, distinguished in residential and commercial/other)
- 4.9 % infrastructure
- unused land
- 2.3 % inland water areas

Property ownership

In Germany, in 2002³⁸

- 42 % of all households are owners of the house or apartment in which they live,
- 55 % of all households are tenants of the house or apartment in which they live
+ 2.3 % subtenants of other tenants

Property transactions

The total tax revenue of the real estate transfer tax (*Grunderwerbsteuer*) in 2005 was 4,791 millions € (4,8 billion). Given a tax rate of 3.5%, that makes a **taxable turnover of 136,885 millions €** (= 136,9 billion Euro) (including taxable mergers and transfer of ownership of companies owning real estate).

³⁷ Source: Statistisches Bundesamt, <http://www.destatis.de/basis/d/umw/ugrtab7.php>

³⁸ Statistisches Bundesamt, <http://www.destatis.de/basis/d/bauwo/wositab6.php>

Land Transfer Tax Revenue³⁹ (million €)				
Year	Länder	Gemeinde	Total⁴⁰	Changes
1979	461	605	1,066	
1980	521	680	1,201	12.66 %
1981	554	702	1,256	4.58 %
1982	527	705	1,232	-1.91 %
1983	992	621	1,613	30.93 %
1984	1,142	495	1,637	1.49 %
1985	1,100	462	1,562	-4.58 %
1986	1,144	467	1,611	3.14 %
1987	1,394	170	1,564	-2.92 %
1988	1,525	140	1,665	6.46 %
1989	1,844	144	1,988	19.40 %
1990	1,999	148	2,147	8.00 %
1991	2,165	147	2,312	7.69 %
1992	2,626	157	2,783	20.37 %
1993	3,017	167	3,184	14.41 %
1994	3,595	181	3,776	18.59 %
1995	3,102	151	3,253	-13.85 %
1996	3,267	156	3,423	5.23 %
1997	4,666	172	4,838	41.34 %
1998	5,502	179	5,681	17.42 %
1999	6,057	202	6,259	10.17 %
2000	5,081	160	5,241	-16.26 %
2001	4,853	161	5,014	-4.33 %
2002	4,763	75	4,838	-3.51 %
2003	4,800	41	4,841	0.06%
2004	4,646	23	4,669	-3.55 %
2005	4,791	0	4,791	2.61 %

³⁹ Source: Bundesfinanzministerium (Federal Ministry of Finance)
http://www.bundesfinanzministerium.de/cln_02/nn_4158/DE/Steuern/Steuerschaetzung__einnahmen/Steuereinnahmen/0601011a6002.html

⁴⁰ The revenue of the transfer tax goes to the *Länder* (German states). The *Länder*, in turn, may give part of this revenue to the local governments (*Gemeinden*). That is the reason, why the table shows two different figures.

Recent Changes in Transaction Costs

The legislative competence for setting the rate of the real estate transfer tax has been transferred to the *Länder* (federal states) as of 1 September 2006 (as a part of the reform of the German federal system, cf. Art. 105 par. 2a sentence 2 *Grundgesetz* – German Constitution, BGBl. 2006 I, 2034). All the other aspects of the real estate transfer tax are still governed by federal law. Up to now (1st March 2007), only Berlin has used its new competence and has raised the tax rate to 4.5 % by 1st January 2007 (GVBl. Berlin 2006, 1172). For the other states, the previous tax rate of 3.5 % remains unchanged.

IX. Greece

1. Professionals involved in the conveyancing market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 15 % (5-25 %)	Technical evaluation (15 %)	- Mandatory involvement see below; - Execution of contract: - Seller's advocate applies for permits - Buyer's advocate applies for registration	Mandatory intervention see below	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract	Notary (sometimes, on request)	Professional involvement not mandatory and not usual	Notaries: fixed fees advocates : fixed minimum fees
Preliminary checks (land register, administrative permits)	- Buyer's advocate: land register check on title - Notary: building permits, administrative permits	Professional duty of advocate / notary (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	Notary	Mandatory involvement (notarial act necessary for transfer of rights)	
Legal advice or counselling	Notary	Professional duty (as part of contract drafting)	
Certification of signatures	- Notary - Advocates	Notary mandatory for certification of signatures; Presence of two advocates also mandatory	

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Contract execution (transfer of payment and registration)	<ul style="list-style-type: none"> - Seller's advocate applies for permits - Buyer's advocate applies for registration - Notary: controls permits 	Professional involvement not mandatory but usual	Notaries: fixed fees advocates : fixed minimum fees
Taxation (esp. transfer tax)	<ul style="list-style-type: none"> - Advocate: sometimes assistance - Notary: mandatory 	Notary mandatory: preparation of tax declaration control of tax payment	

1.1 Notaries

In Greece, the intervention of the notary is **mandatory** for conveyancing: The existence of a **notarial act** is necessary for the creation, transfer, modification or abolition of real property rights.

The **drafting** of the contract is mandatory to be done by the notary, who may also draft a preliminary contract, if required by the parties. The notary checks the existence of a legitimate **building permit** for buildings erected after 1983, and the other necessary **administrative permits**, certifications and documents that have to be annexed to the contract (otherwise it is void). However, the control of the legal title of the seller by a land registry check is usually carried out by the buyer's advocate rather than the notary.

In addition, the notary prepares the **transfer tax declarations** for the parties and checks the payment of the corresponding taxes. If the corresponding taxes are not paid, the notary must refuse to proceed with the contract.

1.2 Advocates

In cases where the **contract value exceeds the amount of 29,347.03 €**, two advocates (at the least), one for each contracting party, **must be present at the signing of the contract**. It is not uncommon though for the parties to employ the services of advocates even when the contract value is lower than 29,347.03 €. The buyer's advocate usually carries out a so-called "**title search**" at the locally

competent Land Registry or Cadastre Office to determine whether the sellers are the legal owners of the property being sold. Also, the advocate usually handles the **payment of taxes** and the **registration**.

1.3. Real estate agents

A real estate agent is **not mandatory**. The involvement of a real estate agent in the sale of residential property among private persons is estimated in a range of **5 % to 25 %**.

1.4 Technical services

Technical evaluation of a property for sale is **not mandatory**. In **practice**, however, it is not uncommon for interested parties to be consulted by a technical expert.

2. Land registration

There are **two types of institutions** responsible for the registration of land in Greece. The older institution is the Land Transfer and Mortgage Registry and the newer is the Cadastre. The **Land Transfer and Mortgage Registry** is competent for registering real property rights in relation to individual landowners (*personalfolium*) whereas the **Cadastre** is competent for registering real property rights in relation to a specific land parcel (*realfolium*).

The **statutory basis for land registration** is: Articles 1192-1208 of Civil Code and the Presidential Decree No. 533/1963 for the Land Registry and Statutes Nos. 2308/1995 and 2664/1998 (as amended and currently applicable) for the Cadastre.

The percentage of **real property registered** varies considerably between city and rural areas. Whereas in city areas the percentage of registered land exceeds 90 %, in rural areas the relevant percentage is between 30 and 70 % approximately. The **Land Registry accounts for 95 % of all registered land**, the newly established Cadastre for the remaining 5 %.

3. Main steps of the conveyancing process

In Greece, the **standard conveyancing procedure** takes the following main steps:

- **Conclusion of the contract of sale and transfer of ownership:** Parties negotiate the terms of the contract, which are then **drafted** by a notary. All contracts dealing with the constitution, transfer, modification or abolition of real property rights must be made **in writing before a notary**, otherwise they are invalid. The sellers hand over copies of the ownership titles to the buyers and provide all necessary certificates and documents for the conclusion of the contract. The two parties **sign the contract before a notary**. Two **advocates** must be present and participate in the signing process if the contract value exceeds the amount of 29,347.03 € (see above).

The Greek Civil Code establishes the **causal system** for the **transfer of ownership**, requiring: a valid obligation contract (*causa*), the payment of purchase price, consent regarding the transfer of ownership and **registration** with the Land Registry or Cadastre.

- **Registration:** The application for land registration requires a **notarial act** (sales contract) and the submission of a **written application** to a competent Land Registry or Cadastre Office with an accompanying copy of the contract and a registration summary. The application can be made by the notary who has drafted the contract, the buyer, or the latter's advocate or legal representative. The person who applied for the registration is notified of the successful conclusion of the registration process through the receipt of a **registration attestation certificate**.

4. Professional services regulations

4.1 Legal services: notaries and advocates

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Greece	5,1	5,7	10,8	6,0	16,8	2,5

*Please note: The MII is an index per country and not per profession.

Table: Regulation Index for Advocates

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Greece	2,4	5,0	7,4	6,0	13,4	2,3

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

To become a Greek **notary** the following **requirements** are set out by the law (Articles 19-25 of the Notarial Code): university law degree, 18 months of legal traineeship, Law bar exam (state reviewed), 2 years of law practice as advocate, judge or land registrar, **State exam** (“certification”) and delegation of public authority to the notary as holder of a public office.

To become an **advocate**, the requirements are: university law degree, 18 months of legal traineeship and a Law **bar exam** (state reviewed).

Objective requirements

The **number of notaries** is determined according to the procedure mentioned in Article 17 of the Notarial Code, i.e. by **presidential decree based on a relevant proposal of the Minister of Justice**, which in turn is based on the decisions submitted by regional committees of three appellate judges and two notaries regarding the number of notaries at their respective territories and the need for increase or decrease.

Barriers to cross-border services

According to Article 19 of the Notarial Code, **Greek nationality** or descent is among the general requirements for one’s appointment as **notary**. It is therefore impossible for foreign nationals to become notaries in Greece. The same restriction is also applicable to judges and other civil servants.

Inter-professional co-operation

Notaries are **not allowed** to participate in inter-professional firms, as the notarial office due to its public nature requires impartiality and independence.

Business structure

Notaries are usually **sole practitioners**, although in the past few years there has been an increase in **notarial firms**, which consist mostly of two partners, although there are no restrictions as to the number of partners allowed. Notarial firms are regulated by the Presidential Decree No. 284/1993.

In relation to **geographical location**, notaries are allowed to practice within a specific area (corresponding to the district of a Court of Peace) to which they have been appointed.

Market conduct regulations

Neutrality

The notary has a statutory duty to provide his services with **absolute impartiality**. The notary is independent from all state authorities (especially public administration) as well as all contracting parties.

Duty to provide services

Notaries are under a **legal duty** to provide their services to all requesting parties, with the exception that the notary is under the obligation to abstain from any notarial act contrary to the law and good morals.

Professional standards

Standards of professional services for notaries are set out by statutory law, i.e. the **Notarial Code**. In particular, the notary is under the obligation to fully inform both contracting parties of the legal consequences of the notarial act, the obligations they undertake respectively and the rights they receive.

Compulsory indemnity insurance

There is **no compulsory** indemnity insurance for notaries. The issue is **currently under discussion**.

Continuing education

The **Notarial Code** requires all new notaries to attend **compulsory seminars** for at least six months following their appointment. Besides, the **regional Notaries Associations** organise regular seminars on important legal developments of importance.

Advertising restrictions

Greek notaries are **prohibited** to advertise their services through any means of mass communication (newspapers, television, radio, direct mailing, etc.). They are only entitled to name plates on the doors of their offices, business cards or letterheads. Only the regional **Notaries Associations** are entitled to provide the general public with information regarding the services offered by their members and may undertake a general professional advertising initiative.

Conduct control

Membership in a regional Notaries Association is **mandatory**. All Notaries Associations are legal persons regulated by public law, supervised by the Ministry of Justice.

A similar requirement is also in effect for **other legal professions**, such as the **advocates** or the bailiffs, who are by default members in the corresponding Law Bar or Bailiff Associations.

Mandatory intervention

The intervention of the notary is **mandatory**: The existence of a **notarial act** is necessary for the creation, transfer, modification or abolition of real property rights.

The **drafting** of the contract is mandatory to be done by the notary. It is also mandatory, that the notary prepares the **transfer tax declarations** for the parties and checks the payment of the corresponding taxes.

Price and fee regulations

Notarial fees for all kinds of services are **fixed** by the state, i.e. every three years (minimum) through a **Joint Ministerial Decision** of the Ministers of Justice, Finance and Economics. The regional Notaries Associations have no control on notarial fees.

4.2 Advocates

Market entry and structure regulations

Subjective requirements

To become an **advocate**, the requirements are: university law degree, 18 months of legal traineeship and a **bar exam** (state reviewed).

Objective requirements

There is no numerus clausus. Candidates have to pass the exams (Bar exam) of the Advocate Association that are held twice per year. Thereafter, candidates need to complete 18 months of practice (see Articles 13-19 Advocate Code).

Barriers to cross-border services

According to Article 3 of the Advocate Code, Greek nationality or European nationality is among the general requirements for one's appointment as advocate. For a European advocate with university title, a minimum of three years of practice as an advocate together with a Greek advocate and knowledge of the Greek language are required for admission to the profession.

In relation to geographical location, advocates are allowed to practice within a specific area only (corresponding to the Court of Appeal to which they had been appointed)

Inter-professional co-operation

Advocates are allowed to participate in intra-professional firms only. No form of inter-professional co-operation is allowed. According to article 47 par.2 of the Advocate Code (P.D.3026/1954 as replaced by art.1 , par 2 of L. 1649/1986), "two or more advocates may create an advocate company without capital in purpose of the common practice of legal services". Such companies are authorized by presidential decree based on a relevant proposal of the Minister of Justice, after the opinion of the coordinative committees of the local Advocates Associations. They are common in practice.

Business structure

Advocates can be sole practitioners or practise in partnerships or companies. See above inter-professional co-operation.

Market conduct regulations

Neutrality

As a rule, a professional may represent one party only. Exceptionally, in some cases such as divorce the advocate may represent both parties. There are some rules in the Advocate Code that exclude the advocate in case of conflict of interests.

Duty to provide services and specialization

According to Article 39 of the Advocate Code, the duty of an advocate is to represent and defend the client before every Court and every institution and Committee of special jurisdiction etc. The advocate may refuse to do so only: if it is illegal, if the case of the client will not have a chance to be successful.

For specialization, the creation of master degrees is planned.

Standards of professional services

The standards of professional services are regulated by statutory law, i.e. The Advocate Code (Article 45), the code of Deontology and the Internal regulation of the Advocate Associations. In particular, there is a requirement to act in the best interests of the client.

Compulsory Indemnity Insurance

It is not yet common for advocates as well as for notaries, to take out insurance covering civil responsibility.

Continuing education

The regional Advocate Associations organize seminars on all current matters, participation in which is not however mandatory.

Advertising restrictions

Greek advocates are prohibited to advertise their services through any means such as newspapers or any other mass media. On business cards and notepaper, only the name, the address and the regional Court to which the advocate is admitted and the university title he or she holds may be stated. Furthermore, advocates are entitled to name plates on the doors of their offices.

Conduct Control

Membership in a regional Advocate Association is mandatory. All Advocates Associations are legal persons regulated by public law and supervised by the Ministry of Justice.

Price and Fee Regulation

• **Price Regulation**

Fees are determined by agreement reached between the advocate and their client but this may not be below the lower minimum limits contained in the Advocates'

Code. These minimum fees are laid down by a joint Ministerial Decree by the Minister of Economy and Finance and the Minister of Justice following agreement with the Board of Directors of the Bar Association and then published in the Government Gazette. The regional Advocates' Association has no control over advocate fees. However, it arranges pro bono assistance to persons with economical problems.

4.3 Real estate agents:

Subjective requirements

In Greece, anyone can set himself up as an estate agent. The registration in the Local Chamber of Commerce requires only a high school degree.

Two categories are **barred**: not discharged bankrupts and people barred by the Ministry of Justices. Only the agents who are registered in this Register have the right to get the commission for their services.

No limitations whatsoever apply to **EU citizens**.

Business structure

Establishment of a business in real estate services is **not restricted** to a certain legal form. Most real estate agents practise as **sole practitioners but they can either practise in partnerships or in limited liability companies**. There is no limit on the number of partners. Especially in bigger cities, real estate agents are cooperating with each other, which often results in splitting price for their services 50 %-50 %.

Professional standards

There are no standards of professional services regulated by statute, although there are some local **associations** (e.g. Thessaloniki's Association of Real Estate Agents), which associate (voluntarily) their members and set rules and professional standards, including an **ethics code**.

Compulsory Indemnity Insurance

A compulsory professional insurance is **not required**.

Advertising restrictions

There are **no specific regulations**. General regulations on unfair competition laid down in the commercial code apply.

Conduct control

Membership in a professional organisation is **not mandatory**, and there is no control of quality by the state.

Price and fee regulations

As to **real estate agents** there are **no limitations** on fees. Usually is 4 % **of the value of real estate** (2 % from each site seller – buyer). There was a law with recommended prices but this practice was abandoned in 1993.

4.4. Technical services

Data n.a.

5. The Greek Real Estate Market*5.1. Transaction costs (in €)*

	Real Estate Agent [4 %]	Technical Service [non-mandatory]	Legal Services (Drafting) [1.2 % + 200 €]	Legal Services (Executing) [0.5 % - 220 €]	Land Register Fee	Transfer tax/ Stamp duty	TOTAL Usual transfer costs
100,000 € sales price (no mortgage)	4,000	500 (50-1,000)	1,400	1,440	490	11,020	18,850
100,000 € sales price + 100,000 € mortgage	4,000	500 (50-1,000)	1,400	1,440 + 500	1,280 = 490 + 790	11,020	20,140

	Real Estate Agent [4 %]	Technical Service [non-mandatory]	Legal Services (Drafting) [1.2 % + 200 €]	Legal Services (Executing) [0.5 % - 220 €]	Land Register Fee	Transfer tax/ Stamp duty	TOTAL Usual transfer costs
250,000 € sales price (no mortgage)	10,000	500 (50-1,000)	3,200	2,940	1,200	28,000	45,840
250.000 € sales price + 250.000 € mortgage	10,000	500 (50-1.000)	3,200	2,940 + 500	3,150 = 1,200 + 1,950	28,000	48,290
500,000 € sales price (no mortgage)	20,000	500 (50-1,000)	6,200	5,440	2,390	56,300	90.830
500,000€ sales price + 500,000€ mortgage	20,000	500 (50-1,000)	6,200	5,440 + 500	6,280 = 2,390 + 3,890	56,300	95,220
% VAT applicable	19 %	19 %	--	--	--	--	--

Note: 500 € is added for a mortgage

5.1.1 Real Estate Agents

The usual fee of a real estate agent is 4 %, i.e. **2 % for each contracting party**.

5.1.2 Technical Services

The **usual fee** of a technical expert is between **50-1,000 €**.

The fee of a technical expert is usually **paid by the buyer**, unless it involves drawing up a topographical chart of a land property, which is required to be attached to a contract, in which case, the fee is paid by the seller.

In the event of a bank loan secured by a **mortgage**, the **bank** pays the technical expert and recovers the expense from the buyer.

5.1.3 Legal Services

The fees of notaries and advocates (attorneys) are fixed **by law** (see above).

The **notary's fee** (honorary and official costs) for achieving the contract is 1.2 % of the contract value (+ 200 € approximately for copies etc). In case of a mortgage, a flat fee of 500 € will be added for its execution.

If the contract **value exceeds the amount of 29,347.03 €**, then **two advocates** (one for each party) must be present at the signing of the contract and their fee is 0.5 % on the contract value (+ 220 €). The notary's fee is usually paid by the buyer and the advocates' fees are paid by each contracting party. Furthermore, the advocates are entitled to a separate fee for the investigation of land titles and debts that lay on the land. Any **other legal services** provided by the notary or the advocates before or after the contract are not billed separately and are included in the aforementioned fees.

The notary's fees are usually paid by the buyer, the advocates fees by each party for her own advocate.

5.1.4 Land Register Fee

The fees of Land Registries and Cadastre are specified by law.

The fees depend on the value of the registered property:

It is currently **0.475 % on the contract value**.

In cases of **mortgage** registration, the fee is 0.775 % on the contract value.

All relevant fees are always paid by the **buyer**.

5.1.5 Taxes on Conveyancing

a) The **Land Transfer tax** for city property is **9 % on the contract value** for amounts up to 15,000 € and 11 % for amounts above that, whereas for rural property the tax is 7 % and 9 % respectively. Another 3 % is added in both cases as municipal tax.

There is only one exception in relation to the acquisition of a first residence. In such a case the buyer is tax-exempt for an amount up to 75,000 € if single, 115,000 € if married with a further 23,000 € for each of the first two children and 35,000 € for each of the other children.

These taxes are paid by the buyer and are estimated on the objective tax value of the property transferred, which in practice is usually lower than the actual market value and estimated to be in a range of **20 % to 70 % of the actual market value**. The fees of notary, advocates and Mortgage/Land Registry are calculated based on the objective tax value whereas the real estate agent's fee is calculated based on the actual market value.

The payment of the corresponding tax is a formal requirement of the land transfer contract, and is checked by the notary beforehand. It is further checked during the registration process at the Mortgage Registry. The notary also completes the land transfer tax declarations, the payment however of these taxes is undertaken by the buyer at the competent inland revenue office.

b) For **property acquired after 1 January 2006** which is further transferred, the Land Transfer Tax has been abolished and replaced by two other taxes, namely the **Automatic Price Incremental Tax** and the **Transaction Fee**. The former is calculated on the difference between the objective value at the time of acquisition and the objective value at the time of sale depending on the number of years that have elapsed between and is from 0 % to 20 % of that difference. The latter is 1 % of the value of property transferred.

5.1.6 Commercial or Office Buildings

There are no differences in the taxation of commercial or office buildings and residential buildings. There is only one exception in relation to the acquisition of a first residence. In such a case the buyer is tax-exempt for an amount up to 75,000 € if single, 115,000 € if married with a further 23,000 € for each of the first two kids and 35,000 € for each of other children.

5.1.7 Changes in Transfer Costs

a) From 1 January 2006 onwards, when transferring **new unused buildings**, whose building permit has been issued after that date, instead of the Land Transfer Tax a **Value Added Tax of 19 %** is incurred, based on the value of the property.

b) From the same date onwards, for used buildings the **Land Transfer Tax** has been replaced by two new taxes (see above).

5.2. Service providers

Regarding **details of firms** involved in conveyancing in Greece (number and size, personnel, average turnover and cost, or branch offices), there is no available statistical data.

For **real estate agents** in particular, the only well-known fact about them is their fee (see above). Regarding their **participation in land sale contracts** it is in the region of 5-25 %, due to their high fees.

5.3. Key market data

Average prices

Price indices

ATHENS	THESSALONIKI	NAFPLION	CORFU
Stadiou Str.	Tsimiski Str.	King Konstantinos Str.	Moustoxidi Str.
	1990 – 381.00 €	1988 – 246,52 €	
1995 – 1,305.94 €	1993 – 484.00 €	1993 – 308,15 €	1990 – 366,84 €
1998 – 1,232.58 €	1996 – 821.00 €	1995 – 630,97 €	1995 – 719,01 €
2001 – 2,934.70 €	1997 – 1,056.00 €	1998 – 763,03 €	1998 – 851,07 €
2002-2005 – 2,934.00 €	2001 – 1,320.00 €	2001 – 968,46 €	2001 – 997,80 €
2006 – 3,950.00 €	2006 – 1,750.00 €	2006 – 1500 €	2006 – 1200 €

Please note: The table refers to four major Greek cities and shows the changes in price indices for residential and/or office properties between 1990 and 2006. This data is strictly empirical and refers to different years depending on the city surveyed, as changes in price indices are not applied simultaneously in the whole country. The streets chosen for the comparison are well-known large streets in central locations in their respective cities, and the prices represent both residential and commercial/office use.

Number and value of transactions

Statistical tables based on data from the National Statistical Service of Greece for the year 2004:

Contracted notarial acts in 2004

Court of First Instance	Buying and selling of immovable property
Athens	51.508
Aegean	5.238
Dodecanese	2.086
Thessalonica	36.048
Thrace	11.161
Ioannina	3.179
Corfu'	2.000
West Macedonia	4.123
Crete	9.080
Larissa	11.045
Nauplio	10.434
Patra	10.676
Pireaus	6.813
Lamia	2.597
TOTAL	165.988

Financing

The manner of payment in sales contracts varies considerably. 20 % of all sales contracts are paid in full. The remaining 80 % is financed by credit, and more specifically **70 % through secured bank loans and 10 % through other means of credit**. The Greek banks stopped securing loans by way of a mortgage on the property, in order to reduce relevant expenses, and substituted mortgages with mortgage priority notices (a reservation right which entitles the creditor to have a full mortgage registered within 90 days after being awarded a title for the loan) , which incur less cost. As for down payments, according to the Real Estate Owners Association these amount to approximately 5 % of the overall price.

Market share for price segments

Price in €	Residential/Commercial Property Sales
Up to 100,000	30 %
100,000 – up to 250,000	35 %
250,000 – up to 500,000	25 %
More than 500,000	10 %

NB. No separate data is available for residential and commercial property sales.

Ratio home owner versus tenants

No data available.

General Market Situation

No data available.

X. Hungary

1. Professionals involved in the conveyancing market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 20 % in total (15 % private, 70 % commercial transactions)	Technical survey (1.5 %)	Contract drafting: mandatory solicitor or notary	Contract drafting: mandatory solicitor or notary; Notary usual for mortgage loan contract	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (sometimes)	Advocate or parties	No mandatory intervention and no exclusive rights	Notary: fixed fees; Advocate: negotiable
Preliminary checks (land register, administrative permits)	Legal draftsman (advocate or notary): land register	Professional duty of legal draftsman (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	Legal draftsman: - Advocate: 99 % - Notary: 1 %	Professional involvement of either an advocate or a notary mandatory	
Legal advice or counselling	Legal draftsman (advocate or notary)	Professional duty of legal draftsman (as part of contract drafting)	
Certification of signatures	Legal draftsman (advocate or notary)	Mandatory by legal draftsman	
Contract execution (transfer of payment and registration)	Legal draftsman (advocate or notary)	Professional involvement not mandatory but usual	
Taxation (esp. transfer tax)	Professional involvement not usual	Professional involvement not usual	

1.1 Notary

In Hungary, it is mandatory to use the services of an advocate or a civil law notary for the conclusion of the sales contract. In practice, about 99 % of the contracts are drafted by advocates, and only less than 1 % by notaries⁴¹. It should be noted that until 1994 anybody could draft real estate sale and purchase contracts provided that two witnesses were present at the signature. However, due to abuses, this method was abandoned by the legislator.

A notarial contract is usual for **mortgage** loan agreements. The notarial intervention is not mandated by law, but requested by banks who wish the contract to be directly enforceable -which is the case if it is drafted by notarial deed.

The advocate or the civil law notary may also, on a non-mandatory basis, deal with the **execution of the contract** (i.e. handle the transfer of payment and the registration process). Finally, neither the notary nor the advocate normally play a role in **taxation** other than informing the client about his main tax obligations.

1.2 Advocates

See above (notaries).

1.3 Real estate agents

The seller typically uses the services of a real estate agent in the sale of **commercial and industrial property** (70 %). However, in **private transactions**, involvement of agents does not exceed 15 %. Real estate agents help to find a buyer, and sometimes **check the debts and administrative permits**. They **must not draft** any legal transactions related to real estate, they are only allowed to broker the services of an advocate.

⁴¹ In Hungary, a country with a population of 10 million, there are 10,000 – 11,000 solicitors and 300 notaries publicly operating. In 2005, of a total number of 650,000 real estate sale and purchase contracts, only 3,200 were made by notaries public, the rest was made by solicitors.

1.4 Technical services

Technical services are **not mandatory**, and they are **rarely** used, only in 1-2 % of real estate transfers. There is no obligatory valuation, but the **price** of the property may not deviate from the real estate prices generally applicable in the given place by more than one-third. Otherwise, parties may apply within one year that a court should invalidate the contract.

2. Land registration

A **uniform real estate registration system** has been operated **since 1972**. The **real estate register** contains the data required by law for all the properties of the country, separately for each locality, the rights and legally significant facts related to the property. Furthermore, the real estate register also contains the personal ID and address data of the persons recorded therein.

The maintenance of the real estate register and the management of related affairs are the responsibilities of the **regional land office** for the geographical location of the property. The land offices are agents of public administration, their resolutions can be challenged.

The **statutory basis** for land registration is Act CXLI of 1997, defining the rules and organisation of real estate registration.

100 % of the area of the country is registered.

3. Main steps of the conveyancing process

In Hungary, the standard conveyancing procedure takes the following main steps:

- **Conclusion of the contract of sale and transfer of ownership**: The parties having met and agreed on the terms of the transaction, a public notary or an advocate is involved for the **draft of the contract**. It is possible for two advocates (the same advocate cannot represent both parties) to act in the drafting of the contract, but only one of them is entitled to counter-sign the contract. At the signature of the contract, the buyer usually pays a **deposit of 10 %** of the purchase price. In the contract, the parties already agree on the transfer of the property, which

however takes place only when the full price is paid. The signed contract is usually deposited with the professional, and a copy will be issued for the buyer, and the request for registration submitted to the land register, when the price has been paid to the seller. Transfer of payment via a professional escrow account is possible but rare in practice.

- The **transfer of ownership** requires: a valid obligation contract (causa), payment of the purchase price, consent on the transfer of ownership, and the **registration** with the land register. Usually, the **advocate or notary** supervises payment and handles the registration process.

- **Registration:** Registration may only be carried out by the land register on the basis of **agreements countersigned by advocates** or **notarized agreements**. A **court resolution** may also be basis for registration.

4. Professional services regulations

4.1 Legal services: notaries and advocates

A) Notaries

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Hungary	5,9	6,0	11,9	4,0	15,9	4,5

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

These are: to have a university law degree, followed by three years of practice in a notary cabinet and a **professional exam** in law (which is the same exam for every lawyer). Additional requirements are: Hungarian citizenship, a clean record, three years of practice as a deputy notary public. Significantly, these additional 3 years are not foreseen for other legal professions. For example, the requirements for judges are as follows: law degree, followed by 3 years court's practice as trainee judge, a professional exam mentioned above; after this exam the future judge must

pass only **one year** of practice as "stagiaire judge" before being appointed as tenured judge by the President of the Republic.

Objective requirements

There is a **numerus clausus** for notaries. At the proposal of the professional chamber, the **Minister of Justice** defines the number of notaries public in a decree. The minister takes into account the level of development of the area belonging to the office, the number of inhabitants and the type of the area (for example, an area of commuters, or a center, etc.).

Barriers to cross-border services

A Hungarian notary must be a **Hungarian citizen**. This requirement is motivated by the fact that public authority is exercised.

Inter-professional co-operation

The notary must not perform any business activity requiring his personal participation or unlimited financial liability, perform real estate or loan brokerage activities, assume guarantees or other obligations securing the fulfillment of a contract associated with his activity as a public. In these fields, inter-professional co-operation is forbidden as well

Business structure and geographical location

A notary public is not allowed to operate branch offices. Notaries public have their own **defined areas** of operation. Activities performed outside the area of operation shall be void. Notaries public of Budapest are allowed to act in the entire territory of Budapest. Notaries public outside Budapest are allowed to operate in the area of jurisdiction of the court having competence for their registered office.

Market conduct regulations

Neutrality

The notary is acting on behalf of the state. S/he is under a **duty of neutrality**.

The notary is excluded in case of a **conflict of interests**. The notary public must not act in any matter in which s/he would also be forbidden to act as a judge pursuant to the provisions of the Code of Civil Procedure.

Duty to provide services

A notary public has a **duty to provide services**; s/he may only and must deny involvement in a transaction if the transaction is **illegal** or immoral or aimed at the bypass of a statute.

Professional standards

The standards of professional services are regulated by **statutory law**.

Compulsory Indemnity Insurance

Indemnity insurance is **compulsory**. For **notaries** public, the minimum coverage is 25,000 €, but it is planned to be increased to 200,000 € in 2007.

Continuing education

Continuing education is **mandatory** for Hungarian notaries: ten hours of training organized by the chamber twice a year.

Advertising restrictions

A notary public shall **not** advertise. Notification about opening an office is allowed.

Conduct control

For a notary, **membership** in the Chamber of Notaries is mandatory. There is a continuous **conduct and quality control** exercised by the Chamber.

Mandatory intervention

It is mandatory to use the services of an advocate or a civil law notary for the conclusion of the sales contract.

Price and fee regulations

Notary fees are fixed by a ministerial decree.

For fees in practice see *below* (transaction costs).

B) Advocates

Table: Regulation Index for Advocates

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Hungary	2,6	1,4	3,7	4,0	7,7	2,6

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

In order to become an advocate, a person needs to be a graduate from a law faculty, have practiced at least for 3 years, and have passed a **professional exam** in law. Then s/he is allowed to open her/his office.

Objective requirements do **not** exist.

Cross-border services

A **foreign person** can act as an advocate in Hungary, if s/he meets the subjective requirements mentioned above. But only advocates with **EU citizenship** are allowed to operate as advocates without restriction in Hungary.

Inter-professional cooperation

No specific rules apply.

Business structure or **geographical location** are not regulated and an advocate may be a member of an international legal office.

Market conduct regulations

Neutrality

The advocate usually acts **on behalf on one party**. S/he violates a rule of ethics if s/he represents both parties. There is no duty of neutrality.

Duty to provide services does **not** exist.

Professional standards

Professional standards of service are not regulated by statute. The **Hungarian Bar Association** has set out **guidelines** of good professional practice (“Rules of proper professional conduct for advocates”) for its members.

Compulsory indemnity insurance

Indemnity insurance is **compulsory**, but lawyers rarely take out a higher insurance than the statutorily required minimum. For lawyers the minimum is coverage is 18,000 €.

Continuing education is **not mandatory** for the profession.

Advertising restrictions

Just as with notaries, advertising used to be generally forbidden for lawyers too. However, in 2006 the Hungarian competition office prohibited the general restrictions on advertising, so the Bar is now under an obligation to change its self-regulation relating to advertising.

Conduct control

For an advocate, **membership** in the **Hungarian Bar Association** is mandatory. There is a continuous **conduct control** exercised by the Bar.

Mandatory intervention

It is mandatory to use the services of an advocate or a civil law notary for the conclusion of the sales contract.

Price and fee regulations

The advocate’s fee is subject to **free negotiations**.

For fees in practice see *below* (transaction costs).

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

In order to act as a real estate agent a person has to follow a course of six months and then pass a real estate broker **exam**.

Objective requirements do **not** exist.

Cross-border services

A **foreign person** may act as a real estate agent in Hungary if s/he meets the subjective requirements.

Inter-professional cooperation is **not** restricted.

Business structure or geographical location are **not** regulated.

Market conduct regulations

Neutrality

The real estate agent is acting **on behalf of his client** (usually the seller). There is **no duty of neutrality**.

Duty to provide services does **not** exist.

Professional standards do **not** exist.

Compulsory indemnity insurance does **not** exist.

Continuing education is **not mandatory**.

Advertising restrictions

General advertising regulations apply to real estate agents as well.

Price and fee regulations

There are no fixed fees.

For fees in practice see *below* (transaction costs).

4.3 Technical services

Not relevant (see above).

5. The Hungarian Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	4,000 € (as agreed, 3 - 10 %)	N.r. (1-2 % with industrial areas)	Advocate, 1 % about: 1,000 €	No separate charge	18 €	5,420 € (Non-residential properties : 10 % i.e. 10.000 € with residential properties , 2 % up to the value of 14.500 €, and 6 % on the value exceeding that, i.e. 5,420 €)	10,438 €
100,000 € sales price + 100,000 € mortgage	4,000 €	N.r.	Notary for mortgage deed only: 640 € ⁴² advocate, about: 1.400 €	No separate charge	62 € (18 € + 5 % of the secured claim, but not more than 44 €)	5,420 €	11,522 €

⁴² The notary fee could be twice as much if the notary has to work outside of his office or after his normal working hours.

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
250,000 € sales price (no mortgage)	7,500 €	N.r.	Advocate, 1 % about: 2,100 €	No separate charge	18 €	14,420 € (Non-residential properties : 10 % i.e. 25,000 € with residential properties , 2 % up to the value of 14,500 €, and 6 % on the value exceeding that, i.e. 14,420 €	24,038 €
250,000 € sales price + 250,000 € mortgage	7,500 €	N.r.	Notary: 1.270 € for mortgage deed only advocate, about: 2,500 €	No separate charge	62 € (18 € + 5 % of the secured claim, but not more than 44 €)	14,420 €	25,752 €

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
500,000 € sales price (no mortgage)	15,000 €	n.r.	Advocate, about: 3,000 €	No separate charge	18 €	29,420 € (non-residential properties : 10 % i.e. 50,000 € with residential properties , 2 % up to the value of 14.500 €, and 6 % on the value exceeding that, i.e. 29,420 €	47,438 €
500,000 € sales price + 500,000 € mortgage	15,000 €	n.r.	Notary: 2,050 € for mortgage deed only advocate, about: 3,300 €	No separate charge	62 € (18 € + 5 % of the secured claim, but not more than 44€	29,420 €	49,832 €
Percentage VAT applicable	20 %	20 %	Only the advocate is subject to VAT of 20 %, Notarial activities are exempt from VAT.		Official dues are exempt from VAT	Official dues are exempt from VAT	

5.1.1 Real Estate Agents

The usual fee for the real estate agent is between 3-10 % of the sales price.

Who **pays**, depends on who is using the services of the agent.

5.1.2 Technical Services

Technical services are rarely used (see above).

The party who requires the service pays, or the parties together pay.

5.1.3 Legal Services

- **Notarial fees** are defined by a decree of the Minister of Justice (see above). In practice, e.g., for a 100,000 € sales price the notary's fee would be 640 €, for a 500,000 € sales price the fee would be 2,050 €.

- **Advocates fees** are subject to free negotiation (see above), and are usually around 1 % for lower value straightforward transactions. They may be up to a max of 2 % for more complicated transactions. They decrease proportionately and digressively with an increase in the value of the property and so are generally less than 1 % of the property value.

In most cases the **buyer** will engage the advocate. Usually, the costs are on him.

5.1.4 Land Register Fee

The registration fees of the land office are defined by statute.

Each registration costs a **flat fee** of 18 € (5,000 HUF), the registration of mortgage is 5 % of the secured claim, but not more than 44 € (12,000 HUF).

The fee is usually paid by the **buyer**.

5.1.5 Taxes on Conveyancing

5.1.5.1. Transfer Taxes

Transfer taxes are 10 % for non-residential properties, 2 % for residential properties up to the value of 14,500 €, and 6 % on the value exceeding that.

The **market price** determines the duties on acquisition of property. The Duties Office acts in the proceedings of the definition of duties. If it determines in the proceedings that the value is one-third less than the market price, it will impose a donation duty.

These taxes are related to the acquisition of ownership, therefore the **buyer** is liable to pay them.

Tax payment is not a requirement for the registration.

There is no professional involved in the tax collection (see above).

5.1.5.2 Capital Gains Taxes

There are **no capital gains taxes** on the sale of land.

5.1.6 Commercial or Office Buildings

There are **no differences** for the taxes or the other transfer costs for commercial or office buildings.

5.1.7 Changes in Transfer Costs

There has been **no major change**.

5.2 Service providers: n.a.

5.3 Key market data

Average prices in 2005:

- Residential apartment: 100,000 €
- Residential house: 200,000 €

Number of transactions in 2005: 650,000

General market situation: important local market divergences

XI. Ireland

1. Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 95 %	Structural survey (ca. 80 %)	Contract drafting and execution in 99 %	Not existing	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (not usual)	-	-	Negotiable
Preliminary checks (land register, administrative permits)	Solicitor	Professional duty of solicitor (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	Solicitor	Professional involvement not mandatory but usual (99 %)	
Legal advice or counselling	Solicitor	Professional duty of solicitor (as part of contract drafting)	
Certification of signatures	Solicitor	Professional duty of solicitor (as part of contract drafting)	
Contract execution (transfer of payment and registration)	Solicitor	Professional involvement not mandatory but usual (99 %) (as part of package and included in the price)	
Taxation (esp. transfer tax)	Solicitor	Professional duty of solicitor; stamp duty: solicitor deals with the Revenue Authorities and payment of taxes (as part of package and included in price)	

1.1 Solicitors

It is **not legally required** to involve a professional in conveyancing in Ireland. However, **solicitors enjoy exclusivity rights** for conveyancing and land

registration work; only they may offer these services for value. **In practice both the seller and the buyer** most frequently (**99 %**) employ a solicitor. In some cases, the same solicitor **may act for both the seller and the buyer**, though the Irish Bar Association has recommended that this is not suitable in the case of conveyancing.

The contract is normally **drafted** by the seller's solicitor, and the buyer's solicitor checks it. The seller usually retains the services of his solicitor also for **the execution of the contract**, i.e. transfer of payment and registration.

The buyer's solicitor is responsible for drawing up the **deed of conveyance** to be submitted to the **land registry**. Following payment, it is the duty of the buyer's solicitor to **register the deed of conveyance** with the land register.

In addition, where **stamp duty** is payable on the conveyance, the **buyer's solicitor** has the task of dealing with the Revenue Authorities.

1.2 Civil Law Notaries

Notaries **exist** in Ireland, but are not involved in conveyancing.

1.3 Real estate agents/ auctioneers

Real estate agents/ auctioneers are involved in about **95 %** of the sales of residential and commercial properties. The real estate agent/ auctioneer is **engaged by the seller** in order to find a buyer, and their fees are discharged by the seller.

1.4 Technical experts

It is **not legally required** to employ a professional to check the existing buildings. However, in the case of property purchased by way of **mortgage**, the lending bank will usually requires that a survey be carried out. In addition, most experts recommend that the **buyer** engages an independent surveyor to carry out a **structural survey** at his own expense. It is estimated that a survey of the property, either by the lending bank's surveyor or by an independent surveyor, is carried out in approximately **80 %** of sales.

2. Land registration

Land registration is dealt with in the **Land Registry**.

First registration of land which has not previously been registered with the Land Registry involves the lodgement of an Affidavit (a sworn declaration) as set out in the **Land Registration Rules** 1972, together with a Statement of Title, an Ordnance Survey Map and the originals of all title documents referred to in the Statement of Title. First registration of property in the Land Registry is made by **Examiners of Title** who are normally former solicitors or barristers.

Registration of a change of ownership of land which is already registered in the Land Registry is affected by submitting a valid Land Registry transfer in the prescribed form as set out in the Land Registration Rules 1972. Registration of changes in ownership is carried out by relatively minor Land Registry officials who do not necessarily have professional qualifications.

Although **90 % of land in Ireland is registered**, a considerable amount of urban land remains unregistered: Such land is not registered in the Land Registry; however, written documents transferring title to this land may be registered in a **separate registry** known as the **Registry of Deeds**. Registration of unregistered land is now compulsory in six Irish counties: Carlow, Laois, Meath, Longford, Roscommon and Westmeath.

The Land Registry and Registry of Deeds are under the control of the **Property Registration Authority** which is a statutory body established by the Registration of Deeds and Titles Act 2006.

3. Main steps of the conveyancing process

In Ireland, the standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership:** Usually, preliminary checks are carried out and a **contract for sale** of the property is drafted by the seller's solicitor before putting the property on the market. When the contract is **signed** depends on whether the property is sold by auction or private treaty. If the property is sold **by auction**, the parties usually sign the contract immediately following the auction. If the property is sold **by private treaty**, the contract is normally forwarded to the

buyer's solicitor for approval and returned by the buyer's solicitor together with the deposit. The seller then validates (authorises) the contract and returns it to the buyer's solicitor.

It is possible to **register a memorandum** of the contract in the **Registry of Deeds** prior to execution of the same. However, this is not normally done.

The parties retain the services of their respective solicitors also for the period **between execution of the contract and completion of the contract** (i.e. the issuance of a deed of conveyance). The **buyer's solicitor** draws up the **deed of conveyance** completing the contract. When the terms of this document have been agreed with the seller's solicitor, the buyer's solicitor forwards an authorised (validated) copy of this deed to the seller together with the balance of the **purchase price**. The seller's solicitor then executes (i.e. authorizes) this copy and returns it to the buyer's solicitor.

In the case of **unregistered land** outside compulsory registration areas, this has the effect of **transferring ownership** of the property to the buyer. The buyer is then allowed into **possession**. In the case of **registered land** or unregistered land situated within a compulsory registration area, **transfer of legal ownership** is affected on the registration of the buyer as the new registered owner of the property.

- **Registration:** The buyer's solicitor is responsible to **register the executed deed of conveyance** with the appropriate authorities. 95 % of **applications** for first registration of land (which need not necessarily be made in the context of a sale of that land) and 99.9 % applications for transfer of ownership of unregistered land are drafted by a solicitor (for details see above).

4. Professional services regulations

4.1 Legal services: Solicitors

Table: Regulation Index for Advocates

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Ireland	2,0	1,3	3,3	0,0	3,3	4,5

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

Solicitors are regulated by the Solicitors Acts 1954-2002.

Subjective requirements are:

- University degree/Preliminary Examination
- First Irish Examination (first written and oral exam in the Irish language)
- Final Examination – First Part (Eight law exams)
- Professional Practice Course – Part 1 (6 months – in order to be eligible to participate in this course applicants must have secured a training contract with a solicitors' firm)
- Training Programme (24 months – this consists of 18 months in-house experience together with 6 months on the Professional Practice Course – Part 2)
- Second Irish Examination (second written and oral exam in the Irish language)

In order to practise as a solicitor in Ireland it is necessary to be **admitted as a solicitor by the President of the High Court** or such other High Court or Supreme Court Judge as the President may delegate. Following admission a solicitor is then placed on the **roll of solicitors** by the **Registrar of Solicitors**. The Registrar of Solicitors is appointed by the Law Society of Ireland, which is the regulatory body for solicitors. All solicitors (other than solicitors in the full time service of the State) are required to hold a practising certificate which is renewed annually by the Registrar.

Over **6.000 solicitors** work as solicitors in Ireland today.

Objective requirements do **not** exist.

Cross-border services

Entry to the solicitors' profession is **not restricted to Irish citizens**. Directive 98/5/EC has been implemented in Ireland by the European Communities (Advocates Establishment) (Amendment) Regulations 2004.

Solicitors based outside Ireland are not normally entitled to provide conveyancing services. However, it is not uncommon for Irish solicitors to co-operate with **associated legal firms** in the United Kingdom and Northern Ireland in relation to the provision of cross-border services for clients of those firms.

Inter-professional cooperation

Solicitors may co-operate **only with other solicitors**. This is subject to the qualification that in-house solicitors may be **employed by non-legal businesses** to deal with legal work relating to those particular businesses.

Business structure

Irish solicitors may operate their business either as **sole traders, partnerships** or through the medium of a **company**.

Market conduct regulations

Neutrality

Solicitors are governed in the conduct of their business by the **Solicitors Acts 1954-2002** and the **Law Society Guide to Professional Conduct** passed pursuant to those Acts. The Law Society Guide to Professional Conduct describes the **independence** of a solicitor as an essential requirement.

Duty to provide services

Irish solicitors do not have a duty to act. However, in deciding whether or not to act they are under an **obligation not to discriminate** against clients on the basis of race, religion, sexual orientation, gender or membership of the travelling community.

Professional standards *see above*.

Compulsory Indemnity Insurance

Irish solicitors **must** take out a policy of compulsory professional indemnity insurance with a reputable insurer. The current **minimum level** is 2,5 million €.

Continuing education

Irish solicitors **must** engage in 20 hours of Continuing Professional Development every 2 years.

Advertising restrictions

Solicitors are permitted to advertise subject to restrictions contained in the **Solicitors (Advertising) Regulations 2002**. The advertisement must not be likely to bring the solicitors' profession into disrepute, be in bad taste, reflect unfavourably on other solicitors, be false or misleading in any respect, or be contrary to public policy.

Conduct control

Solicitors are subject to the disciplinary control of the **Solicitors Disciplinary Tribunal**, which is an independent statutory tribunal with its members being appointed by the President of the High Court.

Mandatory intervention

The intervention of a solicitor is **not mandatory**.

Price and fee regulations

There is **no fixed rate of charges** for solicitors' conveyancing fees.

There is a facility to make **complaints** to the Incorporated Law Society of Ireland regarding excessive solicitors' fees.

4.2 Real estate agents/ Auctioneers

Market entry and structure regulations

Subjective requirements

In order to carry on business as a real estate agent or auctioneer it is necessary to obtain a **licence**. Licences are issued by the Revenue Commissioners on foot of a **certificate of qualification** from the District Court judge in the area where the auctioneer/ estate agent proposes to carry on business. Essentially, this certificate only requires a clean criminal record. Licences must be **renewed on an annual basis**.

A specific **education** in real estate business is **not** a requirement for the grant of a licence and the competency of the applicant to carry on business as an auctioneer/ estate agent is not a matter which is normally addressed in relation to such a grant.

The Irish Minister for Justice has indicated an **intention to reform** this area and make auctioneers and estate agents subject to greater control. **Legislation is proposed for 2007**, but the structure of this legislation has not yet been disclosed.

Objective requirements do **not** exist.

Cross-border services

Estate agents/auctioneers based **outside Ireland** do not provide services in relation to the sale of real property in this jurisdiction.

Inter-professional cooperation and business structure are **not** restricted.

Market conduct regulations

Neutrality is **not** regulated.

Duty to provide services does **not** exist.

Professional standards and compulsory indemnity insurance and continuing education are **not** regulated.

Advertising restrictions do **not** exist.

Conduct control is **not** regulated.

Mandatory intervention

The intervention of a real estate agent is **not mandatory**.

Price and fee regulations

There are no regulations or recommendations on fees; prices are freely negotiable.

4.3 Technical services

No data available.

5. The Irish Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent/ Auctioneer	Technical services (if availed of)	Legal services	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	2,000	500	1,000	375	Exempt.-	3,875
100,000 € sales price + 100,000 € mortgage	2,000	500	1,000	375	Exempt.-	3,875
250,000 € sales price (no mortgage)	2,000	500	2,000	375	10,000	14,875
250,000 € sales price + 250,000 € mortgage	2,000	700	2,000	375	10,000	15,075
500,000 € sales price (no mortgage)	6,500	600	4,000	625	37,500	49,225
500,000 € sales price + 500,000 € mortgage	6,500	600	4,000	625	37,500	49,225
1 mill. € sales price (no mortgage)	10,000	600	8,000	625	90,000	109,225
1 mill. € sales price + 500,000 € mortgage	10,000	600	8,000	625	90,000	109,225
5 mill. € sales price (no mortgage)	35,000	1,000	50,000	625	450,000	536,625
5 mill. € sales price + 500,000 € mortgage	35,000	1,000	50,000	625	450,000	536,625
% VAT applicable	21 %	21 %	21 %	None	None	

5.1.1 Real Estate Agents

The real estate agent's fee normally vary **between 1 % and 3 %** of the sale price

The fees are usually discharged by the **seller** (see above).

5.1.2 Technical Services

The fee for the survey of the property usually ranges **between 400 – 2,000 Euro**.

An independent surveyor is normally engaged and **paid by the buyer**.

5.1.3 Legal Services

Solicitors' conveyancing fees currently vary **between 1 % and 2 %** of the sale price.

In practice both the seller and the buyer (99.9 %) employ a solicitor (see above).

Each party pays the services of the respective solicitor.

5.1.4 Land Register Fee

Land register fees are **regulated by statute**.

Depending on the value of the transaction, the fee is **375 or 625 €**.

5.1.5 Taxes on Conveyancing

Transfer tax / stamp duty on the transfer of real property is regulated by statute and ranges, depending on the value of the transaction, between are **0-9 % of the value of the real estate** being transferred.

5.2 Service providers

Other firms (not top 10)	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm
Real estate agents	N.a.	N.a.	N.a.	N.a.
Advocates/solicitors	N.a.	7 160	N.a.	N.a.
Architects/surveyors/engineers	N.a.	N.a.	N.a.	N.a.

5.3 Key market data

Usage of Land as of 2000

- 66.8 % agriculture
- 11.9 % forest
- 1.9 % buildings
- 17.1 % wetlands
- 2.3 % water

Property ownership (2004)

75 % of all households are **owners** of the house or apartment in which they live,

23 % of all households are **tenants** of the house or apartment in which they live
+ 2 % subtenants of other tenants

Property transactions

The total tax revenue of stamp duty / transfer tax on property transactions in 2005 was 2 billion⁴³.

Land Transfer Tax Revenue⁴⁴ (in million €)

1999	551
2000	674
2002	670
2003	665
2004	1.075
2005	1.460

* Transfer tax / stamp duty on the transfer of real property is regulated by statute and ranges, depending on the value of the transaction, between **0-9 % of the value of the real estate** being transferred (see above).

⁴³ Source: <http://www.davydirect.ie/other/pubarticles/irishpropertyoct2006.pdf>

⁴⁴ Source: Statistical Report of the Revenue Commissioners 2004: http://www.revenue.ie/pdf/sr04eng_sd.pdf

XII. Italy

1. Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 75 % (75-95 % in urban, 50-75 % in rural areas)	Evaluation (seldom)	Contract drafting (5 %, commercial transactions)	Mandatory intervention see below	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (usual)	- Notary (or agent/parties themselves)	Professional involvement not mandatory but usual; no exclusive rights	Fixed minimum fees abolished in 2006; now negotiable but maximum fees still in place
Preliminary checks (land register, administrative permits)	Notary (land register, building permit)	Professional duty of notary (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	Notary	Professional involvement not mandatory; but absolutely usual as a notarial instrument is required for registration	
Legal advice or counselling	Notary	Professional duty of notary (as part of contract drafting)	
Certification of signatures	Notary	Professional involvement (notarial instrument) mandatory for registration	
Contract execution (transfer of payment and registration)	Notary	Notary mandatory for registration; handling payment (control by the notary or via notarial escrow account) usual	
Taxation (esp. transfer tax)	Notary	Tax retention by notary obligatory for notarial acts	

1.1 Civil Law Notaries

Notaries are the **key players** in conveyancing in Italy. Though not being mandatory for a valid transfer of property among the parties, the intervention of notaries is **mandatory for the registration procedure** which guarantees the registered right towards third parties. Therefore, a notary, usually chosen by the buyer who pays him, is **almost always** involved in conveyancing.

Notaries are presumed to exercise a public function and their **tasks and functions** are amongst the widest in Europe: they control the register, carry out administrative checks, (sometimes) draft the preliminary contract and (almost always) the deed of conveyance, collect taxes linked to conveyancing, forward them to the tax administration and initiate and control the registration procedure.

Generally, the **control of permits**, certifications as well as every necessary check fall to the parties, the seller in particular. Nonetheless, it is common practice for the notary to conduct these investigations (or sometimes by a technical expert appointed by the notary or by the seller). The notary must also check the **existence of debts** resulting from public registers and which could also be transferred to the buyer together with the property.

Whenever the **drawing up of the contract** is entrusted to the notary, the latter usually verifies that respectively the payment of the price and the delivery of the asset (usually by way of *traditio ficta*, i.e. delivery of the keys) are effected, even if there is no specific obligation to do so established by law. In some cases, the parties also ask for a notarial escrow account.

Regarding **taxes**, notaries are liable, without being remunerated for this function, to **collect the registration tax, the mortgage tax and the cadastral tax**. In 2005, all taxes collected by notaries (including, but not limited to conveyancing) amounted to 5 billion € which corresponds to 0.35 % of the Italian GDP.

1.2 Advocates (*solicitors*)

In Italy, advocates are **rarely involved** in the conveyancing process on a non-mandatory basis. In rare cases parties seek the additional advice of an advocate to control the notary; or when the redemption of registered rights such as mortgages or attachments which burden a property to be sold is entrusted to an advocate.

1.3 Real estate agents

Real estate agents are **not mandatory** in the conveyancing process, but are nevertheless involved in 75-95 % of transactions in cities and in 50-75 % in the countryside. Also, agents are involved more often in Northern and Central than in Southern Italy. The **function** of estate agents is limited to bringing together buyer and seller. To this end, they usually produce a written valuation of the property which provides the basis for price negotiations. Frequently, agents supply the notary with the necessary documentation to facilitate the checks and enquiries by the latter.

1.4 Technical experts

Technical experts are **sometimes involved** in the conveyancing process on a **non-mandatory basis**, in particular when a mortgage bank requires a valuation, when cadastral data need to be updated, or when parties require help to obtain certain administrative documents for the sales contract. These include a certificate of approved use (*certificato di destinazione urbanistica*) when land is transferred; the identification data for building permits; the documentation required by the implementation legislation of the EU energy performance directive.

1.5 Other professionals do **not** play any particular role.

2. Land registration

The Italian Land Register (*registri immobiliari*) is a part of the **public administration** which, together with the general land survey (*catasto*), makes up the so-called area agencies (*agenzie del territorio*). These are supervised by the municipalities and, ultimately, the Ministry of Economy. Except for the North-Eastern provinces, which belonged to Austria until World War I and still follow the Austrian system, the Italian register operates on the basis of **personal entries of the holders of real rights** and not on the basis of parcels of land. That notwithstanding, about 95 % of all properties and other real rights are estimated to be registered to date. Though legal practice usually relies on the contents of the register, registration has only **declaratory effect** – i.e. it is not necessary for the creation of transfer of any real right. However, as a paramount source of evidence, it serves to resolve disputes

between several purchasers or other holders of rights, the registered person enjoying priority. Registration is today done completely electronically, with the notaries filling in computerised forms and the land register adding them to their database.

3. Main steps of the conveyancing process

In Italy, the standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership:** Once the parties have agreed on the sale, they usually draft a **preliminary contract**, which needs to be **in writing** (Arts. 1350 f. c.c.) and which brings about the transfer of property (unless the parties have agreed otherwise). It was usual not to use a notary for this stage for tax evasion purposes (the preliminary contract stated the true price, whereas the latter deed stated a lower price relevant for taxation). This has now changed given that since 2006 taxes are calculated on the basis of objective value criteria (so-called "*prezzo valore*") irrespective of the agreed price. As a consequence, the number of cases in which notaries draft the preliminary contract is expected to increase.

Following the conclusion of the preliminary contract, usually **20 % of the total purchase price** is paid (more if the buyer takes immediate possession), which also stands as a deposit for completion (Art. 1385 c.c.). The preliminary contract is also the basis for negotiating with lenders on loans to finance the rest of the purchase price. Then, the notary carries out various **checks** (mortgages, planning, taxes, land register, matrimonial regime of sellers/buyers).

As a final step, the transfer is executed through a **deed in a public or a certified private act**, to be read by the notary to the parties. After this, the buyer pays the **rest of the purchase price** to the seller and the various **taxes** to the notary, and the seller hands over the keys.

- **Registration:** The notary has the deed registered – simultaneously in a single computerised form – in the **land register** and with the **tax revenue service**. It has to be noted, that you do not necessarily need an Italian document to get access to the Italian public registers. In fact, the sales contract could be drafted by a foreign notary. What is necessary in Italy is just the deposit of this act by an Italian notary or by the notarial archives, in order to make the act legal. This is different from other

countries, where only the national notary can draft the act (e.g. Germany, Netherlands, Spain).

4. Professional services regulations

4.1 Legal services: notaries

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MII * Mandatory Intervention	MERI + MCRI + MII	CPI Consumer Protection
Italy	4,7	4,7	3,6	12,9	6,0

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

Several steps are **required** to become a notary in Italy: a university law degree, clerkship of 18 months to be registered in the clerks register administered by the District Notary Council (before May 2006: 24 months), written and oral notarial exam organised as concours and further clerkship of 120 days with a practising notary who must certify this time.

Objective requirements

A **numerus clausus exists** and is organised as follows: Number and locations of notaries for each district are fixed by decree of the **Minister of Justice**, after consulting the Notary councils and the Courts of Appeal, on the basis of the population size, the size of the territory, the number of legal transactions, and the prospective earnings (for each office, a population of at least 7.000 persons and an annual income from fees of at least 50,000 € in accordance with the average of the last 10 years need to be ensured). Numbers and locations need to be reviewed every 7 years, earlier partial revisions are possible.

Cross-border services

Foreign candidates are admitted under the same conditions as nationals. Candidates who are already admitted as notaries in another EU Member State do not have to pass the clerkship period. There are no special limits for foreign professionals in cross border transactions.

Inter-professional cooperation

Associations between notaries and other professionals are not allowed although forms of co-operation are (which may lead to the sharing of premises etc). These restrictions are motivated by the need to ensure the impartiality and the independence as well as the regime of territorial competence of the notary which is based on the perceived need to be well informed about the specifics of the territory in question.

However, the **2006 deregulation statute** on liberal professions could do away with these restrictions, but its applicability to notaries in this respect and its relationship with existing contrary provisions of the notarial law are not yet clear.

Notaries are also **prohibited** from acting as advocates, prosecutors, bank directors, traders, mediators or brokers.

Business structure

Only **associations** of (an unlimited number of) notaries within the same district are allowed, no corporate law arrangements (e.g. corporations) are possible for notaries. Secondary offices are possible only within narrow conditions which are motivated by the need to protect the certainty of the principal seat.

Market conduct regulations

Neutrality

Carrying out the function of legality control, the notary is bound to act in an **impartial way**, i.e. in the interests of both parties, irrespective of who pays him. Violations are severely punished.

Duty to provide services

Exercising a **public function**, a notary is obliged to offer his services whenever requested within the territory of the district.

Professional standards

Notaries are subject to a **set of statutory duties** such as the duty to inform the parties of the results of the various checks, to inform the parties on the consequences of certain contractual arrangements including their alternatives, to actively promote the correction of errors and to provide clients with a written cost estimate. The National Notary Council is currently elaborating further standards for

key notarial activities which will serve to ensure quality and which will be backed up by legal sanctions.

Compulsory indemnity insurance

Indemnity insurance was made **compulsory by statute in May 2006** and currently covers maximum damages of 2,600,000 € per notary and year. This maximum will be adapted by ministerial decree as of 2007. The National Notary Council will also have to set up a security fund out of which intentional damages not covered by insurance will have to be compensated.

Continuing education

As of May 2006, continuing education has become **mandatory by regulation of the National Notary Council**; it is organised by means of a credit point system in which the participation in various events is rated. An estimate of formal and informal continuing education indicates an overall average time of 1-2 weeks per year.

Advertising restrictions

Whilst the **former total ban** on advertising, contained in a 1937 statute, was partially lifted in 2005, so as to allow the provision of objective information capable of correcting information asymmetries, the **new 2006 deregulation statute** abolishes all kinds of limitations on advertising as of 1 January 2007.

Conduct control

Membership and registration in a **District Notary Council** is mandatory. The District Council has responsibility for disciplinary matters and also ensures the “decorum” of the profession, i.e. the respect of notaries’ duties and adequate conduct. Registers and notary acts are further controlled biannually by the *Archivi notarili*, a state authority which inter alia collects all notarial acts.

Mandatory intervention

The intervention of a notary is **mandatory for the registration procedure** which guarantees the inopposability of the registered right towards third parties.

Price and fee regulations

Up to July 2006, the tariff of notaries was set by the State in a Decree of the Minister of Justice on the basis of a proposal by the National Notary Council. The tariff referred to different kinds of notarial activities.

The **liberalisation regulation** of July 2006 refers to all liberal professions in Italy. The new Italian law (L. n. 248/2006) abolishes minimum tariffs for liberal professions including notaries. However, its precise consequences for notaries are not yet clear which is mainly due to the bad quality of the legislative drafting and contradicting legislation. Thus, the new law prohibits non-derogable minimum tariffs but continues to allow **maximum tariffs** when such are deemed necessary for consumer protection. Yet it is not clear when this is the case. Moreover, a subsequent reform forbids “unfair price competition” among notaries, and another recent statute foresees a 30 % reduction of notarial fees under the new “prezzo valore” (or “price-value”) system for the determination of the tax value (which presupposes the ongoing existence of fixed tariffs). Since 2006 notaries seem to continue to apply by and large the old fixed tariffs system.

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

To exercise the profession, registration in the **Register of Business Agents**, which is set up by the provincial Chamber of Commerce, is sufficient.

Registration in the Register of Agents requires the **following conditions**: a high school degree, age of at least 18; a declaration certifying the attendance on a relevant course of qualification (or 2 years work experience at the office of a real estate agent), certification that a qualifying examination organised by the Chamber of Commerce has been passed, a written request and payment of a stamp tax to the Chamber of Commerce of the province where the agent will have his/her seat. To this request certificates of domicile (*residenza*) and Italian or EU citizenship must be attached, together with certification that the above mentioned examination has been passed. Moreover, an insurance covering professional risks is required.

Only the agents who are registered in this Register have the right to be paid commission for their services. Non-registration is sanctioned in various ways.

Numerus clausus does **not** exist.

Cross-border services

An **Italian domicile** is required for the exercise of services by **non-EU citizens**. No limitations whatsoever apply to **EU citizens**.

Inter-professional cooperation

There are only two **statutory limitations** according to which a real estate agent (a) cannot exercise another business or other professional activities and (b) cannot be employed by natural or legal persons, private or public, in an occupation different from real estate agency.

Business structure

There are **no limitations** on business structure and **no geographical limitations** on the territory in which the agent may exercise his activities.

Market conduct regulations

Neutrality

An agent may act on behalf of both parties. There are limitations which exclude the professional from dealing with property owned by him/herself.

Duty to provide services does **not** exist.

Professional standards

Professional standards are **not regulated by statute**. Major **professional associations** promote professional education and provide updating services in order to enhance quality of services. Generally, the agent is obliged to inform the client as fully as possible about the transaction. In order to get specific information on the property being sold, professional associations recommend that checks be made at the mortgage register and the cadastre by the agent.

Compulsory Indemnity Insurance

Professional insurance is **mandatory**.

The **minimum amount** varies according to the nature of the agent (natural or legal person, partnership or company, etc.). Control of the insurance is entrusted to the Chambers of Commerce.

One leading association has provided data on the **maximum amount** covered and on insurance primes:

1. **Individual business:** maximum amount covered = 260,000.00 €; premium paid by the member of the Association = 26,00 €.
2. **Partnership:** maximum amount covered 1,550,000.00 €; premium paid by the member of the Association = 152.00 €.
3. **Shareholder Company:** maximum amount covered 520,000.00 €; premium paid by the member of the Association = 182.00 €.

Continuing education is **not mandatory**.

Advertising restrictions do **not** exist.

General advertising regulations apply to real estate agents, too.

Conduct control

There is no official conduct/ quality control.

Price and fee regulations

There is **no price regulation** for real estate agents. The price for their services is determined by free agreement between the parties.

Agents are usually **paid by both parties**, with the typical fee being about 3 % for each party. According to information provided by a major association, the price varies from 1 % to 5 % for each party, with different municipal and communal practices existing throughout the country. Usually, services of real estate agents organized in franchising systems reach the upper level of this price scale. If no party agreement exists, the price and each party's share of it is determined by the local Chamber of Commerce.

4.3 *Technical services* play a minor role and are not, therefore, considered here.

5. The Italian Real Estate Market

5.1 Transaction costs (in €)

Acquisition of a 'first home': Taxes are reduced as follows: Registration tax: 3 % calculated on the fiscal value (here conventionally fixed at half of the actual market value); mortgage and cadastral taxes are a fixed amount.

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs ⁴⁵
100,000 € sales price	(2 x 3 % ⁴⁶)	47	1,500 ⁴⁸	49	115	1,898	9,515
50,000 € fiscal value (no mortgage)	3,000				(90 ⁵⁰ Arch.t.: 4,71)	(Stamp t.: 230 ⁵¹ Cad.t.: 168 Mort.t.: 168 Reg.t.: 1,500 ⁵²)	

⁴⁵ We add under this point the amount of the substitutive tax which applies in case of a loan contract. This substitutive tax is 0.25 % of the granted loan for first home acquisitions (Table A) and 2 % of the granted loan for other acquisitions (Table B). This tax is retained by the bank when it grants the loan to the borrower. The bank deals directly with payment of the tax.

⁴⁶ See notes in text, no. 4.2. As it often happens in practice, it is assumed that the commission is paid at 3 % by both parties.

⁴⁷ See notes in text, no.4.3.

⁴⁸ VAT at 20 % is applied only on the notary fee. It is not included within the totals in the tables. All expenses which are not directly documented as being incurred on behalf of the client and in his/her name (e.g. telephone calls, fax, transfer expenses, etc.) are added to the fee and subject to V.A.T. (DPR n. 633/1972 art. 15 comma 3). By contrast, taxes are not subject to V.A.T. according to art. 15 para 3 of DPR above where they relate to client and are in his/her name.

⁴⁹ See notes in text, no. 4.2.

⁵⁰ This amount of 90 € (resulting from amendments by DL 3 October 2006 n. 262, GU n. 230 of 3 October 2006) includes the payment of cadastral transfer (*voltura catastale*) and mortgage tax (*tassa ipotecaria*), as well as the cost of the up-dating service of the Cadastral data bank, and the transcription in the Land Register on receipt of (i) the copy of the contract and (ii) the transcription form (*nota di trascrizione*). Legal basis of this cost: DPR n. 347/1990 (*Testo unico delle imposte ipotecarie e catastali*); art. 19 n. 1 of the Table attached to this DPR and n. 2.1 of the Table for Special Cadastral Taxes of the DL n. 533/1954 transposed into L. n. 869/1954 (lastly modified by DL 3 October 2006 n. 262). This is a tax rather than a fee, but in consideration of the transaction which it remunerates, we have inserted it at this point in the table. The amount of 35 € is related to the registration of the mortgage, which is not included in the exceptions of the "*imposta sostitutiva*".

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs ⁵³
100,000 € sales price 50,000 € fiscal value + 100,000 € loan; mortgage: 1,5 of loan (eg. 150,000 €)	(3 %) 3,000 3,000		1,500 1,170		150 (90 35 Arch.t (sales): 24,71 Arch.t (mortgage) 20,90)	2,066 = (Stamp.t.: 230 Cad.t.: 168 Mort. t.: 168 Reg.t.: 1500)	10,886 (=excel table) + 0.25 % of the loan (250) Total 11.136
250,000 € sales price 125,000 € fiscal value (no mortgage)	(2 x 3 %) 7,500 7,500		1,950		115 (90 Arch.t: 31,85)	4,148 = Stamp t.: 230 Cad.t.: 168 Mort. t. 168 Reg. t.: 3750	21,213
250,000 € sales price 125,000 € fiscal value + 250,000 € loan; mortgage: 1,5 of loan	(2 x 3 %) 7,500 7,500		1,950 1,850		150 (90 35 Arch.t (sales): 31,85 Arch. t (mortgage) 21,42	4,316 = Stamp t.: 230 Cad.t.: 168 Mort. t.: 168 Reg.t.: 3750	23,266 + 0.25 % of the loan (625) Total 23,891

⁵¹ Under this heading the so called *imposta di bollo* (stamp tax), regulated by DPR n. 642/1972, is included. This applies to acts which are electronically transmitted (MUI) according to the procedure described above, n. 2.0 or 3.0

⁵² 3 % calculated on a fiscal value of 50.000 €.

⁵³ We add under this point the amount of the substitutive tax which applies in case of a loan contract. This substitutive tax is 0.25 % of the granted loan for first home acquisitions (Table A) and 2 % of the granted loan for other acquisitions (Table B). This tax is retained by the bank when it grants the loan to the borrower. The bank deals directly with payment of the tax.

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs ⁵⁴
500,000 € sales price 250,000 € fiscal value (no mortgage)	(2 x 3 %) 15,000 15,000		3,100		115 (90 Arch.t: 42,91	7,898 = Stamp t.: 230 Cad.t.: 168 Mort. t. 168 Reg. t. : 7500	41,113
500,000 € sales price 250,000 € fiscal value + 500,000 € loan; mortgage: 1,5 of loan	(2 x 3 %) 15,000 15,000		3,100 2,350		150 (90 35 Arch.t (sales): 42,91 Arch. t (mortgage) 38,50	8,066 = Stamp t.: 230 Cad.t.: 168 Mort.t.: 168 Reg.t.: 7500	43,666 + 0.25 % of the loan (1250) Total 44,916
1,000,000 € sales price 500,000 € fiscal value (no mortgage)	(2 x 3 %) 30,000 30,000		3,900		115 (90 Arch.t: 53,97	Stamp t.: 230 Cad.t.: 168 Mort. t.: 168 Reg.t.: 15000	79,581
1,000,000 € sales price 500,000 € fiscal value + 1,000,000 € loan; mortgage: 1,5 of loan	(2 x 3 %) 30,000 30,000		3,900 2,800		150 (90 35 Arch.t (sales): 53,97 Arch.t (mortgage): 46,90	Stamp t.: 230 Cad.t.: 168 Mort.t.: 168 Reg.t.: 15000	82.416 + 0.25 % of the loan (2500) Total 84,916

⁵⁴ We add under this point the amount of the substitutive tax which applies in case of a loan contract. This substitutive tax is 0.25 % of the granted loan for first home acquisitions (Table A) and 2 % of the granted loan for other acquisitions (Table B). This tax is retained by the bank when it grants the loan to the borrower. The bank deals directly with payment of the tax.

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs ⁵⁵
5,000,000 € sales price 2,500,000 € fiscal value (no mortgage)	(2 x 3%) 150,000 150,000		8,200		170 (90 Arch.t: 79,31	Stamp t.: 230 Cad.t.: 168 Mort.t.: 168 Reg.t.: 75000	383,936
5,000,000 € sales price + 2,500,000 € fiscal value 5,000,000 € loan; mortgage: 1,5 of loan	(2 x 3%) 150,000 150,000		8,200 7,800		220 (90 35 Arch.t (sales): 79,31 Arc. t. (mortgage): 56,70	Stamp t.: 230 Cad.t.: 168 Mort.t.: 168 Reg.t.: 75000	391,786 + 0.25 % of the loan (12.500) Total 404,286
% VAT applicable	20 %		20 %				

(B) Transactions which fall outside the favourable fiscal treatment of the acquisition of a 'first home': Registration tax 7 % of the fiscal value (here conventionally fixed at half of the market value); mortgage tax: 2 % of the fiscal value and cadastral tax: 1 % of the fiscal value

⁵⁵ We add under this point the amount of the substitutive tax which applies in case of a loan contract. This substitutive tax is 0.25 % of the granted loan for first home acquisitions (Table A) and 2 % of the granted loan for other acquisitions (Table B). This tax is retained by the bank when it grants the loan to the borrower. The bank deals directly with payment of the tax.

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs ⁵⁶
100,000 € sales price fiscal value 3,000 50,000 € (no mortgage)	(2 x 3 %) 3,000 3,000		1,500		90 Arch.t: 24,71	Stamp t.: 230 Mort.t.: 1000 Cad.t.: 500 Reg.t.: 3500	12,844.71
100,000 € sales price fiscal value 3,000 50,000 € + 100,000 € loan; mortgage: 1,5 of loan	(2 x 3 %) 3,000 3,000		1,500 1,170		90 35 Arch.t (sales): 24,71 Arch. t (mortgage) 20,90	Stamp t.: 230 Cad.t.: 500 Mort.t.: 1000 Reg.t.: 3500	14,070.61 + 2 % of the loan (2,000) Total 16,070.61
250,000 € sales price fiscal value 7,500 125,000 € (no mortgage)	(2 x 3 %) 7,500 7,500		1,950		90 Arch.t: 31,85	Stamp t.: 230 Cad.t.: 1250 Mort.t.: 2500 Reg.t.: 8750	29,801.85
250,000 € sales price fiscal value 7,500 125,000 € + 250,000 € loan; mortgage: 1,5 of loan	3 % 7,500 7,500		1,950 1,850		90 35 Arch.t (sales): 31,85 Arch. t (mortgage) 21,42	Stamp t.: 230 Cad.t.: 1250 Mort.t.: 2500 Reg.t.: 8750	31,708.27 + 2 % of the loan (5,000) Total 36,708.27
500,000 € sales price fiscal value 15,000 250,000 € (no mortgage)	(2 x 3 %) 15,000 15,000		3,100		90 Arch.t: 42,91	Stamp t.: 230 Cad.t.: 2500 Mort.t.: 5000 Reg.t.: 17500	58,462.91

⁵⁶ See fn. of the corresponding point of Table A.

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs ⁵⁷
500,000 € sales price fiscal value 250,000 € + 500,000 € loan; mortgage: 1,5 of loan	(2 x 3 %) 15,000 15,000		3,100 2,350		90 35 Arch.t (sales): 42,91 Arch. t (mortgage) 38,50	Stamp t.: 230 Cad.t.: 2500 Mort.t.: 5000 Reg.t.: 17500	60,886.41 + 2 % of the loan (10.000) Total 70,886.41
1,000,000 € sales price fiscal value 500,000 € (no mortgage)	(2 x 3 %) 30,000 30,000		3,900		90 Arch.t: 53,97	Stamp t.: 230 Cad.t.: 5000 Mort.t.: 10000 Reg.t.: 35000	114,273.97
1,000,000 € sales price fiscal value 500,000 € + 1,000,000 € loan; mortgage: 1,5 of loan	(2 x 3 %) 30,000 30,000		3,900 2,800		90 35 Arch.t (sales): 53,97 Arch. t (mortgage) 46,90	Stamp t.: 230 Cad.t.: 5000 Mort.t.: 10000 Reg.t.: 35000	117,155.87 + 2 % of the loan (20.000) Total 137,155.87
5,000,000 € sales price (no mortgage) fiscal value 2,500,000 € (no mortgage)	(2 x 3 %) 150,000 150,000		8,200		90 Arch.t: 79,31	Stamp t.: 230 Cad.t.: 25.000 Mort.t.: 50.000 Reg.t.: 175000	558,599.31

⁵⁷ See fn. of the corresponding point of Table A.

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs ⁵⁸
5,000,000 € sales price + fiscal value 2,500,000 € 5.000.000 € loan; mortgage: 1,5 of loan	(2 x 3 %) 150,000 150,000		8,200 7,800		90 35 Arch.t (sales): 79,31 Arch.t (mortgage): 56,70	Stamp t.: 230 Cad.t.: 25000 Mort.t.: 50000 Reg.t.: 175000	566,491.01 + 2 % of the loan (100.000) Total 666,491.01
percentage VAT applicable	20 %		20 %				

5.1.1 Real Estate Agents

As indicated above, the commission for the real estate agent is usually around 6 % of the sales price, with each party paying 3%.

5.1.2 Technical Services

The intervention of a technical expert is not frequent in real estate transactions between private persons. However, when this happens⁵⁹, the practice shows a cost oscillating between 250 and 500 €. Moreover, technical interventions to update cadastral data are frequent and the cost is about 500 € (including costs incurred by the technical expert himself)⁶⁰. Usually – and as a rule in the more complex cases – these expenses are paid by the seller.

⁵⁸ See fn. of the corresponding point of Table A.

⁵⁹ It should be noted that when a technical expert is appointed by the lending bank or by the notary, a stable relationship with him arises.

⁶⁰ Some problems relating to the up-dating of the cadastral data can also be solved on-line by the technical expert or notary. The latter can up-date data before the contract of sale, by way of the so called “*preallineamento*”, or during registration of it (e.g., the up-dating of the address of the immovable; the registration of data concerning the legal regime governing the property of spouses; or the correction of mistakes and errors in the registration).

5.1.3 Legal Services

As shown in the table above, “Legal Services” in the context of conveyancing services in Italy cover the professional activity of notaries. The cost includes all activities which notaries are obliged to do⁶¹.

The only additional notary cost which can be incurred relates to where the notary is specifically appointed by the parties to check with the communal and cadastral offices that the administrative permits for the sale of the property are in order. This activity could be – in theory – carried out autonomously by the interested party.

All costs to be paid for the sale (taxes, checks, notary fees) are paid by the buyer (this happens also on the basis of art. 1475 c.c.⁶²). However, it must be noted that:

- a) costs for checks that are carried out by a technical expert and concern the legality of the property such as building permits are usually excluded.⁶³ These costs are paid by the seller, who is the person obliged to declare in the sales contract the legality of the asset in terms of building laws and is liable as to the warranties in favour of the buyer,
- b) taxes for which the seller is liable.

5.1.4 Land Register Fee

For registrations in the Land Register a tax has to be paid, which is regulated by DLgs. n. 347/1990, *Testo unico delle disposizioni concernenti le imposte ipotecarie e catastali*. Moreover a tax for cadastral transfer has to be paid, which is a lump sum of 90 €.

⁶¹ Almost all these activities are carried out in compliance with specific obligations imposed by law (and supplemented by professional ethical standards). These include preliminary checks, payment of taxes, drafting of the contract, carrying out of specific executive obligations by the Land Register, Cadastre or fiscal offices in general, as well as additional executive obligations depending upon the quality of the property or its geographical location or even the subjective nature of the persons involved in the transaction.

⁶² Art. 1475 c.c. Expenses of sale – The expenses of the contract of sale and other incidental expenses are borne by the buyer, unless otherwise agreed.

⁶³ Of course, if an expert’s report is requested by the bank which is financing the buyer, the latter will have to bear the costs of it. This cost will be included in the costs to be paid to the bank, under the heading “preliminary inquiry and expert’s report”.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

The fiscal charge for real estate transactions in Italy is high and complex. This is in part due to new legislation, which is dealt with immediately below (and sub n. 3.1.8). Taxes related to the transfer of real property include mortgage and cadastral taxes, the tax of registration, the archives tax⁶⁴ and the stamp tax. With the exception of the stamp tax which is fixed, the others are proportional (registration, mortgage and cadastral taxes) and/or depending on the value of the transaction (archives tax).

For a sale between private persons of an apartment for the price of 100,000 €, with a fiscal value of 50,000 €, and where the parties have opted for the above mentioned system of the “prezzo valore” (the new tax value system according to which the taxable sales price is determined by objective criteria and not by the price indicated by the parties), the tax regime is the following:

a) If conditions for the fiscal aid connected to the acquisition of a ‘first home’⁶⁵ are fulfilled and if the buyer is entering for the first time into such a transaction⁶⁶ the taxes are as follows:

- **Registration tax** (*imposta di registro*): 3 % (calculated on the fiscal value of 50,000 €) = **1,500 €**;
- **Mortgage tax** (*imposta ipotecaria*) of a fixed amount = **168 €**;
- **Cadastral tax** (*imposta catastale*) of a fixed amount = **168 €**;
- **Stamp tax** (*imposta forfetaria di bollo*) of a fixed amount = **230 €**;
- **Mortgage tax and cadastral transfer tax** (*tassa ipotecaria e diritti di voltura catastale*) = **90 €**;
- **Archives tax** (*tassa d'archivio*) = **24.71 €**;

⁶⁴ The archives tax is to be paid to the notarial archives for each document drafted by the notary that is subject to fiscal registration as well as for wills. For a brief description of this fee see CONSIGLIO NAZIONALE DEL NOTARIATO - UFFICIO STUDI, *Dizionario giuridico del notariato nella casistica pratica*, Milano, 2006, p. 962.

⁶⁵ These conditions are established by note II bis of art. 1 of the Tariff attached to DPR n. 131/1986.

⁶⁶ Special rules on fiscal aid exist in cases of repurchase where it is within one year from the date of first purchase of a new ‘first home’ according to art. 7 L. n. 448/1998, so-called c.d. “*credito d'imposta*”. See the already mentioned Circolare 38/E, as well as IANNIELLO-MONTESANO, *Le agevolazioni per l'acquisto della prima casa*, Milano, 2002, p. 343 ff.

b) If the conditions under (a) for the acquisition of the 'first home' are not fulfilled:

- **Registration tax** (*imposta di registro*): 7 % (calculated on the fiscal value of 50.000 €) = **3,500 €**;
- **Mortgage tax** (*imposta ipotecaria*): 2 % (calculated on the fiscal value of 50,000 €) = **1,000 €**;
- **Cadastral tax** (*imposta catastale*): 1 % (calculated on the fiscal value of 50,000 €) = **500 €**;
- **Stamp tax** (*imposta forfetaria di bollo*) = **230 €**;
- **Mortgage tax and cadastral transfer tax** (*tassa ipotecaria e diritti di voltura catastale*) = **90 €**;
- **Archives tax** (*tassa d'archivio*) = **24.71 €**.

Payment of all such taxes is made by the buyer.

The system allows tax to be based on the cadastral value of a residential property rather than the actual sales price agreed between private persons.⁶⁷ Outside the "prezzo valore" system taxes are based on the true market price.

In theory, payment of taxes (excluded the mortgage tax) is not necessary for registration to be carried out. The system of electronic registration (Modello Unico Informativo), i.e. the electronic transmission of documents to the fiscal offices, to the Cadaster and to the Land Register, means both operations take place simultaneously. The file with the *nota di trascrizione* is sent via e-mail to the land register for registration and to the fiscal register for taxation purposes. In cases in which the normal electronic procedure does not (or cannot) work for more than 3 hours, an 'urgency procedure' (called *SOSTel*) operates, allowing presentation of the documents in paper form (together with a floppy disk) both at the land register and fiscal office. Also in this case, and where necessary, both operations can be made (almost) simultaneously

5.1.5.2 Capital Gains Taxes

According to art. 67 lit. b) of DPR n. 917/1986 (*Testo unico delle imposte sui redditi*), taxation is provided for in the following cases: **a)** capital gains made through transfer for valuable consideration of urban property constructed or acquired and held for a

⁶⁷ Severe penalties are established in case of concealment of money consideration (price).

period of less than 5 years (this excludes properties acquired by succession law or property which was lived in as a main residence of the owners between the time of construction or acquisition and transfer) and **b)** capital gains deriving from transfer for valuable consideration of building sites.

These headings form a taxable income to be indicated in the statement of income. This is subject to high rates of taxation under the category of “various incomes” (*redditi diversi*).

Otherwise, from 1 January 2006, according to art. 1 para 496 of L. 23 December 2005 n. 266, it is possible to tax such capital gains by way of a ‘substitutive income tax’ at the rate of 12,50 % up to 30 September 2006 and after that date at 20 % (art. 3 paras 3 and 4 of DL 3 October 2006 n. 262, GU n. 230 of 3 October 2006). Consequently, the obligation to declare such gains in the statement of income ceases. For this alternative to operate, a specific request from the seller or person transferring the property to the notary is necessary. After such a request, the notary applies the ‘substitutive tax’ and pays it with the money received from the seller or person transferring the property himself. The notary has also to notify the relevant data concerning the transaction to the Fiscal Office (*Agenzia delle Entrate*)⁶⁸.

If the system of ‘substitutive taxation’ is not chosen, but the ordinary method of taxation is preferred, the capital gain will be autonomously taxed using a tax rate calculated on the average of the rates applied to the income of the seller/person transferring the property over the preceding 2 years. The legal basis of these rules is DPR n. 917/1986 (it is also available on the form for income statements – so called *modello unico*). It will also be necessary to register the capital gain in the income statement by filling in the specific table for ‘other income’. Subsequently the public

⁶⁸ Art. 35 para 23-ter of DL 4 July 2006 n. 223 introduces in art. 52 of DPR n. 131/1986 (regulating the automatic cadastral valuation and therefore the system of the “prezzo-valore”) the para 5-bis. This new rule states that “paras 4 and 5 cannot be applied to transfers of immovables and their appurtenances which different from those regulated by art. 1 para 497 of L. 23 December 2005 n. 266, and further amendments”. Paras 4 and 5 establish the so called automatic cadastral valuation (*valutazione automatica su base catastale*). It follows that all transfers of immovables (*cessioni immobiliari*), carried out outside the scope of art. 1 para 497 of L. n. 266/2005 (transfers for which the option of “prezzo-valore” has not been exercised, both in cases where the requirements for this system were or were not given), cannot benefit of the limitation of the power to rectify the act, if a value equal or superior to the cadastral value has been declared. Therefore, the general regime applies, legitimating the assessment of the higher value according to market criteria (see PETRELLI, „Liberalizzazione” dei servizi professionali e misure tributarie “urgenti available on <http://www.notaioricciardi.it/bollettini/ManovraEstiva.htm>).

administration will determine the tax to be paid and send it to the taxpayer, usually within 3 years.

5.1.6 Commercial or Office Buildings

If the transfer concerns property which is not residential property, and if the transfer is between private persons, tax rates do not change, but the system of the "prezzo valore" is not applicable. According to the recent DL n. 223/2006, translated into L. n. 248/2006, the power of the Fiscal Office to verify and control the declared value operates. Taxation on the basis of the fiscal value is also excluded.

5.1.7 Changes in Transfer Costs

Since 1990 a multiplicity of complicated legislation on transfer costs has been produced. This includes:

- a) Forms of fiscal aid for the acquisition of the 'first home' have been introduced.
- b) Gradually, the amount of fixed taxes (e.g. the mortgage and cadastral taxes for the 'first home') and stamp tax have been increased.
- c) Real estate transfers which are not excluded from VAT. and that are subject to proportional registration tax have been widened (at last through DL n. 223/2006, transposed into L. n. 248/2006). Consequently transfer costs have increased.
- d) In 2002⁶⁹ the notarial tariff was updated and (and converted into Euro) by decree of the Minister of Justice of 27 November 2001 (substituting the preceding Tariff of 1987).
- e) In 2006, DL n. 223/2006, transposed into L. n. 248/2006, abolished the minimum tariff rates of professionals including notaries; however, its consequences as to notaries is unclear (see below n. 4.3). In practice, competition among notaries has not increased very much; the phenomenon of consumers shopping around for best quotes is not usual.
- f) DL n. 262/2006 (GU n. 230 of 3 October 2006) increased the mortgage and the cadastral taxes. Moreover, registration, mortgage and cadastral taxes have been introduced also for gifts and transfers according to the law of succession⁷⁰.

⁶⁹ On this point see also below, n. 4.

⁷⁰ See PETRELLI, *IL DECRETO LEGGE COLLEGATO ALLA FINANZIARIA 2007* available on http://www.notaioricciardi.it/bollettini/DL_%20COLLEGATO_FINANZIARIA_2007.htm.

5.2 Service providers

National Territory	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm	Average cost per firm	% conveyance/ total services (add up to 100 %)
Real estate agents ⁷¹	More than 10 000	More than 35 000	More than 25 000	2 (Average number)	45 %	155,000 €	Percent on the turnover 55 %	
Civil law notaries		4 693						

5.3 Key market data

Average prices

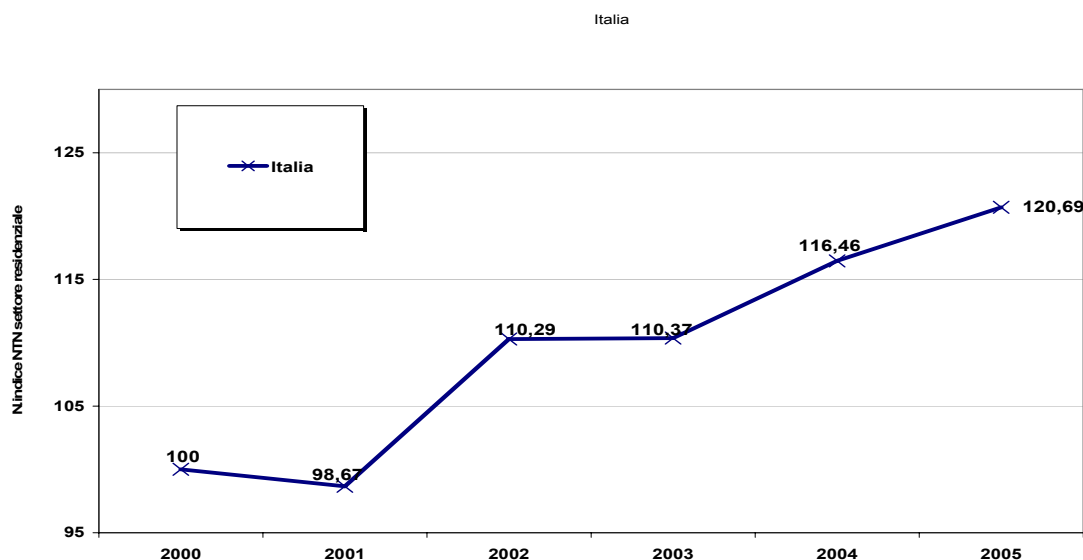
- **Tourist region property:** from 1,500 up to 10,000 € /sm.
- **Residential apartment:** commercial surface of about 60 sm: from 120,000 up to 275,000 €. From this average price, properties located in tourist localities are excluded.
- **Residential house (villa):** commercial surface of about 140 sm: from 250,000 up to 500,000 €. From this average price, properties located in tourist localities are excluded.
- **Commercial/office property:** commercial surface of about 100 sm: from 150,000 up to 400,000 €. From this average price, centres of peculiar value are excluded.

Development of price index:

The following graph of price movements from 2000 to 2005 has been supplied by the Minister of Internal Affairs.

Here a table summarising the Italian system of taxation of immovables is available, valid for gratuitous transfer as well as for transfer for valuable consideration.

⁷¹ Estimate by FIAIP, Ufficio Studi, Mr. Armando Barsotti.



Price development for residential buildings in % starting from 2000 (100%)

Number and value of transactions:

The following table contains data on the volumes of real estate transactions (NTN or normalised number of transactions) from 2000 to 2005:

Number of transactions in:	2000	2001	2002	2003	2004	2005
Capitals of all Provinces	230,340.63	224,639,64	242,812.39	235,236.38	244,635.19	248,316.71
Remaining area of all provinces	460,137.45	456,624.61	518.709,78	526,849.49	559,490.47	585,033.09
Total	690,478.08	681,264.25	761.522,17	762,085,87	804,125.66	833,349.80
Ratio capital/total province	33 %	33 %	32 %	31 %	30 %	30 %

Ratio house owners – tenants :

Owners 71.4 %, tenants 20 %, others 8.6 % (2001)

General Market Situation:

According to a report of Bank of Italy of June 2006, more than 60 % of Italian households' wealth is invested in real estate.

In Italy, building, renting and selling houses is a **very attractive business**: From January 2001 to December 2005 the average trend of financial investments in the stock exchange has been – 10.39 %. In the same period, the average trend of real estate investment has been + 28.51 %.

XIII. Luxembourg

1 Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 90 %	Technical survey/evaluation ca. 5 %	Not relevant	Contract drafting (100 %) Mandatory intervention (see below)	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract	Notary	Professional involvement of notary not mandatory but usual	Fixed fees
Preliminary checks (land register, administrative permits)	Notary Technical expert (building permit, 5 %)	Professional duty of notary (prior to drafting the sales contract)	
Drafting the sales contract and/or deed of conveyance	Notary Public entity	Professional intervention of notary (or public entity) mandatory as only authentic deeds may be registered	
Legal advice or counselling	Notary	Professional duty of notary (as part of the process associated with concluding the notarial deed)	
Certification of signatures	Notary	Professional intervention of notary (or public entity) mandatory as only authentic deeds may be registered	
Contract execution (transfer of payment and registration)	Notary	Professional involvement mandatory: notarial deed necessary for registration	

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Taxation (esp. transfer tax)	Notary	Professional involvement not mandatory but related to the registration procedure which includes the payment of the transfer cost as well	Fixed fees

1.1 Notaries

Notaries play a **central role** in the transfer of property in Luxembourg. It is **not exclusively mandatory** to involve a notary, but in practice in **nearly 100 %** of the cases they draw up the **deed**, the definitive contract of sale, as only an authentic deed (i.e. a deed drafted and certified by a notary) can transfer the property in Luxembourg. Furthermore, notaries are usually responsible for **drafting** the contract, collecting all the necessary information and documents, **permits**, arranging the **registration procedure** and guaranteeing the overall legality of the transaction.

1.2 Lawyers

Lawyers **do not play a role** in the transfer of property in Luxembourg.

1.3 Real estate agents

The intervention of a real estate agent is **not mandatory**, but in practice a real estate agent is usually involved by the seller in order to find a buyer. It is estimated that real estate agents are involved in the transfer of property in about **90 %** of the cases.

1.4 Technical experts

It is **neither legally required nor usual** (estimated: 5 %) to employ a professional to check the existing buildings. If a technical expert is involved, it is usually only for the purpose to get a **building permit** for new constructions.

The **EU-Directive 2002/91/EC** has not yet been implemented in Luxembourg.

2. Land registration

Land registration lies within the competences of the **Land Registry** (*l'Administration de l'enregistrement et des Domaines* – AED). This authority is dealing with ownership and mortgage registration. There is a **separate authority** for technical mapping and land survey (*l'Administration du Cadastre et de la Topographie* – ACT). Both institutions are operating under the umbrella of the **Ministry of Finance**.

The **registration procedure** includes **three main actors**: the notary, the Land Registry *l'Administration de l'Enregistrement et des Domaines* (hereafter **AED**) and the *l'Administration du Cadastre et de la Topographie* (hereafter **ACT**). The basis of the registration procedure is an authentic act made by the notary (notarial deed = *Extrait de l'acte de mutation*) who hands it over with a certified copy and with all other relevant documents to the **AED**. The **AED** forwards it to the **ACT**. The **notarial deed** indicates all the data necessary for the execution of the transfer of the property (name of the previous and the current owner, co-owners, the personal data of the seller and the purchaser, all information about the object of the sale like location, address, cadastral number, nature, price, the title of the ownership, etc.). The **AED** checks the act in general and deals with the **fiscal part** of the land registration. The procedure can continue if the transfer cost is paid, normally within a short period (few days). The **ACT** updates the land map and the **data of the register**; the **ACT** has available information about all real estate situated in the Luxembourg territory, about the property rights concerning them and the complete history of the properties since the beginning of land registration in Luxembourg (~1820). On the request of the notary they issue an *“Extrait cadastral”* about the situation of the piece of real estate. At the end of the registration procedure the clients are informed about the registration by the notary.

Currently, there is a **reform plan** to merge the three systems (*“Le système de gestion intégré relatif à la publicité foncière”*). The goal behind this reform project is to make the system more effective by accelerating the exchange of information concerning real estates, lands and buildings in order to avoid the risk of error.

In Luxembourg **all real property is registered** within the system of the ACT (*l'Administration du Cadastre et de la Topographie*).

3. Main steps of the conveyancing process

In Luxembourg, the standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership:** When the seller has found a buyer, the parties ask a notary to draft a **preliminary contract** (“*compromis de vente*”) in which the parties conclude the sale but attach suspensive conditions to it. After the fulfilment of these conditions, the notary draws up the **notarial deed**, the definitive contract (“*contrat de vente*”). Only an authentic deed can **transfer the property**. As mentioned above, also **public entities** which issue authentic deeds can do this by themselves or ask a notary to do so.

The **payment** must be effected at the time when the authentic act/ notarial deed is concluded, because the sale contract already **transfers the ownership**.

- **Registration:** The **notary applies for registration** in the registration office (for details of the registration procedure see above).

4. Professional services regulations

4.1 Legal services: Civil Law Notaries

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Luxembourg	5,4	N.a.	N.a.	4,0	N.a.	2,3

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

According to Article 15 of the **Luxembourg Notary Law** (*Loi du 9 décembre 1976 relative à l'organisation du notariat*) subjective requirements are:

- Holding the **Luxembourg nationality** and possessing all the civil and political rights,
- being at least **25 years** old,

- having obtained the necessary **education**, i.e.: 4 years of legal studies, followed by a 9 months course on the Luxembourg legislation, followed by a final exam in order to be able to get inscribed to the notarial chamber; then there is a one year compulsory internship in a notary office in order to become a notary candidate.

Objective requirements.

A **numerus clausus** exists (Article 13 of the Notary Law/ *Loi du 9 décembre 1976 relative a l'organisation du notariat*). The provision provides that a **Regulation** (*Règlement grand-ducal*) will fix the number and the location of the notaries after having the opinion of the chamber of notaries (*chambre des notaires*). Currently, under the relevant Regulation (*Règlement grand-ducal du 17 août 1994 ayant pour objet de déterminer le nombre et la résidence des notaires*) **36 notaries** operate in Luxembourg.

A new notary taking over an existing office needs to pay a **transfer fee** calculated on the 'value' of the practice (based on equipment etc.). This fee is decided between the notaries.

Cross-border services

It is possible only for **Luxembourg nationals** to become notaries in Luxembourg. The same rule is applicable to judges and civil servants.

Though a **foreign notary** can operate on behalf of the parties as well, following the registration procedure provided by the Luxembourg legislation, the only restriction is that s/he cannot "physically" work within the country.

Inter-professional cooperation

According to Article 6 and 7 of the Notary Law the notaries cannot cooperate with other professions and cannot directly, indirectly or by enlisting the services of somebody else exercise commercial or other activities listed therein (among which the activity of real estate agent is mentioned).

Business structure

Usually there is no cooperation between the notaries themselves except when substitution is required (Art. 39 of the Notary Law). On the other hand each notary can have employees (including legally qualified employees) and can cooperate with people having the same profession (*candidate notaire*). There is no limitation by the

state or by the notary chamber concerning the number of the cooperating professionals. It depends on the activity of the certain office.

Each notary has the same scope of authority and s/he can discharge her/his function only within the territory of their **district** otherwise the act is null. They have to be domiciled at the place which is indicated on the nomination act. It is not possible for them to live somewhere else or to change their residence without previous authorisation, see Art. 3, 4 of the Notary Law.

Market conduct regulations

Neutrality

The notary is acting on behalf of both parties as a **neutral intermediary**. Notaries cannot deal with cases in which they or their adherents are parties or have an interest, though certain exceptions can be found (Article 24 of the Notary Law).

Duty to provide services

The notaries **cannot refuse** a request to act within the district where they are nominated except when the notarial act infringes penal law (Article 21 of the Notary Law) or contains a situation mentioned in Article 24 of the Notary Law (adherents).

Professional standards

Professional standards are regulated by the **Notary Law**. Certain aspects of notarial activity (e.g. allocation, honorarium) are regulated by way of **Regulations** (*Reglement grand-ducal du 17 aout 1994 ayant pour objet de determiner le nombre et la residence des notaires; Reglement grand-ducal du 24 julliet 1971 portant revision du tarif des notaires*).

The professional representation and respect of the rules of the profession are ensured by the Luxembourg **Chamber of Notaries**. Also the opinion of the Chamber is needed before adopting a regulation concerning the profession.

Compulsory Indemnity Insurance

In principle it is **not compulsory** to have an indemnity insurance, but **in practice** all members of the Notary chamber have it. The **amount of the insurance** depends on the volume of the tasks they are charged with, mostly accounted on the basis of their turnover, but it can be completed by ad-hoc insurance as well.

Continuing education

Continuing education is **not compulsory**, but the Luxembourg **Chamber of Notaries** organises continuing education lectures when there is a new regulation or when they think it is important to do so. Another method in practice is that the notaries inform each other about which type of acts or situations to pay attention to.

Advertising restrictions

Advertising for notaries is **restricted** under the Luxembourg Notary Law.

Conduct control

Professional conduct is **controlled** by the **President of the Luxembourg Chamber of Notaries** on the one hand and by a **special council** (*Conseil de discipline*) on the other hand. This special council consists of a judge as president and four members nominated from the Chamber of Notaries. They have competence to deal with professional misconduct and adjudicate on its consequences.

Mandatory Intervention

As only an authentic deed can transfer the property, it is **mandatory** to involve either a notary or a public entity competent to issue authentic deeds.

Price and fee regulations

Notaries fees are **fixed by statute** (Règlement grand-ducal du 24 juillet 1971 portant révision du tarif des notaires).

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

Real estate agents need a **business permit** in order to operate in Luxembourg. The permit is issued by the **Ministry** of Middle Classes, after having sought the opinion of an Advisory **Committee** which considers the applicant's professional qualifications and good standing.

The permit is **strictly personal**, and can be refused or withdrawn for sound reasons. It is normally valid indefinitely, but ceases to be valid if it is not used within

two years as of its date of issue, or if trading is suspended voluntarily for more than two years. In the event of the Ministry refusing or withdrawing a permit, an appeal may be lodged with the administrative court ("*tribunal administratif*") within one month following notification of the decision.

If the permit is sought by an individual, s/he must supply **evidence of professional qualifications** and **good standing**. Legal persons, i.e. companies, partnerships, etc., must apply in the same way, the qualifications and good standing must be demonstrated in respect of the firm's management.

The **professional good standing** (*honorabilité*) of applicants is assessed on the basis of their criminal record and information obtained from an administrative investigation.

A **business permit** specifying "trade" (commerce) is granted for all general business activities provided that the applicant has in-depth knowledge of **company management**. The Regulation of 27 September 2004 (*Règlement grand-ducal du 27 septembre 2004 précisant les conditions d'accomplissement de la qualification professionnelle des commerçants visée à l'article 7(1) de la loi du 28 décembre 1988 réglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales*) lays down the conditions traders need to meet to qualify regards **company management**. These conditions are the following, alternatively:

- having completed an initial training course,
- having completed an intensive training course,
- having supporting documentation showing qualifications which are acknowledged as being equivalent to the above-mentioned training courses ,
- having completed a period of training of not less than three years.

Article 10 of the Act of 28 December 1988, as amended (*Loi du 9 juillet 2004 modifiant: la loi modifiée de 28 décembre 1988 réglementant l'accès aux professions d'artisan, de commerçant, d'industriel qu'à certaines professions libérales*), governing setting up a business lays down **additional conditions** which people who wish to become **real estate agents** have to meet. They have to pass an **aptitude test**. The details of this test still have to be laid down by regulation. In the meantime, the **Chamber of Commerce's training institute** (Institut de Formation de la Chambre de Commerce or "IFCC") gives classes and organises examinations

at the end of training courses on the basis of and in accordance with the provisions of the current law governing setting up a business.

Objective requirements

There are **no such a requirements**. Currently, there are **609 real estate agents** operating in the Luxembourg market.

Cross-border services

It is possible for the citizens or entities established in one of the **member states of the European Union** to operate as real estate agents in Luxembourg, and it is quite usual.

Inter-professional cooperation is **not** regulated.

Business structure is **not** regulated.

Market conduct regulations

Neutrality is **not** regulated.

Duty to provide services is **not** regulated.

Professional standards

There is a **Chamber for real estate professionals** (*Chambre immobilière du Grand Duché de Luxembourg - CIGDL*) in Luxembourg which was founded in 1971, but it is **not compulsory** for a real estate agent to be a member of this organisation. The CIGDL adopted a '*code de déontologie*' on 30 October 1970 setting out **professional rules**. The tasks of the CIGDL are, besides others, to represent the member's interest, set up an **arbitration** in case of professional conflict between the members and ensure the quality of the services.

Compulsory Indemnity Insurance

An indemnity insurance is **compulsory** for real estate agents: In order to get the **business permit**, they have to show that they are insured against the financial consequences of professional legal liability for professional commitments.

Continuing education is **not** regulated.

Advertising restrictions

There are **no special restrictions** for the advertising activity of the real estate agents. General rules apply. For example: the advertising may not be misleading for the consumers; in case of direct mailing they need to provide complete information.

Conduct control

It is **not compulsory** for a real estate agent to be a member of the professional organisation. In practice, only about 1/10 of the real estate agents are members. For the **members of the CIGDL**, according to its code in case of misconduct of the members, they set up a special committee which will start a **disciplinary procedure**. Otherwise the **Chamber of commerce** acts in case of serious misconduct. There is no compulsory quality certification system.

Mandatory Intervention

The involvement of a real estate agent is **not mandatory**.

Price and fee regulations

Fees are **freely negotiable** (art. 2 de la Loi du 17 mai 2004 relative à la concurrence) **since 2004**.

Before, there were maximum fixed prices (Règlement grand-ducal du 20 janvier 1972 fixant le barème des commissions maxima pouvant être facturées par les agents immobiliers).

4.3. Technical services

Not relevant in Luxembourg (see above).

5. The Real Estate Market in Luxembourg

5.1 Transaction costs (in Euro)

	Real estate agent (usually 3 %)	Technical services (if usual)	Legal services	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	3,000.-	Not usual	856.-	6 % (= 6.000)	12	9868
100,000 € sales price + 100,000 € mortgage	3,000.-	Not usual	856.- 532.-	6 % (= 6.000) 0,24 % registration (= 240) for mortgage	12	10640
250,000 € sales price (no mortgage)	7,500.-	Not usual	1,400.-	6 % (= 15.000)	12	23912
250,000 € sales price + 250,000 € mortgage	7,500.-	Not usual	1,400.- 853.-	6 % (= 15.000) 0.24 % registration (= 600) for mortgage	12	25365
500,000 € sales price (no mortgage)	15,000.-	Not usual	1650.-	6 % (= 30,000)	12	46662
500,000 € sales price + 500,000 € mortgage	15,000.-	Not usual	1,650.- 978.-	6 % (= 30.000) 0.24 % Registration (= 1200) for mortgage	12	48840
% VAT applicable	12 %		12 %			

5.1.1 Real Estate Agents

The agent's fee usually is a **flat fee of 3 %** (+ VAT) of the purchase price.

The client can turn to several real estate agents, except if there is a clause about exclusiveness, and the one who sells the property will gain the fee.

The real estate agent is usually **paid by the buyer**.

5.1.2 Technical Services

Technical services are not relevant in Luxembourg.

In case the **buyer** wants a preliminary check by a technical expert he/she needs to pay their fee.

5.1.3 Legal Services

Notarial fees are **fixed by statute** (see above).

For the sales contract, the fee ranges **between 856 and 1.650 Euro** (see table above).

The buyer pays the fee.

5.1.4 Land Register Fee

All land register fees are **fixed by statute** (Fiscal code).

There is a **flat fee of 6 %** for the transfer of property registration; for agricultural land it is 1 % whereas for Luxembourg city the rate of **9 %** applies.

There is an additional registration fee to be paid for the mortgage of 0.24% of the mortgage value.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

There is no transfer tax; the public interest is covered by the increased register fees indicated above. In addition, only a fee of around 12€ is payable for the registration certificate to be presented to the tax authorities.

5.1.5.2 Capital Gains Taxes

The relevant rules are laid down in the **law on taxation of income** (*Loi concernant l'impôt sur le revenu*- hereafter LIR).

The **capital gains tax** is levied on the transfer (sale, exchange) of immovable property whether land or a building, the regime is the same. The capital gains tax is

not a separate tax but is **part of the general income tax** which is composed of eight categories of income (art 10 LIR) the aggregate of which constitutes the taxable income. Capital gains belong to the category number 8 called “*revenus nets divers*” which includes various types of income listed by the law, mainly capital gains on the sale of movable and immovable property but not only. Within this category, the law makes a distinction depending on the period for which the immovable property has been held: if the property has been held for up to 2 years, the income is called “*bénéfice de cession*”, also “*plus-value immobilière*” (and art. 99 and 99ter LIR apply).

A **tax allowance** (50,000 € or 100,000 € in the case of spouses) is granted on capital gains according to art. 99 ter LIR rather than on capital gains according to art. 99 bis LIR (art. 130 § 4 LIR). Likewise the acquisition price is re-evaluated in the case of capital gains according to art. 99 ter LIR rather than of capital gains according to art. 99bis LIR (art 102bis LIR).

No tax is due in the case of transfer of property which was **used by the transferor for private residential purposes**, “*résidence principale*” for at least 5 years (art. 102 bis LIR). These rules do not apply if the immovable property, whether building or land, is part of the assets of a **commercial activity** (art. 99 bis §1 and 99 ter §1 LIR) or of a legal entity/person. In that case the capital gains are part of the profit of the commercial activity and treated as any other profit deriving from this activity.

The profit made by natural persons is another of the categories of income (see above) – category number 1 called “*bénéfice commercial*”.

As capital gains are part of general income, the tax and the tax rate depend on the overall income of the transferor. If the property is held by a natural, or a legal entity/person which is not considered as such for tax purposes, the rate is progressive **from 8 % to 38 %** (art. 118 LIR). If the immovable property is held by a legal entity/person subject to tax as a legal entity/person, the rate is a fixed rate. This rate applies to all the income of the legal entity/person (art. 174. LIR).

5.1.6 Commercial or Office Buildings

No significant differences.

5.1.7 Changes in Transfer Costs

Fees for **real estate agents** are freely negotiable since 2004; before, there were maximum fixed prices (see above).

5.2 Service providers

Firms	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm
Real estate agents	N.a.	609	N.a.	N.a.
Advocates/ solicitors	N.a.	N.a.	N.a.	N.a.
Civil law notaries	N.a.	36	5-25	N.a.
Licensed conveyancers	Not existing			
Architects	N.a.	N.a.	N.a.	N.a.
Engineers	N.a.	N.a.	N.a.	N.a.

5.3 Key market data

Usage of Land:

According to statistical data from 2004⁷² the rate of usage of land in Luxembourg (total territory of 2586 km²) was as follows:

- 86.6 % agriculture and forest
- 8.7 % buildings, from which 2.8 % is industrial
- 4.1 % infrastructure, railway and other waters
- 0.6 % rivers

Property ownership (2004)⁷³:

75.5 % of all households are owners of the house or apartment in which they live,

24.5 % of all households are tenants of the house or apartment in which they live

⁷²STATEC <http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=1009>

⁷³CES http://www.gouvernement.lu/dossiers/economie_finances/ces/Avis2006.pdf

Typical Sale:

Price	Residential property sales
Up to 100,000.- Euro	~10 %
100,000.- up to 250,000.- Euro	~30 %
250,000.- up to 500,000.- Euro	~40 %
More than 500,000.- Euro	~20 %

Financing:

In 95 % of sales the price is financed by way of a **mortgage**.

Average prices:

In Luxembourg the average prices are:

- for a **residential apartment**: 311.000 €
- for a **residential house**: 552.000 €.

Price evolution:

Graph 1: Residential Premises: Development of average sale prices per object (in million Euro) from 1992 to 2002

The different lines on the graph represent the following:

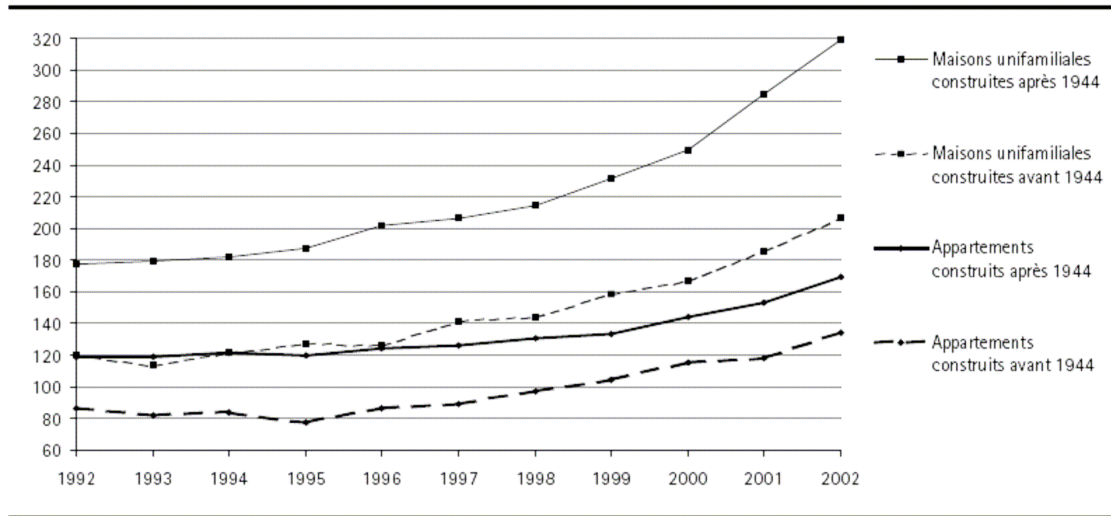
- Family homes built after 1944.
- Family homes built before 1944.
- Apartments built after 1944.
- Apartments built before 1944.

Graph 2: Land: Development of average sale prices per acre (in Euro) from 1992 to 2002

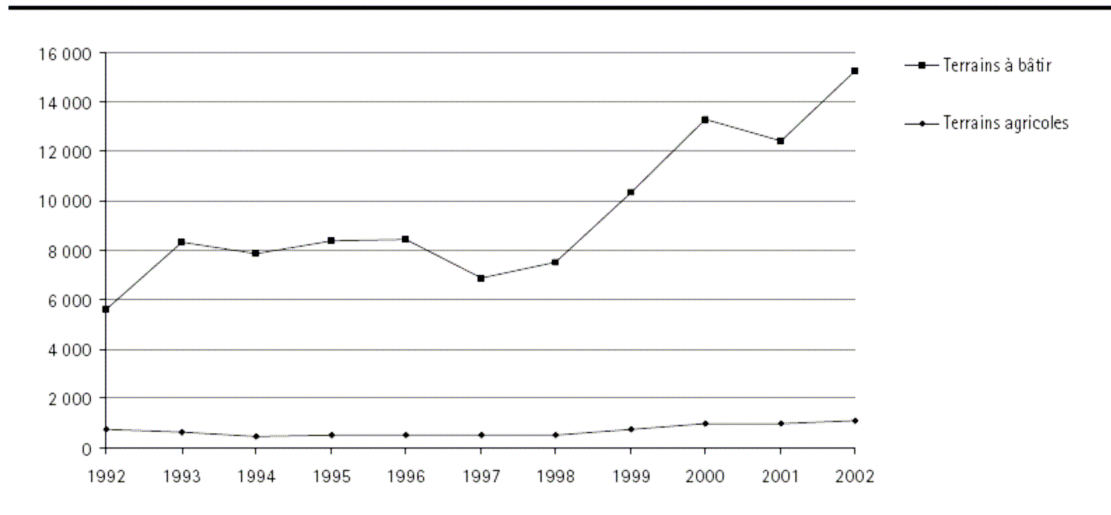
The two lines on the graph represent the following:

- Building land.
- Farm land.

Graphique 1: Immeubles d'habitation: Évolution des prix de vente moyens par objet (en milliers de EUR) de 1992 à 2002



Graphique 2: Terrains – Évolution des prix de vente moyens par are (en EUR) de 1992 à 2002



XIV. The Netherlands

1. Professionals involved in the conveyancing market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 50 % (25-50 % for the buyer, 75-95 % for the seller)	Technical services (rare)	Contract drafting (rare: 5 %)	Contract drafting and execution, some functions are mandatory (see below)	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract	-	-	Fixed fees for notaries abolished in 2002; now negotiable fees
Preliminary checks (land register, administrative permits)	- Notary (debts of the seller), (municipal) pre-emption rights, land register - Advocate (sometimes: administrative permits)	Professional duty of the notary	
Drafting the sales contract and/or deed of conveyance	Notary (usual) Advocate (sometimes for commercial transactions)	Involvement of notary: - Not mandatory, but usual for drafting the contract (100% in the Amsterdam region) - Mandatory for the deed of conveyance; exclusive right	
Legal advice or counselling	Notary	Professional duty of notary	
Certification of signatures	Notary	Mandatory involvement of notary for certification of signatures (as part of notarial act)	

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Contract execution (transfer of payment and registration)	Notary	Mandatory involvement of notary: - Payment (control or escrow account) - Registration (application + control)	
Taxation (esp. transfer tax)	Notary	Mandatory involvement of notary: receiving (escrow) and forwarding transfer tax	

1.1 Notaries

In the Netherlands, civil law notaries play an **extensive role** in conveyancing, and their involvement is **mandatory** in some steps of it. First, almost always in the Amsterdam region, and sometimes (estimated 20%) also in other areas, the notary is involved in the **drafting and signing of the sales contract**. Also, the notary checks whether there are **debts of the seller** which lay on the land, and s/he checks whether there is a (municipal) **pre-emption right**.

Only a Dutch notary can draft the **deed of conveyance**. In case of a mortgage, the notary also drafts the **deed of mortgage**. The notary acts as an **escrow** agent for monies deposited by the parties, and the staff of his office acts on behalf of the mortgage bank during the signing process. All payments including the **transfer tax** (for whose payment the notary is responsible) pass through the hands of the notary, who keeps as an **escrow** the money from before the signing of the deed of conveyance until the registration of the deed, and the registry has confirmed that no sequestration has been laid by third parties between signing of the deed and the registration. The notary also plays a crucial role in the **registration process**.

As to recent and planned reforms in the Netherlands, see point 5 below.

1.2 Advocates

An advocate is **not mandatory**, and s/he is **rarely** involved in conveyancing (less than 5%). An advocate is employed only in some commercial cases, where s/he may **draft the sales contract** or **check administrative permits**.

1.3 Real estate agents

A real estate agent is **not mandatory**, but **usually the seller**, and often also the buyer, uses a real estate agent in order to find a buyer/ seller and to draft the sales contract. The degree of involvement in the sale of residential property among private persons differs for the seller (estimated 75-95%) and the purchaser (25-50%). In case of financing by **mortgage**, an evaluation of an independent real estate agent will be required by the bank.

1.4 Technical services

Technical services are **not mandatory**, and it is **not usual** to retain a technical expert either.

2. Land registration

There are two connected institutions (one organisation) for registering real estate: The **Cadastre** (*Kadaster*) is a technical survey of the land and information about probable ownership (with reference to the land register). In the *Openbare Registers* (**land register**), ownership and other legal rights in plots of land are registered. However, the *Openbare Registers* refer to the *Kadaster* for the position, borders and size of the cadastral parcel that make up a plot of land in the *Openbare Registers*.

The **Agency for Cadastre and Public Registers** deals with the registration of land. This Agency is a self-administrating state body. The national **headquarter** is in Apeldoorn. The Agency has 15 regional offices that deal with land administration. Historically, the 'juridical-administrative' functions and the surveying functions were strictly separated, with the former being headed by a registrar in each office. Introduction of **information and communication technology** and modern management principles have changed this. There are only six **registrars** left which reside in the national headquarters. The day-to-day work is performed by internally trained staff, who will contact a registrar in case of an unclear or very complicated case. Until recently the public registers for each office were regarded as separate ones, but a change of the law in 2006 introduced **one nationwide (digital) public register** for real property.

The **statutory basis** of land registration is the **Cadastre Law** (*Kadasterwet 1992*, Law on the land registers and land registration). In addition to the Cadastre Law, the organisational structure Agency for Cadastre and Public Registers and relations with the government (the Ministry of Housing, Physical Planning and Environment) are laid down in the Organisation Law Cadastre 1994.

In the Netherlands, **all real property** has to be registered in the land register (since 1832).

As to the role of the **Dutch notary** in the registration process see 1.1 and 3.

3. Main steps of the conveyancing process

In the Netherlands, the standard conveyancing procedure takes the following main steps:

- **Conclusion of the contract of sale and transfer of ownership**: After having negotiated the terms of the contract, the parties usually draft a written contract, often by using a unified form. Parties often ask a real estate agent or a notary to **draft the contract**, but they may also do that themselves without professional assistance. When the buyer is a consumer buying a residential home, the contract has to be **in writing** as of 2003 (in other cases this is not obligatory, but also very common). Upon receipt of the contract (in case it has not been drafted by himself), the notary applies for registration of a **priority notice** (*Vormerkung*) in the land register. The notary's office does **on-line searches in the cadastral administrative database** (and other registers) and gets a copy of the previous deed of conveyance.

Normally, the buyer pays 10% of the purchase price as a **guarantee** into the notary's account. The notary then drafts the **deed of conveyance** and sends it to the parties. The buyer pays all monies into the notary's account (the purchase price, the notary's fee, the transfer tax, registration and other fees), and the cadastral administrative database is checked for the second time. Then, the buyer, the seller and the notary **sign the deed of transfer**. The notary is the last who signs and also puts the hour and minute of him doing so under his signature (this can set the rank in case two conflicting documents are registered simultaneously). Only the notary signs the identical copies (or extracts) that will be sent for registration.

The Dutch system distinguishes between the **sale (contract of sale)** and the **transfer, traditio (deed of conveyance)**: The sales contract has to be followed by

the deed of conveyance (which according to doctrine includes a second contract = real property agreement). The deed of conveyance has to be an authentic deed, drafted by a **Dutch notary**. One and the same notary acts on behalf of both parties, although in most cases the buyer selects and pays him.

The **transfer of ownership** requires a valid obligation contract (*causa*), consent on the transfer of ownership (implied in the deed of conveyance) and registration with the land register. Registration has a **constitutive effect** in the Netherlands: It proves that the parties have undertaken the transaction, but does not prove that the intended effect of the transaction did actually occur, nor repair substantive flaws in the transaction or underlying contract (the so called “negative system”).

- **Registration: Application for registration** requires an **authentic deed** drawn by a Dutch civil law notary. The application is done by presenting in person, sending by post or electronically the **duplicate of the notarial deed**. If the document is submitted by paper, this copy must be printed on the special **forms** to be acquired from the Agency; in addition a second duplicate on normal paper is handed in as well. This second duplicate will be stamped by the Agency adding the date of registration and the office, volume and number where the first duplicate is registered. The second duplicate is returned to the notary after that and when all is over sent by the notary to the buyer, usually with a cover stating (legally not completely true): ‘proof of ownership’. In case of an **electronic document** such a procedure is not needed. In this case the notary will receive after registration an (electronic) message from the Agency with the confirmation of the registration.

Although the law speaks about the seller and buyer being allowed to do the application for the registration, in practice, it is the staff of the **notary office** who plays a crucial role in the **registration process** (see above 1.1). This is also necessary to safely conduct the function the notary fulfils as an escrow; it is considered as the notary’s duty to record his deed as soon as possible. All notaries have **online access to the cadastral registration**, already for over a decade, and recently the registered deeds of the last years have been scanned and can be accessed online as well. Recent legislation allows for the notaries to **register deeds electronically**.

After registration of the deed at the public registers, the notary checks the **cadastral administrative database** for the third time, and when no interdictions or other problems are found, pays out the monies. By far most of the cases also involve a **mortgage** being lifted on the side of the seller (and his bank being paid the

remaining debt) and a new mortgage being created by the buyer. In practice, staff of the notary's office act under proxy in the name of the banks.

Due payment of the **transfer tax** is not a requirement for the registration of the transfer. However, the notary will not administer the deed when the money for the transfer tax is not in his possession (on the escrow account) as he is liable for non-payment of the transfer tax by the buyer. After registration, the notary will forward the to the tax department.

4. Professional services regulations

4.1 Legal services: notaries

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Netherlands	1,9	1,2	3,1	4,0	7,1	5,6

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

These are:

- **University degree** in notarial law.
- At least six years **practice** as a “candidate notary” under the supervision of a notary.
- Three years of **professional education** during the aforementioned six years.

Dutch notaries are appointed by the Dutch government.

Numerus clausus

In 1999, the Netherlands have **liberalised their notarial law**, abolishing the numerus clausus (see *below 5*). Notwithstanding that, applicants are not entirely free in the choice of their office location. In order to know whether an additional notary can be appointed in an area the **Ministry of Justice** usually takes into

account the number of notarial deeds and in some cases also the population as a reference. In addition, the applicant has to present a **business-plan** which proves that she/he can run a sound office within a period of three years.

Cross-border services

At present only Dutch citizens may become notaries. The **requirement of Dutch nationality** applies to Dutch notaries (and judges). The conveyance deed cannot be drawn up and executed by a foreign notary.

Inter-professional cooperation

Inter-professional cooperation is **allowed between notaries, advocates and tax advocates**. The cooperation must not affect the neutrality or impartiality of the notary ('Chinese walls'). When a notary acts as adviser of only one party s/he is not allowed to sign the deed without consent of the other party. Notaries are **not allowed** to provide the services of an advocate, a bank or a real estate agent.

Business structure

There are **no restrictions** on business structure. As to **geographical location**: A Dutch notary is appointed within a municipality; he is free to operate outside this municipality but he is not allowed to establish a branch office.

Market conduct regulations

Neutrality

The notary acts on behalf of both parties, and s/he is under a duty of neutrality.

Independence, impartiality and neutrality are the fundamental characteristics of a Dutch notary. They are laid down in inter alia the Dutch Notaries Act. These duties also translate into notarial instruction duties (information of parties involved or '*Belehrung und Beratung*').

Duty to provide services

The Dutch notary has a **duty to provide services in core functions** such as authenticating documents (family law, real estate, company law) and certifying signatures or taking the oath.

Professional standards

Notaries are subject to a set of **statutory duties** set out by the Dutch **Law on Notaries 1999**, and by **regulations** drawn up by the **Dutch Notarial Organisation**

(**KNB**), such as the duty to inform the parties of the results of the various checks, or to inform the parties on the consequences of certain contractual arrangements including their alternatives. **Details** have been specified and clarified by self regulation of the KNB and by verdicts of the local chambers of notaries.

- **Compulsory Indemnity Insurance**
- The **compulsory indemnity insurance** is 25 million €:
 - 1.000.000, € insurance by each notary individually,
 - Additional 24.000.000, € by the KNB (collective insurance).
This is controlled by the Financial Supervision Office (BFT).

Continuing education

Continuing education of at least 40 hours per two years is **mandatory** for each notary and candidate notary and is administrated by the KNB.

Advertising restrictions

There are no special advertising restrictions. General law applies.

Conduct control

Membership in the Dutch Notary Chamber is **compulsory**.

Conduct is controlled by the local disciplinary chambers of notaries and by the BFT (Financial Supervision Office).

Mandatory intervention

The involvement of a notary is mandatory for the draft of the **deed of conveyance** and the **deed of mortgage**.

Price and fee regulations

In 1999, the Netherlands have **liberalised their notarial law**, abolishing fixed notarial tariffs.

Fixed fees were released in phases within three years (between 1999 and 2002) and were completely abolished as from 2002. The outcome has been a stronger competition (on prices) and lower fees for (important) real estate transactions. Fees for family law have been raised. For details see the Dutch case study.

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

Real estate agents do not need a license (**abolished**).

A specific education in real estate business exists, but this is not an requirement. Certification is possible but not mandatory.

Objective requirements do not exist.

Cross-border services are **permitted**.

Inter-professional cooperation is **not** regulated.

Business structure is **not** regulated.

Market conduct regulations

Neutrality is **not** regulated.

Duty to provide services does **not** exist.

Professional standards

Only some **professional organisations** of real estate agents have internal professional standards (for instance NVM).

Compulsory Indemnity Insurance

Insurance is **not compulsory** (except for certified members of a real estate agents organisation).

Continuing education

No regulation (except for members of organisations such as the NVM).

Advertising restrictions

No restrictions.

Conduct control

There is only for some organisations (for instance NVM) conduct control.

Price and fee regulations

The real estate agent's fee is **freely negotiable**.

For details see the Dutch case study.

4.3 Technical services

Not relevant (see above).

5. Regulatory Reform in the Netherlands since 1950

5.1. Conveyancing

Changes in the market of conveyancing services and the profession of civil law notary in the Netherlands must be considered in **three main phases**.

- First, **licensed conveyancers were abolished in 1956** because of their lack of education and their errors in the field of conveyancing. **Since 1956 civil law notaries** are the only persons allowed to practise conveyancing. As mentioned above, the **intervention of a (civil law) notary is mandatory** for every transfer of real property. The same applies to land charges, condominiums (rights of apartment) and mortgages (section 3:98, section 5:109 and section 3:260 BW).
- The **second phase was the removal of the numerus clausus by the new Notaries Act of 1999**. Everybody who has a notarial law degree and at least six years experience as a 'candidate notary' under supervision of a notary is allowed to become a notary (for details see above).
- The **third phase consisted of the abolishment of fee regulation**. Fixed fees were released in phases within three years (**between 1999 and 2002**) and were completely abolished as from 2002. The outcome has been a stronger competition (on prices) and, as a result of this competition, there are lower fees for most real estate transactions, whereas fees for family law have risen. Lowest fees for notaries services may be found on various websites, for instance <http://www.degoedkoopstenotaris.nl> (meaning: the cheapest notary).

5.2 Contract drafting

Drafting of the obligatory purchase contract is **not regulated**. It is estimated that about 20% of the contracts are drafted by a civil law notary, in Amsterdam nearly 100% (see above).

6. The Dutch Real Estate Market

6.1. Transactions costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty 6 %	Total usual transfer costs
100.000 € sales price (no mortgage)	1.850,--	Not relevant	661,--	(Incl. in drafting)	113,--	6.000,-	8.624,--
100.000 € sales price + 100.000 € mortgage	1.850,-- (without valuation)	Not relevant	1.225,--	(Incl. in drafting)	186,--	6.000,--	9.261,--
250.000 € sales price (no mortgage)	4.625,--	Not relevant	693,--	(Incl. in drafting)	113,--	15.000.-	20.431,-
250.000 € sales price + 250.000 € mortgage	4.625,-- (without valuation)	Not relevant	1.350,--	(Incl. in drafting)	186,--	15.000.-	21.161,-
500.000 € sales price (no mortgage)	9.250,--	Not relevant	1.287,--	(Incl. in drafting)	113,--	30.000.-	40.650,-
500.000 € sales price + 500.000 € mortgage	9.250,-- (without valuation)	Not relevant	2.090,--	(Incl. in drafting)	186,--	30.000.-	41.526,-
Percentage VAT applicable	19 %	19 %	19 %				19 %

Please note: As all rates of real estate agents and notaries in the Netherlands are freely negotiable the transaction costs mentioned above can be only estimations.

6.1.1 Real Estate Agents

The real estate agent's **fee** is **negotiable** (see above).

In practice, the fee is **usually 2-3 %** of the transaction value. Recently it has become possible to hire the real estate agent only for parts of the process, against lower fees.

In case of a **mortgage** the valuation of the property by a certified real estate agent is usually required by the bank (see above).

The **seller and the buyer pay** their own real estate agent.

6.1.2 Technical Services

Technical services are not relevant (see above).

6.1.3 Legal Services

Fixed **notarial tariffs** have been abolished in 1999 (see above).

In practice, the fee is **usually between 0.5 to 2 % of the value** of the transaction.

There is usually only **one fee for all services** provided by the notary, paid by the buyer.

6.1.4 Land Register Fee

Land register fees are **regulated by statute** 634/2004 Coll. on administrative fees.

The fee depends on the type of registration. There are 3 types of registration:

- For every "entry" a flat fee applies (see table above),
- "notation" – 40 € fee,
- "record" – 0 € fee.

Usually the **buyer pays** the registration fees.

6.1.5 Taxes on Conveyancing

6.1.5.1 Transfer Taxes

Transfer tax is regulated **by statute**; it is 6 % of the value of the transaction.

6.1.5.2 Capital Gains Taxes

There are no capital gains taxes applying to the transfer of private property. Commercial trade with real estate is subject to general income tax.

6.1.6 Commercial or Office Buildings

No specific differences apply.

7. Service providers

All firms	Total number of firms	Total number of professionals (2006)	Total number of employees	Branch offices per firm	Percentage conveyance/ total services (add up to 100%)
Real estate agents	No data available	N.a.	N.a.	N.a.	N.a.
Advocates/ solicitors	3.028	13.340	N.a.	N.a.	N.a.
Civil law notaries	922	1.496 Notaries and 2.126 candidate notaries	N.a.	N.a.	Ca. 70 %

7.1 Key market data

Usage of Land

As of 31 December 2000:

- 68.9 % agriculture
- 10.8 % buildings
- 3.3 % infrastructure
- 9.0 % inland water areas

(Source: Statistisch Jaarboek 2000)

Property ownership (2005)

- ca. 56 % of all households are owners of the house or apartment in which they live
- ca. 42 % of all households are tenants of the house or apartment in which they live.

(Source: Department of VROM 2005).

Property transactions

	2000	2001	2002	2003	2004	2005
Transfer of real estate (number of notarial deeds)	422.000	407.000	411.000	404.000	444.700	478.200
Mortgages (number of notarial deeds)	563.000	534.000	553.000	598.000	702.900	770.900

The number of mortgages (for ex. 770.900 in 2005) is higher than the number of real estate transfers (for ex 478.200 in 2005) as refinancing mortgages have also been considered here.

(Source: Jaarverslag Kadaster 2005)

Transfer tax 2005

Expected amount: 4.300.000.000,00 €

(Source: CBS-website, Oktober 2006)

XV. Poland

1. Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 40 % (25-50 %)	Technical services (rare)	Contract drafting (50 %, in commercial transactions)	Mandatory intervention see below	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (25 %)	Notary (80-90 %) Estate agents (5-10 %) Advocate (commercial transactions) Parties	Professional involvement frequent as only a notarial preliminary contract may be enforced	Fixed maximum fees
Preliminary checks (land register, administrative permits)	- Estate agents (debts) - Advocate (in commercial transactions) - Notary: land register, pre-emption rights, administrative permits	Notary: professional duty (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	Notary (notarial act)	Notarial act mandatory for sales contract	
Legal advice or counselling	Notary	Professional duty of notary (as part of contract drafting)	
Certification of signatures	Notary	Mandatory as part of notarial act	
Contract execution (transfer of payment and registration)	Notary	Professional duty of notary	
Taxation (esp. transfer tax)	Notary: tax retention	Professional duty of notary (as part of contract execution)	

1.1 Notary

In Poland, the notary is involved on a **mandatory** basis in conveyancing. Preliminary contracts are often done as a notarial act as they are not enforceable otherwise. In **consumer sales**, it is the notary who prepares the **main sales contract** in the form of a **notarial act**. In **commercial sales**, the parties may, with the help of lawyers, pre-negotiate and agree upon a **preliminary contract**, which is then submitted to the notary. S/he transfers the main contents of such a contract into the notarial act. In sum, more than 95 % sales contracts are thus drafted by notaries.

The notary is obliged to check **statutory pre-emption rights** and some **administrative permits** (e.g. permit for foreigners to acquire land, “independence” certificate for newly constructed houses). The notary is also obliged to send the notarial act to the **land register** for registration and to pay the **land registry fees** on behalf of the parties.

If the parties agree to deposit an advance payment (frequent for reservation purposes) on the **notarial escrow account**, the notary normally releases the money after the conclusion of the notarial act.

The notary also plays a crucial role in the **taxation process**, i.e. s/he collaborates in tax collection.

1.2 Advocate

An advocate is **not mandatory** in the conveyancing process. It is only in **commercial sales** that an advocate (solicitor/advocate/employee of a law firm) often (in an estimated 50 %) prepares the **draft contract** and checks whether there are debts of the seller which lay on the land.

1.3 Real estate agent

A real estate agent is involved in **25-50 %** of the residential property sales in urban areas. In **consumer sales**, it is usually the real estate agent who checks whether there are debts of the seller which lay on the land.

1.4 Technical services

Technical services, especially those of a property valuer are **not mandatory** and **rarely used** in consumer transactions. The main exception lies where the sale is financed by a bank which usually requires that a property valuation be obtained. In commercial sales, technical services are more common.

The European Energy Performance directive 2002/91/EC has been transformed into Polish law, but the relevant certificates will not become mandatory until the beginning of 2009.

2. Land register

Poland follows a **dual land registration system**. There is a **mortgage register**, the main purpose of which is to register titles and encumbrances, and a **land and buildings register**, which describes the physical features and the use of the land and buildings. The function of the latter is only informative.

The **statutory basis** for land registration is the Law of 6 July 1982 on mortgages and mortgage registers.

There are **electronic and paper mortgage registers** existing alongside each other. Among the 347 mortgage register divisions of district courts, 82 divisions maintain an electronic mortgage registry. The electronic mortgage registry requires a special written form to be filled in by the parties.

3. Main steps of the conveyancing process

In Poland, the standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership:** After the parties have negotiated the contents of a sale, they often conclude a preliminary contract if there are obstacles to be overcome; these include public law provisos such as permits or preemption rights. Any sales contract must be concluded in the form of a **notarial act**, otherwise it is void. Whereas in consumer sales the notary normally drafts the contract directly himself, in commercial sales the parties often submit drafts prepared by their advocates and the notary transposes the main contents of these

drafts into the notarial act. **Ownership** is transferred automatically following the conclusion of a valid sales contract (causal system adopted from French law) unless the parties have agreed otherwise. However, a conditional transfer of ownership is not possible; if the parties want to link the transfer of ownership with the full payment of the purchase price, they must conclude an additional transfer agreement with notarial form once the buyer is ready to pay. The registration with the mortgage register has only a declaratory effect and does not entail the transfer of property.

- **Registration:** The simple **written form** is required for the application for registration. The **notary usually applies** for the registration on behalf of the parties. S/he is obliged to include in the notarial act a **registration motion** which needs to be sent to the relevant mortgage register court within 3 days of execution. The notary is also obliged to pay the **registration fees** on behalf of the parties. However, s/he is not allowed to control the completion of the registration process, as s/he is not regarded as a party to the proceedings.

4. Professional services regulations

4.1 Legal services: civil law notaries

Regulation Index for Notaries:

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Poland	5,6	4,7	10,3	4,0	14,3	3,2

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

A person applying for the appointment as a notary must hold a **master of laws degree** from either a Polish university or a foreign one recognized in Poland. S/he is required to pass a **State exam**, to undergo a special **notarial traineeship** and then to work as an **assistant notary** for at least three years. Some exceptions apply for law professors, judges and alike.

Objective requirements

Whilst there is no formal *numerus clausus* for notaries, the number of notaries is controlled by the Minister of Justice, who determines the seat of each notarial office. The Minister of Justice allocates new seats in order to supply the territory of Poland with notarial services equally.

Barriers to cross-border services

A notary may only be a **Polish citizen** whose civil and citizen rights have not been restricted. Notarial services shall be provided in **Polish**. However, if requested by a party to the transaction, a notary may perform a service in a **foreign language**, either by drawing on his/her own knowledge of a foreign language at the level of sworn translators and interpreters or by asking a sworn translator and interpreter for assistance.

Inter-professional co-operation

Inter-professional co-operation is **not allowed**. Also, without prior approval by a Council of the relevant Chamber of Notaries, a notary must not take up any **additional employment**.

Business structure and geographical location

A notary is **usually** running a notarial office as a sole practitioner. Several notaries may run a common office pursuant to a civil agreement or in a **professional partnership**. However, each notary handles legal transactions in his/her own name and is fully liable for her/his services.

The Minister of Justice, at the motion of the interested person and in consultation with the competent Notarial Chamber, appoints the notary and determines the **seat of his/her office**. Each notary is only allowed to run a single office.

Market conduct regulations

Neutrality

The notary acts **on behalf of both parties**. S/he is under a **duty of neutrality** and shall ensure due protection of rights and interests of the parties to the transaction and other persons who may be legally affected by the transaction.

Duty to provide services

Since notaries offer a **public service**, they shall offer these services upon request. The notary may only **refuse** to provide illegal notarial services.

Professional standards

The standards of professional services are partly regulated in the Notaries Act (e.g. rules on confidentiality), partly in a **Code of Ethics** issued by the National Chamber of Notaries. The most **important standards** mentioned in the Code of Ethics are: honesty, reliability, independence, impartiality and confidentiality.

Compulsory Indemnity Insurance

Indemnity insurance is **compulsory**. The **minimum amount** for civil liability insurance is 25,000 €. The relevant Chamber of Notaries is obliged to control whether such indemnity insurance has been contracted.

Continuing education

Notaries are under a **duty** to continuously upgrade their professional qualifications. The law assigns the control of this duty to the Minister of Justice, and it is exercised by the presidents of the competent Courts of Appeal. The determination of the forms of such education is in the discretion of the Minister.

Advertising restrictions

Any kind of advertising is **banned**.

Conduct control

Membership in the relevant **Chamber of Notaries** is **compulsory**. Notaries belonging to the relevant Chamber of Notaries are supervised by the members of the **Council** of that Chamber or specially appointed notaries not belonging to the Council or notaries emeritus.

Mandatory intervention

A notarial act is mandatory for any contract in relation to real property including the preliminary contact (if existing) and the main sales contract entailing the transfer of property.

Price and fee regulations

For Polish notaries there is a **fixed maximum fee**, which has been enacted by the Minister of Justice in an **Ordinance of June 28th, 2004**, on the basis of the Polish Notaries Act 1991 (with further amendments).

The fixed notarial fee depends on the value of the transaction as indicated as the purchase price in the notarial act.

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

Real estate agents need a **state reviewed licence**. A person applying for the licence of the real estate agent must fulfil the following conditions: s/he holds a master degree, has passed a **State exam** and **postgraduate studies** on real estate services (this is not required if the master degree is in the real estate management), and s/he has completed a **traineeship** of not less than 6 months.

Objective requirements do **not** exist.

Cross-border services

It is **possible** for foreign nationals to become real estate agents in Poland under condition that they fulfill the entry criteria for a licence mentioned above. There is an additional requirement for foreign nationals to be fluent in **Polish**.

Inter-professional cooperation

A real estate agent **must not** become a partner of a notary or an advocate, but s/he can form a **partnership** with a property valuer.

Business structure

Alongside acting as a single practitioner, an agent may be employed by another agent or establish a partnership with other agents (it is not however possible to mix own business activity with employment). There is no limit on the number of partners.

Market conduct regulations

Neutrality

Following the **Code of Ethics** for real estate agents they shall act in an equal and fair manner towards all parties to the transaction.

A Duty to provide services does **not** exist.

Professional standards

The professional standards for real estate agents' services are set out by the **Code of Ethics** for real estate agents.

The **most important duties** are acting with due diligence and protecting the interests of her/his clients.

Compulsory Indemnity Insurance

Indemnity insurance is **compulsory**. The **minimum amount** of the civil liability insurance is 25.000 €. Sole practitioners usually stick to the minimum amount whereas the larger agencies tend to have better insurance.

Continuing education

Continuing education is **mandatory**, and it is controlled by the Minister of Transport and Construction. There is a **credit point system**, and each real estate agent must collect 10 points within 24 months.

Advertising restrictions

General advertising regulations, in particular the rules on unfair competition apply to real estate agents as well.

Conduct control

There is **no permanent** conduct or quality control provided by the State or by a professional organisation. The party who is not satisfied with services of a real estate agent can submit a complaint to the **Minister of Transport and Construction** which will be forwarded to the **Professional Disciplinary Committee**. The members of that committee are appointed by the minister. The committee may impose several kinds of sanctions.

Price and fee regulations

There are **no mandatory** or fixed fees.

For fees in practice see below (transaction costs).

4.3 Technical services: property valuers

Market entry and structure regulations

Subjective requirements

These are: a **master degree** in law, economics or technical studies; a **State exam**; completed **postgraduate studies** on property valuation (this is not required if the master's degree is in the real estate management); completed property valuation **traineeship** of not less than 6 months.

Objective requirements do **not** exist.

Cross-border services

See above (real estate agents).

Inter-professional cooperation

A property valuer **may not** become a partner of notary or advocate, but s/he can form a **partnership with a real estate agent**.

Business structure

A valuer may be employed by, or establish a partnership with other valuers.

Market conduct regulations

Neutrality

A property valuer is under a **duty of neutrality**. Also, a property valuer must not assess his/her own property or the property of a family member. This applies not only to the extent to which explicit legal prohibitions exist but also when his/her objectiveness might be considered to be at risk.

A Duty to provide services does **not** exist.

Professional standards

Professional standards are set out by a **Code of Ethics** for property valuers

The **most important standards** mentioned in this Code of Ethics are: honesty, reliability, due diligence, impartiality and confidentiality.

Compulsory Indemnity Insurance

Indemnity insurance is compulsory, the **minimum amount** being 25,000 Euro.

Continuing education

See above (real estate agents).

Advertising restrictions

A property valuer **must not** advertise or promote **unfairly**. This is the case in particular if the dignity of his/her profession or prejudices other property valuers services would be adversely affected. In comparison to real estate agents, property valuers are therefore **more restricted** in advertising their services. However, these restrictions are not as severe as for notaries and advocates.

Conduct control

See above (real estate agents).

Mandatory intervention

The intervention of a technical expert is **not mandatory**.

Price and fee regulations

There are **no price regulations**. However, the **Code of Ethics** for property valuers states that the price should not be unworthy for one's work.

For fees in practice see below (transaction costs).

5. The Polish Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	2,000 €		677 €		50 €	10,000 €	12,727 €
100,000 € sales price + 100,000 € mortgage	2,000 €	250 €	677 €		50 €	12,025 €	15,002 €
250,000 € sales price (no mortgage)	3,750 €		1,430 €		50 €	25,000 €	30,230 €
250,000 € sales price + 250,000 € mortgage	3,750 €	250 €	1,430 €		50 €	30,062 €	35,542 €
500,000 € sales price (no mortgage)	6,250 €		2,050 €		50 €	50,000 €	58,350 €
500,000 € sales price + 500,000 € mortgage	6,250 €	250 €	2,050 €		50 €	60,125 €	68,725 €
1,000,000 € sales price (no mortgage)	1 % 10,000 €		3,300 €		50 €	100,000 €	113,350 €
1,000,000 € sales price + 1,000,000 € mortgage	1 % 10,000 €	250 €	3,300 €		50 €	121,000 €	134,600 €
5,000,000 € sales price (no mortgage)	0.5 % 25,000 €		3,600 € (maximum)		50 €	500,000 €	528,650 €
5,000,000 € sales price + 5,000,000 € mortgage	0.5 % 25,000 €	250 €	3,600 € (maximum)		50 €	515,000 €	543,900 €
% VAT	22 %	22 %	22 %		-		
Comments		Assuming a residential building is sold	Notarial fee		Change in mortgage registry	Stamp duty: 2 % + 0.1 % on mortgage	

5.1.1 Real Estate Agents

The **usual amount** that agents charge is from **1 to 3 %**, but it tends to get lower for larger transactions (see above).

As commissions may be **negotiated**, prices vary; prices in the table are indicated as examples. So for 100,000 € sales price the fee is 1-3 % (1,000-3,000 €), for a 5,000,000 Euro sales price the fee might be 0.5 % (25,000 €).

The fee is **paid by both parties separately**, but there are several options to avoid this, in particular shifting the whole commission to the buyer. In case of the sale being financed by a bank, it might be observed that the costs of real estate services are sometimes taken over by the bank which gives a mortgage-backed loan to the buyer.

5.1.2 Technical Services

The use of technical services in Poland is rare unless the purchase is financed by a bank (see above). Thus, in the table above, technical services are included, when a **mortgage** is created.

The **costs** depend on the scope of technical services provided. This is to be directly negotiated with a property valuer.

In **practice**, the usual fee for a valuation of the real estate property ranges from **200 to 400 €**. For standard **consumer sales**, it should not be higher than **200 €**. The estimates for valuation in the table above are based on prices in Warsaw (capital of Poland). Prices may vary in other regions.

Usually the **buyer pays** for technical services. It should be mentioned that nowadays the seller's due diligence becomes popular.

5.1.3 Legal Services

The notary's fees are **mandatory fixed maximum fees** regulated by the Ordinance of the Minister of Justice and depending on the value of the transaction (see above). The parties may **negotiate** with the notary to get lower fees. However, it is not very **common** for the parties to succeed in getting a lower fee as notaries tend to apply the maximum fees and not to compete between themselves very much.

The **maximum fee** set is calculated on the value of the notarised transaction and **ranges** from: 770 € sales price = 25 € fee, up to: 256,000 € sales price = 1,470 €

fee + 0.25 % of the amount over 256,000 € (but not more than six times the average monthly salary in the national economy in the previous year announced for pension purposes in the Monitor Polski Official Journal of the Republic of Poland by the President of the Central Statistical Office, which shall apply for one year starting from the second quarter of each year). It is the **buyer** who pays the notary fees.

If the parties (in particular institutional parties) request **additional advocate services**, the fees depend on the scope of services provided. Who pays the fees depends on whether one or both parties are requesting additional services.

5.1.4 Land Register Fee

The land register fees are **fixed by statute**⁷⁴.

The fee is a flat fee depending only on the type of registration:

- ca. **50 €** (200 PLN) for changing an existing file,
- ca. **15 €** (60 PLN) for opening a new file,
- additional **19 €** will be due if the creation of a new mortgage register file is necessary.

The **buyer** usually pays the registration fees.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

Stamp duty (tax on civil transactions) is:

- 2 % (for consumer and for commercial sales)
- An additional stamp tax of 0.1 % of the mortgage value applies.

Usually, the **seller pays** the taxes. The tax payment is not a requirement for the registration.

The notary collaborates in the tax collection.

5.1.5.2 Capital Gains Taxes

Other taxes on the transfer are:

⁷⁴ Law dated on 28 July 2005 on Court Fees in Civil Cases.

- for **consumer sales**: 10 % income tax. The 10 % income tax is payable only if the property is sold before 5 years from its initial acquisition. Other exceptions include:
 - the share of income that is used to buy another property (or share in property or to pay a credit for previously acquired property) within 2 years from a sale (the seller has 14 days to inform the tax office that the income will be used to buy another property),
 - the sale is free of tax if the property was acquired through donation or inheritance.
- for **commercial sales**: 22 % VAT. The buyer is exempted if s/he states that the transaction was for purposes listed in the Act of VAT.
 - The sale is free of tax if a building used for commercial purposes is sold or transferred to a company as a contribution in kind.
 - Both the 10 % of the income tax and the 22 % of the VAT are based on the purchase price.

Usually, the **seller pays** the taxes. The notary collaborates in the tax collection (see above).

5.1.6 Commercial or Office Buildings

There are some **differences** in taxation between commercial and residential buildings (*see above*).

5.1.7 Changes in Transfer Costs

The stamp duty and the income tax have not changed since 1991.

There have been some **significant decreases** of **notary fees** laid down by the Ministry of Justice over the past few years. The following shows the evolution of notary fees:

1995 (Dz.U. 1994, nr 130, pos. 654)		2001 (Dz.U. 2001, nr 35, pos. 414)		2004 (Dz.U. 2004, nr 148, pos. 1564)	
Up to 2.568 € (10.000 PLN)	3 %	Up to 1.283 € (5,000 PLN)	51 €	Up to 770 € (3 000 PLN)	25 €
From 2.568 € (10.000 PLN) up to 5.137 € (20.000 PLN)	77 € + 2 % of the amount over 2.568 €	From 1.283€ (5,000 PLN) up to 3,851 € (15,000 PLN)	51 € + 3 % of the amount over 1.283 €	From 770 € (3 000 PLN) up to 2.568 € (10 000 PLN)	25 € + 3 % of the amount over 770 €
From 5.137 € (20.000 PLN) up to 12.833 € (50.000 PLN)	128 € + 1 % of the amount over 5.137 €	From 3,851 € (15,000 PLN) up to 7,700 € (30,000 PLN)	128 € + 2 % of the amount over 3,851€	From 2,568 € (10 000 PLN) up to 7,700 € (30 000 PLN)	80 € + 2 % of the amount over 7,700€
over 12.828 € (50 000 PLN)	205 € + 0.5 % of the amount over 12.833 €	From 7.700 € (30,000 PLN) up to 15,400 € (60,000 PLN)	205 € + 1 % of the amount over 7,700€	From 7,700 € (30 000 PLN) up to 15.400 € (60 000 PLN)	182 € + 1 % of the amount over 7,700 €
The notary fees could not be higher than 1.283 € (5 000 PLN).		From 15,400€ (60 000 PLN) up to 256,922 € (1,000,000 PLN)	228 € + 0.5 % of the amount over 15,400 €	from 15,400 € (60,000 PLN) up to 256,922 € (1,000,000 PLN)	282 € + 0.5 % of the amount over 15,400 €
		Over 256,922 € (1,000,000 PLN)	1,490 € + 0.25 % of the amount over 256.922. €	Over 256,922 € (1,000,000 PLN)	1,467 € + 0.25 % of the amount over 256,922 €, (but not more than the above mentioned limit of six times an average monthly indexed salary)

[Please bear in mind that Polish zloty has been denominated on the 1st of January 1995 in accordance with the following ratio: 10,000 PLN to 1 PLN]

In **September 2006**, the Polish Minister of Justice has again announced that the maximum notary fees **will be decreased significantly**, though the ordinance has not been published yet.

5.2 Service providers

TOP 10	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm	Average cost per firm	% conveyance / total services (add up to 100 %)
Real estate agents	10	104	338	7	N.a.	N.a.	N.a.	N.a.
Notaries	10	415	1.276	2	N.a.	c. 12,3 mln €	N.a.	N.a.

n.a. = not available

5.3 Key market data

Average prices in 2005:

Average price for one square meter of residential premises was 320 €.

Average price for land (to be used for construction) for one square meter was 9.50 €.

Market share for price segments

Price (in Euro)	Residential property sales	Commercial property sales
Up to 100,000.- €	60 %	20 %
100,000.- up to 250,000.- €	25 %	50 %
250,000.- up to 500,000.- €	10 %	20 %
More than 500,000.- €	5 %	10 %

Development of price index

Types of property	2004 (in € /m2)	2005 (in € /m2)
Residential premises	298	358
Non-residential premises	283	284
Residential buildings	151	211

General Market Situation:

- tendency towards higher prices in better locations
- accession of Poland to the **European Union** brought some speculative capital on the land market which affected prices
- **important local market divergences**

XVI. Portugal

1. Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 85 % (80-90 %)	Energy certificate mandatory	Often involved by the buyer for assistance throughout the whole conveyancing process	Mandatory intervention see below	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (usual)	Advocate Notary (or parties)	Mandatory authentication of the parties' signatures by notary on preliminary contract too	Notary: fixed fees Advocate: negotiable fees
Preliminary checks (land register, administrative permits)	Notary: land register, building permit	Professional duty of notary (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	Notary	Mandatory involvement of the notary: notarial act necessary for registration	
Legal advice or counselling	Notary	Professional duty of the notary (as part of contract drafting)	
Certification of signatures	Notary	Mandatory involvement of the notary: authentication of the parties' signatures	
Contract execution (transfer of payment and registration)	- Notary (registration process) or - Advocate (registration process)	Professional involvement is not mandatory but usual	

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Taxation (esp. transfer tax)	Notary	Professional duty of notary: control of transfer tax payment	

1.1. Notaries

In Portugal, the mandatory involvement of the notary extends to the **drafting of the contract and the authentication of the parties' signatures** (art. 875 CC). The latter authentication of the parties' signatures is also mandatory for a preliminary contract (art. 410 par. 3 CC). Before drafting the contract, the notary controls both the **land register** and the **building permit**. Conversely, the notary is **not involved in payment**: There is no notice of payment by the notary, and notarial escrow accounts do not normally exist. The notary is however involved again in the execution of the contract: he may be mandated to administer the **registration** (application and control) and **taxation process**. He must not apply for registration of the land transfer, unless the parties have proved payment of the **transfer tax** (*Impuesto Municipal de Transmissoes*).

1.2. Advocates

Advocates are **not mandatory** in conveyancing, but in practice an advocate is **often** involved by the buyer for assistance throughout the whole conveyancing process. In particular, the buyer may consult an advocate for advice on the content of the contract and its financial consequences. The advocate may also draft a **preliminary contract** and represent the buyer in the **transfer and registration process**. Thus, the application for registration may be submitted by the advocate and the payment of the registration fee administered by him.

Advocates representing the seller are less common, but in complex transactions, e.g. selling commercial premises or dwellings subject to several rental contracts, they may be involved to advise the seller on the content of the contract and tax matters.

1.3. Real estate agents

Real estate agents are **not mandatory** in the conveyancing process, but in practice they are involved in 80-90 % of the sales of residential properties. The percentage is particularly high in urban centres.

The **seller** is usually represented by a real estate agent in order to **find a buyer** at the best price possible. Real estate agents upon request **estimate the value** of the property and suggest a price accordingly. In a number of cases, they also **draft the sale agreement**. Sometimes the **buyer** might mandate a real estate agent to find a property which fulfils his or her specific wishes. Finally, real estate agents may also give financial advice.

1.4. Technical experts

Energy consultants

The energy consultant's task is to draft an **energy certificate**, which needs to show the building's energy status. The services provided by energy consultants are **in some cases mandatory**. Pursuant to the decree-law 80/2006 (implementing, partially, the EC directive on energy performance of buildings, 2002/91/EC), an energy labelling shall be carried out (Art. 12, 2, f) in order to certify the compliance with energy requirements of the *Regulamento das características térmicas dos edifícios* (Regulation on energy features of buildings, approved by the above-mentioned Act). Architects, engineers or technical engineers may act as energy consultants.

Building experts

The services provided by building experts are **neither mandatory** nor usual. Nevertheless, they play an **important role in the selling of old houses** which are often sold with an expert's report setting out information on their running costs. This fact is important as the Portuguese market is more dynamic as far as old houses are concerned.

2. Land registration

The registration of land and property is carried out by the **Land Registry**, which is a **national authority** under the control of the **Ministry of Justice**.

The **registrar** is a legally trained office holder who works on a functionally autonomous basis; registrars depend also on the Ministry of Justice, General Directorate of Registries and Notaries (*Direcção Geral dos Registos e Notariado*).

The **statutory basis** for land registration is the Land Registration Code, approved by Decree-Law 224/84, of 6 July (hereinafter CRPre); it is in force for the whole country. According to Article 19 CRPre, registration is made in the Land Register Office with **territorial competence** where the building is placed. If a building is located in the area corresponding to multiple Land Registries, registration must be effected in all of them.

3. Main steps of the conveyancing process

In Portugal, the standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership:** After agreement has been reached on the terms of the transaction, the parties usually sign a **preliminary contract**. Theoretically, it is possible for the seller to give a unilaterally binding preliminary promise only, but in practice, normally both the seller and the buyer sign a preliminary contract. For its valid conclusion, the parties' **signature(s)** need to be certified by the notary (art. 410 par. 3 CC), and the notary must declare that a building or use permit exists. However, the lack of one of these requirements entitles only the buyer to avoid the contract, so that in practice the parties often do without the notarial certification of signatures. A **down payment** which amounts to 5-20 % of the purchase price is usually made at the signature of the preliminary contract.

As the next step, the **principal contract** is negotiated and drafted. Similar as in Spain, this is usually done in a very succinct form, limited to basic terms. The draft may be done either by the parties, the real estate agent, the advocate or the notary. However, the sales contract must then be concluded in the form of a **notarial instrument** (art. 875 CC). The **transfer of ownership** is the automatic legal consequence of the conclusion of a valid contract, unless, as it often happens, the seller has **retained title** until the purchase price (totally or in a certain percentage)

has been paid. Usually, however, the purchase price is paid directly in front of the notary when the sales contract is signed.

- **Registration:** After the conclusion of the contract, the buyer (or her/his advocate or the notary) applies for the registration of the notarial contract in the land register. As in other Roman systems, registration does not entail the transfer of ownership (“declaratory” vs. “constitutive” effect of registration), but is necessary to render the buyer’s rights opposable towards **third parties**.

4. Professional services regulations

4.1 Legal services: notaries and advocates

A) Notaries

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Portugal	5,0	6,0	11,0	4,0	15,0	4,5

*Please note: The MII is an index per country and not per profession.

Until 2004, Portuguese notaries used to be civil servants, which was a remainder of the Sanlazar dictatorship which had abolished their former status as liberal professionals in the 1930ies. In 2004 (Law-Decree 27/2004, 4 February), the former situation was re-established. This included the creation of a professional association (*Ordem dos Notários*) to which administrative and regulatory competences were attributed. With this reform, Portugal rejoined the family of the classic Latin notary system.

Market entry and structure regulations

Subjective requirements

Portuguese notaries must have a **law degree** and pass the **national admission exam (concours)**. After **professional training** which may last of up to 5 years, they must apply for **admission** to the *Ordem dos Notários* (Article 7, n. 1 e n. 2, Law-Decree 27/2004, 4 February, *Estatuto da Ordem dos Notários*, hereinafter EON) in order to be allowed to practise.

Objective requirements

There is a system of ***numerus clausus***, which is however under discussion today. In the last concours which took place in July 2006, there were about 200 vacancies for notaries to be filled.

Cross-border services

Only candidates in possession of a **Portuguese law degree** or a foreign degree acknowledged under the principle of reciprocity are allowed to participate in the concours for notaries.

Inter-professional cooperation

Inter-professional cooperation is **not regulated** in the *Estatuto da Ordem dos Notários*. In practice, such cooperation does not seem to exist.

Business structure

The notary always acts as **sole practitioner**. Other structures are not allowed.

Market conduct regulations

Neutrality

The notary shall be **impartial**; he cannot act as an advisor of only one of the parties (Article 33 EON and Article 13 EON).

Duty to provide services

According to Article 23, 1, c) EON, **denial** of services is only possible if there is a legal reason to do so.

Professional standards

Notaries shall adhere to **deontological rules**, in particular confidentiality, loyalty and transparency. The notary must behave loyally towards his clients and any public or private entities. In particular, s/he shall be in contact with the land registrar in case of doubts or mistakes.

Compulsory indemnity insurance

Notaries shall take out a **professional liability insurance** (Article 23, n. 1, *m* EON). The **minimum amount** requested is 100,000 €.

Continuing education

According to Article 38, n.1 EON, there is a **deontological duty** of continuously updating professional knowledge. Beyond this, there is no mandatory form of continuing education.

Advertising restrictions

Advertising is **forbidden** without exceptions.

Conduct control

Notaries are subject to disciplinary control by the **Minister of Justice** and the **Notaries Professional Association** (*Ordem dos Notários*, Article 3 EON). The *Ordem dos Notários* must cooperate with the Ministry in its exercise of disciplinary powers (Article 3, 1 EON).

Mandatory intervention

The **mandatory involvement** of the notary extends to the drafting of the sales contract and the authentication of the parties' signatures, including on any preliminary sales contract.

Price and fee regulations

Notarial fees are **fixed by statute** (*Tabela de honorários e encargos notariais*) on the basis of the value of the transaction (see below sub 5). They are not calculated as a % of the property value but operate as a flat fee. The flat fee increases with the value of the property. From 2008, fixed notary tariffs will be removed completely.

B) Advocates

Table: Regulation Index for Advocates (country with “latin” notaries)

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Portugal	2,0	1,5	3,5	4,0	7,5	2,5

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

In order to practise as an advocate, the professional shall be admitted to the *Ordem dos Advogados (Portuguese Bar Association)*. Advocates have a law degree, undergo a training period of almost two years and pass a **national examination**.

Objective requirements do **not** exist.

Cross-border services

Advocates admitted to a Bar in other **EU Member States** will be admitted to the Portuguese Bar provided that they fulfil the terms stated in the Diploma Directive (Directive 89/48/EEC). On the basis of the **right of establishment**, advocates may also be admitted under their home title to the Portuguese Bar (the Establishment Directive 98/5/EEC).

Inter-professional cooperation

An advocate shall act in accordance with **professional rules** and on behalf of his client's interests. Therefore, if cooperation is deemed to be required it has to satisfy the **client's interests**.

Advocates are not allowed to provide **estate agents services** (*stricto sensu*; they play however an important role in advising real estate agencies), neither can they practise simultaneously as **notaries**. As to the relationship **amongst advocates** there is a chapter on the *Estatuto da Ordem dos Advogados* (approved by Law 15/2005, 26 January) holding that there is a principle of solidarity, but always in favour of the clients. Communications are subject to confidentiality.

Business structure

Advocates may practise either as **sole practitioners, in partnerships or in limited or unlimited liability companies**. There is no control on the number of partners or firms.

Market conduct regulations

Neutrality

The advocate acts usually **on behalf of one party**. Professional guidelines stating the rights and duties of advocates were recently approved by Law 15/2005, 26 January (*Estatuto da Ordem dos Advogados - EOA*). If there is a **conflict of interests**, the advocate must not accept the cause or must terminate the contract (Article 94, EOA).

Duty to provide services does **not** exist.

Professional standards

The **Portuguese Bar Association** supervises the observance of professional duties and may apply sanctions.

Courts are also important as far as definition of professional standards is concerned. Since a general standard applies (the professional is not liable if s/he acted according as *bonus pater familiae* under the particular circumstances of the case, Article 483 Civil Code), the courts develop **guidelines** on how to interpret it.

Compulsory indemnity insurance

All advocates shall take out **professional liability insurance** (Article 99 EOA). The group insurance policy approved by the Bar Association offers, for the year 2006, a minimum amount of 100.000 € (per advocate, per damage and per year).

Also **limited liability companies** composed of advocates have to be insured (Article 37 Law Decree 229/2004, 10 December). The minimum amount corresponds to 50 % of turnover per year, with a minimum of 50,000 € and a maximum of 5,000,000 €.

Continuing education is **not mandatory** for the profession but usual.

Advertising restrictions

The Statute of the *Ordem dos Advogados*, in its Article 89, allows advertising as long as **professional conduct rules** (including confidentiality) and **general rules on advertising** are respected. There is also a list of acts that might be deemed as lawful (or unlawful) advertising.

Conduct control

The **Portuguese Bar Association** is competent to supervise that advocates adhere to the legal and ethical rules applying to the legal profession.

Mandatory intervention

The involvement of an advocate is **not mandatory**.

Price and fee regulations

There is **no specific price regulation** as to fees charged by advocates for services provided in conveyancing. Some firms offer register services and drafting agreements services under fixed prices.

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

Real estate agents shall fulfil a **number of statutory requirements** in order to obtain a **licence** to practise, as stated in Article 6, Law-Decree 211/2004, 20 August (regulating the practice of real estate agents). In order to obtain a licence, the real estate agency must be a **commercial entity** and have no debts to the State (including social security debts).

Real agents must show **professional capacity** (having secondary studies, according to Article 7 and passing an exam) and must also prove liability insurance.

There is an **admission exam**. However, candidates who have a degree or even a bachelor degree in related subjects such as law, architecture and others are not required to undergo the exam.

Objective requirements do **not** exist.

Cross-border services

It is possible for **foreign nationals** to be licensed as real estate agents. In case of corporations of agents located abroad, professional competence is controlled by the Portuguese agents within these corporations (Article 7, n. 7 Law -Decree 211/2004).

Inter-professional cooperation

Real estate agents cooperate with banks, insurances, notaries or even advocates on behalf of their clients. There are **no formal regulations** on the matter.

Business structure

Under the provisions of Article 6, n. 1, a Law-Decree 211/2004, real estate agents may only practice in **commercial corporations**.

Market conduct regulations

Neutrality

The real estate agent acts on **behalf of his client**. It is forbidden to accept payments from both parties (Article 16, n. 2, a Law-Decree 211/2004), but the real estate agent can represent them both. In this case, the payment is due by the first who contracted the real estate agent, unless there is an agreement on dividing the fees (Article 18, n. 6 Law-Decree 211/2004).

A Duty to provide services does **not** exist.

Professional standards

The **statutory duties** include supplying the client with information on the legal status of the property, on the conditions of the contract and on any obstacle which might endanger the validity of the contract (Article 16 Law-Decree 211/2004). The establishment of an estimate of the value of the property and the drafting of the sale and purchase agreement may be contractual duties as well.

Compulsory indemnity insurance

Required by statute (Article 6, n.1, e and Article 23 Law –Decree 211/2004, 21 August), real estate agents shall be covered by a professional indemnity insurance. The Portaria 66/2005, 25 January, approved the general clauses of the insurance contract. It only covers pecuniary damages. The **minimum amount** is 150.000 € (Portaria 1324/2004, 19 October).

Continuing education is mandatory.

A mandatory credit point system is established to ensure continuing education. Attending conferences, specific courses or even studying at a university or obtaining a post-graduate degree confer the required *créditos* (6 points or créditos are required according to Article 10, n. 2, Portaria 1326/2004, 19 October).

Advertising restrictions

General advertising regulations in the Portuguese Marketing Act apply to real estate agents as well.

Conduct control

Many real estate agents are members of the **professional association**: *Associação dos Profissionais e Empresas de mediação imobiliária* (around 3.000 members), but membership in this association is not required by law.

There are **administrative sanctions** in the case of infringement of duties. The IMOPPI (*Instituto de Obras Públicas e Particulares e do Imobiliário*) is competent to supervise the real estate agents and agencies and has the power to sanction them.

Price and fee regulations

As to real estate agents, there are **no regulations and no recommendations** on fees.

4.3 Technical services: architects (acting as energy consultants)

Market entry and structure regulations

Subjective requirements

In order to be approved as an energy consultant, the professional shall be recognised as competent by the *Ordem dos Arquitectos*.

Only the **members of the *Ordem dos Arquitectos*** can practise in Portugal. According to the *Regulamento de inscrição* of 11 September 2006, a **professional training** of 9 to 12 months is required as well as knowledge on “Statute and Deontology”. Architects of other Member States already practising are exempt from the exam. The same occurs with architects of other States under reciprocity conditions.

Objective requirements do **not** exist.

Cross-border services

As mentioned above, only the admission to the *Ordem dos Arquitectos* is required, also for **foreign** architects.

Inter-professional cooperation

There are **no specific rules** on cooperation with other service providers.

Business structure

There are **no limitations** whatsoever on the kind of business structure.

Market conduct regulations

Neutrality

Energy consultants are under a **duty of neutrality**. According to Article 48 EOA, the architect shall avoid any situation which might interfere with the autonomy and impartiality that govern her/his activity.

There are also **detailed rules on impartiality** in the *Regulamento de deontologia* of 9 June 2001. Even in case of disagreement between the proprietor and the developer (and/or a public entity), the architect must act impartially (Article 4 *Regulamento de Deontologia*).

A Duty to provide services does **not** exist.

Professional standards

Both the Statute of the *Ordem dos Arquitectos* and the *Regulamento de Deontologia* enumerate a **large list of duties**, which exist towards clients, the community and other architects. The *Ordem* supervises the respect of these duties and exercises disciplinary powers in case of violation. Article 45 of Law-Decree 176/98, 3 July (approved the *Estatuto da Ordem dos Arquitectos*, EOA) states that in his relationship with colleagues, the architect shall respect their interests and refrain from undue competition (Article 51 EOA).

Compulsory indemnity insurance does **not** exist.

Continuing education

There are **no specific requirements on continuing education**. Nevertheless, there is a constant offer of courses and seminars.

Advertising restrictions

General rules apply. In addition, there are some specific rules on confidentiality and limitations on the information to be given about prices, costs of the work or other non-technical details (Article 6 *Regulamento de Deontologia*).

Conduct control

The *Ordem dos Arquitectos* supervises the practice of architects and has sanctioning power (Articles 52 to 67 EOA).

Mandatory intervention

The services provided by energy consultants are **in some cases mandatory**: pursuant to the decree-law 80/2006 (implementing, partially, the EC directive on energy performance of buildings, 2002/91/EC), an energy labelling shall be carried out (Art. 12, 2, *f*) in order to certify the compliance with energy requirements of the *Regulamento das características térmicas dos edifícios* (Regulation on energy features of buildings, approved by the above-mentioned Act).

Price and fee regulations

Fees **depend on** the kind of task performed by the architect. Time and complexity are usually the **relevant factors** when assessing the value of the required service.

4.4 Reforms

The Portuguese Government has recently introduced a package of reforms known as the Simplex Reforms, which will have a significant impact on the provision of real estate conveyancing services in Portugal. Under the part of the reforms known as the "Casa Pronta" project, a real estate contract can now be simultaneously enacted in the presence of a public official (not a notary) and registered at the Public Registry. This new "special property conveyance, encumbrance and registration procedure" is available from the Public Registry for real estate and directly competes with notaries by providing services which are substitutes for the notarial public deed. The procedure was introduced by Decree Law 263-A/2007, 23 July 2007 and is currently being implemented on an experimental basis in a number of municipalities of Portugal (e.g. Almeirim, Braga). Under the new law, the public official at the public register is empowered to draft and record contracts (that replace notary deeds)

related to the purchase of real estate, as well as register these contracts in the public registry. This means that in practice the drafting and registering of real estate transfers will take less time, involve less steps and cost less.

Consumers or businesses buying real estate will no longer have to go to a notary for the drawing up and witnessing of public deeds and contracts related to property transfer, but have recourse to a simplified and less costly procedure. The Ministry of Justice advertises this service as "simplifying the procedure of buying a house"⁷⁵ and that it will entail lower costs to the user. Notarial associations are reported to be preparing a constitutional complaint against the "Case Pronta" project and the constitutional court is therefore likely to render an opinion on it in due course.

5. The Portuguese Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services	Legal services (advocate)	Legal services (notary)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	3,750 € (2,500 – 5,000 €)	275 € (Energy labelling: 150-400€)	325 € (Average fee for buyer's advocate: 150-500 €)	132.35 € ⁷⁶	125 ⁷⁷ (Transfer only)	800 €	5,400 €

⁷⁵ "Casa Pronta" official presentation available at http://www.portugal.gov.pt/NR/ronlyres/9C53098E-8336-4712-99D3-65064129F815/0/Apresentacao_Casa_Pronta.pdf

⁷⁶ Please note that the regulation on notarial fees foresees a fee of €132.35 euros for transactions between 25.000 and 125.000. Also note that an additional notarial fee for each asset under register (Art. 11.2 of Portaria 385/2004) of 24,50€ (incl. VAT) and for a certificate of the contractual act (Art. 10.7a), of Portaria 385/2004) of 20,34€ (incl. VAT) may apply and are not included in this table.

⁷⁷ Please note that the following additional fees, not included in this table, may apply: (1) 25€ for each additional record to the descriptive registration (provisional registration of purchase, Art. 21(1.2) of the Regulation for Fees of Registries and Notaries); (2) 31.50€ for the certificate of the descriptive registration (Art. 21 (9.2) of the Regulation for Fees of Registries and Notaries).

	Real estate agent	Technical services	Legal services (advocate)	Legal services (notary)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
100,000 € sales price + 100,000 € mortgage	3,750 €	275 €	325 €	211,50 €	260 ⁷⁸ (Transfer and mortgage)	1,400 €	6,222 €
250,000 € sales price (no mortgage)	9,375 €	275 €	325 €	195,59 €	125 € (Transfer only)	2,000 €	12,296 €
250,000 € sales price + 250,000 € mortgage	9,375 €	275 €	325 €	331.94 €	260 € (Transfer and mortgage)	3,500 €	14,067 €
500,000 € sales price (no mortgage)	18,750€	275 €	325 €	195.59 €	125 € (Transfer only)	4,000 €	23,671 €
500,000 € sales price+ 500,000 € mortgage	18,750€	275 €	325 €	331.94 €	260 € (Transfer and mortgage)	7,000 €	26,942 €
1,000,000 € sales price (no mortgage)	37,500€	257 €	325 €	195.59 €	125 € (Transfer only)	8,000 €	46,421 €
1,000,000 € sales price + 1,000,000 € mortgage	37,500€	275 €	325 €	331.94 €	260 € (Transfer and mortgage)	14,000 €	52,692 €
% VAT applicable	21 %	21 %	21 %	21 %			21 %

Please note: - Transactions of more than 200,000 € are not frequent in Portugal. – As to transfer tax: figures in the table are based on 0.8 % of the value of the property in case of transfer only; in case of a mortgage (5 years or more): 0.6 % of the value of the property.

⁷⁸ Please note that the following additional fees, not included in this table, may apply: (1) 1.50€ for each copy of document proving the veracity of the records presented (Art. 21(9.7) of the Regulation for Fees of Registries and Notaries); (2) 48€ for the conversion of the provisional registration of purchase (Art. 21 (3.3) of the Regulation for Fees of Registries and Notaries); and (3) 48€ for the conversion of provisional, to definitive, of registration of mortgage, for each mortgage registration (Art. 21(3.3) of the Regulation for Fees of Registries and Notaries).

5.1.1 Real Estate Agents

The agent's fee is usually **2.5-5 %** of the price of the transaction (excluding taxes).

The real estate agent is usually **paid by the seller**.

5.1.2 Technical Services

The usual fee of an energy consultant for drafting the **energy certificate** ranges **between 150-400 €**, depending on the complexity of the task.

5.1.3 Legal Services

- **Notarial fees** are fixed by statute (see above). The highest possible notary fee is 195.59 €; it applies when the value of the transfer is more than 200,000 €, which is rarely the case in Portugal (see above).

- For **advocates' services**, the average fee ranges between 150-300 € for drafting the contract and between 150-500 € for executing the contract. Usually the **buyer pays** the legal fees.

5.1.4 Land Register Fee

Land register fees are **regulated by statute**. The fee depends on the type of registration. The registration fee for a transfer of ownership is 125 €, in case of a mortgage 135 €, i.e. together with the transfer 260 €. Usually, the **buyer pays** the registration fees.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

- The buyer is liable for transfer costs. The tax (IMT - Imposto Municipal sobre transmissões onerosas) is paid at the Tax Office, before the deed is issued. The amount paid is based on the transaction price, unless the value of the property is higher.

- The tax rate depends on the type of property and the use assigned to the property.

According to the **Ofício-Circulado nº 40089/2007, de 8.1**, the values regarding sales in 2007 (Continental Portugal) are:

For urban property for permanent residential use of the buyer:

Purchase price (in €)	Tax	Tax allowance (€)
Up to 85,500	Exempt	
85,500 to 117,200	2 %	1,710
117.200 to 159.800	5 %	5,226
159.800 to 266.400	7 %	8,422
266.400 to 532.700	8 %	11,086
532.700	6 %	

For urban property for residential use:

Purchase price (in €)	Tax	Tax allowance
Up to 85.500	1 %	
85.500 to 117.200	2 %	855
117.200 to 159.800	5 %	4.371
159.800 to 266.400	7 %	7.567
266.400 to 511.000	8 %	10.231
511.000	6 %	

- Urban properties for other use: 6.5 %
- Rural properties: 5 %

5.1.5.2 Capital Gains Taxes

Fifty percent of the difference of value between the value of sale and the value of the property must be included as a part of **personal income** (*Imposto sobre o rendimento de pessoa singular*) and therefore charged according to the tax rate applicable to the whole income (Art. 10 CIRS).

The main **exemptions** regard cases where the seller uses the capital gain to buy another house (within two years) or where s/he had bought one within the twelve month period preceeding the sale. If the acquisition of the property is before 1 February 1989, there is also an exemption.

If the property is not urban and it is affected to commercial, industrial or agricultural use, the seller is also exempted from this duty.

Commercial or Office Buildings

As far as to the tax IMT, the non-residential use of the building implies a tax of 6.5 %, regardless the value of the transaction.

Changes in Transfer Costs

According to a study on the evolution of notarial and registral “prices” of the Observatório Permanente de Justiça (Os custos da fé pública-Um estudo sobre o impacto social do novo regime emolumentar dos registos e notariados), the 2001 reform led to a decrease of notarial tariffs. Nevertheless, the system was criticised because there were fixed tariffs even for transactions of immovables with low prices. Consumers’ associations also pointed out that the prices should relate to the cost of the service for the State, whilst notaries would have preferred to have different prices according to the complexity of the task. With the “privatization”, a new regulation of prices entered into force. According to Portaria 385/2004, of 16 April, notarial fees regarding the sale of immovables shall be related to the value of the transaction. As a result, there was an effective decrease for sales under 200,000 € and now fees are flat based on the value of the property.

The extension of capital gain tax (to also cover transactions of societies) and the restrictiveness of the exemptions admitted by law are the two main points of criticism. Compliance with the duty to pay this tax improved after measures were taken by the Central Administration in order to control economic data; a duty was imposed on notaries to inform the Tax Office and to control the payment of some taxes. In this case however, the notary will not control the payment directly, but the Tax Office might get some information on the existence and type of transactions through electronic means and data comparison.

5.2 Service providers (advocates)

TOP 10	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm	Average cost per firm	% Conveyance/total services (add up to 100 %)
Advocates	10	Ca. 480	Ca. 150	1-3 ⁷⁹	Ca. 70 %	N.a.	N.a.	Ca. 5-10 %
Other firms	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm	Average cost per firm	% Conveyance/total services (add up to 100 %)
Advocates	N.a.	23.520	N.a.	Not usual (0)	Ca. 30 %	N.a.	N.a.	Ca. 5-10 %

5.3 Key market data

Average prices

Prices in Portugal are calculated according to the value of the square metre.

Following are the most recent data:

⁷⁹ Some of these firms are Spanish firms (associated with Portuguese firms), but here we are not taking into account the branch offices located in Spain.

BANK EVALUATION FIGURES ON HOUSING (euros/m²)
2nd QUARTER 2006

Mailand and Regions (NUTS II and III)	Total			Flats			Houses		
	Average 25% lower figures	Overall Average	Average 25% higher figures	Average 25% lower figures	Overall Average	Average 25% higher figures	Average 25% lower figures	Overall Average	Average 25% higher figures
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Mainland	714	1 224	2 004	776	1 275	2 012	638	1 142	1 985
Norte	640	1 051	1 662	693	1 087	1 666	584	1 007	1 656
Minho-Lima	587	914	1 399	694	956	1 289	531	883	1 491
Cávado	601	943	1 428	653	929	1 308	562	954	1 515
Ave	652	1 021	1 567	720	1 051	1 550	597	994	1 581
Grande Porto	606	977	1 528	633	985	1 450	591	973	1 580
Tâmega	606	943	1 385	669	946	1 298	545	940	1 469
Entre Douro e Vouga	711	1 180	1 821	725	1 182	1 810	665	1 173	1 850
Douro	705	1 105	1 728	775	1 141	1 688	669	1 085	1 752
Alto Trás-os-Montes	590	941	1 476	680	930	1 248	548	947	1 592
Centro	665	1 104	1 845	739	1 153	1 820	617	1 065	1 862
Baixo Vouga	778	1 331	2 146	987	1 485	2 149	664	1 178	2 098
Baixo Mondego	643	1 069	1 717	711	1 134	1 735	595	1 007	1 674
Pinhal Litoral	609	997	1 584	819	1 059	1 355	541	968	1 709
Pinhal Interior Norte	654	1 009	1 502	709	1 013	1 375	608	1 004	1 613
Dão-Lafões	629	939	1 359	698	943	1 292	513	932	1 459
Pinhal Interior Sul	615	1 000	1 608	698	1 033	1 502	589	985	1 650
Serra da Estrela	676	1 050	1 744	703	949	1 305	664	1 099	1 897
Beira Interior Norte	554	980	1 706	594	829	1 080	540	1 024	1 809
Beira Interior Sul	715	1 150	1 952	720	1 085	1 683	713	1 212	2 163
Cova da Beira	705	1 058	1 670	696	959	1 314	697	1 119	1 840
Lisboa e Vale do Tejo	841	1 400	2 176	871	1 409	2 155	756	1 372	2 241
Oeste	936	1 550	2 317	945	1 550	2 315	836	1 549	2 335
Grande Lisboa	750	1 206	1 959	800	1 149	1 657	714	1 252	2 133
Península de Setúbal	701	1 151	1 901	742	1 114	1 672	659	1 190	2 125
Médio Tejo	743	1 248	1 936	796	1 238	1 767	701	1 257	2 073
Lezíria do Tejo	882	1 351	2 013	868	1 294	1 871	996	1 605	2 368
Alentejo	759	1 236	1 946	865	1 267	1 837	706	1 218	2 014
Alentejo Litoral	735	1 236	1 993	777	1 264	1 975	718	1 223	1 995
Alto Alentejo	922	1 361	2 031	969	1 323	1 829	851	1 422	2 257
Alentejo Central	722	1 176	1 880	790	1 119	1 603	695	1 201	1 966
Baixo Alentejo	727	1 194	1 862	980	1 324	1 777	662	1 138	1 894
Algarve	957	1 519	2 236	945	1 486	2 172	1 000	1 627	2 353
Algarve	957	1 519	2 236	945	1 486	2 172	1 000	1 627	2 353

Notes:

(1) Average of the first 25 per cent in ascending order of the bank evaluation figures on housing.

(2) Average of all bank evaluation figures on housing.

(3) Average of the last 25 per cent in ascending order of the bank evaluation figures on housing.

Development of price index

	Annual House Prices Growth:	Housing Price Index (Jan. 1988=100):	Housing Price Index (Eurostat/ 2005=100):
1995		207	
2000		258	
2001	5.3%		
2002	0.7%		
2003	1.3%		

	Annual House Prices Growth:	Housing Price Index (Jan. 1988=100):	Housing Price Index (Eurostat/ 2005=100):
2004	0.2%		
2005	2.7%	298	
2006			January: 102.57 August: 104.15

Number of transactions:

300 000 per year (roughly 85 % residential, 15 % commercial)

Ratio house owners – tenants:

70 %-30 %

General Market Situation:

Recent developments in the housing market have been influenced by changes in tenancy regulations and economic factors such as taxes and price increases. In the 1980's and the early 1990's, social regulation involving tenancy contracts favoured tenants and met with criticism from many owners who as a consequence would not rent out their houses. The decrease in taxes on mortgage loans has also meant that the purchase of a house has become more attractive than paying rent.

According to a recent survey, from January to August 2006, there was a decrease of 66 % in the sales of new houses, probably due to high house prices.

XVII. Scotland

1. Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 85 % (75-95 %)	Survey and valuation (85 %)	Real estate agent services (often) Contract drafting: 2 solicitors, 1 for each party (99 %)	Not existing	Licensed conveyancers: existing in very small number only

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (not usual)			Negotiable
Preliminary checks (land register, administrative permits)	Solicitor: land register/building permit	Professional duty of solicitor (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	Solicitors	- Professional involvement of solicitor not mandatory but very usual (99 %); exclusive right of solicitors - 2 Solicitors: 1 for buyer, 1 for seller	
Legal advice or counselling	Solicitor	Professional duty of solicitor (as part of contract drafting)	
Certification of signatures	Solicitor	Professional involvement not mandatory but usual (as part of package and included in price) Exclusive right of solicitors	

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Contract execution (transfer of payment and registration)	Solicitor	Professional involvement not mandatory but usual (as part of package and included in price): Payment: escrow account (5 %), notice of payment/ control (95 %) Registration (application/ control) Exclusive right of solicitors	
Taxation (esp. transfer tax)	Solicitor	Tax retention and payment: professional duty of solicitor (as part of package and included in price)	

1.1. Notaries

In Scotland, notaries exist, but are no longer relevant in conveyancing.

1.2 Solicitors (*solicitors*)

Solicitors are **not mandatory** in the conveyancing process, but in practice conveyancing is **almost exclusively (over 99.9 %)** handled by **solicitors**, one for the seller, one for the buyer. The **sales contract** is concluded by a process of offer and acceptance which are normally signed by the solicitors who act for the parties. Also, the solicitor usually checks the **land register** and the **building permit** and handles the **completion of the sales contract**. **Registration** is also handled by solicitors.

Furthermore, the solicitor has a role in **taxation**. The purchaser's solicitor is responsible for filling in the Stamp Duty Land Tax form and submitting it to the taxation authorities along with payment of the tax.

1.3 Real estate agents

A real estate agent is **not mandatory** in the conveyancing process, but in practice is **often (estimated: 75-95 %)** involved for the **seller**, especially where the sale is between private persons. Real estate agents help to find a buyer sometimes they assist in evaluating the land or building.

The **solicitor branch** of the legal profession does form **property centres** of which the firms of solicitors are members. The property centres market the properties in a general way but enquiries are taken by the individual firms of solicitors. Other real estate agents operate independently simply as selling agents.

1.4 Licensed conveyancers

Licensed conveyancers are **not relevant** – there are only two licensed conveyancers in Scotland.

1.5 Technical services

There is **no legal requirement** for a purchaser or a seller at the moment to have the property surveyed or valued. A **surveyor** will normally be involved in providing a survey and valuation for the purchaser and generally also for the lender.

There are **three types of survey** which are available at the moment:

The first is simply a **valuation for loan purposes** and is not a property survey. The surveyor/valuer will note any obvious defects and report them and will then give a value of the property for loan purposes so that a lender can gauge the amount of money it is proper to lend.

The second type of survey is a **survey of the property** as well as a valuation and is more extensive and costs more.

The third type of survey is a **full structural survey** which would not be commissioned unless a previous survey had indicated the likelihood of structural faults. If a structural survey is required the surveyor may enlist the services of other technical professionals such as engineers or mineral surveyors who have special expertise in relation to subsistence matters.

There are **recent legislative provisions** in Scotland for an **independent survey** to be commissioned by a seller before a property is put on the market which would be available both to a purchaser and a purchaser's lender. The point of this is to provide more information for prospective purchasers and to prevent multiple surveys.

2. Land registration

The **Land Register of Scotland** deals with registration of land. There are **no local registries** and the Land Register is headed by the Keeper of the Registers. The Land Register comes within the jurisdiction of the devolved Scottish Parliament.

The **statutory basis** for land registration is the Land Registration (Scotland) Act 1979 and the Land Registration (Scotland) Rules 1980.

The **Scottish Law Commission** is currently looking at the workings of the **land registration system** and it is likely to be radically overhauled in the next few years. In addition **automated registration** of title to land (ARTL) will be introduced by delegated legislation in 2007 and there will be rules in connection with **electronic transfers**.

3. Main steps of the conveyancing process

In Scotland, the standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership:** A contract for the transfer of a real right in land must be constituted in a **written document** which must be signed by or on behalf of the seller and the purchaser. In Scotland, the **sales contract** is concluded by a **process of offer and acceptance** which are normally signed by the solicitors who act for the parties. The conveyance by seller in favour of purchaser is prepared by the **purchaser's solicitor** and revised by the **seller's solicitor** but will at the moment be signed by the seller. Similarly the discharges of the seller's existing **secured loans** will be prepared by the selling solicitor and signed by the lenders. The new standard security (mortgage document) by the purchaser in favour of the purchaser's lender will be prepared by the purchaser/lender's solicitor and signed by the purchaser.

Ownership flows from the act of **registration**. The transfer of ownership following registration is valid irrespective of the validity of the sales contract.

- **Registration:** The solicitor acting for the purchaser prepares the **application for land registration** and signs it on behalf of the purchaser. Registration is necessary for the transfer of a real right in property good against third parties. The solicitor acting for the purchaser effectively collects **Stamp Duty Land Tax** and pays it to the

Tax Authority. The purchaser's title cannot be registered before the tax is paid and evidence of payment produced to the competent Land Register.

4. Professional services regulations

4.1 Legal services: solicitors

Table: Regulation Index for Solicitors

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Scotland	1,9	1,0	2,9	0,0	2,9	5,0

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

These are: **law degree**, followed by a **Diploma in Professional Practice** issued by the Law Society of Scotland, followed by a Period of **professional training** in a legal firm. It is also possible to become a solicitor by entering into a three-year pre-diploma training contract with a Scottish solicitor and studying for the Society's professional exams.

Objective requirements do **not** exist.

Barriers to cross-border services

The solicitors' profession in Scotland, and the Law Society of Scotland as its regulator, is governed by EU legislation on cross-border provision of services, in particular the Lawyers' Establishment Directive (98/5EC) and the Mutual Recognition Directive (89/48/EEC). The Establishment Directive permits conveyancing practice for a number of legal professionals under their home professional title in Scotland (specifically those with home professional titles obtained in Denmark, the Republic of Ireland, Finland, Sweden, Cyprus, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway and Slovakia). The Mutual Recognition Directive deals with the modalities of requalification in another Member State, which is a separate and shorter process than the domestic requirements outlined above.

Inter-professional co-operation

Solicitors are allowed to conduct **financial services** business, but there can be **no multi-disciplinary practices**.

Business structure

A firm of solicitors can be a sole practitioner, a partnership or a limited liability partnership. There are complicated regulations which allow for corporate firms.

There are no special regulations on **geographical location** nor in relation to the establishment of branch offices.

Market conduct regulations

Neutrality

Solicitors are not permitted to act for more than one party where there is an **actual** conflict of interest. Where there is a **potential** conflict of interest there is a general prohibition against solicitors acting for both buyer and seller, or both landlord and tenant, in a conveyancing transaction, except in very specific sets of circumstances.

However, solicitors routinely act for the purchasing clients and lenders to purchasing clients and indeed for selling clients and the lenders whose loans are to be repaid from the sale. This is expressly allowed in terms of **Practice Rules and Regulations** laid down by the Law Society of Scotland.

Duty to provide services does **not** exist.

Professional standards

Standards of professional services in solicitors professions are regulated partly **by statute** and partly **by professional regulation**. Solicitors must be members of the **Law Society of Scotland** and are subject to the Practice Rules and Regulations laid down by that Society (see above).

So far as **solicitors** are concerned there are also accounts rules relating to the handling of clients' monies, rules relating to the provision of adequate professional services and conduct.

Solicitors who also offer **financial services** are governed by the **Financial Services Legislation**.

Solicitors who act **as real estate agents** as well as solicitors either themselves or through a solicitors' property centre would also have to comply with the **Property Misdescriptions Legislation**.

Compulsory indemnity insurance

The **solicitor branch** of the profession **must** have Professional Indemnity Insurance and this is provided by a **Master Policy** organised by the Law Society of Scotland which covers all firms. The **premium** paid depends inter alia on the claims record of each individual firm.

Solicitors are also required to contribute to the Scottish Solicitors' Guarantee Fund, which provide compensation for clients who have suffered monetary loss as a result of the dishonesty of a solicitor or their staff. This is an important additional consumer protection which operates over and above the coverage provided by indemnity insurance.

Continuing education

Continuing education is **mandatory** in the legal profession.

Solicitors are now no longer required to submit a card detailing the continuing education carried out during the year, although the current requirement of 20 hours remains and proof of compliance must be produced on demand.

Advertising restrictions

There are **no specific** advertising restrictions for solicitors.

Conduct control

The **Law Society of Scotland** regulates solicitors from the point of view of professional conduct and ethics. Whist formerly the provision of an adequate professional service was also monitored by the Law Society, the Scottish Parliament in 2007 adopted the Legal Profession and Legal Aid (Scotland) Act which passes responsibility for dealing with complaints relating to inadequate professional services to an independent body.

Mandatory intervention

The intervention of a solicitor is **not mandatory**.

Price and fee regulations

There is **no price regulation** (as such), but solicitors are required to provide the client with either an estimate of fees or a note of the basis on which fees will be charged.

Solicitors charge fees depending on the time involved and **compete** among themselves as to fee levels.

4.2 Real estate agents

Market entry and structure regulations

Objective requirements do **not** exist.

Cross-border services are **not** regulated.

Inter-professional cooperation is **not** restricted.

Business structure or geographical location are **not** regulated.

Market conduct regulations

Neutrality

The real estate agent is acting **on behalf of her/his client** (usually the seller).

Duty to provide services

There is **no legal duty** to provide services to all requesting parties.

Professional standards

Real estate agents have to comply with the **Property Misdescriptions Legislation**.

Advertising restrictions

General advertising regulations apply.

Price and fee regulations

There are **no regulations or recommendations** on real estate agents' fees.

For fees in practice see below (transaction costs).

4.3 Technical services: surveyors

Market entry and structure regulations

Subjective requirements

A surveyor has the option of taking a **degree at a University** or going through **professional training**.

Objective requirements do **not** exist.

Business structure or geographical location are **not** regulated.

Market conduct regulations

Neutrality is **not** required.

Duty to provide services does **not** exist.

Professional standards

Standards of professional services in surveying professions are regulated partly by **statute** and partly by **professional regulation** (codes of conduct).

Compulsory indemnity insurance

There is **no compulsory insurance** for surveyors although most firms will have this.

Continuing education is **not mandatory**.

Advertising restrictions

General advertising regulations in the Act on Unfair Business Practices and the Consumer Protection Act apply to technical inspectors as well.

Conduct control

Surveyors are supervised by their own **professional body**, the Royal Institution of Chartered Surveyors.

Mandatory intervention

The intervention of a technical expert is not **mandatory**.

Price and fee regulations

There are **no mandatory scale** charges for surveyors. Most individual firms of surveyors and valuers have their own scale of charges.

The fee is generally based on the **value of the property** and increases with that value.

5. The Scottish Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	1,000 €	378 €	Combined 1,335 €		228 €	-	2,941 €
100,000 € sales price + 100,000 € mortgage	1,000 €	378 €	1,482 €		261 €	-	3,121 €
250,000 € sales price (no mortgage)	2,500 €	600 €	1,631 €		554 €	2,506 €	7,791 €
250,000 € sales price + 250,000 € mortgage	2,500 €	600 €	1,780 €		587 €	2,506 €	7,973 €
500,000 € sales price (no mortgage)	5,000 €	741 €	2,224 €		816 €	15,036 €	23,817€
500,000 € sales price + 500,000 € mortgage	5,000 €	741 €	2,372 €		848 €	15,036 €	23,997€
% VAT applicable	17½ %	17½ %	17½ %		-	-	

Please note: In general terms there are **no fixed fees** charged by professionals in relation to transfer. All figures are estimates made by the national reporter⁸⁰.

⁸⁰ Remark by the national reporter: The estimates given in the table for professional fees are not to be regarded as backed up by any research of a statistical nature. So far as legal services are concerned there is a wide variation. It could be said that there is more price

5.1.1 Real Estate Agents

Generally, real estate agents when acting for a seller charge a **percentage of the sale price** (e.g.: 100,000 € sales price – 1,000 € fee; 500,000 € sales price – 5,000 € fee), although some (generally smaller) firms of real estate agents charge fixed fees. Where a percentage is charged it can vary **between 0.5-1.5 % of the sale price**. A mean estimate would be **around 1 %**.

It is the **seller** who pays the real estate agent's fee for selling on the basis that it is up to the real estate agent to get the best price for the seller.

5.1.2 Technical Services

Generally charges for surveyors or valuers are based on the **value of the property**. Most individual firms of surveyors and valuers have their own scale of charges and the fee charged increases with the value of the property (see above).

At the moment the **purchaser** pays for the technical services of the surveyor or valuer. This **will change** with the seller having to commission a survey and valuation before the property is put on the market (see above 1.5.). It may be however that the regulations will eventually provide that the successful purchaser will reimburse the seller for the cost of the survey or for part of the cost as part of an information pack which will have to be provided by the seller before the property goes on the market.

5.1.3 Legal Services

There is no set scale of legal fees (see above). Solicitors therefore charge **fees depending on the time involved** and compete among themselves as to fee levels.

competition among solicitors' firms in the West of Scotland than there is anywhere else. So far as legal and technical services of surveyors are concerned the figures have been taken from the informal scales of charges supplied by a Glasgow city centre firm of surveyors with branches elsewhere and a Glasgow city centre firm of solicitors. So far as real estate agents' fees are concerned they are taken on the basis of a mean medium one per cent charge. The figures which are supplied are accordingly indicative only. The total legal fees might be charged by both sets of solicitors, one for the seller and one for the purchaser. The real estate agents' fee would be payable by the seller and the Land Register fee would be payable by the purchaser as would the Stamp Duty Land Tax. The surveyor or valuer's fee at the moment will be payable by the purchaser but when the independent seller's survey is introduced this will be payable by the seller.

Solicitors do not make individual separate charges for drafting the contract and thereafter carrying out the conveyancing process. A **single combined charge** is made for both.

The **seller** pays the seller's solicitor and the **purchaser** pays the purchaser's solicitor for fees incurred.

5.1.4 Land Register Fee

Fees payable to the Land Register for registration of the purchaser's title and a lender's security or mortgage document are **fixed by regulation** (*Land Registers (Scotland) Act 1868 S25* and the *Land Registers (Scotland) Act 1995*). The fees are changed from time to time by a **fee order** issued by Scottish Ministers.

The fee for the registration of the **transfer of ownership** depends on the value of the registered property.

A **flat registration fee** of **32.62 €** (£ 22) for the registration of a Standard Security (**mortgage deed**) where that application is made along with an application for registration of a conveyance in favour of the purchaser.

The **purchaser pays** the registration fees for the registration of the conveyance and the purchaser's mortgage document in favour of the purchaser's lender.

Where there is a discharge in favour of the seller of a seller's loan secured on the property the seller will pay a registration fee for this discharge only if the discharge is not sent with the purchaser's application for registration because it is not available until later. This fee is based on the amount of the loan which is being repaid and is payable by the seller.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

Stamp Duty Land Tax is a United Kingdom (as opposed to a Scottish) matter and the rates are fixed from time to time in the **Finance Acts** passed by the United Kingdom Parliament. So far as Stamp Duty Land Tax is concerned no tax is paid on any lending transaction but only on the purchase of property. Stamp duty Land Tax is now regarded as an **exceptionally high tax**.

Where the price of a property does not exceed **185.360 €** (£125.000) no Stamp Duty Land Tax is payable. This exemption limit is increased to 222.432 € (£150.000) in certain so-called deprived areas.

Between 185,360 € (£125,000) (or 222,432 € in deprived areas) and **370,720 €** (£250,000) the Stamp Duty Land Tax is assessed at one per cent of the total price no allowance being made for the original exemption band.

Between 370,720 € (£250,000) and **741,441 €** (£500,000) the Stamp Duty is assessed at three per cent of the total price (no allowance being made for the original exemption band or the one per cent band). Where the price exceeds 741,441 € the Stamp Duty Land Tax is assessed at four per cent of the total (no allowances being made for lower bands).

The Stamp Duty Land Tax is payable by the **purchaser**.

The **tax is based on the purchase price** and should reflect real market value. It would be a criminal offence to falsify the price in the conveyance. There is no practice of deliberately deflating the price in the conveyance.

Payment of Stamp Duty Land Tax is a **requirement for registration** of the transfer of land in the Land Register.

The **solicitor acting for the purchaser** effectively collects Stamp Duty Land Tax and pays it to the Tax Authority.

5.1.5.2 Capital Gains Taxes

Capital Gains Tax is not payable on the sale of a domestic property where that property is the **ordinary residence of the seller**. Where the property is a commercial property or a second holiday home Capital Gains Tax would normally be payable on the amount of any gain subject to certain relieves.

Where a **commercial property** in which a business is carried on is sold and the seller purchases another property in which to carry on the same business there will normally be no Capital Gains Tax payable. There are also relieves from Capital Gains Tax where the seller is effectively retiring from business.

There is **no special tax bracket** for a land sale. The rate of Capital Gains Tax is between ten and forty per cent subject to certain relieves.

5.1.6 Commercial or Office Buildings

- So far as **Stamp Duty Land Tax** is concerned there are no special rates for commercial properties.
- So far as **technical services** and **legal services** charges are concerned these are likely to be considerably higher than the charges quoted in the table for a self use residential property. Land Register fees are on the same scale as for residential properties.
- Corporate entities pay **Corporation Tax** rather than Capital Gains Tax on any gain subject to relieves.

5.1.7 Changes in Transfer Costs

- Formerly, **solicitors** used to charge a **fixed scale fee** depending on the price of the property. This scale was regarded as anti competitive and abolished some time ago. Solicitors today charge fees depending on the time involved (see above).
- There has been a significant **increase in Stamp Duty Land Tax rates** in recent years (see above).
- There are **recent legislative provisions** in Scotland for an **independent survey** to be commissioned by the seller (see above 1.5.). At the moment the **purchaser pays** for the technical services of the surveyor or valuer; this will change then (see above 1.5., 5.1.2.).
- The **land registration system** is likely to be radically overhauled in the next few years (see above 2.).

5.2 Service providers

The total number of **firms of solicitors** in Scotland who operate in the conveyancing area of practice is **around 1.000**.

The average number of **branch offices** is approximately one for the top ten firms. These top ten have very few branch offices.

5.3 Key market data

Average prices

The average price of residential property in Scotland is 193,942 €.

No more data available.

XVIII. Slovakia

1. Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties (ca. 85 % in Bratislava; less than 60 % in other regions)	Energy certificate mandatory	Contract drafting (75 % or more)	Contract drafting (25 % or less) Mandatory intervention see below	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (frequent)	- Estate agents - Parties - Notaries / advocates (rare)	Professional involvement is neither mandatory nor usual	Notaries: fixed fees lawyers: fees negotiable (but in absence of agreement between the parties a State regulation fixing fees applies by default)
Preliminary checks (land register, administrative permits)	- Advocate (usual) - Notary (not usual)	Professional duty of advocate/notary (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	- Advocate (75 % or more) - Notary (25 % or less)	Professional involvement is not mandatory but usual; exclusive right	
Legal advice or counselling	- Advocate - Notary	Professional duty of advocate/notary (as part of contract drafting)	
Certification of signatures	Notary Municipal body	Mandatory notary or municipal body: authentication of the signature(s) of the seller only	
Contract execution (transfer of payment and registration)	Advocate/notary (usual for registration and/or escrow services)	Professional involvement is not mandatory but usual	
Taxation (esp. transfer tax)	-	-	

1.1 Notaries

The role of notaries (*notár*) in Slovakia is **regulated by Act No. 323/1992 Coll.** on notaries (*zákon o notároch a notárskej činnosti – Notársky poriadok*) which reintroduced the Latin notary system. This is characterised by the dual character of notaries as liberal professionals and state authorized and appointed holders of a **public office**. Every notary must be member of the **Chamber of notaries**, the self-regulatory body of notaries (*Notárska komora*) [<http://www.notar.sk>]. **Tariffs and fees** of notaries are regulated in the Order of Ministry of Justice No. 31/1993 Coll. on notarial fees.

The mandatory **role** of the notary in the process of conveyancing is **limited to the authentication of the signature(s) of the seller only**. However, it must be noted that it is also possible to have the signature of the seller authenticated by a **municipal body**, which is largely used by parties due to lower fees.

The assistance of a notary public in the process of contract **drafting** is not mandatory but very common in rural parts of Slovakia, especially if there are no or few advocates.

Recently, there are **reform plans** in Slovakia to adopt new legislation pursuant to which it would become mandatory to have the contract drafted by a legal professional (notary, advocate, possibly also executor). However, this is mainly an initiative of notaries themselves, which has met with strong resistance by the public, the main reason being that the new legislation would apparently lead to an increase in fees for the consumer.

Since the transfer of property is **not subject to taxation** in Slovakia as of **1.1.2005**, the notary has **no obligation** to notify any authority about the transfer.

Before 1.1.1993, i.e. before the cadastre was established in Slovakia, state notaries were charged with the registration of contracts. Afterwards (until 2005), the cadastre was assigned the duty to inform tax authorities on transfers by forwarding one copy of the contract to them.

The function of notaries in **executing** the contract is limited to **depositing the purchase price on an escrow account** and transferring the money to the seller when all conditions set in the contract are met. Alternatively, it may be cheaper to deposit the money on a fixed documentary deposit in the bank. The bank will

release the purchase price if the seller or purchaser submits title (ownership list) indicating that the purchaser has become registered as owner.

1.2 *Advocates (advocates)*

The role of advocates (advocates) in Slovakia is **regulated by Act No. 586/2003 Coll. on advocacy (*zákon o advokácii*)**. It is mandatory that each advocate (*advokát*) is a member of the autonomous **Chamber of advocates (*Advokátska komora*)** [<http://www.sak.sk>]. **Tariffs and fees** of advocates are regulated in the Order of Ministry of Justice No. 655/2004 Coll. on fees of advocates, which has dispositive status only, i.e. may be derogated by the parties.

In conveyancing, it is **not mandatory** to use the services of an advocate, **but in practice it is the most common way** to have the contract drafted. This may happen directly, i.e. the contract is prepared by an advocate (typically if the client, purchaser or seller, is represented by the advocate throughout the whole process), or indirectly, i.e. the contract is prepared by an advocate as an assignment for a real estate agent, and the real estate agent is representing the client in the whole process.

It is usual and generally recommended to use the services of a notary or an advocate when transferring property since it is the best guarantee that the whole process (especially before the cadastre) will go smoothly and without complications. It is very common that the **process of registration** at the cadastre takes much longer than the legally stipulated time period (15 days /accelerated intabulation/ - 30 days /intabulation/ – 60 days /records/) due to imperfections in the content of the contract or in the motion for registration.

1.3 *Real estate agents*

Real estate agents carry out their business under the **license** granted by Trades Licensing Office as regulated by Act No. 455/1991 Coll.

Contrary to notaries and advocates, real estate agents are **not organized on a mandatory basis in a self-regulatory body**. That notwithstanding, the national association of real estate agents' offices (*Národná asociácia realitných kancelária – NARKS*) [<http://www.narks.sk>] organizes on a voluntary basis almost all major

market players, but in total represents only one tenth (1/10) of all agents active in real estate. Its members are bound by a Code of practice, articles of association and internal directives.

The agents's fee is usually paid by the purchaser; in practice, it mostly gets deducted directly from the advance payment effected as a reservation fee.

During the last 5-7 years, the **practical importance** of real estate agents has grown rapidly as the real estate market has been booming. The real estate agent is usually the first contact person for purchasers and sellers in the conveyancing process and may represent him or her also before the advocate or notary. The other party in the contract mostly uses the services of its own advocate to check the drafts of the documents. It is more common to use the services of a real estate agent in regional centres (about 89-90 % in Bratislava and Košice) than in small cities and rural areas (less than 50 %). However, if luxury property in the countryside is to be offered to a solvent clientele, usually real estate agents from Bratislava are involved.

1.4 Technical experts

It is **neither mandatory by law nor usual** to hire a professional (technical expert or surveyor) to check the condition of the property. Since there is no tax burden on property transfers as of **1.1.2005**, it is no longer required to submit to the cadastre a survey made by a professional expert (before, the tax was calculated on the basis of the price indicated in the survey).

2. Land registration

In Slovakia, registration of real property (land, buildings and other constructions) is regulated by Act No. 162/1995 Coll. on cadastre and registration of ownership and other titles to real property (*Katastrálny zákon*).

Real property and titles to real property are registered in the **cadastre** (*kataster nehnuteľností*). The cadastre is managed by a specialized administrative body – the central **cartography and cadastre authority** of the Slovak republic (*Úrad geodózie, kartografie a katastra Slovenskej republiky*) and local **cadastral offices** /8/ (*katastrálny úrad*), which have further subordinated **cadastral branches** (*správy*

katastra) competent in certain cadastral areas (*katastrálne územie*) [<http://www.geodesy.gov.sk>].

The cadastre comprises of geometrical information, a list of real property, its specifications and information about rights (titles) to both land (which is registered as plots) and constructions built on the plots. The **information in the cadastre** is organized as follows:

- part A: PROPERTY
- part B: OWNERS
- part C: ENCUMBRANCES

The registration is made by **registrars**. The registrars do not need to have a law degree, but have to pass (any) university degree and a qualification exam (no obligatory training period).

Besides certain exceptions, all real property (land, buildings and other constructions with foundations fixed to the land) has to be registered in the cadastre.

3. Main steps of the conveyancing process

The following steps represent the standard procedure of transfer of real property in Slovakia:

- Legal obligation (*titulus*): valid and effective contract

The **draft of the contract** may be prepared by the seller, purchaser, real estate agent, notary or advocate based on the will of the contracting parties. Legal essentials of the contract are regulated in the Act No. 40/1964 Coll. Civil Code (*Občiansky zákonník*) and in the Act No. 162/1995 Coll. on cadastre and registration of ownership and other titles to the real property (*Katastrálny zákon*). The contract must be in **written form** and inseparably incorporated in one document; the **signatures** of the seller must be **authorized** either by a notary or by a municipal authority (see above).

It is quite common that the **purchase price** is deposited on a bank account or on a notary escrow account and released only after registration (*list vlastníctva*). Since many conveyances are realized through **mortgages**, banks take over the

responsibility for legal accuracy of all transfer documents and the release purchase price only if all requirements are met.

- Intabulation (*modus*): The application for the registration of the legal title

After the parties have concluded a contract, they may file the **application for registration** of the legal title to the **cadastre** (*návrh na vklad vlastníckeho práva*). The application does not require any particular form, not even an authorized signature of the seller. The required copies of the contract (one for each party and two for cadastre) must be appended to the proposal, since the cadastre will attach the **title attestation mark** on each copy and subsequently send it to all parties. Simultaneously, the parties must pay the registration fee of approximately € 60,- (to have the registration effected with a regular 30 days period) or approximately € 230,- (if asking for accelerated registration within the period of 15 days). All fees are paid by purchaser or by both parties (50:50).

Apart from certain exceptions (e.g. state property, where registration is made as per the date of delivery of the application to the cadastre), the **registration** is effected at the date when the decision of the cadastre is rendered.

The registration entails the **transfer of ownership** of the property; no additional steps are required.

4. Professional services regulations

4.1 Legal services: Notaries and Advocates

A) Notaries

A notary in the Slovak republic is a person appointed and **authorised by the state** to execute notarial tasks pursuant to the Act No. 323/1992 Coll. on notaries (*zákon o notároch a notárskej činnosti - Notársky poriadok*) – § 2 of the Act No. 323/1992 Coll. There is only one unified type of general notary who carries out business as a self-employed (single) professional.

Notaries are **appointed by the Minister of Justice** to take office in the district of a specific first instance court. This decision is based on the results of a selective procedure announced and carried out by the Notarial Chamber.

For notaries, there **three-stage career procedure** applies:

- articulated notarial clerk (requirements: citizen of the Slovak republic, full legal capacity, impeccability, law degree, employed by a notary),
- notarial candidate (after three years of legal practice, two years of which must be notarial, and after passing the notarial exam),
- notary public (*see below: subjective requirements*).

Membership in the Notarial Chamber is mandatory. Notaries are bound by rules on organization, appointment, discipline and good practice. The bodies of the Notarial Chamber include the general assembly, an executive board, a revision board, a disciplinary board and an educational board.

The current **number of notaries** (based on information from the Notarial Chamber) is 318. Almost 20 % of all notaries are located in the Bratislava region.

Market entry and structure regulations

Subjective requirements

These are:

- nationality of the Slovak republic,
- full legal capacity,
- law degree,
- impeccability (without criminal record),
- five years of legal practice, two years of which must be notarial,
- passing the notarial exam.

Objective requirements

There is a *numerus clausus* rule for notaries. In practice, each half-year the Minister of Justice appoints 5-6 notaries.

In the years 2002-2006, the **abolition of the the numerus clausus rule was discussed, but without success**, mainly due to the strong resistance of the Notarial Chamber. After elections in 2006, it seems as if the new Slovak government has the intention to preserve the status quo.

Cross-border services

Only a **Slovak citizen** may become a notary (see above). However, signatures on transfer contracts with respect to real property located in Slovakia may be authenticated also by a **foreign notary**. No apostille or legalization is required if there is a bilateral contract in this respect. Even no official translation is needed if it is done in Czech language.

Inter-professional cooperation

Any cooperation with **other professionals** is prohibited.

Business structure

Based on a written contract, notaries may **cooperate** (only) with other notaries having their office within the same district court area. In that case, they may share the same notarial office and its costs and revenues. However, each notary is acting in his or her own name and upon his or her own responsibility.

Notaries are **not allowed** to establish a company nor any other structure to carry out their notarial practice.

Market conduct regulations

Neutrality

Neutrality, impartiality and confidentiality are fundamental professional duties. These duties are also regulated in the **Code of practice** elaborated by the Notarial Chamber.

Duty to provide services

The notary is **obliged** to provide services within the scope defined in Act No. 323/1992 Coll. on notaries (*zákon o notároch a notárskej činnosti - Notársky poriadok*). A duty to provide services is also regulated in the Code of practice.

Professional standards

Professional standards are generally **regulated** in the Act No. 323/1992 Coll. on notaries (*zákon o notároch a notárskej činnosti - Notársky poriadok*) and **supervised by the Ministry of Justice**. Internally, professional standards are also adopted in the form of a code of practice, which is supervised by the Notarial Chamber (through internal disciplinary control).

Compulsory Indemnity Insurance

Notaries have the **obligation** to take out indemnity insurance.

Continuing education

An obligation as to continuing education is **not** stipulated by law, but the **code of practice** states obligations in this respect. In practice, continuing education of notaries is however rather a matter of professional honour than an effectively controlled obligation.

Advertising restrictions

Advertising restrictions are **not regulated** in the Act No. 323/1992 Coll. on notaries (*zákon o notároch a notárskej činnosti - Notársky poriadok*), but may be regulated in the **code of practice**. However, due to the *numerus clausus* rule there is no significant need to restrict advertising.

Conduct control

Conduct control is carried out by the **Ministry of Justice** and also internally based on the disciplinary competence of the **Notarial Chamber** towards its members.

Mandatory Intervention

There is **no mandatory intervention** of notaries in conveyancing. The only compulsory element, the **authentication of signature(s)** of the seller, may be done by a notary or a municipal authority.

Price and fee regulations

Fees and tariffs are **regulated by** Order of the Ministry of Justice No. 31/1993 Coll. and are generally **fixed**.

For details see below (5.).

B) Legal services: Advocates (advocates)

An advocate (*advokát*) in the Slovak republic must be registered in the **list of advocates** kept by the Slovak **chamber of advocates** (*Slovenská advokátska komora*). The advocate acts independently, bound only by laws and instructions of the client – § 2 of the Act No. 586/2003 Coll. on advocacy (*zákon o advokácii*).

For advocates, a **dual-stage career procedure** applies:

- articulated advocate (requirements: full legal capacity, impeccability, law degree, employed by an advocate),
- advocate (*see below: subjective requirements*).

The membership in the **chamber** as a self-regulatory body is mandatory. Advocates are bound by the **code of practice for advocates** which contains rules on organization, professional status, appointment and discipline. The bodies of Advocate's Chamber encompass the general assembly, the executive board, the revision board and the disciplinary board.

The actual **number of advocates** in the Slovak republic (as per 12.2.2007) is 4 388; moreover there are around 2 000 of articulated advocates. Approximately 2 000 advocates are located in Bratislava alone.

Market entry and structure regulations

Subjective requirements

These are:

- nationality of the Slovak republic,
- full legal capacity,
- law degree,
- impeccability (without criminal record),
- three years of legal practice as articulated advocate,
- passing the advocate's exam,
- taking an oath.

Objective requirements do **not** exist.

Cross-border services

There are **no restrictions** of cross-border services, provided that the foreign advocate is registered within the relevant Chamber's registry. Slovakia has implemented **Directive 98/5/EC**.

Inter-professional cooperation

See below: advocates may only co-operate with other lawyers

Business structure

Advocates may carry out their business in one of the **following structures**:

- single professional,
- association of advocates (*združenie*),
- general partnership (*v.o.s.*),
- limited partnership (*k.s.*),
- limited liability company (*s.r.o.*) .

Except joint stock companies, advocates may establish any business structure - provided that the only business activity is the provision of legal services. Also, only an advocate may be an associate/ partner in, or director of, any such structure.

Market conduct regulations

Neutrality

There is **no duty of neutrality**. Confidentiality towards his/her clients is a fundamental duty of the advocate.

Duty to provide services

The advocate may refuse to provide its services only in cases specified by Act No. 586/2003 Coll. on advocacy (*zákon o advokácii*).

Professional standards

Professional standards are generally **regulated** in the Act No. 586/2003 Coll. on advocacy (*zákon o advokácii*) and internally supervised by the **Chamber** according to the Advocate's code of practice and through internal disciplinary control.

Compulsory Indemnity Insurance

Advocates have the **obligation** to take out indemnity insurance with an insurance covering not less than SKK 3,000,000 (i.e. approximately € 85,000). This represents yearly costs of SKK 2,000 (i.e. approximately € 58.-).

The **limited liability company** must have an insurance coverage for not less than € 1,500,000.- for each partner.

Continuing education is **not** mandatory.

Advertising restrictions

The **Code of practice** stipulates certain restrictions with regard to advertising. In general, it is prohibited to praise someone's personal qualities or the qualities of certain law offices. All information about an advocate's practice shall be spread in a neutral and objective way.

Conduct control

Conduct control is carried out exclusively by the **Advocate's Chamber**.

Mandatory Intervention

There is **no mandatory intervention** of advocates in conveyancing.

Price and fee regulations

Fees and tariffs are **regulated by Order** of Ministry of Justice No. 655/2004 Coll. However, the fee regulation only applies if there is no fee agreement made between the parties. Fee negotiations among the party are allowed and usual in practice.

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

These are:

- **university degree** in economics, law or constructional specialization;
- or: a completed secondary school education with graduation and five years of **practice** in the subject field.

According to the Act No. 455/1991 Coll. *Trade Licensing Act (Živnostenský zákon)*, the activity of real estate agents is a **regulated trade (viazaná živnost)**. Therefore, a **licence (živnostenský list)**, granted by the Trade Licensing Office, is required.

Objective requirements do **not** exist.

Cross-border services are **not** restricted.

Inter-professional cooperation is **not** restricted.

Business structure is **not** restricted.

Market conduct regulations

Neutrality is **not** regulated.

Duty to provide services does **not** exist.

Professional standards

There are only **general rules** for carrying out business pursuant to the Act No. 455/1991 Coll. *Trade Licensing Act (Živnostenský zákon)*. In addition, members of certain **professional associations** may be required to follow their respective Codes of Practices, which are usually presented as beneficial towards potential clients.

Compulsory Indemnity Insurance is **not** regulated.

Continuing education is **not** regulated.

Advertising restrictions does **not** exist.

Conduct control

Conduct control may be carried out by the Trade Licensing Office or the Slovak Commercial Inspection.

Price and fee regulations

There are **no regulations** of prices/fees.

5. The Slovak Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	2,150 (Commission: 1-5 % of purchase price (incl. VAT) or Lump-sum: 1,500-2,800)	Average fee for technical survey (apartment): 130	Average fee for advocates : 420,- (including execution)	Authentication of each signature of the seller /€ 2,-/	60 (Accelerated registration fee 220)	-----	2,760 /No accelerated Registration fee/
100,000 € sales price + 100,000 € mortgage	Same amount	Same amount	Same amount	Same amount	Same amount	Same amount	2,760
250,000 € sales price (no mortgage)	2,150	Average fee for technical survey (apartm.): 230	Average fee for advocates : 420,- (including execution)	Authentication of each signature of the seller /€ 2,-/	(Accelerated registration fee 220)	-----	2,860 /No accelerated Registration fee/
250,000 € sales price + 250,000 € mortgage	Same amount	Same amount	Same amount	Same amount	Same amount	Same amount	2,860

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/ stamp duty	Total usual transfer costs
500,000 € sales price (no mortgage)	2,150	Average fee for technical survey (apartment): 300	Average fee for advocates : 420,- (including execution)	Authentication of each signature of the seller /€ 2,-/	60 (Accelerated registration fee 220)	-----	2.930 /No accelerated Registration fee/
500,000 € sales price + 500,000 € mortgage	Same amount	Same amount	Same amount	Same amount	Same amount	Same amount	2,930
% VAT applicable	19 %	19 %	19 %	19 %	0 %	-----	

5.1.1 Real Estate Agents

The agent's fee in practice is usually **between 1-5 % of the purchase price**.

As there is strong market pressure, the fees do not rise progressively together with the purchase price. E.g. if the transaction is worth € 250,000 the fee will be similar to the fee for a 100,000 € transaction, i.e. around 2,000 €. Thus, there exists a soft price cap on agents' fees. In the table, a typical average fee amounting to 2,150 € has been indicated.

Furthermore, the final amount of the agent's fee may depend on the final purchase price (i.e. the real estate agent makes an agreement with the seller on the purchase price and takes a surplus if he or she is able to get a higher price). In some cases, the agent takes the deposit for the purchase price handed over as a lump-sum fee for the services provided. Indeed, it is quite frequent that the agent finds a purchaser for the seller and makes the parties enter into a preliminary contract pursuant to which the purchaser shall pay a deposit of € 1,500.- - 2,800.- as a reservation fee.

5.1.2 Technical Services

Fees for surveys are **freely negotiable** but, at the same time, survey fees are in practice close to those calculated pursuant to Order of Ministry of Justice No. 491/2004 Coll. on expert's fees. Generally, the **most usual fee for an expert's**

survey is up to € 200.- which corresponds to 10-12 hours of work. Since there is no more tax obligation, surveys are rarely ordered by any of the parties.

5.1.3 Legal Services

Fees for legal services are **regulated** by following legislation:

Advocates: Order of Ministry of Justice No. 655/2004 Coll. on advocate's fees. The fees of advocates are **freely negotiable**, but in absence of agreement between the parties the State regulation fixing fees applies by default. Generally, **the most usual fee of advocate drafting and executing contract amounts to a flat fee of € 280.-** (irrespective of the purchase price). Usually, each party bears the fees of his or her own advocate.

Notaries: Order of Ministry of Justice No. 31/1993 Coll. on fees and compensations of notaries. The fees of notaries are **fixed**. Usually, the purchaser bears all notary fees except the fee for the authentication of the seller's signatures. In some cases, notarial fees are split among both parties.

Since there is **no mandatory intervention of any legal profession in conveyancing** (notwithstanding the mandatory authentication of seller's signature), often the parties or the real estate agents use well-established standard contracts and thus do not need professional assistance. It is very simple for the parties or the estate agent to draft and execute the contract and to apply for registration; legislation is quite precise in this respect and specifies (in the Act No. 162/1995 Coll. on cadastre and registration of ownership and other titles to the real property) the obligatory terms and conditions of the contract and the documents to be appended.

5.1.4 Land Register Fee

Land register fees are **regulated** by the ACT No. 145/1995 Coll. on administrative fees.

The fee depends on the **type of registration** as follows:

- For each "entry", a flat fee of **€ 60.-** is due (accelerated registration in the period of 15 days instead of the standard 30 days period costs **€ 220.-**)
- "notation" – 0 € fee
- "record" – 0 € fee

Usually the **purchaser pays** all registration fees; in some cases, a ratio of 50:50 is agreed upon between the parties.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

There are no transfer taxes.

5.1.5.2 Capital Gains Taxes

A flat rate **income tax** of 19 % applies. Exception: If the seller had a permanent residence in the real property for at least two consecutive years, his or her income from sale is free of tax.

5.1.6 Commercial or Office Buildings

A flat rate income tax of 19 % applies. If the seller owned the real property for at least five consecutive years or if it was the part of his business assets for the same period, such income from sale is free of tax.

5.2 Service providers

TOTAL	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm	Average cost per firm	% Conveyance/ total services (add up to 100 %)
Real estate agents	Ca. 3 000 registered real estates agencies, out of which ca. 1 500 is active.	3 000 to 5 000 real estate agents	N. A.	Close to 0	Almost none	It depends on the exact criterion	Either the 2 to 5 % system applies (the least % with the most expensive real estate), or fixed lump sum of 50.000 when real estate is worth until 2 mio. SK, 100.000 when it is over 2 mio. SK. In the rents 1st rent goes as a reward to the agency.	Qualified estimate says 60 % vs. 40 % (sale vs. Rent).
Advocates		4 388 /revised number as per 12.02.2007/	N.a.	Close to 0	N.a.	N.a., (subject to business secrecy)	Statutory , i.e. law on attorney practice and subsequent under statutory norms	N. A.

TOTAL	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm	Average cost per firm	% Conveyance/ total services (add up to 100 %)
Civil law notaries	318 numerus clausus	318	N.a.	0	0 %	N.a.	Ordinance No. 31/1993 on notaries rewards	N.a.
Architects	N.a.	1340 Authorized architects, but there are also unauthorized architects who work under the authorized architect	N.a.	N.a.	N.a.	N.a.	Law No. 18/1996 on prices	N.a.
Engineers (land surveyors and cartographers)	N.a.	657 Authorized land surveyors	N.a.	N.a.	N.a.	N.a.	N.a.	N.a.

5.3 Key market data

The National Bank of Slovakia together with the Slovak National Association of real estate agents (NARKS) prepared a sample survey covering the first and second quarter (1.Q and 2. Q.) of 2005. Please note that this survey does not provide a fully reliable summary (especially due to fact that NARKS accounts only for 1/10 of all professionals active on the market):

Number of transactions (1.Q and 2.Q 2005):

Real estate	Sale			
	Number of transactions		Price per 1 m ² (in €)	
	1.Q	2.Q	1.Q	2.Q
Apartments:	40 882	37 824	712	710
including: 1-room apartment	7 928	7 337	731	730
2-rooms apartment	10 826	9 231	722	723
3-rooms apartment	15 426	15 389	705	696
4-rooms apartment	6 239	5 371	679	674
5-rooms apartment and more	463	496	809	1 018
Houses & Villas:	9 726	8 671	777	786
including: house	9 425	8 499	760	777
villa	301	172	1 295	1 259
Real estate (apartments & houses)	50 608	46 495	724	725

From: NARKS (Slovak national association of real estate agencies) and National Bank of Slovakia.

Average prices per 1 m² (in SKK and EUR):

Year	2002	2003	2004	2005	1.Q 2005	2.Q 2005	3.Q 2005	4.Q 2005	1.Q 2006	2.Q 2006
Apartments	18 132	24 538	28 072	25 720	24 565	24 526	26 463	27 326	28 860	29 948
Houses	17 532	25 264	29 420	27 568	26 819	27 139	28 069	28 245	29 538	30 147
Ø in SKK	17 832	24 901	28 746	26 088	24 998	25 014	26 815	27 524	29 007	30 000
Ø in €	516	721	833	756	724	725	777	797	840	869

From: NARKS (Slovak national association of real estate agencies) and National Bank of Slovakia.

General Market Situation:

The Bratislava region is dominant on the market as per number of transactions; the highest level of prices may be found there, too.

The total demand is increasing at the rate of 19 % per year and the prognoses is that this increase should continue for the next 10-15 years.

The building industry is doing well due to the strong position of big investors and high investments into infrastructure.

The total amount of mortgages is permanently increasing due to an increase of the living standard and the net income of families.

The increase may be further supported by the fact that a substantial part of the population is about to found a family.

A new price map of the real estate in Slovakia will be published in March 2007.

XIX. Slovenia

1. Role of Professionals involved in the conveyancing services market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 30 % (25-50 % urban, 5-25 % other areas)	Technical survey (not usual)	Contract drafting and executing (rare in consumer transfers, more usual in commercial transactions)	Contract drafting and executing (rare) Mandatory intervention (certification of signatures, see below)	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (sometimes)	- Mostly parties themselves - Sometimes advocate or notary	Professional involvement neither mandatory nor usual	Fixed fees
Preliminary checks (land register, administrative permits)	Legal draftsman (advocate or notary): land register	Professional duty of legal draftsman (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	- Advocate (rare) - Notary (rare) - Real estate agent (rare) - Mostly parties	Professional involvement neither mandatory nor usual	
Legal advice or counselling	- Advocate - Notary	Professional duty of legal draftsman (as part of drafting)	
Certification of signatures	Notary	Certification of signatures by notary mandatory (necessary for registration)	
Contract execution (transfer of payment and registration)	- Advocate (possible) - Notary (possible)	Professional involvement neither mandatory nor usual	

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Taxation (esp. transfer tax)	Notary	Professional duty of notary: control of tax payment before approving the parties' signatures	Fixed fees

1.1 Notaries

In Slovenia, in the conveyancing process **civil law notaries are mandatory** with respect to the **certification of the parties' signatures** under the intabulation clause (see below).

All other notary services are voluntary: Civil law notaries may be involved in **drafting** the sales contract. Also, the draftsman (notary, advocate or real estate agent) checks **statutory pre-emption rights** and **administrative permits**; in particular, an administrative confirmation on the status of the estate is required (similar to a zoning permit).

The notary plays an essential **role in taxation**: before approving the parties' signatures, s/he has to check if the **transfer tax** has duly been paid.

1.2 Advocates

Advocates are **not mandatory** in the conveyancing process. Parties can draft the contract and apply for registration themselves which usually happens. If requested by the parties, either one advocate acts for both parties and **drafts the sales contract**, or the seller's advocate drafts the contract and the buyer's advocate checks it. Advocates will also carry out preliminary checks as part of this process (see under notaries above).

In case of **business transfers** it is more common that legal persons are represented before the Land Register by advocates or civil law notaries.

1.3 Real estate agents

It is estimated that in urban areas real estate agents are involved in 25-50 % of cases, while in other areas the range is 5-25 %.

The real estate agent shall act in the interest of both parties and may be responsible to both of them. The real estate agent has a legal obligation to inspect the real estate from a legal and a factual point of view. This includes a check on rights of third parties on the seller's land.

1.4 Technical experts

There is **no mandatory** evaluation of the property, and it is **not usual** to retain a technical expert either.

2. Land registration

In Slovenia, land registration is dealt with by **land register courts**. The **statutory basis** is the Land Registry Act 2003. Land register courts are first instance courts in Slovenia, called local courts. Their basic competences include the administration of the land register, the entry of registrations and the administration of the **deeds (documents) register**. Although not all real property is actually **registered**, the vast majority (between 75 and 95 %) is.

3. Main steps of the conveyancing process

In Slovenia, the standard conveyancing procedure takes the following main steps:

Contract of sale and transfer of ownership: After the parties have met and agreed on the terms of the transaction, they sometimes conclude a preliminary contract, in particular when an obstacle still needs to be overcome before the main contract may be concluded. The main purchase contract can be drafted by the parties themselves, by an advocate, a notary or real estate agent. Either one advocate acts for both parties and drafts the sales contract, or the seller's advocate drafts the contract and buyer's advocate checks it. The sales contract needs to be **in writing**. In practice, not infrequently the parties buy a contract form in a stationery shop and fill it in by themselves, in number of cases with informal legal assistance by friends or the bank's lawyer

Then, the parties go to a public **notary**, who is **mandatory** with respect to the **certification of the signatures** of the parties under the **intabulation clause**. This is

a **special contract clause** by which the current owner allows the registration of the transfer of ownership to the new owner. As a rule, the intabulation clause is part of the sales contract, but it can also be included in a separate document. It is often stipulated that **payment** is due upon the notarial certification of the parties' signatures under the intabulation clause.

Until 2002, when the new Law of Property Code was enacted, it was not clear whether the **transfer of ownership** was effective irrespective of the validity of the sales contract. The new Code follows the Austrian model of the “**causal**” **system**, under which a transfer of ownership presupposes the existence of a valid contract.

- **Registration:** Registration of the transfer has a **constitutive effect**, i.e. it is indispensable for transfer of ownership. All rights are transferred only when the registration process is completed. It is quite common that the parties (if they are natural persons) apply for the registration personally. The **application** for registration needs to be made **in writing** and the content of the application for the registration must be identical to the intabulation clause.

4. Professional services regulations

4.1 Legal services: notaries and advocates

A) Notaries

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Slovenia	4,9	5,0	9,9	2,0	11,9	5,0

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

These are: a **diploma** of a Faculty of Law, followed by a minimum of 5 years of **legal practice**, at least one year of which has to be done at a notary office and another at either a court, an advocate's or a state attorney's office.

Objective requirements

There is a **numerus clausus**, which is currently set at **90 notaries** and will be increased to 116 in 2007. For each of the local courts there has to be at least one public notary appointed by the **Minister for Justice**. The number of the notaries is decided by the Ministry according to the needs of the general public and economic demands. Currently, the Ministry is considering to **raise the number** of notaries to increase competition.

Barriers to cross-border services

Foreign notaries may practise law in Slovenia subject to actual and legal **reciprocity** of professional services by the respective countries (i.e. the state of origin of a foreign notary allowing Slovenian notaries to practise on its territory).

There is a general **language requirement** for advocates and notaries; they must have an active command of the Slovenian language.

Inter-professional co-operation

A notary may cooperate with an estate agent or an advocate on a case by case basis only. Notaries must be legally organized as sole practitioners and shared offices of any kind are not allowed. Moreover, notaries are not allowed to act as advocates and, vice versa, advocates must not provide notary services.

Business structure and geographical location

There are no further provisions on business structures in the Public Notary Act other than the notary must act as **a sole practitioner**. In practice, this rule is observed without any exception. Notaries neither join their offices together nor form a company or partnership.

Notaries are also limited with respect to the **geographical location** of their seat: they are appointed for a particular region (identical to Local Court region).

Market conduct regulations

Neutrality

A notary, who certifies the signatures with respect to the intabulation clause, acts on **behalf of both parties**. Notaries must not provide services in cases when they are personally involved or where rights and/or obligations are established for their relatives. Besides, there is **no specific** requirement of neutrality.

Duty to provide services

Notaries may only deny their services on **specific legal grounds**, provided by the Public Notary Act.

Professional standards

Standards are regulated by the **Public Notary Act** as well as by the **Code of Conduct** of the notary association. The **main standards** are: a notary is a person of public trust; s/he shall act independently and impartially; s/he is under a strict duty of confidentiality.

Compulsory indemnity insurance

For a notary professional indemnity insurance is **mandatory**. The **minimum level** is set jointly by the Ministry for Justice and the Notary Association.

Continuing education is not mandatory

Continuing education is a **statutory duty**. There is no requirement as to the time (hours per year), but in practice at least a week (40 hours) per year is spent on education on average.

Advertising restrictions

There are **no special provisions** on advertising in the Act on Public Notaries. **General competition law rules** apply. This is in tension with the regulation of advocates who are not allowed to advertise. In practice, advertising by notaries hardly ever exists.

Conduct control

Notaries must comply with the provisions of their **Code of Conduct**.

There is a **conduct control** and a control of the legality by the **Ministry of Justice**. The Ministry can start **disciplinary proceedings**; the most rigorous sanction is the removal from office.

Mandatory intervention

The intervention of a civil law notary is mandatory with respect to the certification of the parties' signatures under the intabulation clause.

Price and fee regulations

Notary fees are **fixed** by the Ministry for Justice. Fees are governed by the **Notaries' Tariffs**, published in the Official Gazette of the Republic of Slovenia.

B) Advocates

Table: Regulation Index for Advocates

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Slovenia	2,2	3,7	5,9	2,0	7,9	4,7

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

These are: a **diploma** of a Faculty of Law, followed by a minimum of **4 years of legal practice** after obtaining the degree, at least one year of which has to be practice with an advocate or a notary.

Four years' practical of experience as a **Bachelor of Law**, thereof at least one year with an advocate, are deemed to be fulfilled by the person who has not completed the minimum one year's practice in the law office, if s/he has held the office of judge, public prosecutor or public attorney for at least five years.

Objective requirements do **not** exist.

Cross-border services

A **foreign advocate** who wants to practise in Slovenia must have an equal/adequate status under the law of his own country.

For foreign attorneys from **EU member states** there are **two possibilities**: they can either provide services as "*odvetnik*" (Slovenian title for an advocate, admitted to the Bar) or they can use their **original title** (for example, solicitor/barrister). In the first case, they need to enter (and pass) a **special exam** on the Slovenian legal order; in the latter, such a requirement does not exist, but counselling is restricted to issues relating to the legal system of their home country (e.g. English law). For advocates of **non-EU** member states the Attorney Act states an additional condition of reciprocity.

There is a general **language** requirement for advocates and notaries (see above).

Inter-professional cooperation

There is no specific restrictive regulation in the Act on advocates. So advocates can set up practice with any other professional.

Business structure

Advocates can practise as **sole practitioners** or within a **partnership**; in the latter case they are personally responsible for the debts of the partnership. The partnership can be a company (legal person) or a “societas” having no legal personality under Slovenian Law.

Market conduct regulations

Neutrality

The advocate is acting on behalf of his client. He is obliged to act **independently** and **impartially**.

Duty to provide services

Advocates are free to accept or reject a request for service. This right is limited with respect to **ex officio representation** (mandatory representation of a person ordered the court of statute, mostly in criminal law).

Professional standards

Standards are regulated by statute, the **Attorney Act as** well as by the **Code of Conduct** of the Bar Association of Slovenia.

Compulsory indemnity insurance

The **Bar Association of Slovenia** insures the advocate against professional liability for damages. Each advocate makes a contribution to the Bar Association to cover the cost of the policy.

Continuing education

The **Code of Conduct** requires that the advocate shall permanently continue her/his education. However, there is no specific time requirement (hours per year).

Advertising restrictions

An advocate shall not advertise her/his activity. The **Code of Conduct** prohibits in particular: praising the quality of one’s own performance, quotation of successful

pleadings, successful suits and other cases, critique of other advocates' performance and success, reference to one's former activity, functions or position etc.

Conduct control

For both notaries and advocates alike, the **membership** in the Notary and Bar Association respectively is compulsory. There is a **conduct control** by the **Bar Association**. The legal basis is the Code of Conduct. The Bar Association may start **disciplinary proceedings** against an advocate.

Mandatory intervention

The intervention an advocate is **not mandatory**.

Price and fee regulations

There are **fixed fees**, governed by the advocates' tariffs which are published in the Official Gazette of the Republic of Slovenia. The Ministry for Justice and Bar Association jointly set these tariffs.

For details see below (transaction costs).

5.2 Real estate agents

Market entry and structure regulations

Subjective requirements

Upon a successful passing of a state reviewed exam, the real estate agent obtains a **licence**. A Higher School Degree is required to enrol for the exam.

Objective requirements do **not** exist.

Cross-border services

Under the condition of **reciprocity** foreign natural persons may act as real estate agents if they demonstrate that in their home state they fulfil the conditions for a real estate agent. In addition, they must be registered in the directory of real estate agents of the Ministry of Justice.

Inter-professional cooperation is **not** regulated.

Business structure

A real estate agency can either be established as a **company** or as a **sole trader** according to the Companies Act. There are no limits as to the form of the company (limited or unlimited responsibility).

Market conduct regulations

Neutrality

A real estate agent must act **impartially** and ensure equal protection of the interests of both the client and the third party with whom s/he puts the client into contact. An exception lies when an **express agreement** is concluded with the client according to which the agent represents only the client's interests. In case such an agreement exists, the agent must clearly inform the third party that s/he is acting as a representative and not as a mediator.

Duty to provide services does **not** exist.

Professional standards

The standards are **regulated by statute**. The **most important standards** include: due diligence, i.e. acting with good professional diligence; general business conditions: a real estate company must define its general conditions of conducting real estate brokerage services.

Compulsory indemnity insurance

A real estate company **must insure** its liability for damage incurred by the client or third party. The minimum insurance sum is 167.000 € per damage claim or 334.000 € for all claims in a single year.

Continuing education

Real estate brokers are **obliged by statute** to take training courses every five years or following a change in the regulations that must be known as part of the professional examination for a real estate broker.

Advertising restrictions

There are **special regulations** on advertising: The real estate agent must ensure that the price, location, year of construction or last renovation and size of the real estate as well as the name and headquarters of the real estate company are announced. If a real estate company advertises its own real estate, it must state this

specifically in the advertisement. The provisions of the **Consumer Protection Act** apply to the advertising of a time leases for residential buildings.

Conduct control

The **Ministry for Environment** is responsible for the conduct control of real estate agents. It issues and withdraws licences for conducting brokerage transactions and keeps the directory of real estate brokers.

In addition, **inspectors from the Market Inspectorate** of the Republic of Slovenia supervise brokerage services.

Mandatory intervention

The intervention of a real estate agent is **not mandatory**.

Price and fee regulations

There are **maximum fees** for real estate agents' services set out by statute (Art. 5 Real Estate Brokerage Act). The maximum commission may **in the case of purchase or sale** not exceed **4 %** of the contract price.

The Minister competent for spatial planning may, in agreement with the Minister for economic affairs, prescribe elements of fee fixing.

A real estate company may charge a client a commission only on the basis of a **brokerage contract**. If it is agreed that a commission is to be paid by both parties, the sum shall be divided.

4.2 Technical services

Not relevant in Slovenia.

5. The Slovenian Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting) ⁸¹	Legal services (executing) ⁸²	Land register fee	Transfer tax/-stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	Up to 4 % of the sales price= Up to 4,000 €	NO	585 €	67.50 €	88 €	2 %= 2,000 €	6,741 €
100,000 € sales price + 100,000 € mortgage	Up to 4 % of the sales price= Up to 4,000 €	NO	585 €	67.50 € Plus 225 € (mortgage)	138 €	2 %= 2,000 €	7,016 €
250,000 € sales price (no mortgage)	Up to 4 % of the sales price= Up to 10,000 €	NO	900 €	67.50 €	88 €	2 %= 5,000 €	16,056 €
250,000 € sales price + 250,000 € mortgage	Up to 4 % of the sales price= Up to 10,000 €	NO	900 €	67.5 € Plus 337.5 € (mortgage)	138 €	2 %= 5,000 €	16,443 €
500,000 € sales price (no mortgage)	Up to 4 % of the sales price= Up to 20,000 €	NO	900 €	67.5 €	88 €	2 %= 10,000 €	31,056 €

⁸¹ The costs of an advocate, who prepares a draft of a sales contract (not mandatory).

⁸² The costs of a civil law notary, who certifies the signatures of the parties with respect to the intabulation clause (mandatory). The additional costs for a mortgage (in brackets) represent the costs of a civil law notary, who drafts a contract establishing a mortgage in the form of a notary deed.

	Real estate agent	Technical services (if usual)	Legal services (drafting) ⁸³	Legal services (executing) ⁸⁴	Land register fee	Transfer tax/-stamp duty	Total usual transfer costs
500,000 € sales price + 500,000 € mortgage	Up to 4 % of the sales price= Up to 20,000 €	NO	900 €	67.5 Plus 585 € (mortgage)	138 €	2 %= 10,000 €	31,691 €
1,000,000 € sales price (no mortgage)	Up to 4 % of the sales price= Up to 40,000 €	NO	900 €	67.5 €	88 €	2 %= 20,000 €	61,056 €
1,000,000 € sales price + 1,000,000 € mortgage	Up to 4 % of the sales price= Up to 40,000 €	NO	900 €	67.5 Plus 675 (mortgage)	138 €	2 %= 20,000 €	61.780,5 €
5,000,000 € sales price (no mortgage)	Up to 4 % of the sales price= Up to 200,000 €	NO	900 €	67.5 €	88 €	2 %= 100,000 €	301,056 €
5,000,000 € sales price + 5,000,000 € mortgage	Up to 4 % of the sales price= Up to 200,000 €	NO	900 €	67.5 € Plus 675€ (mortgage)	138 €	2 %= 100,000 €	301,786€
% VAT applicable	19 %		19 %	19 %			

⁸³ The costs of an advocate, who prepares a draft of a sales contract (not mandatory).

⁸⁴ The costs of a civil law notary, who certifies the signatures of the parties with respect to the intabulation clause (mandatory). The additional costs for a mortgage (in brackets) represent the costs of a civil law notary, who drafts a contract establishing a mortgage in the form of a notary deed.

5.1.1 Real Estate Agents

The maximum agent's fee can be up to 4 % of the sales price.

This restriction does not apply if the contract value of the real estate is **less than 10,000 €**. A contract that is contrary to these regulations is void.⁸⁵ The party who commissions the agent is obliged to **pay the fee** (the seller or the buyer).

5.1.2 Technical Services

Technical services are **not relevant** (see above).

5.1.3 Legal Services

- The **notary's fee** for the (mandatory) **certification of the parties' signatures** with respect to the intabulation clause is **currently set at 67.50 €** (see above).

- As to **advocates' services** (which are not mandatory) – if parties decide to have the **sales contract drafted** by an advocate – the fees amount to **between 45 and 900 €**. Usually parties share the costs for the notary; other provisions are of course possible.

5.1.4 Land Register Fee

Land register fees are **fixed** by the **Court Fees Act**⁸⁶.

⁸⁵ Article 5 of the REAL ESTATE BROKERAGE ACT:

The maximum permitted brokerage commission may at most in the case of purchase or sale amount to 4 % of the contract price. This restriction does not apply if the contract value of the real estate is less than 10,000 € in total. In the case of other legal transactions the parties settle the amount of the brokerage commission through contract.

A real estate company may charge a client a brokerage commission only on the basis of a brokerage contract. If it is agreed that a brokerage commission is to be paid by both parties, the sum under the preceding paragraph shall be divided.

A contract that is contrary to paragraphs 1 and 2 of this article is void.

The minister with jurisdiction for spatial planning may, in agreement with the minister with jurisdiction for the economy, through an executive regulation, prescribe measures for forming the prices for real estate brokerage services as part of the maximum permitted brokerage commission under paragraph 1 of this article.

⁸⁶ Official Gazette-Ur.l. SRS, št. 1/1990, RS, št. 14/1991, 38/1996, 20/1998, 70/2000, 29/2001 Skl.US: U-I-97/00-9, 93/2001, 16/2002 Skl.US: U-I-97/00-18, 73/2003 Odl.US: U-I-32/02-19, 121/2003.

In principle, the fee depends on the value of the registered property (**0.5 % of the value**). However, the **maximum fee is fixed at 88 €** (Tariff Number 18 of the Court Fees Act).

The **buyer** usually pays the registration fees, since s/he is the party in the registration procedure.

5.1.5 Taxes on Conveyancing

5.1.5.1. Transfer Taxes

Taxes on the transfer of real property are **2 % of the property value** and must be paid by the seller. The tax is based on the **purchase price**. However, because it is common practice that the parties state less than the actual purchase price in the contract, the tax authorities can decide on the amount of the tax due by basing the tax on the **market value**. The notary must not certify the parties' signatures if the taxes have not been duly paid.

5.1.5.2 Capital Gains Taxes

In Slovenia, also capital gains taxes apply. **The tax rate is 30 %.**

The basis for the tax is the difference between the purchase prices. There is an exception for an owner who had his **domicile** in the property to be sold at least for three years. In this case, s/he is exempted from the capital gain tax, irrespective of the profits made.

5.1.6 Commercial or Office Buildings

There are **no differences** in taxes or other transfer costs for commercial or office buildings.

5.1.7 Changes in Transfer Costs

The **notarial law and tariffs** have been changed on numerous occasions since 1990. In 2005, when the last change occurred, the **notary's tariffs were considerably lowered**. The reason behind was the political pressure of the general public who considered the former fees as too high.

5.2 Service providers

Real estate agents

Top 5 firms	Turnover in 1,000 €	Average number of employees
Dodoma	2,074	22
Gašpar (Gasspar)	2,629	8
Metropola	1,950	20
Interdom nepremičnine	567	5
Adria nepremičnine	123	2

5.3 Key market data

Average prices

Advertised prices for apartments in areas around Ljubljana, June 2006 (in €)

Type	Min.	Max.	Average
flatlet	33,383	107,674	67,880
1 room	45,860	121,849	80,148
2 rooms	45,068	233,684	102,882
3 rooms	64,680	315,473	132,965

Advertised prices of houses in Ljubljana and suburbs, June 2006 (in €)

	Min.	Max.	Average
Ljubljana	35,053	1,000,000	385,240
Lj. - suburbs	25,038	1,000,000	242,971

Advertised prices of offices in Ljubljana, June 2006 (in €)

Type	Min.	Max.	Average
Offices	27,124	1,800,000	361,512
Shops	43,000	350,000	130,874
Bars and restaurants	45,000	1,900,000	418,135

Development of price index

Price trends of apartments in Ljubljana - average price in €/m²

Month	Flatlet	1-Room	2-Room	3-Room
Jun. 95	961	801	991	947
Sep. 95	1.420	1.136	1.035	917
Dec. 95	1.151	1.045	1.056	991
Mar. 96	1.267	1.133	990	990
Jun. 96	1.285	1.097	1.017	993

Trend of average prices for advertised apartments in Ljubljana from March 2006 to June 2006 and June 2005 – June 2006 (in %)

	Flatlet	1 Room	2 Rooms	3 Rooms
Mar 06 - Jun 06	6,6	4,8	4,9	0,8
Jun 05 - Jun 06	21,9	14,0	17,5	20,2

General Market Situation:

- a shortage of residential property for sale exists in the capital Ljubljana, and some other big cities (e.g. Maribor, Kranj) as well as at the seaside and in other tourist areas
- there is a shortage of building land as the agricultural land is very much protected
- extremely strong local market divergences exist

XX. Spain

1. Professionals involved in the conveyancing market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 40 % (25-50 %)	Property survey and valuation (usual in case of mortgage or new buildings)	Preliminary contract (5 %)	Mandatory intervention see below	Gestor administrativo contract execution (60-70 %)

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (frequent)	Advocate (5 % mainly commercial transactions) Mostly: real estate agents, gestor administrativo or parties themselves	Professional involvement neither mandatory nor usual	Fixed fees (notary)
Preliminary checks (land register, administrative permits)	Notary	Professional duty of notary (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	Notary (deed of conveyance)	Mandatory involvement of notary: notarial act necessary for registration	
Legal advice or counselling	Notary	Professional duty of notary (as part of contract drafting)	
Certification of signatures	Notary	Mandatory involvement of notary for certification of signatures as part of notarial act	
Contract execution (transfer of payment and registration)	- Gestor administrativo (60-70 %) - Notary (20-30 %)	Professional involvement not mandatory but usual	
Taxation (esp. transfer tax)	- Gestor administrativo (60-70 %) - Notary (20-30 %)	Professional duty of notary to notify tax authorities; tax payment is usually managed by the gestor administrativo	

1.1 Notaries

As in all other Western European continental countries, notaries are the key players in conveyancing in Spain. Though not being mandatory for a valid transfer of property among the parties, a **notarial contract** drafted in the form of a **deed** (*escritura*) is **mandatory for the registration procedure** which guarantees inter alia the **opposability of the registered right towards third parties**. The notarial deed can only be replaced by a court settlement which is generally more difficult and expensive to obtain and therefore rare. The notary also **reports the conclusion of the contract to the land register** (this happens immediately after the conclusion of the deed by fax) which guarantees its rank. Also, on a monthly basis, the notary informs the tax authorities about all the deeds he has issued and thus contributes to the **control of taxation**.

Before drafting the deed, the notary is obliged to check **the legality of the building** which requires two documents: (1) a certificate of the local administration stating that the owner of the plot has obtained permission for the construction of the building, and – if this certificate doesn't contain a detailed description of the building (which it usually does not) – (2) a certificate issued by an architect which testifies that the building has been completed according to the municipal permission and describes its technical details. If these documents are not valid or accurate, the notary must refuse to issue the deed; a deed issued in violation of these provisos would be denied registration. Furthermore, the notary controls the **seller's debts** lying on the land, such as taxes on the property or condominium expenses. This control is usually carried out by means of the documents (certifications, tax payments) furnished to the notary by the parties.

Unlike in other continental European states, notaries do not usually handle the registration process in Spain. This service is performed most frequently by *gestores administrativos* (see below). However, notaries are planned to be enabled soon to pay the transfer taxes for their clients and to request registration in an online procedure, which might increase the notaries' role in the execution of deeds.

1.2 Gestor administrativo

The *gestor administrativo* constitutes a **peculiarity of the Spanish system**. A *gestor administrativo* is a professional who renders help in different **administrative**

procedures to clients, **always on a non-mandatory basis**. *Gestores administrativos* may carry out preliminary administrative controls, the presentation of the deed to the Property Register for its registration, and the payment of registration taxes. Typically, *gestores administrativos* are employees or collaborators of the lending bank, which, having a financial interest, normally insists on the involvement of “their” *gestores administrativos*. Therefore, *gestores administrativos* are used in around 60-70 % of all land sales, whilst the involvement of notaries (20-30 % of all land sales) or attorneys (mostly restricted to commercial transactions) is more limited.

1.3 Advocates

The involvement of advocates is **not mandatory** and rare in practice (limited to about 5 % of all land sales). In commercial transactions, advocates, often in-house advocates of the companies involved, draw up a **preliminary contract**. Furthermore, advocates may check debts and administrative permits (which may overlap with the notary’s professional duties), or they may be involved in the execution of the contract (payment etc.).

1.4 Real estate agents

As in all other continental states, the involvement of estate agents is purely voluntary. Professional agents are involved in 25-50 % of all transactions, their role being limited to bringing buyer and seller together and, in number of cases, drafting preliminary contracts.

1.5 Licensed conveyancers

Licensed conveyancers **do not exist** in Spain.

1.6 Technical services

Technical services are not mandatory, but usual in two major cases.

First, when the credit is secured by a mortgage, the **bank** usually has a **valuation of the property** done by an architect. This activity which is mostly unregulated, is usually carried out by big valuation firms which employ architects for this work.

Second, technical services are usual for **new buildings**. As the law compels developers to insure the building against damages in substance for the first 10 years after completion (*decennial insurance*), insurance companies require periodical technical controls.

2. Land registration

The legal registration of land and property is carried out by the **Land Registry** which is divided into some one thousand independent Registries, with a specific portion of Spanish territory corresponding to each. The head of each registry there is a registrar (registrador) who is a highly qualified government worker. The **statutory regulation** of the Land Registry is contained in the Ley Hipotecaria (LH) of 8 February 1946 and in the Reglamento Hipotecario (RH) of 14 February 1947, both having been subject to several modifications. Between 75 and 90 % of real estate property is registered which corresponds to more than 95 % of the overall value of land and buildings. Electronisation of the property register has been established in 2001 but is not yet fully active, especially for old properties.

The registration of property transfers is voluntary whereas only the registration of mortgages is compulsory. Though legal practice usually relies on the contents of the register, registration has only **declaratory effect** – i.e. it is not necessary for the creation of transfer of any real right. However, as a paramount source of evidence, it gives a presumption that the person named in the register is the true holder of the right. Thus, it serves to resolve disputes between several purchasers or other holders of rights, the registered person enjoying priority. Also, registration enables good faith acquisition of property.

3. Main steps of the conveyancing process

In Spain, the standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership:** As a first step, the parties often (but not always) draft a **preliminary contract**, in many cases with the help of the **estate**

agent or a **gestor administrativo**. Sometimes, this agreement is roughly drafted, states only the essential elements of the transaction and is therefore in need of completion. In other cases, the preliminary contract is however more detailed than the notarial contract.

Then the **notarial contract** is concluded and put down in a deed. [NOTE: For sales contracts on real estate, **no special form** is legally mandatory, and a contract written in a private document or even an oral contract is valid. However, any of the two parties has the right to oblige the other one to convert it into a notarial act by signing it again in front of a notary.]

Transfer of ownership takes place according to the Roman system of *titulus* (a **valid and consistent contract** that can generate the transfer of the object) and *modus* (the physical delivery of possession or of something representative of it, or the granting of the public deed or notarial act, which is legally equivalent to the transfer of possession).

The **price** is usually paid in full before the notary when the deed is concluded. The obligation to pay the price is just an effect of the contract. Non-payment does not make the transfer of ownership ineffective.

- **Registration:** After conclusion of the deed, the notary sends it by fax to the register so as to ensure its rank among various entries affecting the same property. However, to enable registration, the notarial deed must formally be presented to the register. This can be done by anyone, with power of attorney being legally presumed. In practice, registration as well as taxation is mostly managed by a **gestor administrativo**.

4. Professional services regulations

4.1 Legal services

This section is limited to notaries as they play the most important role in conveyancing in Spain.

Table: Regulation Index for Notaries

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Spain	4,8	5,2	10,0	4,0	14,0	4,4

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

A Spanish notary obtains his/her appointment as public official after successfully passing a **state exam** organised as a concours (oposición). In order to pass it, candidates must have a university degree in law. The preparation for the state exam is usually done on a private basis and lasts for an average of about 6 more years after the completion of the university studies. There is no special professional training.

Objective requirements

A **numerus clausus** is established with the number of notaries being decided by the General Directorate for Notaries and Registries (Dirección General de los Registros y del Notariado (DGRN)). This General Directorate is within the Ministry of Justice but in practice acts in an autonomous way. This autonomy is expressly recognised in Royal Decree 1474/2000, dated 4th August. Currently, there are a total of nearly 3.000 notaries. The numerus clausus is based on a double policy goal: first, in order to ensure the quality of the practice of this public authority, and second, in order to ensure that in all the regions of Spain, even the most rural areas, a notary acting as a public official and legal counsellor is available.

Barriers to cross-border services

Citizens from other EU states (but no citizens from third states) are eligible to become notaries under the same conditions as Spanish citizens.

Inter-professional co-operation

A Spanish notary cannot associate himself with other professionals (such as advocates, tax advisors or auditors) in respect of the central and exclusive part of his/her activity, **i.e. the draft of the deed**. This includes the control of its legality and the information of State authorities of aspects of the deed that might affect public interests.

Regarding all ancillary activities which are not regulated, such as the execution of the deed with the tax authorities or the property register, inter-professional co-operation is not limited. In this context, co-operation with *gestores administrativos* is very frequent.

Business structure or geographical location

Partnerships among notaries are possible, but need to be specifically approved, in order to ensure the quality of service and the right of the client to choose the notary. However, in order to make sure there is a certain degree of competition, partnerships cannot be approved if they involve all the notaries in a town.

Likewise, the **geographical location** of notary offices is determined and periodically revised by the Ministry of Justice. This is justified by the need to ensure a proper quality of notarial services and a sufficient number of notaries in all the areas of the country.

Notaries are not allowed to practise outside their allocated geographical area unless given special authorisation to do so.

Market conduct regulations

Neutrality

The notary has a **duty of impartiality** as laid down in the “Reglamento Notarial”; he can never act on behalf of one of the parties, not even if he has been chosen by this party. Therefore, even the involvement of two notaries in one transaction, each one of them acting on behalf of one of the parties, is excluded. The duty of neutrality also extends to giving adequate advice to the less informed party.

Duty to provide services

Since notaries offer a **public service**, they shall offer these services upon request.

Professional standards

Standards of professional behaviour and diligence are regulated in a similar way as for civil servants and are supervised by two **controlling bodies**: the **College of Notaries** and the **General Direction of Notaries and Registries**, belonging to the Ministry of Justice. These two bodies can sanction the notary for any infringement. In particular, when a notary disrespects the duty to advise his clients, he shall not only **be liable for the damages to the person who was harmed**, but he can also be sanctioned by any of these two bodies.

Compulsory Indemnity Insurance

There is a **compulsory insurance** for all notaries, which reflects the need to protect the citizen or consumer using notarial services. This insurance is ensured through a **unique policy** covering all notaries in Spain. It is collectively negotiated by the General Council of Notaries, which is the supreme institution in the College of notaries. The total prime is around 5,180,000 €, so the average cost of the **prime** is 1,726 € per notary and year. The insurance covers damages of up to 30,000,000 € per notary and of a total of 150,000,000 € for the whole body of notaries per year.

Continuing education

Continuing education is not mandatory, but widely usual. The notarial colleges organise a wide range **of educational activities**, such as on-line courses, academic conferences, publication of different law reviews, etc.

Advertising restrictions

The **notarial regulation** allows a notary to advertise his office only by putting a sign of small size in the entrance of the building where his office is established. In **practice**, notaries are however using more advertising systems, such as big advertisements, mailings, etc. This is being more or less tolerated by the notarial colleges and the DGRN.

Conduct control

Membership in the **College of Notaries** who controls the conduct of notaries is compulsory for all notaries. In addition, as public officials, notaries also depend on the **aforementioned DGRN**, which has numerous supervising and controlling functions: it can give instructions on how to perform the notarial functions or how to calculate fees in certain situations; it exerts a disciplinary control on the notaries; it imposes sanctions whenever a misconduct appears; it regulates the notarial organisation and supervises the Colleges of Notaries.

Mandatory intervention

A **notarial contract** put down in a **deed** (*escritura*) is **mandatory for the registration procedure** which guarantees inter alia the in opposability of the registered right towards third parties. The notarial deed can only be replaced by a court settlement.

Price and fee regulations

Notary fees are **regulated by statutory law** (Real Decreto 1426/1989 of 17th November, with later modifications). This regulation involves only the core of the notarial function which is the preparation and authorisation of the deed.

In principle, these fees are **fixed** by regulation. However, there are several exceptions, which make them more **flexible**: thus, when the deed contains a full contract (not just the essentials necessary for the transfer of property), there can be a reduction of up to 10 % of the price; also, when the deed has a value of more than 6.000.000 €, the fees covering the value that exceeds this amount can be freely negotiated between the notary and the parties.

4.2 Real estate agents

Market entry and structure regulations

Subjective requirements

In Spain, a real estate agent must have an official title given by the Ministry of Housing after having passed an **exam**.

Objective requirements do **not** exist.

Cross-border services are **not** restricted.

Inter-professional cooperation is **not** restricted.

Business structure or geographical location are **not** restricted.

Market conduct regulations

Duty of neutrality and duty to provide services do **not** exist.

Professional standards

There exists an official professional body of property agents, their official professional college, which controls their professional conduct. However, in fact (*as mentioned above*), their activity is purely gain-oriented and thoroughly deregulated.

Compulsory Indemnity Insurance and continuing education are **not** required.

Advertising restrictions

General advertising regulations apply to real estate agents as well.

Conduct control: see above.

Mandatory intervention

The intervention of a real estate agent is **not mandatory**.

Price and fee regulations

There are no fixed fees.

In practice, the fee is **usually 3 to 8 %**. However in some attractive tourist areas, such as the southern coast, real estate agents are reported to charge up to 10-20 % of the sale price.

4.3 Technical services

No specific regulations.

5. The Spanish Real Estate Market*5.1. Transaction costs (in €)*

Deed	Value	Real estate agent	Technical services	Legal services	Gestor administrativo	Land Register fee	Transfer tax	Total costs
Sale	100,000 €	6,000 €	0 €	269 €	210 €	129 €	7,000 €	13,608 €
Additional costs for mortgage	100,000 €	0 €	130 €	379 €	210 €	161 €	1,700 €	2,580 €, Total: 16,188 €
Sale	250,000 €	15,000 €	0 €	347 €	316 €	181 €	17,500 €	33,344 €
Additional costs for mortgage	250,000 €	0 €	202 €	443 €	316 €	172 €	4,250 €	5,383 €, Total: 38,727 €

Deed	Value	Real estate agent	Technical services	Legal services	Gestor administrativo	Land Register fee	Transfer tax	Total costs
Sale	500,000 €	30,000 €	0 €	433 €	330 €	233 €	35,000 €	65,996 €
Additional costs for mortgage	500,000 €	0 €	313 €	529 €	330 €	216 €	8,500 €	9,888 €, Total: 75,448 €
Sale	1,000,000 €	60,000 €	0 €	567 €	330 €	315 €	70,000 €	131,212 €
Additional costs for mortgage	1,000,000 €	0 €	623 €	676 €	330 €	310 €	17,000 €	18,939 €, Total: 150,151 €
Sale	5,000,000 €	300,000 €	0 €	1,467 €	330 €	853 €	350,000 €	652,650 €
additional costs for mortgage	5,000,000 €	0 €	2,706 €	1,801 €	330 €	1,086 €	85,000 €	90,923 €, Total: 743,573 €

* (excluding taxes, technical & commercial costs)

5.1.1 Real Estate Agents

The agent's fee **usually is 3 to 8 %** (in some places, such as the southern coast, they charge up to 10-20 % of the sale price!). The table refers to 6 % of the price, which is supposed to represent the average.

The fee is normally **paid by the seller**. Especially in tourist regions, it is however also usual to charge the buyer for it.

5.1.2 Technical Services

Technical services are not always used (see above). There can be big differences in the fees for these services, as they are not regulated.

The professional organizations issue **guiding fees**. As they are not compulsory, each professional can negotiate freely his/her fees.

Nevertheless, it can be stated that whenever the fees are negotiated with a big company (e.g. a bank for the valuation of properties that will be subject to a mortgage, or a building company for the technical controls that insurance companies

compel proprietors to do in order to get the compulsory insurance against substance damages of the building) they are much lower (as much as 50 %) as when it is a consumer who requests them⁸⁷.

The estimation in the above table refers to the most usual fees charged and is based on fee quotations to clients by one of the most important Spanish banks. These represent the fees charged by the valuation companies that work for the bank.

5.1.3 Legal Services

Fees for Notaries (and for Property Registers) are **established by the law**: Real Decreto 1426/1989 of 17th November, with several later modifications, the most important ones in Real Decreto-Ley 6/1999, and Real Decreto-Ley 6/2000 of 23rd July.

Fees for notaries can vary within a range, according to their legal regulation, so that they can be reduced up to 10 % below the set fee levels. Other possibilities of fee negotiating, for higher values, are explained later.

The notarial fees indicated in the table include all the services provided by the notary in the usual case: obtaining previous information, drafting the contract, keeping it's copy in his file, and notifying the Property Register. The fees are the same regardless of the number of controls that must be undertaken.

Notarial fees are most usually **paid by the buyer**.

The fees for notarial services include only the true "core" of the property transaction: the previous investigation of any possible encumbrances of the property, the writing of the deed and the immediate brief communication to the Property Register (*normally by fax*) in order to prevent the presentation to the register of any possible

⁸⁷ For instance, the compulsory decennial insurance is extremely expensive when one builds one's own house (on average about 6,000 €, including the premium and the cost of the compulsory technical controls), as no companies offer better conditions, although the risk is nearly non-existent (there are virtually no buildings that suffer serious structural damage during the first 10 years of existence). When it is negotiated by a developing company, the cost is about half that amount for each home that is constructed.

The case of this *decennial insurance* could show a lack of competition and information in the housing market, although it is completely free and with no entry barriers. The legal obligation of this compulsory insurance has increased the cost of each house by 3,000-6,000 €, even though the risk covered by this insurance is almost negligible, and is also covered by the professional insurance of the architect.

encumbrances or deeds that could gain priority. This notice does not, of course, replace the later registration process.

5.1.4 Land Register Fee

The land register fees are established by law: the Real Decreto 1426/1989 of 17th November, with several later modifications, the most important ones in Real Decreto-Ley 6/1999, and Real Decreto-Ley 6/2000 of 23rd July.

The fees depend on the value of the registered property.

They are most usually **paid by the buyer**.

5.1.5 Taxes on Conveyancing

5.1.5.1. Transfer Taxes

The taxes have been calculated at 7 % of the price, which is the lowest rate applicable in the majority of cases. However, when VAT applies, or when the municipal tax is important, overall taxes can be higher. There are several taxes in real estate transfers, which can vary slightly between the different regions of Spain. Usually, the following rates apply:

Transfers of new buildings or building plots, with VAT: 7 % (for housing) or 16 % (for other buildings, and plots) of the price (VAT) plus 1 % transfer tax (ITP). VAT is reduced to 4 % in the case of social housing.

Other transfers of real estate: 7 % (ITP) (4 % in the case of social housing).

For mortgages, a tax of 1 % of the so-called guarantee value (which is usually between 1.5 and 2 % of the loan)⁸⁸.

The taxes are based on the **declared value**. Sometimes (not always, and each time less, especially whenever the price is financed using a mortgage, which will reveal

⁸⁸ Historically mortgages have been subject to a tax that until recently was 0.5 % of the so-called guarantee value (this means between 1.5 and 2 % of the value of the loan, depending on the way in which the guarantee has been defined by the creditor in the mortgage deed), and in some cases, a further 1 % of the value of the guarantee has to be paid in order to cancel it from the property register. This happens with mortgages, as well as with any other kind of guarantees, such as the resolution right of the seller in case the postponed payment of part of the price was not done. This has a very negative effect on the operation of real estate markets, not just because of the increase of costs that it entails, but before all because it causes important distortions in the way property markets, and their financing operations, operate.

the true value) the parties declare a value that is lower than the actual price. The tax administration has established a system of valuation of properties according to their characteristics. So if the declared value is lower, they will use that estimation, which is usually **around 75 % of the market value**.

The **buyer** pays the above mentioned transfer taxes.

Various professionals may be involved with the tax collection:

The **notary** is the only professional that plays always a role in the taxation issues, as he informs monthly the tax authorities about all the deeds he has authorised. So the parties know they must pay their taxes, or otherwise they shall certainly be fined for this omission.

Other professionals, such as advocates, tax advisors or *gestores administrativos* do the tax payment quite frequently for their clients.

Notaries shall in a short time be able to pay the taxes for their clients online, so this system will probably have an ever greater importance in the future.

5.1.5.2 Capital Gains Taxes

There is a **municipal tax** on the estimated capital gains in the sale of land (or in the sale of buildings, contemplating the value of the land on which they are) known as **IMIVTNU**. It is around 0.3 % to 0.5 % of this fiscal (theoretical) value of the land for each year of the duration of the seller's ownership, and it can reach **up to around 15 % of this value**. This tax can be quite different, depending on the respective town.

The municipal tax on the increase of the value of land (IMIVTNU) must be paid by the seller.

5.1.6 Commercial or Office Buildings

The VAT payment is different (16 % for new office and commercial buildings, 7 % for residential buildings)

5.1.7 Changes in Transfer Costs

The most important change has been a noticeable **increase in taxes**, as the tax for transfers has gone up, from 6 % to 7 %, and the tax on mortgages from 0.5 % to 1 % of the guarantee, in most of the regions.

5.2. Service providers

Not available

5.3 Key market data

Number of transactions:

	1995	1997	1998	1999	2000	2001	2002	2003
Properties registered for the first time	242 611	186 158	203 731	212 195	172 771	173 165	192 030	195 574
- Region	177 998	116.654	122.245	118 756	89 468	84 855	83 439	76 943
- Cities	64 613	69.504	81.486	93 439	83 303	88 310	108 591	118 631
Properties transferred								
- Region	509 221	519 450	620 783	600 608	570 504	565 892	559 098	553 333
- Cities	1 482 574	1 670 809	1 788 245	1 829 236	1 990 521	2 030 917	2 312 490	2 336 232

Ratio house owners – tenants: 78.33-21.66 %

According to the Instituto Nacional de Estadística (INE) statistics published in 2006, of the total of 11 837 827 homes existing in Spain, 9 273 505 of them, or 78.33 %, are owned by the person/family, whereas 2 564 322 homes or 21.66 %, are used through a lease.

The Asociación Hipotecaria Española calculates that it is an 83 % of the housing that are owned by their occupants.

General Market Situation:

The high number of unoccupied houses indicates that there is probably no shortage of housing offer, but that the **increase of prices** is probably due to speculative investments.

There are **enormous price differences between different areas**, such as Madrid and Barcelona, where housing prices are the most expensive, and other regions and smaller towns.

XXI. Sweden

1. Professionals involved in the conveyancing market

	Real estate agent	Technical expert (architect, engineer, surveyor)	Advocate/solicitor	Civil law notary	Other relevant professionals
Main function	Matching parties ca. 85 %	Technical survey (sometimes)	Contract drafting (usual only in commercial transactions)	Not existing	Not existing

Services	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees
Preliminary contract (not usual)	-	-	Negotiable
Preliminary checks (land register, administrative permits)	Real estate agent/ advocate (usual only in commercial transactions): land register	Professional duty (as part of contract drafting)	
Drafting the sales contract and/or deed of conveyance	Estate agent (80 %) Advocate	Professional involvement not mandatory but usual	
Legal advice or counselling	Estate agent or advocate	Professional duty (as part of contract drafting)	
Certification of signatures	Two witnesses	Mandatory	
Contract execution (transfer of payment and registration)	Estate agent - Advocate (in commercial transactions)	Professional involvement not mandatory but usual	
Taxation (esp. transfer tax)	Real estate agent or advocate: assistance for tax declaration	Professional involvement not mandatory but usual	

1.1 Notaries

In Sweden, civil law notaries **do not exist**.

1.2 Advocates

An advocate is **not mandatory**. Advocates are usually only involved in **commercial cases**. Parties who just want to be sure that the drafted contract is valid can take it to an attorney (or to a bank) and pay for this service only.

1.3 Real estate agents

The **conveyancing market is totally dominated by real estate agents**. According to *Värderingsdata*, 84 % of all house sales were made with the help of agents.⁸⁹ The percentage is said to be rising.

Agents handle not only **marketing** of houses and apartments, but also the **conveyancing parts (title searches, contracts and deeds)**. It would probably be fair to call them **licensed conveyancers**, but they use the term Real Estate Agent in their own translations.

The **drafting** of the contract and of the deed of sale is **most often** done by the real estate agent. Also, the real estate agent checks whether there are **debts of the seller** which lay on the land. However, there is normally no check of administrative permits and of whether the existing building has been legally built; the seller will make a statement about this and the lack of permits would be seen as a defect of the sold property.

The real estate agent also handles the **completion** of the contract, including **payment and registration**. Furthermore, the agent will help the seller with the **tax declaration** (although there is no duty to do so).

1.4 Technical services

Technical services are **not mandatory**. Compulsory **energy declarations** were proposed in a **committee report in 2005** but the proposition has not yet been enacted into law. Thus, energy declarations are at the moment **rarely** usual.

The most common evaluation is a **physical survey** ordered by the seller (before the contract date) or the buyer (after the contract date or immediately before).

⁸⁹ <http://www.maklarsamfundet.se/upload/Bransch%20&%20media/Pdf/Press20060927.pdf>.

Sometimes both parties arrange for their own surveys. These are purely technical, aimed at finding damages that can affect the price. Certain parts of the house (electricity and plumbing) are always excluded from the seller's liability.

Economic evaluations are not common when residential homes are sold. The agent and the seller will try to find a reasonable price for first offer but the property goes to the highest bidder.

2. Land registration

The **Land Registries** (there are only seven in Sweden) take care of titles, mortgages, leaseholds and easements. Their basic duty is to register these rights and to give the public access to the registry. Property formation is registered by the (public) **land surveyors**. The output from these two sources is collected, together with property tax information that comes from the **tax authorities**, and shown as the **Real Property Register**. The technical responsibility for it lies with the **National Land Survey**, a governmental agency.

The **Land Registry** collects the stamp tax and the registration fees in connection with the title registration. When the title is registered, the bill is issued to the buyer by computer.

Registration is mentioned in the **Land Code** as well as in the **Property Formation Act**. The rules for access and output are to be found in the **Real Property Register Act**.

In Sweden, more than 95 % of all real property is registered.

3. Main steps of the conveyancing process

In Sweden, the standard conveyancing procedure takes the following main steps:

- **Contract of sale and transfer of ownership**: The seller, in most cases through a real estate agent, offers the property on the market. Having found a buyer, the parties sign the **contract of sale** which is most often drafted by the real estate agent.

The sales contract must be done **in writing**. It must (1) state the property. (2) The signatures of the parties are necessary and the signature of the seller shall be

certified by two witnesses; if not, the title registration for the buyer will be delayed. (3) A **declaration** from the seller that the property is transferred to the buyer must be made; a mere intention to do it in the future is not enough. (4) Finally, the purchase sum has to be declared. All this is stated in the Land Code ch. 4 sec. 1.

Usually, the contract provides that a further **deed of sale** will be issued after full payment (or any other condition). In this case the transfer of property takes place only when the deed is signed. However, nothing prevents the parties from finalizing the transfer on the basis of the contract only. Usually the real estate agent drafts the **deed of sale**, and s/he is handling the entire completion process. The requirements 1-4 above have to be repeated in the deed of sale.

The period between the conclusion of the contract and the **deed of sale** is usually about three months. It is common (but not mandatory) that the buyer pays 10 % of the purchase price when the contract is signed. For completion, the parties normally meet at the office of the buyer's bank which transfers the purchase money to the seller's bank. The deed of sale is signed by the seller when he has received **full payment**. At this moment, the property is transferred to the buyer, the keys to the house are handed over and the buyer takes possession.

- **Registration**: Registration at the Land Registry can only be made on the basis of a **written and signed application by the title holder**. The signature must be witnessed by two testimonies. For the application, the contract or the deed of sale must be produced. In practice, the buyer applies for title registration after completion with a maximum time frame of 3 months being laid down by statute. The application can also be presented earlier, but as long as the condition of full payment is not met, it will be declared dormant. However, a register entry on the pending procedure may be requested (*vilande lagfart*), which renders impossible a good faith acquisition by a third party. Often, the application for title registration is sent in by the **new owner's bank**. This is done in order to secure that the mortgage for the bank is registered as well. **Real estate agents** sometimes help the buyer to complete the application for title registration but it is simple enough to be done by anyone. Registration gives the buyer **protection against third parties**. It does not constitute ownership even though there is a presumption that the title holder is the owner. However, a contract of sale would override this presumption.

4. Professional services regulations

4.1 Legal services

Not relevant (see above).

4.2 Real estate agents

Table: Regulation index for real estate agents providing legal services

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII * Mandatory Intervention	MERI +MCRI MII *	CPI Consumer Protection
Sweden	1,2	0,0	1,2	0,0	1,2	4,4

*Please note: The MII is an index per country and not per profession.

Market entry and structure regulations

Subjective requirements

A new real estate agent has to **study** in accordance with a prescribed curriculum for two years (about half of this is law). After ten weeks of **practice** with a registered agent, the new real estate agent can apply to the **Board of Estate Agents** for **registration**. This board is a governmental body. Only **registered real estate agents** (and advocates) are allowed to act as intermediaries for the sale of real estate and apartments.

Objective requirements do **not** exist.

Cross-border services

Swedish nationality is **not a requirement**. The **Board of Estate Agents** can approve an application if the agent has satisfying studies from abroad.

Inter-professional cooperation is **not** restricted. However, estate agents are not allowed to practise activities which could harm their objectiveness; therefore they must not deal with insurances or loans or sell houses for construction.

Business structure or geographical location are **not** regulated.

Market conduct regulations

Neutrality

There is a **duty of neutrality** and there are restrictions on real estate agents as regards activities that could harm their **objectiveness**, in practice this means that they may not deal with insurances or loans, sell houses for construction.

The agent shall protect the **interests of both parties**, with the exception that he is to help the seller to get the best price. This principle has been hotly **debated** since it was introduced in 1984.

Duty to provide services does **not** exist.

Professional standards

The **Estate Agent's Act** (sec. 12) states "a generally accepted estate agency practice" which consists of rules of good conduct. These rules are **supervised by the Board of Estate Agents**. The agent shall inform the seller on all bids and inform the parties of important matters that he is aware of, such as damages of the property or economical problems of the buyer. The marketing of the object must be done in an honest and serious way and in accordance with general consumer protection rules.

Compulsory indemnity insurance

A real estate agency is **required by statute** to contract indemnity insurance. The insurance is included in the membership in one of the national real estate agents' organisations. The **maximum coverage** that the *Fastighetsmäklarförbundet* gives is 215.000 €.

Continuing education

There are **no legal requirements**, but the national real estate agents' organisations demand about three days of continuing education every year.

Advertising restrictions

Advertising is **not regulated**. However, the **general market court** has in its jurisprudence developed some guidelines on comparative advertisement.

Conduct control

Real estate agents register directly with the public **Board of Estate Agents** but there is **no** mandatory conduct control.

Mandatory intervention

The intervention of a real estate agent is **not mandatory**.

Price and fee regulations

Real estate agents services are compensated in the form of a **commission paid by the seller** (see below sub 5.1.).

There have never been any legal regulations on the amount of this commission but the agents' organizations **formerly** used to issue **recommendations**. Strong competition between agents has, however, led to the **abolishment of such lists**. As a result, the commission is today negotiated for each transaction.

4.3 Technical services

No data available.

5. The Swedish Real Estate Market

5.1 Transaction costs (in €)

	Real estate agent	Technical services (if usual)	Legal services (drafting)	Legal services (executing)	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
100,000 € sales price (no mortgage)	3,600	400	N.r.	N.r.	90	1,500	5,590
100,000 € sales price +100,000€ mortgage ⁹⁰	3,600	400	N.r.	N.r.	130	3,500	7,630
250,000 € sales price (no mortgage)	7,800	400	N.r.	N.r.	90	3,750	12,040
250,000 € sales price +250,000€ mortgage	7,800	400	N.r.	N.r.	130	8,750	17,080
500,000 € sales price (no mortgage)	12,800	400	N.r.	N.r.	90	7,500	20,790
500,000 € sales price +500,000€ mortgage	12,800	400	N.r.	N.r.	130	17,500	30,830
% VAT applicable	25 %	25 %			-	-	

n.r. = not relevant

5.1.1 Real Estate Agents

Real estate agents work on commission agreed upon in each sale (see above). There are no reliable data available on the commission sums in practice. In some cities, e.g. in Lund, agents often take a **flat commission of about 3.000 €** for a sale but it is more common to use a **percentage-based** commission. Variation is big. Sometimes the percentage is the same for the whole deal, sometimes the agent gets a higher percentage for the price above a specified sum. There are no data

⁹⁰ This is interpreted as a *new* registered mortgage. If there already are mortgages, the buyer will not have to pay anything at all and the total will be the same as indicated under "no mortgage".

available on the commission sums⁹¹. In general, the percentage is higher for **objects with low prices** (as work and expenses do not vary much with the price). Co-op flats (flats owned by a cooperative in which individual apartment “owners” have the position of shareholders) are seen as easier to sell, at least in the hot areas, and the commission is accordingly slightly lower.

The figures used in the table are taken from a list that was presented to the public in January-July 2005 by the Erik Olsson which is a large firm for Swedish standards. They may be a bit lower today.

It has to be noted that there are real estate agents who offer **limited services at a low set price**. In this case, the seller is responsible for certain parts of the selling process, for example the showing of the house/ apartment. Examples: www.hemverket.se, www.home4.sale and www.hemonline.se.

Always the **seller pays** the agent.

5.1.2 Technical Services

A technical inspection costs about **500 €**. It is more common that the **buyer orders and pays** the inspection, but it is not unusual for sellers to do it.

5.1.3 Legal Services

Legal services from the **real estate agent** are included in the tasks and fees of the agent. If people go to an **attorney** just for the **draft**, the fee would be between **200 € and 500 €**. It is difficult to say who is paying when the parties agree to use a **bank or advocate** just for the drafting and registration. The strongest interest to get everything right lies with the buyer and his bank and it would be natural to place the burden there, but this behaviour is so rare that no clear habits can be found.

In **commercial transactions**, both parties usually have legal assistance and pay their representative directly. The due diligence work of the buyer’s attorney is normally more costly.

⁹¹ Comment by the national reporter: For example, the total fee for a house sale in October 2006 was 1.75 % plus VAT.

5.1.4 Land Register Fee

The land register **fees are fixed by statute**, i.e. in an ordinance (*förordningen (1987:452) om avgifter vid de allmänna domstolarna*). There is a **flat fee of 90 €** (875 Kronor) for every property to be registered. The **buyer** pays the registration fees; he is charged after applying for title.

5.1.5 Taxes on Conveyancing

5.1.5.1 Transfer Taxes

The **tax on the transfer of real property** for natural persons is 1.5 % of the purchase price. Legal persons (corporations) pay 3 %. The tax is **based on the purchase price**. The tax value is however used if this value is higher than the purchase price. If the purchase price is below 85 % of the tax value, the transaction is seen as a gift and not taxed at all. The **buyer** is primarily responsible to pay the tax, but claims can be made also against the seller. Tax payment is not a requirement for the registration. There is **no professional involved** in the tax collection. The Land Registry handles the stamp tax and the registration fees (see above).

5.1.5.2 Capital Gains Taxes

Sweden has a capital gains tax.

There are no different tax brackets. The **tax is 20 % on the net capital gain** (after deductions for the seller's stamp tax, improvements and the agent's commission). It must be observed that this tax can be postponed if the seller within a year buys another residential home (co-op or real property). The tax payment will then only be due when the new home is sold (unless another one is bought). This rule is very beneficial to sellers and it makes it less interesting to evade tax by stating a lower price.

5.1.6 Commercial or Office Buildings

Only **difference**: The stamp tax for corporation is 3 %, twice as high as the one for natural persons.

5.1.7 Changes in Transfer Costs

There are **no recent changes in the statutes**. The **registration fees** have not changed even nominally since 1990 (one reason is that the design of the old computer system did not allow more than three digits). The real estate agents' organizations **formerly** used to have **recommendation tables**, which have been abolished (see above 4.2.) The **costs have gone down** as a result of harder **competition between real estate agents**. In 1990, there was a commission of at least 4 % plus VAT, today agents get half of this.

5.2 Service providers:

At present there are **5.800 agents** registered with the Board of Estate Agents (*Fastighetsmäklarnämnden*).⁹²

The biggest **professional organisation**, which claims to have about 70 % of all agents as members, is the Association of Real Estate Agents (*Mäklarsamfundet*), and its smaller competitor is *Fastighetsmäklarförbundet* with about 15 %. Some agents are independent. The associations provide their members with an extensive service, for instance legal help, insurances and access to widely used Internet market sites. This seems to have the effect that **most of the firms are small and local**.

There are three **nation-wide franchise chains**, *Svensk Fastighetsförmedling*, *Fastighetsbyrån* (with connections to Swedbank) and *Länshem Fastighetsförmedling* (that stems from the farmer's insurance company). As with other franchise firms, the local branches have individual owners. **Bigger real estate companies** are not very common. An example is however *Erik Olsson* with about 220 employees, roughly half of whom are registered real estate agents. This may be the biggest firm in Sweden, but it employs not more than 2 % of all agents.

International companies, such as CB Richard Ellis and Re/Max are working in Sweden, but so far their presence is small.

⁹² <http://www.fastighetsmaklarnamnden.se/>.

5.3 Key market data

Average prices (2006):

- **Residential apartment:** 115,000 € or 1,871 € per sq.m.
- **Residential house:** 180,000 € or 1,462 € per sq.m.
- The **differences in prices** are very big. E.g., houses are sold for very little in the municipalities of northern Sweden.
 - The average price for permanent houses in Strömsund the last year was 349,000 Kronor (38,000 €) ,
 - in the wealthy suburb of Danderyd outside Stockholm 5,747,000 Kronor (625,000 €)
 - In Lund, a university city in southern Sweden, the average price was 2,454,000 Kronor (267,000 €)
 - Just an hour north of Lund, in Osby, the average price was 606,000 Kronor (66,000 €).⁹³

Price development:

- **One family houses:**
 - average price 1995 € 70,261
 - average price 2004 € 144,600

Total value of transactions:

In 2005, the total assessed tax values were about **400 billion €** (tax values reflect at the most 75 % of the market value).

Ratio house owners – tenants (2002):

- Number of households in owned houses: 1,345,000 (39 %)
- Number of households in co-operative apartments (equivalent to condominiums): 645 000 (19 %), and in tenancies: 1 437 000 (42 %)

⁹³ All figures come from *Värderingsdata AB*, www.bopriset.nu.

General Market Situation:

During a recession in the real estate market in the first half of the nineties few new dwellings were built, which may have boosted the **rise in the prices** when the national economy began to recover.

Prices especially on **one family houses** have risen sharply from 1995 to 2004 due to a high demand.

There are strong local market divergences (see above).