

DOING REAL ESTATE BUSINESS IN ITALY
(Legal Aspects and License Framework)
and
THE LOCAL MARKET AND FIGURES
(Specially Cross Border Transaction with Romania)
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IL PUNTO in alliance with Qimmo



Abstract¹

Italy's internal Real Estate market has evolved greatly after 2000. Before this date mostly of the investors were focused on the stock market, following this date investors started looking at the Real Estate sector as a valid alternative for investment. The market in these last four years has evolved greatly, and it is very important for a foreign investor to know the basic rules and regulations that control the Real Estate market in Italy. The purpose of this document is to supply a general introduction to the Real Estate market in Italy. In particular the different types of companies that can be settled in Italy and restrictions (if any) in the investment and funding process. A particular emphasis

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has been put on the fiscal aspects of the Real Estate industry because of its complexion and articulation.

The latter part of the document points out how the Real Estate market in Italy has been growing steadily and how it should be viewed by a foreign investor as a valid alternative to other low/medium risk investments. On the other hand, Romania Real Estate market is a very active market closed to Italy. The opportunities of cross border transaction are growing day by day together with the harmonization of the legal and financial frame work respectively of Italy and of Romania.

1. Definition

For the propose of this document:

- **IMI** means the ratio between the NTN (as defined below) and the Stock (as defined below);
- **Is.I.V.I.** means the Italian Real Estate valuer association, "*Istituto Italiano di Valutazione Immobiliare*" (www.isivi.it), full member for Italy of TEGoVA (as defined below);
- **NTN** means "*Normalized Number of Transaction*" which is the number of transaction regarding the percentage of property subject to the transaction. For example, if three transactions refer to respectively 1/3, 1/3 and 1 of the right of property, NTN is equal to 1.66 not 3;
- **OECD** means the countries which adhere to the Organization for Economic Co-operation and Development as listed on web site www.oecd.org;
- **SPA** means "*Società per azioni*";
- **SRL** means "*Società a responsabilità limitata*";
- **Stock** means the number of the premises as reported in the public register;
- **TEGoVA** means the European Group of Valuers Association (www.tegova.org).

2.Foreign Investment Regulations

No prior authorization is required for the formation of an Italian company, except in the case of companies proposing to operate in certain sectors, such as banking and insurance, mining, land, sea and air transportation. Foreign nationals can subscribe to the capital of an Italian company with the same rights as Italian nationals. Foreign investments are only registered for statistical purposes.

The Italian exchange control system has been significantly deregulated. Currently only very limited exceptions exist to the free movement of funds in connection with regular business transactions.

3.Funding of the Italian Transaction

There are no restrictions on the investment of equity capital in an Italian subsidiary. Equally, there are no restrictions on the remittance of equity capital (endowment) to a branch. Same rules apply to Italian companies.

Loans from non-resident lenders do not require prior authorization.

There is no restriction for an Italian subsidiary or branch of a foreign company in borrowing from Italian banks. Such loans may have to be backed by guarantees of the parent company, if so requested by the lending bank.

4.Establishment of a Branch

A branch is established by filing with the Companies' Register certified true copies, to be notarised before a Notary Public and legalized by means of Apostille pursuant to Hague Convention of October 5, 1961, if applicable, of (i) the resolution of the competent corporate body of the non-resident company concerning the opening of the branch, the appointment of the branch manager and the determination of his authority (ii) the articles of incorporation and by-laws of the non-resident company and (iii) a certificate of good standing of the non-resident company.

5.Types of Italian companies

The two most common types of Italian companies in which the liability of the stockholders is limited to the amount of capital subscribed are the Società per Azioni (SPA, similar to a Stock Corporation), and the Società a Responsabilità Limitata (SRL, similar to a Limited Liability Company). Most of the regulations concerning the formation and management of an SPA apply equally to a SRL. There are, however, certain regulations which apply specifically to the latter, but most of them may be deviated in the by-laws. Therefore, broadly speaking, a SPA or a SRL can be used alternatively to organize a company in Italy. If costs are a major concern and the size of the operation is expected to be relatively small, a SRL will better serve the purpose. If instead the operation is expected to grow into a relatively large one, and image is a primary concern, it behoves to choose a SPA.

5.1. Formation

Both a SPA and a SRL are organized by drawing up the articles of incorporation and the by-laws before a notary public. The subscriber(s) (individual(s) or company(ies)) is/are required at the time of incorporation. They may either attend personally or be represented by an attorney-in-fact. In the latter case, the power of attorney must be notarised and legalized by the competent Italian Consulate or by means of "Apostille" pursuant to The Hague Convention of October 5, 1961, if applicable.

5.2. Capital

The minimum stated capital is 120,000 Euro for a SPA and 10,000 Euro for a SRL. Before the deed of incorporation is settled in front of a notary public, the capital must be fully subscribed, if its subscription is promoted by a sole shareholder, the entire capital must be deposited in an authorized bank. The deposit is then returned to the company (with interest, however, normally below average market rates). On the other hand, if the shareholders subscribing the capital are a plurality, at least 25% (thirty percent) of the amount of the subscribed capital must be deposited in an authorized bank. In this case too the paid-up capital will then be released.

5.3. Registration

The articles of incorporation and the by-laws shall be approved by the notary public and must be filed with the Companies' Register for registration purposes.

6.Real Estate Property Purchase: Due Diligence and Tax issue

In order to purchase a Real Estate property in Italy it is necessary to execute an agreement in written form before an Notary Public which shall be subsequently reported in the competent Real Estate register. Any agreement regarding a Real Property which is not executed in the written form, is null and void.

Generally no authorizations are required to buy a Real Estate property in Italy.

It is advisable to carry out a deep investigations over the properties which are object of the deal. In particular, the zoning, constructions, environmental and tax regulations are some of the areas which shall be covered by a Due Diligence before executing any binding agreement.

A valuation of the prospective investment, carried by an independent and qualified valuer, could be advisable in most of the cases. The Italian valuers association, Istituto Italiano di Valutazione Immobiliare or Is.I.V.I. (see its web site www.isivi.it), is a valid instrument for research a local qualified valuer who adopt European criteria of evaluation (such as the European Valuation Standard as set forth under EVS2003 by TEGoVA). The importance of an harmonized valuation is underlined with respect to cross border transaction.

The acquisition of Real Estate property in Italy is subject to different types of taxation:

- Cadastral Tax
- Mortgage Tax
- Register Tax
- VAT Tax

These taxes may be applied in fixed values, proportional or even excluded depending on a series of factors. It is important to point out that Italian legislation on Real Estate taxes is very complicated and every single transfer should be closely monitored, however some generic affirmations can be done.

If the seller is a company whose main activity is the building, restructuring, selling or buying of Real Estate property the VAT will be applied in a proportional rate. Generally speaking this rate will be 20%. Some exceptions however are possible:

- if the buildings are sold after doing restructuring the rate lowers to 10%
- if the buildings are non-luxury residential housing the rate lowers to 10%
- if the building is bought by a natural person who is buying his first house, under certain conditions, the rate lowers even more to 4%.

The general rule is that if the VAT is applicable, the other taxes are applied in a fix value (129,11 Euro). On the other hand if the VAT is not applicable because the seller is not an aforementioned company, then the other types of taxes will be applied in a proportional way:

- Cadastral Tax 1% and
- Mortgage Tax 2% and
- Register Tax varies depending on the type of Real Estate that is being transferred:
 - 7% if the acquisition is of buildings
 - 15% if the acquisition is of land
 - 8% if the acquisition is of land on which buildings can be constructed.
 - 3% if the acquisition is of buildings that are of a particular historical interest

Moreover, in Italy owners of Real Estate are subject to a property tax called I.C.I. This tax too is a proportional tax. Its rate depends on the municipality where the Real Estate is, generally the spread goes from 4 per 1000 to 8 per 1000.

In addition to all the tax that have to be paid the buyer and the seller they will also have to pay a fee to the brokerage agency that is normally 3%.

The taxation on the loan has recently changed its rate. Initially it was 0,25% and now it has grown to 2%.

7. Real Estate Licence Framework: broker, engineer, valuer, lawyer and management.

The Real Estate business for its nature needs many different skills to be carried out. Any Real Estate project may be divided in phases such as for example:

- research of the location which fits with the client requirements (client may want, for example, to reach some benchmark of return and bears a certain type of risk so called Real Estate Rating);
- preparing the structure of the investment (very important to contain the fiscal burden);
- acquisition of the property (legal, technical and fiscal Due Diligence, a prospective plan of the cost related to the next phases, contracts and mortgage);
- renovation of the property (in certain case even a new construction);
- promotion of the property in order to rent/sell it (this phase may start in advance to not loose time);
- management of the property (gathering and improving the income of the property, taking all actions needed to prevent damages and to keep it in good standing).

As you may see, there are a lot of key figures which are involved into a Real Estate transaction at least: broker, engineer, valuer, lawyer and management.

A basic principle of the European Community is the freedom of provide service and movement of persons and goods. Therefore, listing the specific requirements set forth by the Italian laws in order to become respectively a broker, engineer, valuer, lawyer and management, in the next future, may be useful for comparing the Romania legal framework with the Italian one; however, it shall be considered that, in the next future, once Romania had joined the European Community, all the profession recognised in Romania are recognized around the European Community.

Broker: how to be a Real Estate broker licensed in Italy

In order to become an Italian Real Estate broker, it behoves:

- to have at least an high school title;
- to attend a course kept by schools recognized by the local Chamber of Commerce;
- to pass an exam organised by the Chamber of Commerce;
- to enrol to the broker register kept by the Chamber of Commerce.

According to the Italian laws, to be entitled to ask for a broker commission it is necessary to be a licensed broker. The commission fee is between 2% up to 6%

depending on the matter and on the willing of the parties (usually it is 3% on both side of the parties).

According to art. 3, paragraph 5-bis, of Law n.39 3 February 1989 as subsequently amended, the broker shall subscribe an insurance police covering the risks involved in the brokering activity. Moreover, according to art. 3 of Law n.39 3 February 1989 as subsequently amended, the broker activity is not only reserved but also exclusive and therefore, it may not be carried out by employees (other then employees of the broker companies) and/or by effective entrepreneurs or by other professionals.

Engineer: how to be a Civil engineer licensed in Italy

To be qualified as an Italian civil engineer requires to be gradated at an Engineering University as civil engineer, to pass an exam and finally to be enrolled in a public register of engineers. In the recent past, the engineer bar have been divided into many sections including the civil engineer section which gathers all the engineer specialized in Real Estate construction work.

The civil engineer (together with architect) is the licence required by the Italian laws in order to submit to the competent public authority any request of permit of construction and/or of renovation.

The engineering fee are stated by laws and varied on the subject and on the difficulty of the project executed.

Valuer: how to be a Real Estate valuer licensed in Italy (and Real Estate Rating agencies)

Up to today, the Italian laws does not state a specific regulation to fix the requirements for the licensed Real Estate valuers. Therefore, many professions, such as, *inter alia*, architects and engineers, provide for Real Estate appraisal.

Moreover, an association, called "*Istituto Italiano di Valutazione Immobiliare or Is.I.V.I.*" (see www.isivi.it), has make a material effort to let adopt European common standards as pointed out by the European Association of Valuers' Group (TEGoVA, see www.tegova.org) with the European Valuation Standars 2003 (also named briefly and usually "**EVS2003**").

At this state of the art, even less regulated is the sector of the Real Estate Rating agencies. As you know, the rating measures the risk of the investment (either of a single property or an entire portfolio). The Guidance 14 of the aforementioned EVS2003 focuses exclusively on the methods and criteria to provide Real Estate Rating (this European wide method is called "**PaM**" which means Property and Market rating). PaM takes in consideration many factors including the property rights granted by the respective country and, in general, the country profile rating. Less risky is the investment less yield the investor is willing to obtain; and otherwise, an investor pretends an high yield of investment in event of a high risk investment.

As to the Real Estate Rating's methods, the Italian Real Estate market is deeply touched by the rules enacted by the inter banks agreement called Basilea 2 which links the cost of the mortgage loan to the risk of the property more then its value.

An important meeting is scheduled for 11 march 2005 in Milan in Universirty of Bocconi regarding the methods of determining the Real Estate Rating.

Lawyer: there is not a specific qualification required for Real Estate business

As see above, the lawyer is usually one of the players of a Real Estate transaction. Its role is important during the fiscal structuring of the project, Due Diligence and negotiation of the contracts.

Differently from other countries such as U.K. and U.S.A., in Italy there is not a specific specialisation in Real Estate business addressed to the lawyers. However, it is advisable to ask in advance about the experiences in the Real Estate sector of the chosen lawyer.

Management: no license required

The management is often the core business in Real Estate sectors especially in the case of long term investment where the client needs to maintain high the profitability of the bought properties during a long period of time. Still this profession lakes of rules in Italy and therefore, it is not required a license to be entitled to carry out Real Estate management. The management fee is negotiable (it is usually around 4% on the gross income of the premises).

A big portion of the volume of affairs of the Real Estate management sector refers to the condominium properties (where the owners of the single units of the building shall

nominated a manager to take care of the common expensive and of the maintenance of the building).

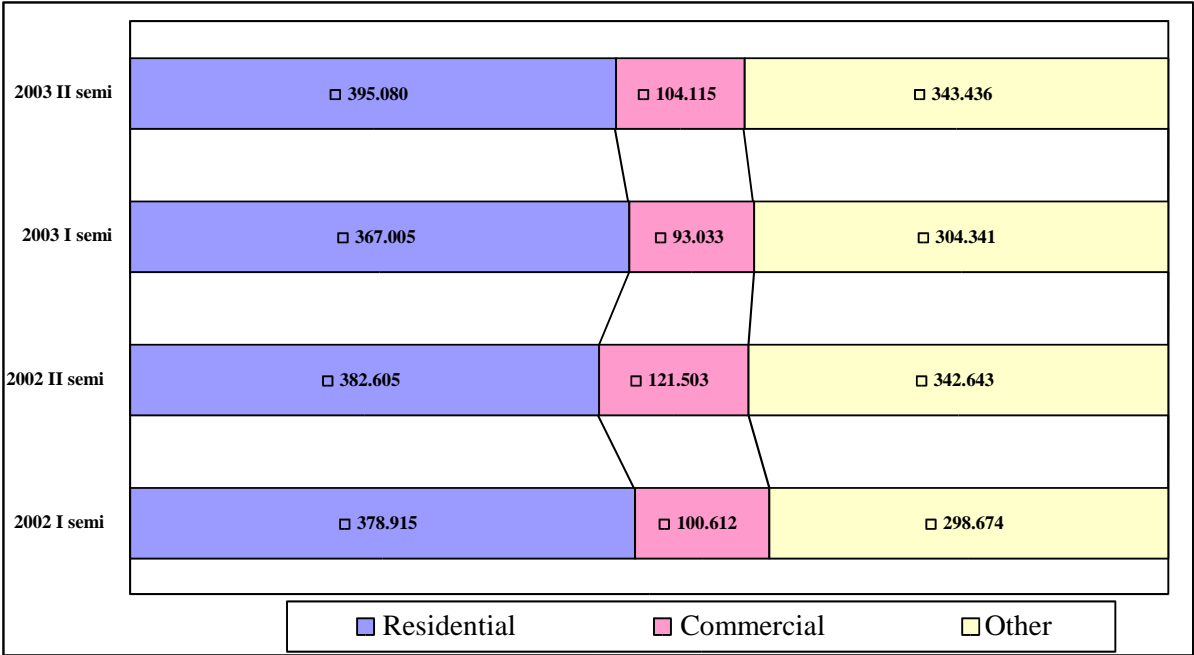
8.The Italian Real Estate Market Indicators

The Italian Real Estate market has kept a strong volume of acquisition during the year 2003 (according to the data provided by the Public Authority of the Territory, "*Agenzia per il Territorio*"). In fact during all the year 2003, the Normalized Number of Transaction (NTN) on the national basis has been incredibly high: n. 1.625.000 transaction on an aggregated basis of residential, commercial and others during all 2003.

Table 1 shows number of transactions for each semester starting from I semester 2002 to II semester 2003 (Blue: residential Pink: commercial Yellow: other)

Table 1

Public Authority of the Territory's data



On the local market, the highest NTN has been registered in Milan and its province which had a NTN equal to 141.600. Hereafter, there is a list the variation of NTN from 2002 to 2003 for each of the main Italian local area which aggregately represent 38% of the entire Italian market.

Table 2: % NTN variation in the main Italian provinces

Public Authority of the Territory's data

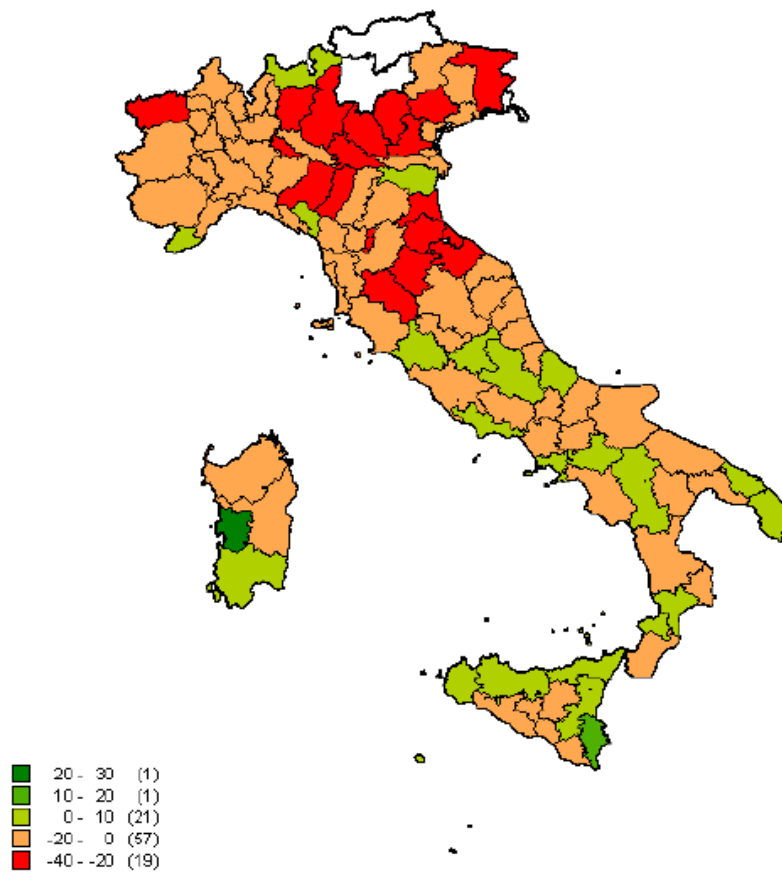
Province	Residential	Commercial	Others	Total
Milano	0,80%	-7,77%	15,30%	4,70%
Roma	-3,90%	-6,61%	2,80%	-2,10%
Torino	-2,40%	-8,10%	-0,20%	-2,20%
Bologna	3,60%	-3,00%	-5,10%	-2,00%
Vincenza	-1,00%	-33,40%	2,30%	-1,80%
Verona	-0,50%	-20,70%	5,40%	1,30%
Brescia	5,70%	26,20%	2,10%	-0,50%
Treviso	2,50%	-23,80%	1,40%	-1,00%
Bergamo	1,50%	-20,60%	-2,70%	-3,20%
Napoli	-3,40%	6,90%	-2,80%	-1,50%
Italian Average	0,10%	-11,20%	1,00%	-1,10%

Except for the province of Milan and the province of Verona, all the main Italian province have lightly showed a decrease of NTN and, in particular, in the commercial premises (with the exception of Naples which has increase the NTN in the commercial sector). The commercial sector has been effected by the end of the fiscal facilitation set forth during 2002. Lombardia, Veneto and Emilia-Romagna had a reduction of NTN superior then 20% in respect to the same period of 2002. However, it is important to underline that the NTN regarding the commercial sector is 14% higher then 2001.

The areas where NTN regarding commercial premises, is materially decreased, are located in the North and North East of Italy as you can see from the following graphics.

Picture : **Variation (%) of NTN 2002/2003 Commercial premises**

Public Authority of the Territory's data



9.The Italian Market: Real Estate Index (IMI)

Other important elements to be considered in order to analyse the Italian Real Estate market are, inter alia, the Real Estate Index (IMI) which is the ratio between the NTN and the Stock showing the intensity of the transaction in respect to the Stock.

Table 3: Stock, NTN and IMI in residential sector in 2000-2003

Public Authority of the Territory's data

	2000			2001			2002			2003		
	NTN	Stock	IMI %	NTN	Stock	IMI %	NTN	Stock	IMI	NTN	Stock	IMI %
North	361.335	12.148.246	2,97	355.036	12.401.779	2,86	397.914	12.639.238	3,15	400.842	12.906.099	3,11
Centre	142.151	5.228.337	2,72	143.087	5.301.618	2,70	159.937	5.394.585	2,96	156.669	5.501.133	2,85
South	186.993	10.045.759	1,86	183.142	10.160.616	1,80	203.672	10.294.987	1,98	204.575	10.405.858	1,97
Total	690478	27422342	2,52	681264	27864013	2,44	761522	28328810	2,69	76208	28813090	2,64

The above graph clearly emphasizes the fact that the northern part of Italy has the 50% of the entire national NTN where the Stock which refer to the northern area is simply 45% of the entire national Stock.

Table 4: Stock, NTN and IMI in commercial sector in 2000-2003

Public Authority of the Territory's data

	2000			2001			2002			2003		
	NTN	Stock	IMI %	NTN	Stock	IMI %	NTN	Stock	IMI %	NTN	Stock	IMI %
North	87.397	2.984.656	2,9	88.132	3096997	2,8	115.114	3220539	3,6	97471	3332965	2,90
Centre	40.123	1.692.671	2,4	42.327	1728195	2,4	54.018	1787299	3,0	47622	1839196	2,6
South	44.314	2.685.356	1,7	44.003	2747462	1,6	52.983	2823699	1,9	52055	2888305	1,8
Total	71.834	7.362.683	2,3	174.462	7572654	2,3	222115	7831537	2,8	197148	8060466	2,4

It should be noted that the commercial Stock in the northern part of Italy has increased 13,8% in respects to 2000.

10.City of Milan: price and Milan Chamber of Commerce' s report.

After a brief review of some figures of the national market, it is useful to consider a specific market in order to offer a detailed example of the Real Estate market.

Milan and Bucarest are quite closed and, then, it is important to focus on the Milan's Real Estate market. The Chamber of Commerce of Milan on March 2004 has issue a report on the Milan's Real Estate market updated to second semester 2003.

Table 5: Residential premises: price of each area and percentage growth from 2002

Centre	SPIGA	€/mq average 9750	14,7%
	S.BABILA	€/mq average 7500	7,1%
East:	MARTINI	€/mq average 2950	22,9%
	FORLANINI	€/mq average 2150	3,6%
North:	GRECO	€/mq average 2500	13,6%
	MAGGIOLINA	€/mq average 3300	3,1%
West:	Q.GALLARATESE	€/mq average 2550	14,6%
	LEOPARDI	€/mq average 5800	1,8%
South:	MERCALLI	€/mq average 5400	18,7%
	NAVIGLI	€/mq average 3950	2,6%

The following chart shows some areas in Milan where the price per square meter has increased the most from 2002.

Table 6: Areas with the highest increases in price from 2002:

ZONE	Min-max €/mq	var %
MARTINI – CUOCO	2400 – 3500	22,9
MERCALLI – QUADRONNO	4000 – 6800	18,7
TEODOSIO – VALLAZZE	2400 – 2900	17,8
ARGONNE – CORSICA	2400 – 3500	15,7
VENEZIA – MONFORTE	6000 – 8000	14,8
SPIGA – MONTENAPOLEONE	7500 – 12000	14,7
QUARTIERE GALLARATESE – TRENNO	2300 – 2800	14,6
ACCURSIO	2400 – 3100	14,6
TRIBUNALE - 5 GIORNATE	4500 – 5800	14,4

Residential: the demand is strong in particular for the little flats of new construction. In the central area, the offer is very poor. The price are increased on a average 7,4% per year from 2002.

Commercial: the demand is weak, unless for little office in central position.

11. Cross boarder transaction with Romania.

The future adherence of Romania to the EU enhances the opportunity for cross border investments in all fields including the Real Estate. The freedom to provide service, the freedom of movement of goods and people and a common legal framework are elements which grant a basis for an unified market.

For these and other reasons, many foreign investors look to Romania as a favourable market. The Romania internal market is one of the strongest between those countries which are going to enter into EU. The bank system is modern and foreign banks have acquired important interest of the main local banks. Many brokers have already notice an increase of the Italian investors in Romania.

There are mutual opportunities for even Italian or Romania investors to carry out Real Estate business cross the respective two countries. It is only a matter of time to quantify the number and qualities of the transaction carried out.

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