

Consumer market study on the functioning of the real estate services for consumers in the European Union

Country fiche – MALTA

General information

Country	MALTA
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Main Sources Used	Central Bank of Malta (CBM), National Statistics Office (NSO), Laws of Malta (see list under Table 2), Code of Ethics for Notaries, Code of Ethics and Conduct for Advocates, Malta's Property Code and Regulations 2016

1. Regulatory background

1.1 Level of regulation in the country

Table 1: Level of regulation			
	Level of regulation	Source of relevant legislation	Ongoing discussion on regulation/deregulation (if applicable): current state of affairs and main arguments in the debate
Real estate transactions ¹	Tightly regulated Every aspect of the transaction is regulated by a number of formalities, from the promise of sale until the registration of hypothecs and privileges, except for the negotiating stage	Civil Code, Cap. 16 Notarial Profession and Notarial Archives Act, Cap. 55 Public Registry Act, Cap. 56 Land Registration Act, Cap. 296	Property market at its strongest point, no aspect of transaction process being questioned
Notary system (or lawyer/conveyancer system) ²	Tightly regulated	Notarial Profession and Notarial Archives Act Examination of Title Regulations, S.L. 55.06 Duty on Documents and Transfers Act, Cap. 364 Income Tax Act, Cap. 123 Public Registry Act Land Registration Act Prevention of Money Laundering and Funding of Terrorism Regulations, S.L. 373.01	Notarial system unchallenged, ongoing discussions centre around the objective to implement a Paperless Registration for Transfer of Immovables by 2020.
Profession of estate agents	Loosely regulated, although ongoing discussions to regulate the sector	Civil Code, Cap. 16 Malta's Property Code and Regulations, 2016 (White Paper)	Capping of commissions (saving contrary agreements), introduction of ethical standards for agents, increased professionalisation of sector through licensing, introduction of proper education and training through minimum criteria for qualification

¹ E.g. limitations or prohibitions of certain transactions; specific formality requirements etc.

² Only in countries where notaries do not exist or do not have a monopoly on conveyancing.

1.2 National legislation

Table 2: List of national legislation		
List of national legislation	Classification of national legislation	Content of the national legislation
Civil Code	Vendors, Purchasers, Creditors, Landlords, Tenants, Agents and brokers	Sale/Letting and Hiring/ Agency/Brokerage/Mutuum Hypothecary & Privileged Guarantees
Commercial Code, Cap. 13	Estate Agents	Misleading advertising
Consumers Affairs Act, Cap. 378	Consumers	Unfair contract terms ^a , Unfair commercial practices ^b , Distance selling regulations
Notarial Profession and Notarial Archives Act, Cap. 55	Notaries	Appointment of Notaries, Exercise of Notarial Functions, Formalities of Notarial Acts, Examinations of Title, Constitution of Notarial College and Notarial Council
Public Registry Act, Cap. 56	Notaries, Creditors, Purchasers	Registration of causes of preference among creditors Enrolment of acts requiring registration in order to have effect in regard to third parties
Land Registration Act, Cap. 296	Notaries, Creditors, Purchasers	Registration of titles to land (limited to certain parts of the island known as Land Registration Areas)
Credit Agreements for Consumers relating to Residential Immovable Property Regulations under the Consumers Affairs Act, Subsidiary Legislation 378.10	Creditors, Purchasers	Creditworthiness assessment of customers, Effective underwriting standards in relation to residential immovable property, Prudential and supervisory requirements in relation to household lending in relation to the purchase of immovable property
Prevention of Money Laundering and Funding of Terrorism Regulations, Subsidiary Legislation 373.01	Notaries	Proper Customer Due Diligence (CDD) and Anti-Money Laundering (AML) procedures
Immovable Property (Acquisition by Non-Residents) Act, Cap. 246	Notaries, Purchasers	Acquisition of secondary residences by EU citizens, including Maltese, who have not resided continuously in Malta for a minimum period of five years
Individual Investor Programme of the Republic of Malta Regulations, Subsidiary Legislation 188.03	Notaries, Purchasers	Granting of citizenship to foreign individuals and their families who contribute to the economic development of Malta: requisite to acquire property worth €350,000 or rent for a minimum annual €16,000

Table 2: List of national legislation		
Legal Notice 376/2012 Energy Performance of Buildings Regulations, 2012 under the Building Regulation Act (Cap. 513) and the Malta Resources Authority Act (Cap.423)	Buyers and Tenants	Energy efficiency of the new and the existing buildings
Subsidiary Legislation 409.02, Protection of Consumers in respect of certain aspects of Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts) Regulations under the Malta Travel and Tourism Services Act	Consumers	Protections of Buyers in Contracts for Timesharing of Immovable Property Regulations

^a The Maltese Consumer Affairs Act contains a non-exhaustive list comprising **29 specific unfair terms**:

- (a) Excluding or limiting the liability of a trader because of his own fraud or gross negligence or that of his employees or agents, or by reason of any failure to fulfil an obligation constituting one of the fundamental elements of the contract;
- (b) Establishing an unreasonably short period for notifying the trader of any defects;
- (c) Excluding or limiting the legal rights of a consumer against the trader in the event of total or partial non-performance or inadequate performance by the trader of any of his contractual obligations;
- (d) Prohibiting the consumer from offsetting a debt owed to the trader against a claim, which the consumer may have against the same trader;
- (e) Making an agreement binding on the consumer whereas the provision of services or goods by the trader is subject to a condition whose realization depends solely on the will of the trader;
- (f) Allowing the trader to retain sums paid by the consumer if the consumer decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the trader where the trader is the party cancelling the contract;
- (g) Requiring a consumer who fails to fulfil his obligation, to pay to the trader as compensation a sum which is disproportionately high to the value of the goods or services purchased or hired;
- (h) Determining the compensation payable by a consumer who fails to fulfil his obligations, without providing for compensation of the same magnitude by the trader who fails to fulfil his;
- (i) Limiting the means of proof that the consumer can use;
- (j) Causing the consumer to waive any ground of claim against the trader in the event of a dispute;
- (k) Prohibiting the consumer from seeking the cancellation of the contract if the trader fails to fulfil his obligations;
- (l) Restricting the right of the consumer to cancel the contract if the trader, in connection with any guarantee or warranty given, does not fulfil his obligation or fails to do so within a reasonable period;
- (m) Irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- (n) Enabling the trader to alter the terms of a contract unilaterally, without a valid reason, which is specified in the contract;
- (o) Enabling the trader to alter unilaterally, without a valid reason, any characteristics of the product or service to be provided;

- (p) Providing for the price of goods to be determined at the time of delivery by the trader or allowing him/her to increase the price without in any case giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
- (q) Causing the price to vary by reference to factors depending only on the will of the trader;
- (r) Giving the trader the right unilaterally to determine whether the goods or services supplied are in conformity with the contract; (s) giving the trader the exclusive right to interpret any term of the contract;
- (t) Limiting or eliminating the obligation of the trader to respect commitments undertaken by his agents or employees;
- (u) Obliging the consumer to fulfil his obligations where the trader does not perform his;
- (v) Allowing the trader the possibility of transferring all his rights and obligations under the contract where this may serve to reduce the guarantees or warranties for the consumer, without the consent of the consumer;
- (w) Providing for an immediate and final commitment by the consumer on signature of the contract, with the trader contracting subject to a condition the fulfilment of which depends only on the will of the trader;
- (x) Permitting the trader to establish or alter unilaterally the period for delivering goods or supplying a service;
- (y) Excluding or limiting the legal liability of a trader or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that trader or supplier;
- (z) Authorizing the trader or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the trader or supplier to retain the sums paid for services not yet supplied by him/her where it is the trader or supplier himself/herself who dissolves the contract;
- (aa) Enabling the trader or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;
- (bb) Automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early;
- (cc) Excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes to arbitration not covered by legal provisions, unduly restricting the evidence available to him/her or imposing on him/her a burden of proof which, according to the applicable law, should lie with another party to the contract.

^b According to the same Act (Article 51B) a **commercial practice** shall be unfair if:

- (a) It is contrary to the requirements of professional diligence, and
- (b) It materially distorts or is likely to materially distort the economic behaviour with regard to the product, of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers: Provided that, other than the advertising practice of making exaggerated statements or statements which are not meant to be taken literally, commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group.

A commercial practice shall be considered to be a **misleading action** (Article 51C) if:

- (a) It contains false information; or
- (b) In any way, including its overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him/her to take a transactional decision that he would not have taken otherwise:
- (i) The existence or nature of the product;
 - (ii) The main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;
 - (iii) The extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;
 - (iv) The price or the manner in which the price is calculated, or the existence of a specific price advantage;
 - (v) The need for a service, part, replacement or repair;
 - (vi) The nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;
 - (vii) the consumer's rights, including the right to repair, replacement or reimbursement as provided in Part X of the Act, or the risks he may face; or
- (c) In its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves:
- (i) Any marketing of a product, including comparative advertising, which creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor; or
 - (ii) Non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where –
 - The commitment is not aspirational but is firm and is capable of being verified, and
 - The trader indicates in a commercial practice that he is bound by the code.

A commercial practice shall be regarded as a **misleading omission** (Article 51D) if:

- (1.a) In its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise; or
- (1.b) Taking account of the matters described in paragraph (a), the trader hides, or provides in an unclear, unintelligible, ambiguous or untimely manner, such material information as referred to in that paragraph, or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise;
- (2) Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted;

- (3) In the case of an invitation to purchase, the following information shall be regarded as material, if not apparent from the context:
- (a) The main characteristics of the product, to an extent appropriate to the medium and the product;
 - (b) The geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;
 - (c) The price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
 - (d) The arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
 - (e) For products and transactions involving a right of withdrawal or cancellation, the existence of such a right.
- (4) Information requirements established by European Union law in relation to commercial communications including advertising or marketing shall be regarded as material.

Aggressive commercial practices (Article 51E) are defined as:

- (1) A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes him/her or is likely to cause him/her to take a transactional decision that he would not have taken otherwise.
- (2) In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of:
- (a) Its timing, location, nature or persistence;
 - (b) The use of threatening or abusive language or behaviour;
 - (c) The exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;
 - (d) Any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;
 - (e) Any threat to take any action that cannot legally be taken.

1.3 Implementation of relevant EU legislation

Table 3: Implementation of relevant EU legislation					
EU legislation	Implementation achieved?	Implementation of EU legislation at the national level	Source of the national implementation legislation	Content of the national legislation in keywords	Which parts of the EU legislation have been transposed?
Directive 2005/29/EC on unfair commercial practices (UCPD)	Yes	Consumer Affairs Act, Cap 378	Part VIII Unfair commercial practices and illicit schemes, Unfair commercial practices	Unfair commercial practices, misleading actions/omissions, aggressive commercial practices	All
Directive 93/13/EEC on unfair terms in consumer contracts	Yes	Consumer Affairs Act, Cap 378	Part VII Unfair Contract Terms	Prohibited terms, meaning of an unfair term, use of plain language in consumer contract	All
Directive 2008/122/EC on the protection of consumers, in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts	Yes	Malta Travel and Tourism Services Act, Cap 409	Subsidiary Legislation 409.02 Protections of Buyers in Contracts for Timesharing of Immovable Property Regulations	Advertising, Pre-contractual information, right of withdrawal, advance payments, long-term holiday products contracts, termination of ancillary contracts	All
Directive 2010/31/EU of Energy Performance of Buildings Directive	Yes	Building Regulation Act (Cap. 513) and the Malta Resources Authority Act (Cap.423)	Legal Notice 376/2012 Energy Performance of Buildings Regulations, 2012	Adoption of a methodology for calculating the energy performance of buildings, setting of minimum energy performance requirements, Energy Performance Certificates, Calculation of cost-optimal levels of minimum energy performance requirements	All

Table 3: Implementation of relevant EU legislation

Directive 2005/36/EC on Recognition of Professional Qualifications, as last amended by Directive 2013/55/EU	Yes	Mutual Recognition of Qualifications Act, Cap. 451	Subsidiary Legislation 451.03 Recognition of Professional Qualifications Regulations	Permission to pursue a regulated profession, minimum training conditions, comparable professional activities, effects of recognition, issuance of European Professional Card, Free Provision of Services, Freedom of Establishment, Recognition of Professional Experience	All
Mortgage Credit Directive, 2014/17/EC	Yes	Consumer Affairs Act, Cap. 378	Subsidiary Legislation 378.10, Credit Agreements for Consumers relating to Residential Immovable Property Regulations	Obligations of the Creditor, Knowledge and competence requirements for staff, obligation to provide pre-contractual information, creditworthiness assessment, foreign currency loans, arrears and foreclosure	All

1.4 Communications and strategy papers

Table 4: Communications and strategy papers					
Communication or strategy paper	Have the following communications and strategy papers been referred to in national documents?	Name of document	Source	Content	Differences with respect to communications and strategy papers listed in the first column
COM(2015) 550 final Communication of the Commission Upgrading the Single Market: more opportunities for people and business	No	Only discussed by the Malta-EU Steering & Action Committee (MEUSAC)			
COM(2013)676 Communication from the Commission on evaluating national regulations on access to professions	No	National Action Plan still not submitted by Malta			
COM(2016)820 Communication from the Commission on reform recommendations for regulation in professional services	No				
European Consumer Agenda	No				
Consumer Programme 2014-2020	Yes	Explanatory Memorandum approved by Government, May 2012	Malta-EU Steering & Action Committee (MEUSAC)	Explanation of Government Position	Malta believes that the focus of the EU should be on those Member States with weak consumer organisations rather than on markets with low consumer confidence ³ .

³ Position retrieved from the Explanatory Memoranda of the Government; no explanation was given for this divergence.

2. General market information

2.1 Key market data

Table 5: Key market data											
General market situation (e.g. trends in the market, recent developments in the market, price fluctuations, etc.)	Strong promotion of ownership especially from the 1970s onwards. Property prices tripled between 1985 and 2000 and have kept increasing steadily since the years preceding Malta's accession to the EU in 2004. Malta is currently experiencing another period of robust growth in residential prices as a result of a number of factors, such as the government scheme for first-time buyers as well as the low interest rate environment, which makes property more attractive to purchase. Property prices have also benefited from income growth amongst certain categories, and continued to increase in foreign workers and the Individual Investor Programme.										
Total value of residential transactions for buying and renting for the year 2015 (2014 or 2013 depending on the latest available data) expressed in EUR	<p>Ownership</p> <p>22,723 contracts concerning sale of property 972 estate agents appeared on these contracts¹ (this figure omits cases where agency fees would be settled separately than on the deed of sale) 2,905 of the total were First Time Buyers² Value of Property Sales from January to October 2016³</p> <table border="1"> <tbody> <tr> <td>Less than €150,000</td> <td>8,543</td> </tr> <tr> <td>Between €150,000 and €250,000</td> <td>1,768</td> </tr> <tr> <td>Between €250,000 and €600,000</td> <td>1,056</td> </tr> <tr> <td>Between €600,000 and €1,000,000</td> <td>206</td> </tr> <tr> <td>More than €1,000,000</td> <td>145</td> </tr> </tbody> </table> <p>No data available for renting.</p>	Less than €150,000	8,543	Between €150,000 and €250,000	1,768	Between €250,000 and €600,000	1,056	Between €600,000 and €1,000,000	206	More than €1,000,000	145
Less than €150,000	8,543										
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Between €600,000 and €1,000,000	206										
More than €1,000,000	145										
Ratio house owners – tenants (i.e. the percentage of households that are owners resp. tenants of dwelling units)	<p>76.5% ownership (15.3% owned with mortgage, 61.2 owned without mortgage) 9.2% Renting privately below market price 5.4% Renting Privately at market price 5% Social Housing (2011 Census)</p>										
Usage of land (Quotas for built land, agricultural land, "wild land" (forests, lakes etc.))	<p>Artificial land in Malta accounts for 32.6 % of the total area. A rationalisation exercise was carried out by the Malta Environment and Planning Authority (MEPA) in 2006, which relaxed height limitations and development in certain zones, and eased supply restrictions. A similar exercise was carried out in 2015 (DC 15/Development Control Policy and Design Guidelines) with the aim of permitting the construction of additional buildings.</p>										

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Average prices of residential property	<p><i>According to the type of property</i></p> <ul style="list-style-type: none"> • <i>Average flat of ca. 70 sqm</i> • <i>Terrace house of ca. 100 sqm</i> • <i>Detached (one family house) of ca. 150 sqm</i> 	<p>Ownership</p> <p>There is a general lack of public domain information on property. No official data is available on actual prices (only data available is the Property Price Index published by the National Statistics Office and the index of advertised residential property prices published by the Central Bank of Malta)</p> <p>Renting</p> <table> <tr> <td>1-bedroom Average</td> <td>€498</td> </tr> <tr> <td>2-bedroom Average</td> <td>€663</td> </tr> <tr> <td>3-bedroom Average</td> <td>€879</td> </tr> <tr> <td>Non-detached Average</td> <td>€1,249</td> </tr> <tr> <td>Detached Average</td> <td>€2,196</td> </tr> </table> <p>(Central Bank of Malta)</p>	1-bedroom Average	€498	2-bedroom Average	€663	3-bedroom Average	€879	Non-detached Average	€1,249	Detached Average	€2,196
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Detached Average	€2,196											
	<p><i>According to the type of location</i></p> <ul style="list-style-type: none"> • <i>Capital city</i> • <i>Urban areas</i> • <i>Rural areas</i> 	<p>Ownership</p> <p>No data available in relation to the typologies of location listed on the left.</p> <p>Renting</p> <p>Rents in the upmarket region comprising the capital city and the main commercial area (Region A) were nearly 50% higher than those in medium-priced urban areas (Region B). Region B commanded rents that were on average, around 10% steeper than those in the more downmarket urban area of the island (C).</p> <p>No data is available on rural areas.</p> <p>A. Sliema, St. Julian's, Gzira and Valletta (upmarket region) B. Mellieha, St. Paul's Bay, Qawra and Bugibba (medium price range) C. Vittoriosa, Senglea, Cospicua and Marsascala (downmarket region)</p>										

Table 5: Key market data												
Price development of residential property	<p><i>According to the type of property</i></p> <ul style="list-style-type: none"> • Average flat of ca. 70 sqm • Terrace house of ca. 100 sqm • Detached (one family house) of ca. 150 sqm 	<p>Ownership</p> <p>Property price index (NSO) up by 5.6% in 2016</p> <p>Renting</p> <p>Increases between 2012 and 2015 in:</p> <table> <tr> <td>1-bedroom apartments:</td> <td>Over 30%</td> </tr> <tr> <td>2-bedroom apartments:</td> <td>Over 30%</td> </tr> <tr> <td>3-bedroom apartments:</td> <td>Almost 50%</td> </tr> <tr> <td>Non-detached houses:</td> <td>Over 20%</td> </tr> <tr> <td>Detached houses:</td> <td>Over 50%</td> </tr> </table> <p>(Central Bank of Malta)</p>	1-bedroom apartments:	Over 30%	2-bedroom apartments:	Over 30%	3-bedroom apartments:	Almost 50%	Non-detached houses:	Over 20%	Detached houses:	Over 50%
	1-bedroom apartments:	Over 30%										
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Detached houses:	Over 50%											
	<p><i>According to the type of location</i></p> <ul style="list-style-type: none"> • Capital city • Urban areas • Rural areas 	<p>Ownership</p> <p>No data available in relation to the typologies of location listed on the left. Apartments up by 4.65%, Maisonettes 6.06% in 2016</p> <p>Renting</p> <p>Cumulative Growth in Rents between 2012 and 2015 for apartments for every region (except 1-bedroom apartments in upmarket region) rose by over 30% Rents of non-detached house in upmarket region rose by almost 50%; Rents of detached house in upmarket region rose by almost 80%, in medium-priced region almost 50%, in downmarket region over 30%</p>										
Development of price index (Housing price index if existing, otherwise Consumer price index)	<p>Over the period spanning 1985 to 2001, house prices nearly tripled, rising by an average rate of 7.9% per annum. The key driver behind this increase was the steady growth in income over this period. Between 2000 and 2015, house prices nearly doubled, increasing on average by 4.8% per annum. The main factors pushing up property prices were higher incomes, increased migration, lower lending interest rates and incentives for prospective homebuyers.</p>											

Above details based on **Central Bank of Malta**, Annual Report 2016 available on: <https://www.centralbankmalta.org/annual-reports>; **W. Gatt & O. Grech**, An Assessment of the Maltese Housing Market, Central Bank of Malta, Policy Note, September 2016; **National Statistics Office**, Property Price Index and Property Volume Index: Q1/2017, 1 June 2017, News Release 91/2017.

- 1 Parliamentary Question 23914, Legislature XII
- 2 Parliamentary Question 23103, Legislature XII
- 3 Parliamentary Question 27256, Legislature XII

2.2 Service providers

Table 6: 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 (expressed in EUR)
Estate agents	Estate agents do not need to be licensed in Malta, meaning that anyone who brokers a property deal would be entitled to brokerage or agency fees. Although various firms exist, no record is kept of how many agents or firms exercise the profession in Malta. The Maltese Federation of Estate Agents (FEA) is a very skeletal organisation, although given recognition by White Paper seeking to regulate the sector.				N/A	Two of the largest firms reported a turnover of €600 million and €506.3 million respectively in 2016 (Remax, Engel & Völkers). Both claimed record year.
Lawyer/Advocates/Solicitor	Neither the Chamber of Advocates nor the Ministry hold a list of legal warrant holders in Malta that are estimated to be c. 1,200 (EU Justice Scoreboard).				N/A	N/A
Notary	Notaries practising in Malta are around 330.				N/A	N/A
Licensed conveyancers	The only service providers involved in the process of conveyancing in Malta are estate agents and notaries. Accredited persons or accredited agents (such as legal firms) are only required for the citizenship by investment programme (IIP).					
Architects	29 registered partnerships	952 warranted architects	N/A	N/A	N/A	N/A
Surveyor	Land-surveying in Malta is generally carried out by architects (Valuation Standards are issued by the local Chamber of Architects – Kamra tal-Periti). 181 Registered Assessors for Energy Performance Rating of Dwellings in Malta (Energy Performance Certificates).				N/A	N/A
Engineers	N/A	1266 warranted engineers	N/A	N/A	N/A	N/A

3. Roles of professionals and services in the real estate market

Table 7: Role of professionals in the real estate market							
	Estate agent	Property valuator⁴	Lawyer/ Advocate/ Solicitor	Notary	Bank	Licenced conveyancer	Technical expert
Main function: does the professional typically work independently or as part of a firm or another organisation?	Usually in firm	Independently	Typically a firm	Typically independently	N/A	Independently	Independently
Extent of engagement (at which point(s) does each professional intervene in the process?)	First point of contact	i) Pre-contractual stage, prior to signing the promise of sale ii) Valuation of the property by customer/ Bank's architect prior to issuance of Sanction Letter	Not typically involved in conveyancing stage unless there exist ambiguities regarding root of title, property permits or redemption of ground rent ⁵	Promise of sale stage right until publication of deed	After promise of sale	N/A	Prior to deed of sale, typically for issuance of EPC
Mandatory involvement	No	No	No	Yes Deeds of transfer of immovables must necessarily be contained in a public deed	N/A	No	Yes Vendors bound to present EPC to purchasers
How are their fees/charges structured	% value	By time	By time	Based on extent of searches	Fees cited on bank website	-	By time

⁴ In some EU countries, the real estate property valuers are regulated as a profession that is separate from estate agents (e.g. Hungary, Lithuania, Latvia); their services might be obligatory, especially when taking mortgage loans.

⁵ The ground rent is the yearly amount, which the tenant (emphyteuta) pays to the direct owner (dominus) of the property as an acknowledgment of the emphyteusis. Emphyteusis is defined by the Maltese Civil Code (Article 1494) as a contract whereby one party grants to the other, in perpetuity or for a time, a tenement for the stated ground rent. The contract of emphyteusis differs from a rental contract in that the rights transferred are of a real rather than a personal nature and the emphyteuta is, in fact, considered to hold the status of an owner.

4. Land registration

Table 8: Land registration	
Responsible authority(ies) dealing with land registration	Public Registry & Land Registry Public Registry is based on a personal system i.e. a search into the transfers and liabilities of a particular person. The Land Registry is founded on a real system wherein registration and searches are made on the basis of the land. The Land Registration Act does not cover the whole of Malta.
Actors involved in the registration procedure and their main functions	Notaries are public officers, impartial to purchasers or vendors. Only actors involved in registration procedure. Main functions involve enrolment of transfer and charges in Public Registry and in Land Registry (if property falls in a Land Registration Area).

^a An area would be declared as a Compulsory Registration Area by virtue of an order by the Minister in the Government Gazette. The process whereby the entire territory of the Maltese islands would become registerable under the Land Registration Act started in 1982, however, this plan has encountered considerable bureaucratic issues in its implementation.

5. The process to buy or sell a property

5.1 Main steps in the transaction process to buy or sell a property

Table 9: Main steps of the process to buy or sell a property

Main steps	Main function	Applicable	National specificities/additional functions/main actors
Estate agent services	Matching the parties	Yes	Today, most of the advertising has turned online with estate agencies running their own websites and social media pages.
Alternative matching devices	Matching the parties	Yes	Sellers who want to avoid agents publicise their properties through property advertising magazines, websites or television channels. Also, newspaper advertisements.
Preliminary contract	Securing the transaction before the final contract is concluded	Yes	Although the promise of sale does not need to be contained in a public deed but merely in a private writing, parties usually resort to Notaries.
Preliminary checks (land register, administrative permits)	Ensuring that the buyer knows all the legal obligations and relevant features related to the property.	Yes	The root of title is verified by the Notary following the order of the relative searches. In case of Bank Loan, title is further verified by Bank lawyers. Building permission and structural adequacy are verified by the purchaser's architect.
Drafting the sales contract and/or deed of conveyance	Summarising the agreement of the parties.	Yes	Notaries draft deeds of transfer; Banks provide draft deeds of loan.
Legal advice or counselling	Ensuring that the transaction is valid and that the parties know about their rights and duties	Unusual	Lawyers are only resorted to in cases of ambiguities related to title of property e.g. if the seller/buyer would want to redeem the ground rent (if property is subject to such).
Certification of signatures	Ensuring the validity of the agreement	Yes	Notaries declare that they would have duly certified the parties appearing on the deed of transfer.
Contract execution (transfer of payment)	Executing the contract (and securing that both parties perform their obligations)	Yes	It is usually declared by the seller that the deed of transfer would constitute evidence of the receipt of payment.
Contract execution (transfer of property)	Executing the contract (and securing that both parties perform their obligations)	Yes	Notaries enrol transfer in Public Registry thereby completing the process.
Registration	Making the transaction visible to third parties and the public	Yes	Notaries.

Table 9: Main steps of the process to buy or sell a property			
Taxation (esp. transfer tax)	Creating revenue for the state	Yes	Collection of stamp duty and property transfer tax taken care of by Notaries, delivered to Commissioner of Inland Revenue.
Post-transaction controls (if applicable)	Securing that the contract is duly executed	Yes	Notaries ensure that all notes of transfer and hypothecation would have been enrolled correctly. This process is also verified by Banks in case of loans.
Other steps	Money Laundering checks	Yes	Money Laundering: Notaries have to apply due diligence requirements on a "risk sensitive basis"

5.2 Sale contract and transfer of ownership

Table 10: Contract of sale and transfer of ownership				
Main steps	Actors involved per intermediate step	Payment details ⁶		Typical risks associated to these steps
		Payments expressed : • In EUR as % of total purchase price <u>and</u> • As a fixed amount if available (add if VAT applies)	When is the payment made	
Estate agent services or alternative matching devices	Usual; payment is made by the vendor. The agent is mostly involved in advertising the property and brokering the deal between the parties. Upon reaching the agreement, the parties pursue the process until the eventual sale. It is only in cases of foreign buyers/sellers that the agent takes forward the process himself/herself with notaries or architects.	5%+VAT (18%)	Typically on deed of transfer	Agent might pose as buyer in order to eventually resell the property for greater margin of profit.

⁶ Payment shall be considered as the 'discharge of an obligation by its settlement equal to the monetary value of the debtor's obligation' while fees can be defined as 'a charge for services rendered' (Retrieved from: <http://www.investorwords.com/3634/payment.html>, <http://www.investorwords.com/1922/fee.html>). Payment, therefore, includes both the cost of the service and the fees for the service in question.

Table 10: Contract of sale and transfer of ownership				
Preliminary contract (usual)	Usual; drafted by Notary	Normally about 1.5% to 2.5% of the property price including total expenses of searches and enrolment/registration of deeds and VAT. Tariffs contained in the Schedule of the Notarial Profession and Notarial Archives Act (Cap. 55).	Notarial fees paid upon or following the deed of transfer.	Conditions of promise of sale must foresee as many conditions as possible, particularly in dwellings that are yet to be constructed e.g. timeframes of completion, specific finishing works on property. Upon the appointment of a Notary, the risks are significantly reduced since Notaries, as public officers, are tasked specifically with overseeing the regularity of the transfer.
Preliminary checks (land register, administrative permits)	Usual; root of title of property verified by Notary and, in case of lending facilities, Bank. Regularity of building permits usually inserted as condition in promise of sale, in case of lending facilities, also verified by Bank.			
Drafting the sales contract and/or deed of conveyance	Usual; drafted by Notary			
Legal advice or counselling	Not usual; Notary/Lawyer			
Certification of signatures	Mandatory; Notary			
Contract execution (transfer of payment and registration; transfer of property)	Mandatory; Notary			
Registration in land register or similar device	Mandatory; Notary			

Table 10: Contract of sale and transfer of ownership

<p>Taxation (esp. transfer tax)</p>	<p>Mandatory</p>	<p>Stamp Duty for purchasers set at 5% (first-time buyers exempted from paying any duty on first €150,000 of the price of property; EU citizens declaring that they will reside in such property qualify for 3.5% preferential rate on first €150,000). Property Transfer Tax set at 8% on the transfer value: - 5% if the property is transferred before five years from the date of its acquisition; - 2% if property was owned as a primary residence for less than 3 years; - Exemption if property was owned as a primary residence for more than 3 years, as long as vacated within one year of transfer; - Exemption if property is assigned between spouses consequent to a judicial or consensual separation/divorce or if property is donated to spouse or direct ascendants/descendants).</p>	<p>Upon transfer of property.</p>	
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In Malta, a contract of lease is neither dissolved by the death of the lessor nor by the transfer of the premises, unless the lessor would have reserved these powers to himself/herself in the agreement constituting the lease. Should the lessor do so, the alienee of the premises desiring to avail himself/herself of this particular stipulation would be bound to give one month's notice to the lessee if the remaining period of the lease would not be superior to one year, or fifteen days' notice in the case that it were inferior.

5.3 Professional services performed in the real estate market related to buying and selling a property

Table 11: Professional services performed in the real estate market related to buying and selling a property				
Services in the real estate market	Minimum standards for information provided by law	Service providers involved	Quality of involvement	Fees expressed: • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)
Estate agent services or alternative matching devices	General Contract Law: Duties of disclosure of conflicts of interest, negotiation in good faith, provision of information on property being advertised and full disclosure of defects that render it inadequate for purpose for which it is being acquire	Estate agents/property brokers	Optional but usual	5% + VAT (18%)
Provision of mandatory information before the start of the transaction, if applicable	Duty of the notary to direct drawing up of the deed from beginning to end.	Notaries	Mandatory (except for legal advice or counselling as the Notary must maintain his/her impartiality)	Tariffs laid down under the Notarial Profession and Notarial Archives Act:
Preliminary contract (usual)	The notary alone is competent to ascertain the will of the parties and to inquire, after reading over and explaining the act to them, whether it is in accordance with their will.			For any deed of transfer, under any title, of any immovable property:
Preliminary checks (land register, administrative permits)				For the first amount not exceeding €10,000: 1%
Drafting the sales contract and/or deed of conveyance	The notary must personally be certain of the identity of the parties (Notarial Profession and Notarial Archives Act).			For any additional amount not exceeding €500,000: 0.5%
Legal advice or counselling				For any additional amount over €500,000: 0.25%
Certification of signatures				An additional two-thirds of the above fee applies in cases where the property would be acquired through a lending facility.
Contract execution (transfer of payment; transfer of property)	The notary should give all the necessary information required by the client and assist the client in taking a fully informed decision.			Including 18% VAT, costs of searches, registration of promise of sale, submission of Inland Revenue Tax and Registration at Public and Land Registers.
Registration in land register or similar device	(Code of Ethics of Notaries, 3.4.3).			

Table 11: Professional services performed in the real estate market related to buying and selling a property

	<p>Notary shall not pay or receive any benefit from either of the parties or from any third parties (such as estate agents and architects), in connection with the practise of his professional duties (Code of Ethics of Notaries, 3.4.6).</p> <p>Notaries are obliged to restrain from unfair competition, such as co-operation with estate agents who pressure clients to choose that particular notary in order to receive financial benefit (Code of Ethics of Notaries, 4.2).</p>			
Taxation (esp. transfer tax)	<p>Notaries must ascertain truth of declarations being made by parties for purposes of tax. Notary must also warn the clients regarding the importance of truthfulness of their declaration and record that warning on the deed of transfer itself.</p>	Notaries	Mandatory	

5.4 Creating a Mortgage

Table 12: Mortgage requirements					
Main steps to create a mortgage	Actors/institutions involved	Minimum standards for information	Additional requirements for consumer mortgages	Fees expressed: <ul style="list-style-type: none"> In EUR as % of total purchase price <u>and</u> As a fixed amount (if available) 	Typical risks associated to these steps
Conclusion of credit and mortgage agreement with lender (bank)	Autonomous process undertaken by the prospective buyer; no actor involved other than Bank and borrower.	Credit Agreements for Consumers Relating to residential Immovable Property Regulations (transposing provisions of Mortgage Credit Directive).	N/A	Processing fees Max. €150-€450 Bank legal fees Max. €350-€650 Bank architect fees Max. €465 Certain banks waive fees for First Time Buyers	N/A
Insertion of mortgage in the land register, usually at first rank	N/A	N/A	N/A	Public Registry: i) For every note for registration of privilege or hypothec over €47,000 = €25.65 + €2.60 for every additional €2,300 ii) For every note of enrolment over €47,000 = €25.65 + €2.60 for every additional €2,300 Land Registry: i) Lodgement of transfer over 93,000 = €51.25 + €10.25 for every additional €23,000 ii) Lodgement of charge over €70,000 = €30.75 + €5.15 for every additional €23,000	Special Privilege on immovables are ineffectual unless they are registered in the Public Registry within the time of two months.
Credit sum paid to mortgagor (buyer) or seller	Creditor Bank				

6. The process to rent or let a property

6.1 Main steps in the transaction process to rent and let a property

Table 13: Main steps of the process to rent and let a property	
Main steps	Process involved
Finding and matching landlords and tenants	Letting agents; usually through online websites or social media pages
Information search by landlords or tenants (e.g. about salary, outstanding debts)	Usually through letting agent
Inspection of the property by tenants (in some cases with the help of professionals)	Viewings typically carried out in presence of both landlord and letting agent
Delivery of mandatory information to tenants prior to the conclusion of the contract (if relevant)	Usually through letting agent
Delivery of energy performance certificate to tenant	Anecdotal evidence suggests duty largely unobserved by landlords
Provision of additional guarantees to landlord, if relevant	No usual guarantees requested besides deposits on rent and utility payments
Conclusion of the contract in the usual form (e.g. oral, written, preformulated)	Must be contained in writing on pain of nullity. Five necessary clauses (specification of address, agreed use, duration, conditions of renewal, amount of rent). Parties are free to include any other stipulations e.g. whether property could be sublet, whether common parts expenses should be borne by tenant, whether pets could allowed in rented premises etc.
Rent payment and deposit (e.g. bank account)	Usually cash or by bank transfer
Registration of the contract in the land register (e.g. excluded, optional or mandatory)	No duty to register lease for contractual validity. The landlord must register lease with fiscal authority (policy announced in 2016 although still not defined by Government).

6.2 Rent contract

Table 14: Rent contract				
Main steps	Actors involved per intermediate step	Payment details ⁷		Typical risks associated to these steps
		Payments expressed : • In EUR as % of total purchase price <u>and</u> • As a fixed amount if available (add if VAT applies)	When is the payment made	
Finding and matching the parties	Usually letting agent	Typically, equivalent to one month's rent; half the amount requested from the tenant and half from the landlord.	Upon entry into property/conclusion of contract	Defaulting tenant
Information search by landlord on tenant (e.g. about salary, outstanding debts)	Optional. Usually background checks done through letting agent.			Uncooperative landlord (especially with regard to repairs)
Inspection of the property by tenant (in some cases with the help of professionals)				Proven risk of having Landlords discriminate against tenants hailing from certain ethnic minorities or income categories.
Delivery of mandatory information to tenant prior to the conclusion of the contract (if relevant)	Optional. In the absence of a formal Tenants' Union, tenants usually rely on letting agents			Certain defects of the property or in the appliances not disclosed by Landlord (and possibly by colluding agent).
				Due to the lack of any academic formation, agents are not always knowledgeable of legal requirements (e.g. contract to be made in writing), hence not in a position to guide tenants.

⁷ Payment shall be considered as the 'discharge of an obligation by its settlement equal to the monetary value of the debtor's obligation' while fees can be defined as 'a charge for services rendered' (Retrieved from: <http://www.investorwords.com/3634/payment.html>, <http://www.investorwords.com/1922/fee.html>). Payment, therefore, includes both the cost of the service and the fees for the service in question.

Table 14: Rent contract

Delivery of energy performance certificate to tenant	Mandatory. Landlords and letting agents are equally responsible for the issuance of certificate (this requirement is hardly observed in practice)	€200	Upon demand by assessor.	Obligation hardly publicised; letting agents themselves are not aware of/negligently ignore duty. Landlords are exposed to fines in case of non-compliance.
Conclusion of the contract in the usual form (e.g. oral, written)	Mandatory. No draft contract provided by government. Landlord may obtain draft from lawyer, alternatively use agent's draft. Contract must necessarily be contained in writing in order to be legally valid.	Depends on whether LL/agent is in possession of draft contract or whether agreement is drafted in the presence of a legal professional.	If legal services intervene in the drafting, fees are payable upon signing of agreement.	If tenant does not have draft contract revised by his/her lawyer s/he risks consenting to unfavourable clauses (especially with regard to utilities – tenants entitled to discounted tariffs if using property as residence, however must register with billing agency).
Rent payment and deposit (e.g. bank account)	Optional. Usually agreed between contracting parties.	Deposit usually equivalent to one month's rent	Monthly, in advance.	
Registration of the contract in the land register or other device (excluded, optional or mandatory)	Mandatory. Landlords must declare rental income for fiscal purposes.	15% final withholding tax (or declaration of rental income in annual return and taxed at applicable amount)	Upon conclusion of agreement.	

6.3 Professional services performed in the real estate market related to renting and letting a property

Table 15: Professional services performed in the real estate market related to renting and letting a property				
Services in the real estate market	Minimum standards for information provided by law, if applicable	Service providers involved	Quality of involvement	Fees expressed: <ul style="list-style-type: none"> • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)
Finding and matching landlords and tenants	N/A	Letting agents	Usual	Fees payable to letting agent equivalent to one month's rent + VAT
Information search by landlords or tenants (e.g. about salary, outstanding debts)	N/A	N/A	Not usual	
Inspection of the property by tenants (in some cases with the help of professionals)	Landlords and agents bound to disclose defects (duty to negotiate in good faith). Guarantee against hidden defects contained in Civil Code, which may lead to tenant demanding reduction of rent or dissolution of agreement.	Letting agents	Usual	
Delivery of mandatory information to tenants prior to the conclusion of the contract (if relevant)			Mandatory	
Conclusion of the contract in the usual form (e.g. oral, written, preformulated)	Duty to inform tenant that contract must be stipulated in writing (general rules on mandate, duty of care)	Letting agent/Lawyer	Optional	
Rent payment and deposit (e.g. bank account)	Amount and manner must be expressly stipulated in rental contract	Letting agent	Usual	
Registration of the contract in the land register (e.g. excluded, optional or mandatory)	Mandatory for contracts longer than three months. Landlord must register contract with fiscal authority (measure announced in 2017 Budget, rules still undefined).	Notary	Mandatory	N/A

7. Professional services regulation: notaries

7.1 Market entry and structure regulation

Table 16: Market entry and structure regulation

	Regulation	
Subjective requirements	<i>Qualifications (diplomas, exams, concours) required to become a notary in your country:</i>	Qualification requires inter alia i) obtaining the diploma of Notary Public from the University of Malta and ii) passing a qualifying examination held after having attended the office of a Notary for a period of at least one year since the end of the said course.
Objective requirements	<i>Do numerus clauses and other objective requirements exist?</i>	No
Citizenship requirements	<i>Are foreign candidates admitted de iure and also de facto under the same conditions as nationals?</i>	Yes. The office is open for citizens of Malta, EU Member States and States of the European Economic Area.
Inter-professional cooperation	<i>Are forms of collaboration between notaries and other professionals allowed and usual?</i>	Notarial firms are allowed, however they are bound to restrain from collaboration with third parties such as estate agents and architects due to possible cases of conflict of interest and unlawful competition.
Business structure	<i>Are notary associations/corporations allowed?</i>	Yes, as long as they maintain their professional independence,
Geographical limitations	<i>Are there limitations with respect to the area in which the notary can exercise his/her activities (e.g. at the regional or municipal level)?</i>	No
	<i>Are these limitation restricted to specific tasks?</i>	N/A

7.2 Market conduct regulation

Table 17: Market conduct regulation		
	Regulation	
Exclusive rights	<i>Transactions or parts of them for which only notaries may act against payment</i>	Only Notaries are competent to receive acts inter vivos and to attribute public faith thereto. This means that any act required by law to be contained in a public deed, such as the transfer and hypothecation of immovables, may only be published by a Notary.
Duty to provide services	<i>Are notaries allowed to refuse a request to act?</i>	Notaries are bound to give their services whenever required to do so.
Professional standards	<i>How are professional standards regulated? What are the tasks of the professional representation (e.g. Chamber of Notaries) in this context?</i>	Notarial College (composed of all the notaries) is tasked with promoting the welfare and progress of the notarial profession. Notarial Council (elected annually amongst members of the College) entitled to communicate with the Government on all matters affecting the profession or connected therewith.
Mandatory intervention	<i>Is the intervention of a notary required for the registration procedure?</i>	For the purposes of enrolment, Director of Public Registry may only receive acts that are drawn up according to law; in case of transfer and hypothecation of immovables, deed must necessarily have been published by Notary.
Compulsory indemnity insurance	<i>Is indemnity insurance compulsory? If yes, what is the indicative amount of the insurance?</i>	Yes. Responsibility of every notary to be adequately insured against all risks of professional liability during the time he is exercising his profession. Minimum sum of €250,00.
Continuing education	<i>Do forms of continuing education exist? If yes, is continuing education mandatory?</i>	Not mandatory, although bound by ethical standards to make every effort to keep himself or herself informed and knowledgeable in the area of his or her profession.
Advertising restrictions	<i>Are there limitations on advertising?</i>	Notaries strictly prohibited from including in their adverts information relating to level of competence, efficacy of services or possession of specific qualities or skills.

8. Professional services regulation: lawyers or other licensed conveyancers (only relevant if legally admitted to perform real estate transactions and/or to assist the conclusion of tenancy agreements)

8.1 Market entry and structure regulation

Table 18: Market entry and structure regulation

Regulation		
Subjective requirements	<i>Conditions (diplomas, exams, concours) required to become a lawyer in your country.</i>	Qualification requires inter alia i) obtaining the academic degree of Doctor of Law (LL.D.) in accordance with the provisions of the Statute, Regulations and Bye-Laws of the University of Malta, ii) being examined and approved by two judges after having attended the office of a practising Advocate for a period of at least one year since commencement of the last academic year of the said course.
Objective requirements	<i>Do numerus clauses and other objective requirements exist?</i>	No
Citizenship requirements	<i>Are foreign candidates admitted de iure and also de facto under the same conditions as nationals?</i>	Citizens of Malta or an EU Member State and anyone otherwise permitted to work in Malta under any law. Subject also to Mutual Recognition of Legal Profession Regulations (S.L. 12.17).
Inter-professional cooperation	<i>Are forms of collaboration between lawyers and other professionals allowed and usual?</i>	Law firms are allowed, however, lawyers are not allowed to enter into any professional partnership or other professional arrangement with any person other than an advocate, unless specifically allowed by law.
Business structure	<i>Are lawyer associations/corporations allowed?</i>	
Geographical limitations	<i>Are there limitations with respect to the area in which the lawyer can exercise his/her activities (e.g. at the regional or municipal level)?</i>	No
	<i>Are these limitation restricted to specific tasks?</i>	N/A

8.2 Market conduct regulation

Table 19: Market conduct regulation		
	Regulation	
Exclusive rights	<i>Transactions or parts of them for which only lawyers may act against payment</i>	Proposed Lawyer's Bill establishes Reserved Legal Servicesa, which may be exclusively provided by lawyers, and Restricted Legal Services open to members of other professions such as Accountants, Architects and Tax Professionals
Neutrality	<i>Is the lawyer allowed to act on behalf of both parties involved in the transaction? In this case, what type of fees apply and which party has to bear them?</i>	Lawyers prohibited from acting for two or more clients where a conflict of interest exists between those clients.
Duty to provide services	<i>Are lawyers allowed to refuse a request to act?</i>	Lawyer generally free to decide whether to accept instructions from any particular client.
Professional standards	<i>How are professional standards regulated? What are the tasks of the professional representation in this context?</i>	Commission for the Administration of Justice (Constitutional organ). b
Compulsory indemnity insurance	<i>Is indemnity insurance compulsory? If yes, what is the indicative amount of the insurance?</i>	No
Continuing education	<i>Do forms of continuing education exist? If yes, is continuing education mandatory?</i>	Academic seminars organised and promoted by Chamber of Advocates; attendance not compulsory.
Advertising restrictions	<i>Are there limitations on advertising?</i>	Guidelines for advertising published by Chamber of Advocates; lawyers prohibited from claiming expertise in particular fields of law or use the names of renowned clients for purposes of advertising.
Fee regulation	<i>Lawyer fee system</i>	Fees relating to judicial procedures fixed by Code of Organisation and Civil Procedure (Cap. 12, Tariff E). Guidelines on Fees for Services Rendered also published by Chamber of Advocates. Professional Fees also dealt with by Code of Ethics and Conduct for Advocatesc published by Commission for Administration of Justice.

^a According to the Draft Bill these services include:

- (a) The provision of legal advice to another person for consideration;
- (b) Advocacy in any of the superior courts of Malta or other tribunals, which, by virtue of any law, are reserved for Practising Advocates;
- (c) The preparation and drafting of any acts or pleadings to be filed in any court or tribunal mentioned in paragraph (b) above;
- (d) the preparation, drafting, negotiation of any document or contract, whether it is to be executed as a public deed or private writing, and which is intended to document, create or acknowledge legal rights and obligations between the contracting parties.

^b Amongst the functions of the Commission for the Administration of Justice listed under Article 101A of the Constitution, there are: to supervise the workings of all the superior and inferior courts; to advise the Minister responsible for justice on any matter relating to the organisation of the administration of justice and; to exercise, in accordance with any law, discipline over advocates and legal procurators practising their profession.

^c Rule 2 under Chapter IV dealing with Professional Fees lays down that an advocate's fee shall be reasonable and may be established either by the advocate himself/herself or by agreement between the advocate and the client. The factors to be considered in determining the reasonableness of a fee (whether agreed or otherwise) include the following:

- a) The time required, the novelty and difficulty of the issues involved, and the dedication requisite to perform the legal service properly;
- b) The responsibility undertaken, with particular reference to the amount involved;
- c) The time limitations imposed by the client or the circumstances;
- d) The nature and length of the professional relationship with the client;
- e) The experience, reputation and ability of the advocate performing the services;
- f) In litigation matters, the fees recoverable from the other party;
- g) The likelihood that the acceptance of the particular brief will preclude the acceptance of other briefs by the advocate.

9. Professional services regulation: estate agents

9.1 Market entry and structure regulation

Table 20: Market entry and structure regulation

	Regulation	
Subjective requirements	<i>Qualifications (level and duration of education and training, diplomas, exams, traineeships or professional experience requirements, concours) required to become an estate agent in your country.</i>	Currently the office of the estate agent is not specifically regulated in any of its aspects. Although bound by general Civil Law rules, primarily those concerning contract and mandate, no regulatory entity and no qualifying requirements currently exist in Malta. White Paper presented in 2015 attempts to start addressing these issues. Proposal for agents to qualify through a post-secondary course in a high vocational school, business school or university.
Objective requirements	<i>Do numerous clauses and other objective requirements exist?</i>	No
Licence requirements	<i>Are estate agents licenced or do they work as employees?</i>	No
Citizenship requirements	<i>Is unlimited access to the profession granted to foreign professionals de iure and de facto?</i>	Yes, the absence of any qualifying requirements means that any individual who is regularly present in Malta may carry out the business and demand a fee.
Inter-professional cooperation	<i>Are estate agents allowed to exercise another profession or business activity? Is inter-professional cooperation regulated?</i>	Yes. No proposal for regulation of intra-professional cooperation.
Business structure	<i>Share of estate agent acts acting as sole practitioners and as companies (if data are available)? Can the agent be employed by another agent or establish a partnership with other agents? Are there any restrictions on the corporate structure of a real estate enterprise (such as voting rights reserved to qualified members of a profession, shareholding requirements etc.)?</i>	Data not available. Yes agents may collaborate with each other; White Paper proposes that franchising agreements must be notified to Authority No
Geographical limitations	<i>Are there limitations with respect to the area in which the estate agent can exercise his/her activities (e.g. at the regional or municipal level)?</i>	No, unless imposed by agency in employment contract.
	<i>Are these limitation restricted to specific tasks?</i>	N/A

9.2 Market conduct regulation

Table 21: Market conduct regulation		
	Regulation	
Neutrality	<i>Is neutrality regulated? Is the agent allowed to act on behalf of both parties involved in the transaction? In this case, what type of fees applies and which party bears these?</i>	As a mandatary, an estate agent should always act in the best interest of his principal, whether the latter would be the buyer or the seller. If engaged by both, s/he must act in the best interests of both.
Professional standards	<i>How are professional standards regulated? Are entities or associations ensuring the professional representation and respect of rules of good practice (e.g. association of real estate professionals)?</i>	Real Estate Agents Authority (proposed in White Paper)
Compulsory indemnity insurance	<i>Is indemnity insurance compulsory for estate agents? If yes, what is the indicative amount of the insurance?</i>	No
Continuing education	<i>Do forms of continuing education exist? If yes, is continuing education mandatory? What are the requirements related to the content and duration of continuing education? What are the consequences of non-compliance?</i>	No
Advertising restrictions	<i>Are there limitations on advertising?</i>	No
Fee regulation	<i>Estate agents' fee system</i>	Commission usually 5% + VAT of the purchase price of the mentioned property; or one month's rent in the case of a rental agreement (also proposed in White Paper). In case of sale fee owed by solely vendor, in case of lettings 50% landlord and 50% tenant.
Compulsory membership in professional bodies/compulsory registration	<i>Is membership in professional bodies compulsory? If so, what are the membership conditions and the membership fees? Does the professional body have a supervisory or another important regulatory role?</i>	Currently no, however, White Paper proposes setting up of Real Estate Agents Authority with the function of supervising licence holders, investigating and initiating procedures and receiving complaints from the public. Membership, as proposed, requires payment of an annual fee of €500 and €250 for every extra office.

10. The real estate market

10.1 Transaction costs for sample transactions

Table 22: Transaction costs VAT excluded						
	Estate agent ⁸	Technical services	Legal services	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
€100,000 sales price (no mortgage)	€5,000	€100	€550 (excluding costs of searches)	€85 (+€61.50 if property falls in a Land Reg. Area)	€3,500 (First time buyers: Exempt)	€9,235
€100,000 sales price + 100,000€ mortgage	€5,000	€100	€917 (excluding costs of searches)	€170 (+€102.55 if property falls in a Land Reg. Area)	€3,500 (First time buyers: Exempt)	€9,687
€250,000 sales price (no mortgage)	€12,500	€100	€1,300 (excluding costs of searches)	€253 (+€123 if property falls in a Land Reg. Area)	€10,250 (First time buyers: €5,000)	€24,403
€250,000 sales price + 250,000€ mortgage	€12,500	€100	€2,167 (excluding costs of searches)	€506 (+€195 if property falls in a Land Reg. Area)	€10,250 (First time buyers: €5,000)	€25,523
€500,000 sales price (no mortgage)	€17,500 - €25,000	€100	€2,550 (excluding costs of searches)	€532 (+€230.27 if property falls in a Land Reg. Area)	€22,750 (First time buyers: €17,500)	Min €43,432
€500,000 sales price + €500,000 mortgage	€17,500 - €25,000	€100	€4,251 (excluding costs of searches)	€1,064 (+€356.15 if property falls in a Land Reg. Area)	€22,750 (First time buyers: €17,500)	Min €45,565
%VAT applicable	15%					

⁸ An agent usually receives a percentage of the transaction value.

10.2 Transaction features

Table 23: Transaction features			
Transaction / service	Party bearing the costs of intermediation service (buyers or sellers, landlords or tenants) Costs expressed: <ul style="list-style-type: none"> In EUR as % of total purchase price <u>and</u> As a fixed amount (if available) 	Fees as expressed in the contract: <ul style="list-style-type: none"> In EUR as % of total purchase price <u>and</u> As a fixed amount (if available) 	Possible hidden costs faced by buyers or tenants
Estate agents	Seller	Typically 5% of purchase price	VAT
Letting agents	Landlord & Tenant	50% of one month's rent each	VAT
Technical services	Purchaser	Architect's inspection and valuation for mortgage (c. €100)	
	Seller	Valuator for EPC (c. €200)	
Legal services	Purchaser	Scale depending on value of property/lending facility and extent of searches (see Table 11)	Itemised Billing Calculator of expenses and fees provided by Notarial Council
Land register fees	Purchaser	Scale depending on value of property/hypothecary guarantee (see Table 12)	
Taxes on conveyancing		VAT on fees	
Transfer taxes	Buyer	Stamp Duty at 5% (first 150,000 taxed at 3.5% if property is used as residence)	
	Seller	Property Transfer Tax at 8% (exemptions apply) (see Table 10)	

10.3 Taxes during the process of buying and selling a property

Table 24: Taxes related to buying and selling a property			
	Relevance of the tax	When to pay the tax as part of the process of buying or selling	Tax amount (expressed in EUR as % of total purchase price <u>and</u> as a fixed amount if available)
Registration tax ⁹	No		
Mortgage tax	No		
Cadastral tax	No		
Stamp tax	Yes	Upon the completion of the purchase	Stamp Duty at 5% (first 150,000 taxed at 3.5% if property is used as residence, exempt if first time buyer) (see Table 10)
Transfer tax (tax on the acquisition of property)	Yes	Upon the completion of the transfer	Property Transfer Tax at 8% (exemptions apply) (see Table 10)
Archives tax	No		
Other taxes	Capital gains Tax	Upon the completion of the transfer	Limited circumstances permitted where seller may opt for capital gains regime (35%) e.g. transfer between co-owners of the property

10.4 Taxes during the process of renting and letting a property

Table 25: Taxes related to renting or letting a property			
	Relevance of the tax	When to pay the tax in the process of renting or letting	Tax amount (expressed in EUR as % of total purchase price <u>and</u> as a fixed amount if available)
Registration tax	No		
Stamp tax	No		
Other taxes concerning the use of the property	Yes	Upon declaration of annual income	15% final withholding tax on all rental income due by vendor 7% VAT charged in cases of tourist accommodation

⁹ Registration taxes are public levies associated with the registration act. They are not to be confused with registration fees, i.e. the payment required by the registration office to carry out the registration. Registration fees are contained in Table 10.

11. Consumer situation in the market

11.1 Consumer rights

Table 26: Consumer rights		
Are there specific consumer rights in the context of real estate transactions and residential tenancies in your country?	<i>With respect to buyers</i>	Yes, Credit Agreements for Consumers Relating to Residential Immovable Property Regulations (transposition of Mortgage Credit Directive) aimed at ensuring standard pre-contractual information and more reliable credit worthiness assessments for prospective for borrowers.
In particular: are residential tenants treated as consumers?	<i>With respect to sellers</i>	No.
	<i>With respect to tenants</i>	No.
	<i>With respect to landlords</i>	No.
If relevant, which existing marketing practices are non-compliant with national consumer legislation?	A recent line of decisions is related to the dubious practice adopted by a particular property-advertising company whose standard contracts foresaw the payment of a commission fee, even if the purchaser would not have identified the property through its advertisements. European Consumer Law, as adopted under Maltese Statutes, is applied effectively.	
If relevant, which existing marketing practices are non-compliant with EU consumer legislation?		
Are there existing marketing practices detrimental to consumers, even if not necessarily illegal, in both domestic and cross-border transactions?	The absence of any index of reference, for either price of property or rents, means that both local as well as foreign buyers/tenants often have to rely entirely on agents in order to obtain information on the market. Due to the subjectivity of this information, and possible bias in favour of property owners and landlords by estate agents, prospective buyers and tenants are not always guaranteed total transparency.	

11.2 Consumer complaints

Table 27: Consumer complaints	
How often do buyers and sellers complain due to arising legal issues (e.g. invalid contract, missing information, hidden defects, missing building permit, delay in payment)?	The process of acquisition of property is closely overseen by notaries, and in case of mortgages, further scrutinised by the Bank. Complaints by vendors and purchasers are the exception.
How often do tenants and landlords complain due to arising legal issues (e.g. invalid contract, missing information, increase of rent, termination of the contract without proper notice)?	Due to the poor regulation of the sector, not only as regards contractual duration as well as possible rent increases, but also in what concerns the registration of contracts, utilities, deposits, quality of housing, complaints by tenants on abusive behaviour by landlords is much more frequent. Nevertheless, complaints rarely reach the Rent Regulation Board due to the times involved in the resolution of the dispute and the relatively low amounts in question. Possibly, even question of affordability of legal advice.
Are consumer complaints against a professional service provider frequent, in particular as regards the fees and quality or service?	2 cases involving estate agents brought before the Consumer Complaints Tribunal during the past five years.
To whom can consumers complain (e.g. local or national administration, consumer protection agencies)? And through which means (e.g. formal letter, online form)? Is the procedure effective (in particular: average time needed for reply, solutions available for redress)?	Provision of mediation between consumers and traders entrusted to the Office for Consumer Affairs; if amicable solution is not found dispute is referred to the Consumer Claims Tribunal. Online form is available for online registration of complaint although referral of case to Consumer Claims Tribunal must be made through formal 'Notice of Claim'.

^a The complaint in the case of *Josephine Casaletto obo John Casaletto v. Sandra Dalmas & Remax Letting* [Consumer Complaints Tribunal, 14 September 2015 (CCT 234/13/MS)] concerned a rented holiday premises that the tenants later found out to be unfit for habitation. The Tribunal agreed with the applicant that the state of the property was indeed hazardous to their health and safety but decided to award the landlady and the estate agent (in solidum) compensation for the number of nights that the tenants had spent in the property. The defendants were thus ordered to reconstitute the remaining amount and pay €500 in moral damages.

The case of *Victor Farrugia pro Daniel Farrugia v. Sara Grech Limited* [Consumer Claims Tribunal, 11 May 2017 (CCT/244/16/S)] concerned an offer by an estate agency to pay the client's notarial fees upon the signing of the deed of sale. The applicant demanded the payment of the full fees; however, the agency was only willing to pay up to €900. The Tribunal found that the advertisement specified that, "the cost of searches, contract registration and other expenses were not covered by the offer" and therefore proceeded to award the case in favour of the agent.