

International Property Markets Scorecard

South Africa Market Conditions – Complete Survey August 2009



Contents

Scorecard Information & Background	3
1. Property Rights	4
1.1 Legal Protection	4
1.2 Registries.....	5
1.3 Formal Ownership.....	7
In-Country Assessment Information	7
2. Access to Credit	9
2.1 Banks	9
2.2 Other Sources.....	10
2.3 Credit Bureau.....	11
In-Country Assessment Information	11
3. Effective Governance	13
3.1 Democratic Representation	13
3.2 Lack of Corruption	15
3.3 Efficient Administration	15
In-Country Assessment Information	16
4. Rational Dispute Resolution	17
4.1 Rule of Law	17
4.2 Enforcement of Contracts.....	18
4.3 Commercial Dispute Resolution	19
In-Country Assessment.....	20
5. Financial Transparency.....	21
5.1 Market Stability	21
5.2 Independent Asset Valuers.....	22
5.3 Data Standards.....	23
In-Country Assessment.....	24
6. Appropriate Regulation.....	27
6.1 Fair Tax Regime	28
6.2 Professional Services	28
6.3 Capital Markets.....	29
In-Country Assessment.....	30
Appendix – Procedures for Registering a Property.....	33

Scorecard Information & Background

The Scorecard reflects the status of the six Core Elements necessary for transparent and efficient property market development. Each Core Element includes three Lead Indicators that are further divided into Sub-Indicators. Colors signify the strength of institutions that support market development – very strong, strong and weak. No color indicates that institutions are very weak. Gray indicates more information is needed for an objective determination.

Acknowledgement

The International Property Markets Scorecard Project is the latest development in the continued cooperative work between the Center for International Private Enterprise (CIPE) and the International Real Property Foundation (IRPF). The work began in September 2002 and includes the booklet *Real Property Markets: The 'Real' Solution for Economic Development* jointly published by the Appraisal Institute, CIPE and IRPF. The Scorecard derives from the work of an academic panel led by Richard Green, PhD., Director of the University of California's Lusk Center for Real Estate and the University of Denver, Burns School of Real Estate and Construction Management's Global Real Estate Project under the direction of Dr. Mark Lee Levine.

For Education Purposes Only

While great care has been taken to provide accurate and current information, neither the Center for International Private Enterprise, the International Real Property Foundation nor its editors, staff or contractors assume responsibility for the accuracy of the data contained herein. Further, the general principles and conclusions presented in the text are subject to significant market fluctuations over time as well as local, state, and federal laws and regulations, court cases, and any revisions of the same. This publication is distributed for education purposes with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service.

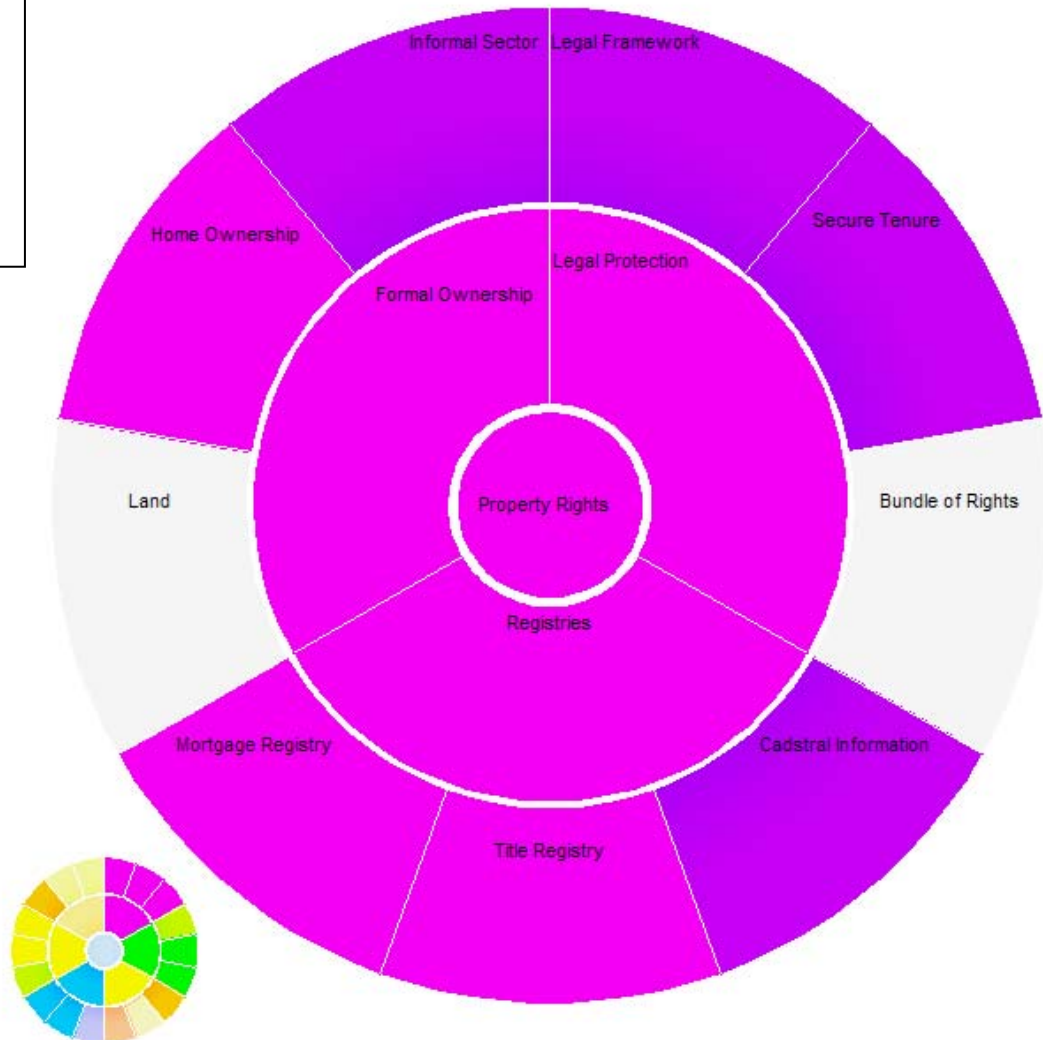
 Except where otherwise noted, this work is licensed under <http://creativecommons.org/licenses/by-nc-sa/3.0/>

Copyright 2009 by the Center for International Private Enterprise and the International Real Property Foundation

This work can be licensed under the Creative Commons Attribution Noncommercial Share Alike 3.0 United States License.

To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-sa/3.0/us/> or send a letter to Creative Commons, 171 Second Street, Suite 300, San Francisco, California, 94105, USA.

1. Property Rights



Goal – Property rights that are legally protected, secure, recorded in a single, accurate, widely accessible electronic registry and that lead to high levels of formal ownership for all citizens

1.1 Legal Protection

Core Question:	Does an effective and sufficient legal framework exist to protect property rights for all citizens? Yes – Strong, however more needs to be done to bring blacks into the system.
----------------	---

Legal Framework

1.1.1 Are property rights clearly defined and protected by law? **Yes – Very Strong – Ranking 20th out of 134; Score 6 out of 7**

Security of Tenure

1.1.2 Can citizens challenge the legality of government takings? **Yes – Very Strong – Ranking 20th out of 134; Score 5.2 out of 7**

Source: *Global Competitiveness Report 2008* – World Economic Forum

www.weforum.org/documents/gcr0809/index.html

Bundle of Rights

Survey Question

SQ1 What is the bundle of rights (group of rights such as occupancy, use and the right to sell or lease) associated with both residential and commercial property ownership? **Weak – ownership in transition for the black community (1) Freehold, (2) Leasehold, (3) Servitude, (4) Sub-surface rights, (5) Sectional Title, (6) Permission to Occupy, (7) Deed of Grant**

Source: Cadastral Template www.cadastraltemplate.org/countrydata/za.htm

1.2 Registries

Core Question:	Does a reliable property registry exist including cadastral, title and mortgage lien information? Yes – Strong – equal to the best in the world
----------------	--

1.2.1 Cadastral Information

Status –Very Strong

Survey Questions

SQ 2 Is cadastral information (information about the dimensions and location of land parcels) accessible to the public? **Yes**

SQ 3 Is zoning/permitted use information included are use regulations respected and enforced? **Yes**

SQ 4 Are Geographic Information Systems (GIS) including Global Positioning Satellite (GPS) information used to create and update the registry? **Yes**

Source: Cadastral Template www.cadastraltemplate.org/countryreport/SouthAfrica.pdf

Civil Society Resource: South Africa Council for Professional and Technical Surveyors
www.plato.org.za/

1.2.2 Title Registry

Strong – Ranking – 87th out of 181 Trend ↓

- 1.2.2.1 What is the number of procedures required to register the transfer of a property from one owner to another? **6**
- 1.2.2.2 What is the duration of time in calendar days that it would take to complete the transfer? **24**
- 1.2.2.3 What is the total cost of the transfer including all fees, taxes, etc. expressed as a percentage of the value of the property? **8.8%**

See **Appendix A** for complete procedure for registering property

Source – *Doing Business* – Registering Property, World Bank
www.doingbusiness.org/ExploreEconomies/?economyid=172

1.2.3 Mortgage Registry

Status –Strong

Survey Questions

- SQ 5 The mandatory use of notaries or similar officials slows down and adds cost to the process. Does a notary need to be involved in the registration process? **Yes**
- SQ 6 Is information in the registry available electronically? **Yes**
- SQ 7 Title insurance is indemnity insurance against financial loss from defects in title and from the invalidity or unenforceability of mortgage liens. Is title insurance available to lenders? **No – but generally thought to be unnecessary due to the strength of the registries.**

Source – *Financing Homes 2008*, World Bank and International Housing Finance Corporation
[www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/financinghomes/\\$FILE/FinancingHomes.pdf](http://www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/financinghomes/$FILE/FinancingHomes.pdf)

1.3 Formal Ownership

Core Question: Do citizens understand and trust property rights institutions and avoid the informal sector? **Yes – Strong but still in transition**

Survey Questions

Land

SQ 8 What is the status of land ownership? **Weak – There is still racial disparity.**

Home Ownership

SQ 9 What is the percentage of formal home ownership? **77% - Strong**

Informal Sector

SQ 10 What is the size of the informal economy as a percentage of GDP? **28.4% - Regional Average 42% - Very Strong Formal Sector**

Source: World Bank http://rru.worldbank.org/Documents/PapersLinks/informal_economy.pdf

In-Country Assessment Information

General Country Note: *There is still wide racial disparity in the property markets of South Africa. Many of the high scores reflected in this report are from largely white institutions. New government structures continue to proliferate in the marketplace. In an attempt to both regulate the industry while at the same time encouraging Black Economic Empowerment (BEE), the effort to bring the black community up to the standards of the white practitioners has been slow at best and will require continued efforts and more innovation.*

Field Question (FQ) 1. What is the actual status of property rights and ownership for citizens?

All different types of corporations such as limited liability corporations, unlimited corporations, close corporations and co-operative societies may own real estate. Trading trusts can also be set up to hold property. Trustees manage the property for the benefit and profit of those individuals designated by the deed. Trading trusts are not common presently in South Africa, but there are some advantages to their use especially in commercial development.

FQ 2. What is the actual experience of transferring a property?

Property and ownership information can be acquired at the appropriate deeds office in the province where the land is located. All titles must be registered. This information is available to the public. Mortgages, bonds, certain types of leases, and the transfer of property rights also require registration in the appropriate deeds office.

Common law rules govern contracts. The only requirement for the sale of land is that both parties sign the contract and that the transfer be properly recorded. The law requires the information contained in three acts: (1) Credit Agreement Act No. 75 concerns certain credit information that must be given to a credit receiver before the contract has begun. (2) Usury Act No. 73 deals primarily with leasing and money lending transactions. (3) Alienation of Land Act 68/1981 deals with installment payments and the sale of land.

Leases under ten years do not need to be in writing to be valid. For a lease over ten years to be binding three steps need to be taken; 1) the lease must be in writing, 2) it must be executed before a notary, and 3) it has to be registered against the title in the relevant deeds office.

Source: The Global Real Estate Project – Burns School, University of Denver
<http://burns.daniels.du.edu/countryDetailRealPropertyIssues.asp?id=67>

FQ 3. What are the actual housing conditions for all groups including the poor, minorities and other marginalized groups?

Housing stock in South Africa tends to be divided into three categories:

(1) Suburban White Housing Stock very much like that in the United States in size, quality and comparable in pricing.

(2) Original Mandated Township Properties that are dilapidated and in many instances lack infrastructure and services. One expert indicated that in a survey of inhabitants of these residences, 93% indicated they would never sell them. The reason for this is that their families have been living in these conditions for several generations and this is their culture.

(3) Newly Constructed Subsidized Housing for Blacks numbers approximately 300,000. There is an estimated need of another 600,000 of these units in the next 5 years indicating construction requirements of 133,000 units per year. In 2005, less than 15,000 were constructed.

One-half of the population of South Africa (mostly black) while housed in these townships would not qualify for mortgage financing. In the remaining 50%, approximately half would qualify for Suburban financing and the other half (earning 1,500 to 7,500 rand per month) would qualify for some mortgages.

Source: IRPF Assessment May 2006

2. Access to Credit



Goal – An efficient, transparent financial sector that provides a broad range of citizens with access to multiple forms of competitive credit so that they can start businesses, build wealth, and purchase property

2.1 Banks

Core Question: Are traditional banking services robust and extensive enough to serve the needs of the population to help them build wealth and purchase property? **Yes – Strong, however income inequity is still a great problem.**

Access

2.1.1 How easy is it to obtain a bank loan? **Very Strong – Ranking 31st out of 134; Score 4.2 out of 7**

Soundness

2.1.2 How sound are the country's banks? **Very Strong – Ranking 15th out of 134; Score 6.5 out of 7**

Source: *Global Competitiveness Report*

World Economic Forum www.weforum.org/documents/gcr0809/index.html

2.1.3 Microlending

Status – Weak – South Africa still has one of the world's worst income inequalities.

2.1.3.1 Microfinance allows citizens without traditional creditworthiness to build a credit history. How many microfinance institutions are operating in the country? **3**

Capitec Bank www.capitecbank.co.za/index.asp

Opportunity Finance

www.opportunity.net/Members/Implementing/Africa/opportunity_finance_limited_south_africa/

Small Enterprise Foundation www.sef.co.za/

2.1.3.2 What is the number of active borrowers per institution?

Capitec Bank – 826,541

Opportunity Finance – 3,396 (from Website)

Small Enterprise Foundation – 50,319

Source: Microfinance Information Exchange www.mixmarket.org/mfi & South Africa Report - www.mixmarket.org/node/14172

2.2 Other Sources

Core Question: Are entrepreneurs free to raise capital outside the banking system including venture capital and/or by issuing stock in a well-regulated stock exchange? **Yes – Very Strong, Johannesburg exchange one of the world's largest**

Financial Freedom

2.2.1 How much control does the government exert over financial services?
Strong environment for entrepreneurs – Score 60 out of 100 – significant government control

Source: *Index of Economic Freedom* – Heritage Foundation
www.heritage.org/index/Country/SouthAfrica

Venture Capital

2.2.2 How easy is it for entrepreneurs to find venture capital?
Very Strong – Ranking 29th out of 134; Score 3.9 out of 7

Equity Investors

2.2.3 How easy is it to raise money by issuing shares on the stock market? **Very Strong – Ranking 4th out of 134; Score 5.7 out of 7**

Source: *Global Competitiveness Report 2008* – World Economic Forum
www.weforum.org/documents/gcr0809/index.html

2.3 Credit Bureau

Core Question:	Is comprehensive credit information available through public and private credit bureaus? Yes – Very Strong
----------------	---

Overall Ranking 2nd out of 181

Coverage

2.3.1 What is the depth of information available in credit bureaus? **Score – 6 out of 6 with a higher number indicating more information is available**

Public

2.3.2 What is the extent of public credit registry coverage? **Not available**

Private

2.3.3 What is the extent of private credit registry coverage? **64.8%**

Doing Business – Getting Credit, World Bank
www.doingbusiness.org/ExploreEconomies/?economyid=172

In-Country Assessment Information

FQ 4. How available are mortgage for purchasing property, who is the typical user and what are the prevailing trends?

A full range of commercial financial institutions are available including commercial banks, merchant banks, building societies, trade finance houses, and the government.

Source: The Global Real Estate Project – Burns School, University of Denver
<http://burns.dcb.du.edu/countryDetailRealPropertyIssues.asp?id=67>

While operating successfully in the middle and upper-income (traditionally white areas), financing in the lower-income (informal black) markets has been very complex. The entrance of new black property ownership has meant a totally new profile of clients, different values of housing and significant misunderstandings regarding the process.

Out of the 300,000 mortgage bonds (about 10% of the total mortgage bond market) granted in the informal black markets, it is estimated that some 100,000 have gone into default. The major concerns by banks therefore basically revolve around a dysfunctional market place:

1. They have little, if any, recourse to people that default on payments.
2. Many of the borrowers have an inability to pay.
3. There is a general decline in property values in the informal black markets.

As such, banks have temporally withdrawn from the lower priced housing market, specifically R80,000 (\$8,000) and below. Regrettably it is specifically this segment of the market that is actually in the direct need of help.

Source: IRPF Assessment June 2002

FQ 5. What are the interest rates, term and loan-to-value ratios for available mortgages?

There is financing involved in real estate transactions. There are four major banks that have bound together with other lending institutions to form the Financial Services Charter. They have committed to providing R42 billion of financing in the Newly Constructed Subsidized Housing in the next 5 years. In the first 2 ½ years, they have placed R27 billion in financing in these markets.

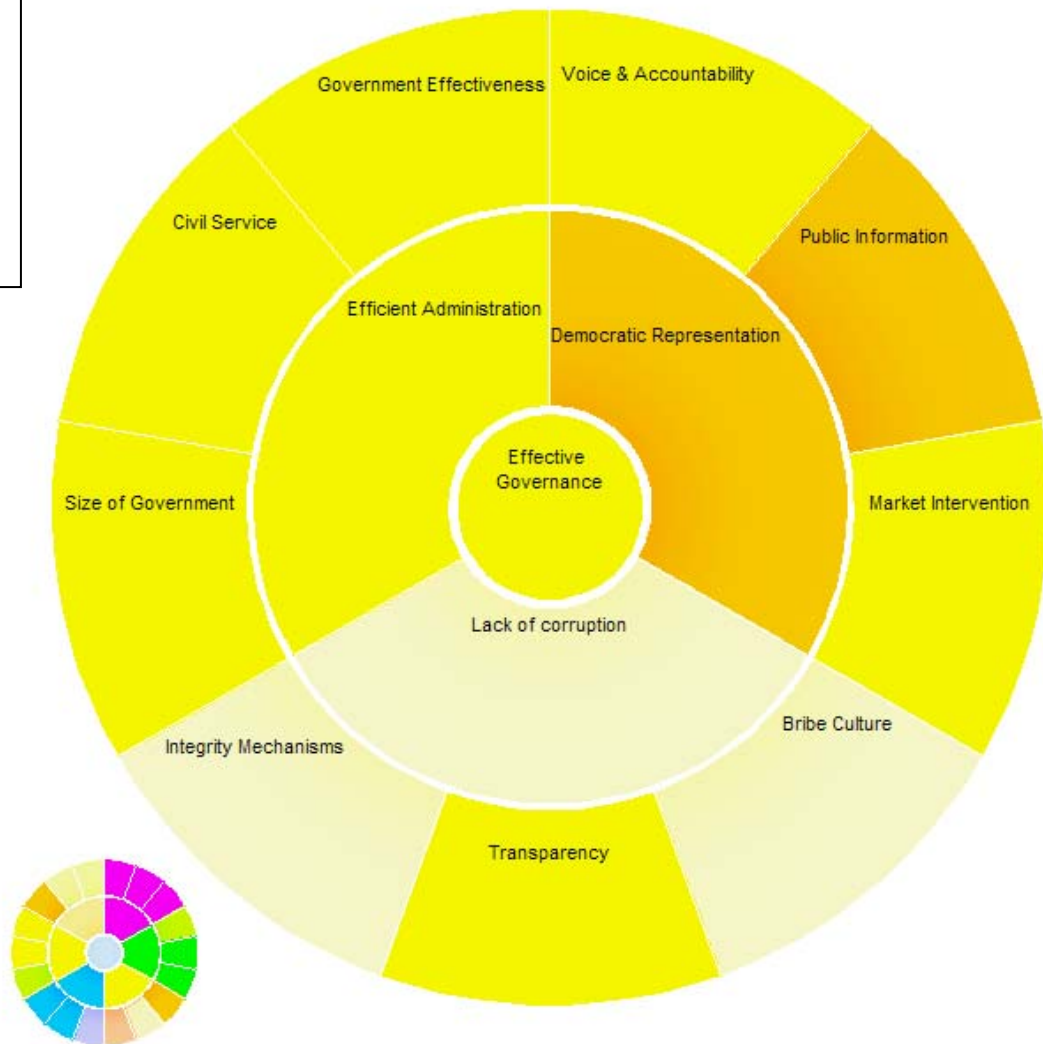
Current rates are at historically low 10 ½%. Rates in the past have escalated beyond 25%. Most loans are variable which the market seems to tolerate.

FQ 6. Are there any informal barriers to borrowing such as for women or minorities?

Considerable disparity continues to exist for black South Africans

Source: IRPF Assessment February 2006

3. Effective Governance



Goal – A popularly elected government free of corruption and functioning efficiently and transparently enough to guarantee economic freedom to individuals and support equitable property markets

3.1 Democratic Representation

Core Question:	Does the country have free and open elections for the leadership and can citizens engage in free enterprise? Yes – Very Strong, although the threat of political interference has been growing.
----------------	--

3.1.1 Voice & Accountability

- 3.1.1.1 Are citizens able to elect their government and do they enjoy freedom of expression, association and a free media? **Yes – Strong – Percentile Rank – 68.8 Trend ↓**

Source: *Governance Matters 2008*, World Bank
http://info.worldbank.org/governance/wgi/sc_chart.asp

- 3.1.1.2 Are citizens free to form political and civic organizations free of state interference and surveillance? **Yes – Very Strong – Score 8.82 out of 10**

Overall Ranking – 31st out of 167

Source: *The Economist* Intelligence Unit Democracy Index
<http://a330.g.akamai.net/7/330/25828/20081021185552/graphics.eiu.com/PDF/Democracy%20Index%202008.pdf>

3.1.2 Public Information

Overall Score – Very Strong 79 out of 100 (2007) Trend ↓

- 3.1.2.1 Are there regulations governing conflicts of interest in the executive and legislative branches of government? **Yes – Executive Score 77 out of 100 – Very Strong; Legislative 82 out of 100 – Very Strong (2007)**
- 3.1.2.2 Can citizens access legislative processes and documents? **Yes – Score 70 out of 100 - Strong (2007)**

Source: *Global Integrity Report* – <http://report.globalintegrity.org/South Africa/2008>

3.1.3 Market Intervention

Overall Ranking – Strong 61st out of 179 Trend ↑

- 3.1.3.1 To what extent does the government intervene in the private sector including state owned industries? **Score 77.6 out of 100 with a higher score indicating less intervention**
- 3.1.3.2 To what extent does the government control prices? **Score 74.3 out of 100 with a higher score indicating less control**

Source: *2009 Index of Economic Freedom* – Heritage Foundation
www.heritage.org/index/Country/SouthAfrica

3.2 Lack of Corruption

Core Question:	Is the public sector transparent and free of corruption? No – Weak, corruption is rife in the granting of government contracts.
----------------	--

Transparency

3.2.1 What is the perceived level of corruption in the country? **Medium levels – Strong – Ranking – 54th out of 180; Score 4.9 out of 10 Trend ↓**

Source: Transparency International

www.transparency.org/policy_research/surveys_indices/cpi/2008

Integrity Mechanisms

3.2.3 A National Integrity System is a framework where the principle institutions that contribute to integrity, transparency and accountability in a society can address corruption in a systematic way. Does a National Integrity System exist? **Yes – Weak – Corruption still poses a serious threat at provincial and local government levels.**

Source: Transparency International

www.transparency.org/policy_research/nis/nis_reports_by_country

Extralegal Payments

Survey Question

SQ 11 How often do businesses report that officials and/or companies expect additional payments to “expedite” service or gain business? **Often – Weak 14th out of 22; Score 7.5 out of 10 with higher scores indicating less corruption**

Source: Transparency International

www.transparency.org/policy_research/surveys_indices/bpi/bpi_2008

3.3 Efficient Administration

Core Question:	Are quality services and qualified civil servants available to the public through the efficient use of public money free of corruption? Yes – Strong, especially compared to other countries in the region.
----------------	--

Size of Government

3.3.1 What is the size of government relative to GDP? **27.3% - 25 to 30% considered optimum - Strong**

Source: *2009 Index of Economic Freedom*, Heritage Foundation
www.heritage.org/index/Country/SouthAfrica

Civil Service

3.3.2 What is the quality of the civil service? **Score – 77 out of 100 – Strong**

Source: *Global Integrity Report 2008* – <http://report.globalintegrity.org/South Africa/2008>

Government Effectiveness

3.3.3 What is the overall effectiveness of the government? **Strong - Percentile Ranking – 74.9 Trend ↑**

Source: *Governance Matters 2008*, World Bank
http://info.worldbank.org/governance/wgi/sc_chart.asp

In-Country Assessment Information

FQ 7. What is the actual experience of practitioners in dealing with the government?

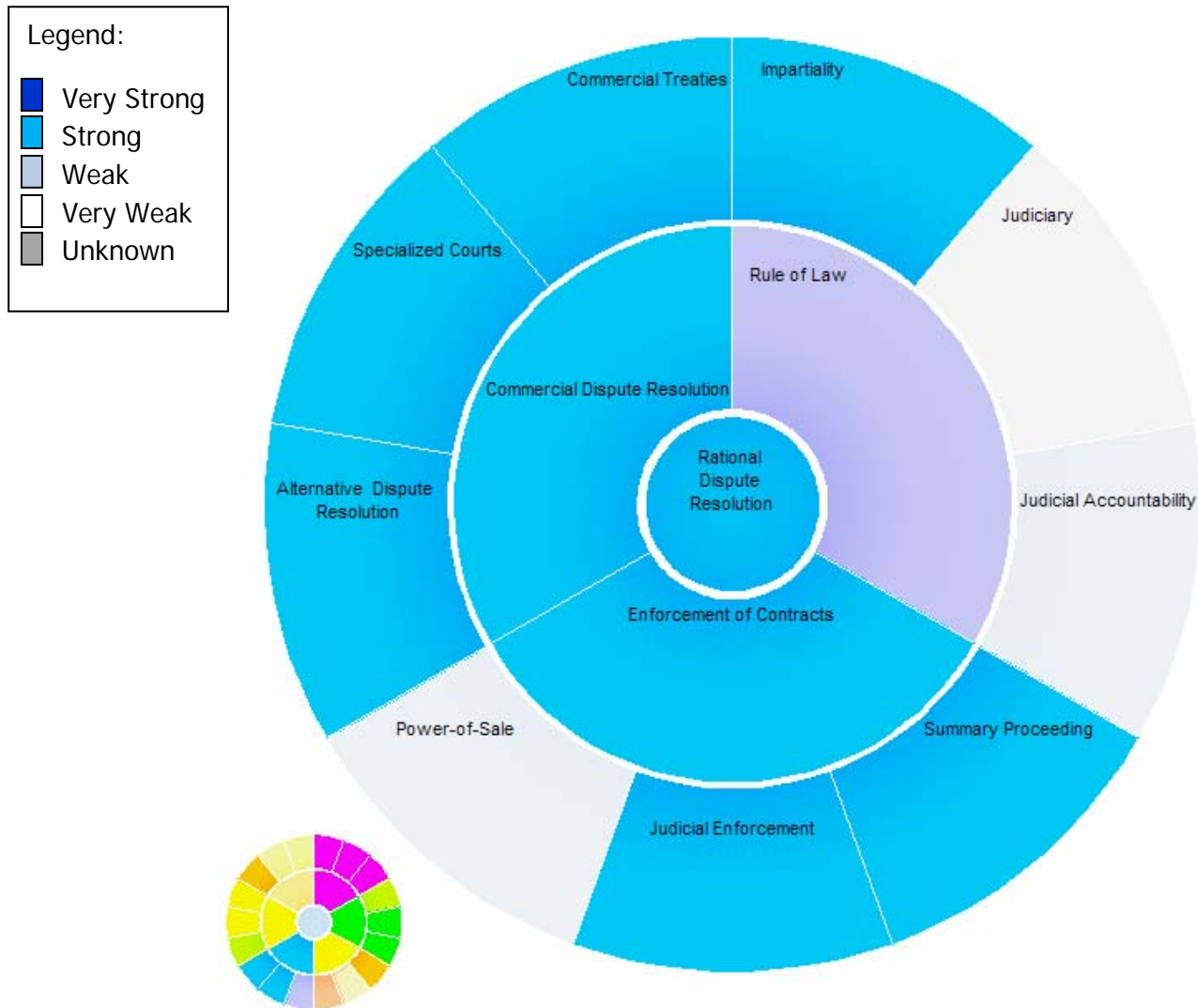
The legal framework for transactions in South Africa is very strong. Because of the extensive mining interest, land registration in definition of parcels is probably the most precise in the world.

Source: IRPF Assessment February 2006

However, under the previous political regime legislation prevented property ownership by race in many areas. As such, most black and colored people of the country were restricted from buying and owning real estate. Therefore a huge percentage of the population has had no exposure or knowledge of traditional real estate structures while only a small percentage has developed to very sophisticated levels. With the change from the former white to the new black Government in 1994, various previous restrictive Acts were removed and gradually the Government has been addressing the housing crisis.

Source: IRPF Assessment June 2002

4. Rational Dispute Resolution



Goal – An efficient institutional framework that balances the rights of the public, owners, lenders and borrowers in the event of a dispute or loan default

4.1 Rule of Law

Core Question: Do all market participants abide by the rule of law and have confidence in the courts and the ability of the police to control crime? **Yes – Weak, judicial accountability needs improvement.**

Impartiality

4.1.1 What is the confidence level of the strength and impartiality of the police, courts and contract enforcement? **Strong – Percentile Ranking – 57.1 Trend ↑**

Source: *Governance Matters 2008*, World Bank
http://info.worldbank.org/governance/wgi/sc_chart.asp

Judiciary

4.1.2 Can members of the judiciary be held accountable for their actions? **Score 54 out of 100 – Very Weak**

Source: Global Integrity Report – http://report.globalintegrity.org/South_Africa/2008

Costs of Crime

4.1.3 What are the business costs of crime and violence? **High costs – Ranking – 133rd out of 133; Score 1.7 out of 10 – Very Weak**

Source: *Global Competitiveness Index*, World Economic Forum
www.weforum.org/documents/GCR09/index.html

4.2 Enforcement of Contracts

Core Question:	Are systems in place for timely and efficient enforcement of contracts? Commercial – Strong Residential – Strong
----------------	--

4.2.1 Judicial Enforcement

Commercial – Strong – Ranking 85th out of 181

4.2.1.1 What is the number of procedures involved in resolving a commercial dispute? **30**

4.2.1.2 What is the time between the filing of a lawsuit and resolution in judicial enforcements? **600 days**

4.2.1.3 What is the cost of judicial enforcements as a percentage of debt value? **33.2%**

Source: *Doing Business* – www.doingbusiness.org/ExploreEconomies/?economyid=172

Residential – Strong

Survey Questions

SQ 12 What is the time between notice of intent to foreclose and loan collection in judicial enforcements? **See below for summary proceeding.**

SQ 13 What is the cost of judicial enforcements as a percentage of property value? **See below for summary proceeding.**

4.2.2 Summary Proceedings

SQ 14 What is the time between notice of intent to foreclose and loan collection in summary proceedings if available to lenders? **Strong – 199 days; Rank – 17th out of 42**

SQ 15 What is the cost of summary proceeding if available to lenders as a percentage of property value? **2.55%; Very Strong – Rank – 4th out of 42**

4.2.3 Power-of-Sale

SQ 16 What is the time between notice of intent to sell and loan collection for power-of-sale agreements if available to lenders? **Very weak – Not available**

SQ 17 What is the cost of power-of-sale agreements if available to lenders as a percentage of property value? **Very Weak – Not available**

Source – *Financing Homes 2008*, World Bank and International Housing Finance Corporation [www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/financinghomes/\\$FILE/FinancingHomes.pdf](http://www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/financinghomes/$FILE/FinancingHomes.pdf)

4.3 Commercial Dispute Resolution

Core Question:	Can commercial disputes be resolved fairly and efficiently without exorbitant expense and delay? Yes – Strong, Constitutional Court recognizes the role of private arbitration in the legal system.
----------------	--

Commercial Courts

Survey Questions

SQ 18 Do specialized commercial courts exist for the handling of property disputes and foreclosures? **Yes – Strong**

Source: *Justice through Specialization: the Case of Specialized Commercial Criminal Court*, Institute for Security Studies www.iss.co.za/Pubs/Monographs/No76/Chap6.pdf

Alternative Dispute Resolution

SQ 19 Are alternative dispute resolution mechanisms in place including commercial arbitration, private mediation and community based processes? **Yes – Strong, a member of the New York Convention on the Recognition and Enforcement of Arbitral Awards**

Civil Society Resource: Arbitration Foundation of South Africa
www.arbitration.co.za/pages/default.aspx

Commercial Treaties

SQ 20 What bilateral, regional and international commercial treaties exist concerning business between countries? **U.S. in negotiations, EU, IBSA (India, Brazil, South Africa) – Strong**

Source: Bilaterals.org www.bilaterals.org/rubrique.php3?id_rubrique=126

In-Country Assessment

FQ 8. To what extent do practitioners report contracts as enforceable?

In the cases where the courts have granted a warrant of ejection in informal black markets, occupants have still refused to leave. Furthermore, the sheriff posting such eviction has been subject to physical harm. Where eviction is carried out, the banks are even with the changing of locks and posting of guards unable to ensure that the property is not reoccupied or in some cases burned to the ground. This obviously negates the initial court eviction and underscores the frustration of the banking industry to participate under these conditions.

Source: IRPF Assessment June 2002

5. Financial Transparency



Goal – A well developed and transparent financial system that includes strong supporting institutions and trained and ethical professionals that contribute to effective financial intermediation and deep and broad access to capital and financial services

5.1 Market Stability

Core Question: Are market risks sufficiently transparent and diversified so that efficient capital allocation can occur? **Yes – Very Strong, the financial sector is one of the largest and most deregulated in emerging markets.**

Financial Reporting

5.1.1 What is the strength of the country's auditing and reporting standards? **Very Strong Ranking – 4th out of 134; Score 6.2 out of 7**

Market Sophistication

5.1.2 What is the overall level of financial market sophistication in the country? **Very Strong Ranking – 12th out of 134; Score 6.3 out of 7**

Source: *Global Competitiveness Report 2008* – World Economic Forum

www.weforum.org/documents/gcr0809/index.html

Insolvency Process

Strong – Ranking – 73rd out of 181 Trend ↓

5.1.3 What is the average time to complete bankruptcy proceedings? **2 Years**

5.1.4 What is the cost of bankruptcy proceedings as a percentage of the estate? **18%**

5.1.5 What is the recovery rate of bankruptcy proceedings? **32.2 cents on the dollar**

Source: *Doing Business* – Closing a Business

www.doingbusiness.org/ExploreEconomies/?economyid=172

5.2 Independent Asset Valuers

Core Question: Do highly trained, independent and ethical valuers exist for real property, natural resources, machinery and equipment and intangible assets? **Yes Strong – valuation association is 100 years old, more needs to be done to bring in black professionals.**

Survey Questions

Standards

SQ 21 How easy is it to find a valuer who implements International Valuation Standards (IVS)? **Very Strong – South Africa has adopted IVS as national standards.**

Source: International Valuation Standards Council www.ivsc.org/standards/index.html

Training

SQ 22 What is the level of training of valuers? **Weak – Training needs to be a part of Black Economic Empowerment.**

Civil Society Resource: International Real Property Foundation www.irpf.org

Ethics

SQ 23 Are opinions offered by valuers free of influence from parties to the transaction? **Strong Property Valuers Professional Act calls for a Code of Conduct and set out disciplinary actions.**

Source: Property Valuers Profession Act 2000

www.saiv.org.za/v1/docs/Property_Valuers_Profession_Act.pdf

Civil Society Resource: South Africa Institute of Valuers www.saiv.org.za/v1/index.php

5.3 Data Standards

Core Question:	Is accurate property information available electronically in formats that are consistent with international standards? Yes – Strong, data collection methods are accurate and sophisticated, but not consistent across all markets.
----------------	--

Survey Questions

Sales & Operating Data

SQ 24 A multiple listing service is an electronic exchange system where brokers and agents can widely share contracted real estate listings of properties that are for sale. Do multiple listing type services exist? **Yes – Weak – Not consistent across the market**

*Civil Society Resource: International Consortium of Real Estate Associations
www.worldproperties.com*

SQ 25 Do resources exist for obtaining building income and expense estimates? **Yes - Strong**

Civil Society Resource: South Africa Property Owners Association www.sapoa.org.za/

Interchange Formats

SQ 26 Do electronic data interchange formats conform to international standards (ebXML – electronic business using extensible markup language)? **Unknown**

*Civil Society Resource: Open Standards Consortium for Real Estate International
www.oscre.org*

Technical Standards

SQ 27 Do building codes and office building measurement standards (ANSI/BOMA Z65.1) conform to international standards? **Yes - Strong**

Civil Society Resource: South Africa Property Owners Association www.sapoa.org.za/

In-Country Assessment

Market Stability

FQ 9. How stable has the property market been over the last several years?

The South African market was not as severely affected by the global crisis as some countries. The downturn of 2008 is expected to return to growth in 2010-11. Growth is currently limited by power outages and a lack of liquidity.

Valuation Profession

FQ 10. How many independent valuers exist in the market?

Registered valuers with the Council of Valuers are estimated at around 2,000 (June 2002)

FQ 11. How many companies exist and what is the average size of valuation companies?

The practice in South Africa is relatively small with an estimated 50-75 companies having an average of 4-5 appraisers each.

FQ 12. What are the valuation standards and do they conform to international and regional standards?

The standards of practice are approved by the Council for the Property Valuers Profession. It is a body appointed by the Minister of Public Works which serves for 4-8 years. They accredit educational offerings and register individuals under 4 areas: Professional Valuer, Professional Associated Valuer, Candidate Valuer, and any other specified categories prescribed by the Council. Valuation standards - aside from the certification portion - would meet IVSC standards.

FQ 13. What valuation methods and techniques are used in the market?

The appraisal practice in South Africa has evolved as a sophisticated practice comparable to western standards. It has sufficient mechanisms in both the State-Appointed Council and the professional evolved Institute. For South Africa to reach the Black Economic Empowerment goals, additional high-impact education will have to be made available to allow beginning valuers to enter the profession more quickly and efficiently.

High-impact education delivered by the Appraisal Institute of the United States could be a mechanism to open the profession to these previously disadvantaged individuals.

The fees are set by the South African Council for Valuers (SACV). It varies by the size of the appraisal and its complexity. The maximum fee becomes the minimum in most instances. The typical clients would be banks, corporate entities and individuals looking to establish value. There is some work in restitution valuation. Since most (white) appraisers are required to meet the RICS Standards of 3-4 years of college education with 3 years of apprentice, the quality of appraisal is reasonably high and most could be relied on to provide valuation services for international level investors.

FQ 14. Are there valuer associations in the market? What number and percentage of practitioners belong?

The Institute of Valuers of South Africa has a small almost exclusively white membership due to the more stringent qualifications to become licensed (4 year diploma at a Technical College). A new one-year course is being envisaged to allow a new type of Associate Valuers to appraise property for mortgage bonds and capital gains tax. Information from good authority advised that the Institute of Valuers and the Council of Valuers seem to have a good working relationship with the Estate Agency Affairs Board (broker regulator). Registered Valuers with the Council of Valuers are estimated at around 2,000 while membership of the Institute of Valuers is estimated around 600. (June 2002)

FQ 15. What training programs are available to upgrade the quality of valuers?

There is some concern about how Black Economic Empowerment can be achieved. In discussions with two leading appraisers, they indicated that the American model might be an accelerated way to give the black community a quick start in the appraisal business. Such education on the unit standard might be gauged as unit 4-5 (high school to early college). The advantage of this training is that it is high impact, practitioner-driven, and relatively short-term compared with the 4 year diploma program in place.

The Services Sector Education and Training Authority (SETA) has designed an education program to help fill existing gaps in the current labor supply. This structured program of training and essential practice is to take place over a one-year period and combines elements of education and training with practical work experience. At the end of the one-year period the participants have the opportunity of being assessed and certified as competent and ready for a full-time and permanent position in the specific industry. (June 2002 – IRPF signed an agreement with SETA in 2008 to develop programs for the real estate profession.)

FQ 16. Are peer review mechanisms in place to assist in enforcing ethical behavior?

Both the South African Council for Valuers (regulator) and the South African Institute of Valuers (association) have enforcement mechanisms to monitor and continue to evaluate the standards of the professional valuer. The Council lists as one of its functions to “draw up a code of conduct for registered persons and to enforce that code.”

FQ 17. What is the quality of valuation reports?

The quality of appraisal reports in South Africa is comparable to the UK and leading appraisals in the United States.

Data Availability

FQ 18. What is the status of proprietary data bases that include property information?

While the real estate practice of the companies is relatively sophisticated, there is no universal “aggregated” source of real property information. MLS’s have, in some instances, regional ownership, but in most cases are private companies or firms which advertise properties electronically but do not aggregate information on any consistent basis. To that extent, the practice in South Africa when considered on a company basis is quite good. On an industry-wide basis is lacking.

Property24 grew out of CPS, a company that was formed 10 years ago to introduce multiple listing services on a national basis to South Africa. Since that time the company has had an agreement with Moore Data Management Systems (now part of Fidelity National Information Services) and was one of the first sites in the world to operate the USA Compass MLS system.

Property24 also owns the MLS trademark in South Africa and is the official software provider for a large number of regional MLS’s across the country. The concept of multiple listing is however not as dominant in South Africa as in the USA. In some areas it is very strong while in other areas large local real estate companies control the market with sole (exclusive) mandates and no multiple exists at all. (June 2002)

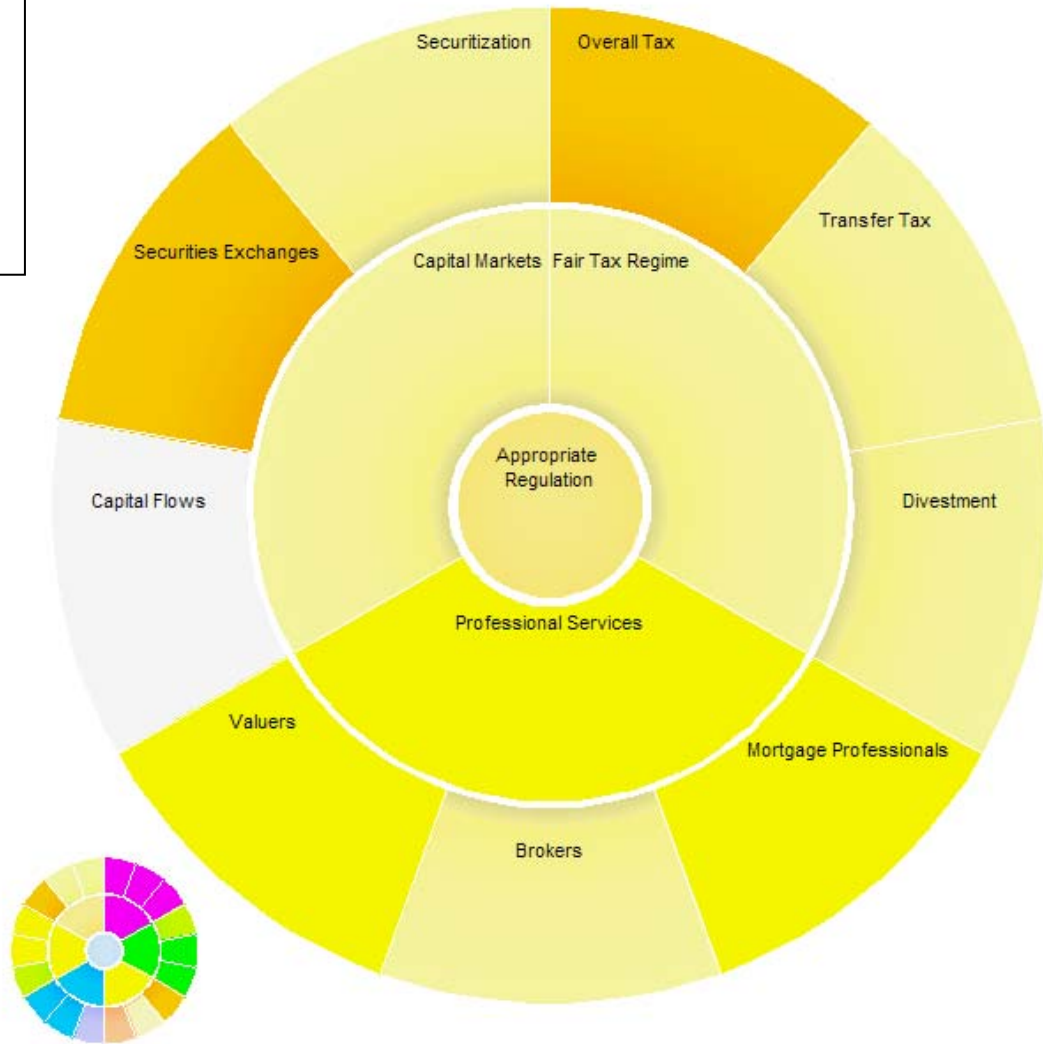
FQ 19. What is the status of existing data sharing mechanisms for properties that are for sale or that have sold? As above

FQ 20. Do valuers have an established data sharing mechanisms?

Most appraisers have data bases and appear to work together through the SAIV.

Source: IRPF Assessments February 2006 (& June 2002)

6. Appropriate Regulation



Goal – A comprehensive regulatory regime that is transparent, efficient, simple in its implementation and that leads to accurate reporting of property values and prudent protection from market risks

6.1 Fair Tax Regime

Core Question:	Do market participants feel the overall tax rate is fair and participate in formal transactions? Yes – Weak, lower rates offset by restrictions, controls and prior approvals
----------------	--

Transfer Tax

6.1.1 What is the total property transfer tax including all duties and payments? **10% - High Weak**

Overall Tax

6.1.2 What is the overall tax rate on entrepreneurs? **34.2% – Ranking – 23rd out of 181 Very Strong**

Source: *Doing Business* – Paying Taxes & Registering Property, World Bank
<http://www.doingbusiness.org/ExploreEconomies/?economyid=172>

Divestment

Survey Question

SQ 28 What is the tax on profits for foreign investors when divesting property? **35% corporate profit, 14.5% capital gains – Weak**

Source: South Africa Revenue Service
www.southafrica.info/business/investing/regulations/tax-investors.htm

6.2 Professional Services

Core Question:	Are the professional services necessary for efficient and transparent property markets available and appropriately regulated and supervised? Yes – Strong, although there are a high number of unqualified practitioners in the market.
----------------	--

Asset Valuers

Survey Questions

SQ 29 Are asset valuers licensed and/or certified by the government? **Yes – Strong the South African Council for the Property Valuers Profession**
www.sacpvp.co.za/

SQ 30 How effective are mechanisms in place to discipline valuers who engage in misconduct? **Unknown**

See pages 24 – 25 for in-country assessment information on valuers.

Civil Society Resource: International Real Property Foundation www.irpf.org

Brokers & Agents

Survey Questions

SQ 31 Are real estate brokers and agents licensed and/or certified by the government? **Yes – Weak – the Estate Agency Affairs Board www.eaab.org.za/page.php?p_id=1**

SQ 32 How effective are mechanisms in place to discipline brokers or agents who engage in misconduct? **Limited**

Civil Society Resource: International Real Property Foundation www.irpf.org

Mortgage Professionals

Survey Questions

SQ 33 Are mortgage professionals licensed and/or certified by the government? **Yes – Strong**

Source: National Credit Act, Effective March 2006 www.ncr.org.za/the_act.php

SQ 34 How effective are mechanisms in place to discipline mortgage professionals who engage in misconduct? **Unknown**

6.3 Capital Markets

Core Question:	Are capital markets well-regulated and diversified enough to provide financial resources to private-sector entrepreneurs and innovators? No – Weak, non-transparent regulation, rigid labor laws and crime are disincentives for investment.
----------------	---

Capital Flows

6.3.1 How restricted is the flow of capital into and out of the country? **Very Weak – Ranking – 111th out of 134; Score 3.7 out of 7**

Securities Exchanges

6.3.2 Is the regulation of securities exchanges transparent, effective and free of influence from government and industry? **Very Strong – Ranking – 5th out of 134; Score 6.1 out of 7**

Source: *Global Competitiveness Report 2008* – World Economic Forum
www.weforum.org/documents/gcr0809/index.html

Securitization

6.3.3 What is the depth of asset-backed securities, mortgage-backed securities, high-yield bonds and highly leveraged loans? **Weak –Ranking – 30th out of 52**

Source: *Financial Development Report 2008* – World Economic Forum
www.weforum.org/pdf/FinancialDevelopmentReport/2008.pdf

In-Country Assessment

Taxation

FQ 21. What is the overall taxation system in regards to property?

The tax on the transfer of real property (land and improvements) is 10% for corporations. Individuals are assessed on a progressive scale depending on the value of the property. Exemptions are allowed in certain instances such as the purchase of unimproved land with the intent to build a residence.

The land tax is considered a lesser tax and is levied by the local governments. The value of the land is determined annually and is usually the measurement for taxation purposes, but sometimes the buildings and improvements are taken into account. In order to encourage foreign investment, the government has made concessions to foreigners in the determination of their taxable income. These tax incentives can be quite attractive especially in the area of industrial development.

Source: The Global Real Estate Project – Burns School, University of Denver
<http://burns.dcb.du.edu/countryDetailRealPropertyIssues.asp?id=67>

Brokerage

FQ 22. What is the number of practitioners in the country including full-time brokers/agents with formal training and part-time, informal brokers?

The number of practitioners in the country according to the Estate Agency Affairs Board (EAAB) is 72,000. They readily admit there might be duplications bringing that number down to 63,000 and of that number, approximately 13,000 are attorneys or other professionals and not active in the business. Therefore, it appears in the market there are 50,000 estate agents.

Multiple sources indicate that of this 50,000, 70% are part-time or “casually” in the business bringing the number of active brokers in the country to approximately 15,000. It would appear since the EAAB waved the examination requirement (late 1990s) that there are a high number of unqualified practitioners in the market. That is estimated to be somewhere between 25,000-30,000 practitioners. In addition, there are an estimated 8 to 10,000 unlicensed individuals active in the market.

FQ 23. What is the number and average size of brokerage companies?

South Africa is organized with a number of substantially large franchise or strategically aligned firms which practice throughout the major metropolitan areas of the country. While individual companies themselves are typically 8-10 members, the franchises substantially dominate the marketplace. That would bring the average size of the individual branches of the companies to be approximately 1,500 to 1,800. While independent companies still thrive, the dominant players are the major franchises and business groups.

FQ 24. Are there brokers associations active in the market? What number and what percentage of practitioners belong?

The Institute of Estate Agents of South Africa was formed in 1937. It went through an historical growth pattern through the 70's and 80's with annual conventions, dedicated centralized staff and a strong organization. In the 1990's, a series of decisions were made which negatively affected the association.

Primarily, they decided to de-centralize the organization and pass much of the work onto the regions. The eight regions were uneven in their capacity with nearly half of them unable to deliver programs, products and services to the membership. As a consequence, the membership significantly declined and the programs, products and services became fewer and fewer. Additionally, the governance system of the national association was made up of the regional directors. This flawed system of governance resulted in a declining commitment of the membership to support the national organization and the bulk of its staff was terminated.

In addition, the major networking opportunity of a national convention was also discontinued. Since the industry is dominated by large franchises, it seems logical that they contributed to this decline so as to maintain their market share and competitive advantage over the smaller brokers who would have relied on the Institute for both education and networking opportunities.

FQ 25. What training programs are available to enhance productivity?

The major franchise and network companies have training specialists. In addition, some of the Institute regions have developed an ongoing rudimentary training program. The National Institute provides some training but serves only as a conduit for a cadre of instructors who have produced their own training materials. This cadre also sells its services to the major franchises and so, as a consequence, holds the National Institute as only one of their “clients.” Additionally, the EAAB has determined that its mission is not only to create a license but also to provide a wide range of education as well as to serve the general public's needs if there are questions or complaints about practice in the country. The education provided by EAAB is

approved by the South African Quality Authority (SAQA) which sets standards for the education delivered by EAAB. South Africa utilizes a British model for evaluating educational offerings. They have "unit standards" ranging from one to eight with Standard One as being roughly equal to the junior high school level and Standard Eight the PhD level. Education offered is categorized in one of these eight units.

While many South Africans like the American model of concentrated business education leading to designations, the only designation to have reached into South Africa is the CRS (Certified Residential Sales) which was imported some 20 years ago. Many practitioners indicated a willingness to participate in courses which would lead to designation that would generally improve the practitioners' skill level in the country.

FQ 26. Is there a Code of Ethics or standards that practitioners follow? Is the Code enforced?

The Institute has a Code of Ethics whose enforcement is remanded to the regions. They assert that these codes are rigorously enforced, although under probing, conceded that they hadn't had a formal hearing in anyone's memory. Most disputes are resolved prior to the formal hearing.

FQ 27. Do civil society organizations exist to support the developments of mortgage professionals?

Yes, the Banking Association of South Africa www.banking.org.za/

Source: IRPF Assessment February 2006 (and June 2002)

Appendix – Procedures for Registering a Property

Source – *Doing Business* – Registering Property, World Bank

1. A conveyancer prepares the transfer deed

Time to complete: 1 day

Cost to complete:

ZAR 15,048 (including 14% VAT) (Transfer fee (ZAR 13,200) and VAT (1,848) for a property of this value, according to the schedule of fees as of May 2007.)

Comment:

A conveyancer prepares the deed of sale and drafts the transfer deed. He obtains the power of attorney, appointing him to appear before the Registrar. The service of an attorney / conveyancer is mandatory for the registration of the land. A conveyancer is an attorney who is permitted in terms of the Attorneys Act to perform specialized duties with regard to the conveyance of immovable property. The Deeds Registries Act empowers only conveyancers to prepare deeds of transfer and in doing so, assumes responsibility for certain facts set out in the deed and documents

Conveyancing fees are set by the Law Society for different property values, and are available at the Transfer Costs table in http://www.ghostdigest.co.za/code/C_20.html (Transfer fees + VAT columns)

2. Obtain a rates clearance certificate from the local authority

Time to complete: 7-14 days (simultaneous with procedures 3 and 4)

Cost to complete: Included in Procedure 1

Comment:

The transferring conveyancer obtains a rates (taxes) clearance certificate from the local authority, on behalf of the seller only if in Johannesburg. Section 118 of the Local Municipality Act states that any act of transferring property must be accompanied by a rates clearance from the local authority. However, the local authority will only check the last 24 months--this is sufficient for the transfer to legally take place. If any taxes are owed from previous years, the seller is not exonerated--the taxes will still have to be paid by either the seller or the new owner as per agreement.

3. Obtain a transfer duty receipt from the South African Revenue Services

Time to complete: 5-7 days (simultaneous with procedures 2 and 4)

Cost to complete: 8% of property value (transfer duty)

Comment:

The transferring conveyancer obtains a transfer duty receipt/exemption certificate from the South African Revenue Services. As of March 2006, the transfer duty payable for legal entities is 8% of purchase price. The transfer duty scale for transactions concluded after 1 March 2006 is as follows for natural persons:

- R 0 to R 500,000 – exempt
- R 501,000 to R 1,000,000 – 5%
- R 1,000,001 and above – 8%

As of September 2005, new transfer duty forms have been introduced, making it necessary to supply information to the Receiver of Revenue, including date of original purchase by the seller, and income tax numbers or VAT for both seller and purchaser. If either party owes tax, a query will be raised by the Receiver of Revenue, which could potentially delay the transfer of title.

4. The conveyancer prepares and collects all the required documentation

Time to complete: 10 days (simultaneous with procedures 2 and 3)

Cost to complete: Included in Procedure 1

Comment:

The conveyancer, before lodging the documentation with the deeds registry to transfer the property to the new company, must also conduct a company search at the Registrar of Companies to ascertain the directors of both companies. All conveyancers are linked by internet to this authority and can perform the check online. Usually conveyancers will also ask clients to present them with such documents anyway. In so doing, the conveyancer will:

- Peruse the memorandum and articles of association of the companies to confirm the powers to acquire and alienate immovable property
- Obtain the necessary resolutions
- Ensure compliance with the Financial Intelligence Center Act by obtaining proof from the companies of the physical/business address and Tax/VAT registration number with the South African Revenue Services.

The conveyancer will also request this information from the clients before proceeding, and the check is done automatically at the time of paying transfer duty (procedure 3). If a company does not have or quotes an incorrect Tax/VAT number, it will not be possible to pay transfer duty and the process will halt.

5. Parties sign all the documentation at the conveyancer's office

Time to complete: 1 day Cost to complete: Included in Procedure 1

Comment:

The conveyancer will have all documentation signed by seller and purchaser and obtain guarantees for purchase price. The documents to be signed by the parties are as follows:

1. Seller
 - 1.1 Power of attorney to pass
 - 1.2 Transfer duty declarations
 - 1.3 Affidavits (Solvency; FICA)

2. Purchaser
 - 2.1 Transfer duty declarations
 - 2.2 Affidavits (Solvency; FICA)

6. The conveyancer lodges the deed at the Deeds Registry

Time to complete: 6-14 days Cost to complete: ZAR 500 (registration fee)

Comment:

The conveyancer lodges the deed at the Deeds Registry. The Registrar compares the draft deed with data in the register. There are two examinations at different levels. The standards are monitored and the deed is prepared for registration and execution. The Registrar executes the deed, updates the register and archives a copy. The registration fee depends on the value of the property and is obtained from the Transfer Cost table in http://www.ghostdigest.co.za/code/C_20.html (D/O Levy column)

As far as the deeds office registration fee is concerned, the following scale applies:

- Up to 80,000 ZAR, fee is 55 ZAR
- 80,000 to 150,000 ZAR, fee is 200 ZAR
- 150,000 to 300,000 ZAR, fee is 260 ZAR
- 300,000 to 500,000 ZAR, fee is 340 ZAR
- 500,000 to 1,000,000 ZAR, fee is 400 ZAR
- 1,000,000 to 2,000,000 ZAR, fee is 500 ZAR
- 2,000,000 to 3,000,000 ZAR, fee is 650 ZAR
- 3,000,000 to 5,000,000 ZAR, fee is 800 ZAR
- 5,000,000 and above, fee is 1,000 ZAR