

ORDER
No. 186, dated 4.5.2022

**ON THE ESTABLISHMENT OF THE DETAILED RULES ON THE CRITERIA,
PROCEDURES FOR THE SELECTION OF REPRESENTATIVES AND THE
FUNCTIONING OF THE DISCIPLINARY COMMISSION, THE MANNER OF
EXERCISING ITS RESPONSIBILITIES AND THE ORGANIZATION OF DISCIPLINARY
PROCEEDINGS FOR REAL ESTATE INTERMEDIARY**

Pursuant to Article 102, paragraph 4, of the Constitution; Article 7, paragraph 2, of Law No. 8678, dated 14.5.2001, "On the Organization and Functioning of the Ministry of Justice", as amended, and Article 29, paragraph 3, of Law No. 9/2022, "On the profession of real estate intermediary", I hereby

ORDER:

I. GENERAL PROVISIONS

1. The purpose of this order is to establish detailed rules on the criteria, procedures for the selection of representatives and the functioning of the Disciplinary Commission, the manner of exercising its responsibilities and the organization of disciplinary proceedings for real estate intermediary.

2. For the purposes of this order's implementation, the following terms have the following meanings:

a) "Disciplinary Commission", a collegial body that reviews the requests of the Minister of Justice for disciplinary proceedings against real estate intermediaries and rules on disciplinary measures according to the law;

b) "Evidence", data, testimony, document or fact that serves to draw conclusions from the investigation and that is undertaken in accordance with the provisions provided for by the law on real estate intermediaries and this order;

c) "Investigation report", the act by which the Minister of Justice terminates the disciplinary investigation, by closing the investigation or initiating disciplinary proceedings by proposing the determination of the relevant measure;

ç) "Final decision", the decision of the Disciplinary Commission to accept the request for disciplinary proceedings and to impose one or more disciplinary measures or to dismiss the request.

3. The main principles on the basis of which the Disciplinary Commission carries out its activities are lawfulness, independence, impartiality, confidentiality and protection of personal data, responsibility, professionalism, transparency and efficiency.

II. CRITERIA AND PROCEDURES FOR THE SELECTION OF THE REPRESENTATIVES OF THE DISCIPLINARY COMMISSION

1. The Disciplinary Commission is a collegial body, which consists of:

a) two representatives from the Ministry of Justice;

b) one representative from the ministry that covers money laundering prevention issues;

c) two representatives from professional associations of real estate intermediaries.

2. The representatives of the Ministry of Justice in the Disciplinary Commission shall be appointed by order of the Minister of Justice within 30 days from the entry into force of this order.

3. The Ministry of Justice shall request the appointment of representatives in the Disciplinary Commission from the bodies specified in paragraph 1, chapter II, of this order, within 15 days from its entry into force. The structures in charge must appoint representatives in the Disciplinary Commission within 10 days from the date of the request forwarded by the Ministry of Justice.

4. Representatives in the Disciplinary Commission are appointed by the responsible structures related to the field of regulated professions and real estate, in accordance with the respective area of responsibility.

5. The Chairman and members of the Disciplinary Commission are elected for a 4-year term, with the right to re-election only once. The Chairman of the Commission is one of the representatives appointed by the Minister of Justice, in accordance with paragraph 2, chapter II, of this order.

6. The term of the chairman and member of the Disciplinary Commission ends when:

- a) the 4-year term ends;
- b) resigns;
- c) reaches retirement age;
- ç) is convicted by a final court decision for committing a criminal offense;
- d) is removed from functional duties in the institution s/he represents or from the professional association of real estate intermediaries.

7. Members of the Disciplinary Commission must recuse themselves from the review of a disciplinary proceeding, in cases where one of the legal obstacles provided for in Article 30 of the Code of Administrative Procedures exists. The member shall notify the chairman of the recusal from the review of the disciplinary proceeding within 2 days from the date of becoming aware of the legal obstacle, while in the case of the chairman's recusal, the second member selected by the Minister of Justice shall be notified. Upon notification of the recusal, the collegial body shall continue the review of the disciplinary proceeding without the recused member.

8. The Minister of Justice or the real estate intermediary against whom the proceeding is being conducted may request the recusal of a member of the Commission from the disciplinary proceeding, until the time of the decision, by stating the reasons for which the recusal from the examination of the disciplinary proceeding is requested. The request for the recusal of a member shall be made in writing, addressed to the chairman and shall contain all possible evidence on which it is based, while when the request is submitted to the chairman, it shall be addressed to the second member designated by the Minister of Justice. The disciplinary proceedings shall be suspended until the review of the request for the recusal of the member or chairman.

9. The Commission shall take the decision on the recusal or confirmation in the disciplinary proceedings of the member or chairman, within 5 days from the receipt of the request for recusal. The member or chairman of the Commission, against whom the request has been submitted, shall not participate in the review of the request for his recusal. In cases of recusal, the collegial body shall function as such without the participation of the recused member.

III. ORGANIZATION AND FUNCTIONING OF THE DISCIPLINARY COMMISSION

1. The Disciplinary Commission shall review all investigation reports together with the investigative files of the Minister of Justice for the disciplinary proceedings against real estate intermediaries.

2. The Chairman of the Commission shall perform the following duties:

- a) administers the investigation report together with the investigation file, submitted by the Minister of Justice for disciplinary proceedings against the real estate intermediary;
- b) informs the other members of the Commission and the real estate intermediary, subject to the proceedings, of the request of the Minister of Justice for disciplinary proceedings;
- c) sets and announce the date and place of the meeting and receive confirmation in writing or electronically from the members of the Disciplinary Commission. When the necessary quorum for its holding has not been reached at the opening of the meeting, the Chairman shall decide to call the meeting for another nearby day;
- ç) sets and announce the agenda of the meeting, as well as appoint the rapporteur for the case, referring to the relevant investigation file for disciplinary proceedings submitted by the Minister of Justice;
- d) opens, close and chair the meeting, ensuring its smooth running in accordance with the provisions of this order;
- dh) asks if there are any prior requests from the parties, which are evaluated by the Commission;
- e) informs the members of the Commission, regarding the obligation to express themselves within 2 days from the moment of receiving the notification, if they have a conflict of interest or doubts about their impartiality in decision-making, as well as the real estate intermediary, subject to disciplinary proceedings, if there is a conflict of interest with one of the members of the Disciplinary Commission;
- ë) signs all acts issued by the Commission;
- f) administers the necessary materials, which are requested by the other members;

- g) carries out the confrontations and clarifications requested by the other members, and announces the termination of the discussions;
3. In cases where the chairman does not call the meeting within the deadline set out in paragraph 5, Chapter III, of this order, or does not participate in it, regardless of the reason, the duties provided for in paragraph 2, Chapter III, of this order, shall be exercised by the second member appointed by the Minister of Justice.
4. The member of the Commission shall perform at least the following duties:
- a) forwards in writing or electronically the confirmation of participation in the meeting to the chairman of the Disciplinary Commission;
 - b) report on the case in a hearing before the Disciplinary Commission, in the case where s/he is the member selected by the chairman, according to the letter “ç”, paragraph 2, Chapter III, of this order;
 - c) preserves the data with which s/he has become acquainted during the performance of his activity, respecting the principle of confidentiality and protection of personal data according to the legislation in force;
 - c) recuses him/herself from the review of the case, if he/she meets the conditions set out in letter “e”, paragraph 2, chapter III, of this order
 - d) votes on the decisions made by the Disciplinary Commission, except in the case when he/she recuses him/herself from the review of the case, as per letter “ç” of this paragraph.
5. The Chairman shall set the date of the meeting no later than 3 days from the receipt of the investigation report. Any change to the date of the meeting shall be notified without delay to each member of the Commission.
6. The documentation of the Commission’s activity during the meeting shall be reflected in the minutes of the meeting, which shall be kept by the secretary elected by the Disciplinary Commission from among the members, under the direction and supervision of the Chairman and shall contain:
- a) the date and place of the meeting;
 - b) the members participating in the meeting;
 - c) the issues discussed at the meeting;
 - c) decisions taken at the meeting, grounds for decision-making, deadlines set for decision-making;
 - d) recusals of members and respective justifications;
 - dh) voting results, voting method of each member and justification of voting by each member;
 - e) Determination of the closure of discussions.
7. The minutes of the meeting are presented for approval to all members at the end of the meeting or at the beginning of the following meeting. After approval, the minutes are signed jointly by the chairman and the secretary.
8. The meetings of the Disciplinary Commission are also documented through audio recording.
9. A copy of the minutes of the meeting, the audio recording, its transcription, if possible, and any other material administered during its development is filed together with the final reasoned decision with the Minister of Justice. Each member of the Commission has the right to request a copy of the minutes, the audio recording and its transcription.
10. Participation in the meetings of the Disciplinary Commission is mandatory. In cases where a member fails to participate in three consecutive meetings, without a legitimate reason, the chairman, or in the case where the chairman does not participate in three consecutive meetings, the second member elected by the Minister of Justice shall immediately notify the body that appointed him and the Minister of Justice. In this case, the appointing body shall appoint the new member in accordance with the rules for the appointment of members, according to the provisions of Chapter II of this Order.
11. The Disciplinary Commission shall hold meetings when the majority of its members are present.
12. The Disciplinary Commission shall make decisions regarding the adjournment of hearings, the admissibility of evidence, the resolution of the case, as well as any other issue it deems necessary or appropriate in dealing with the case.
13. The Disciplinary Commission shall make decisions only on issues that are included in the agenda of the meeting.

14. Decisions at the Disciplinary Commission meeting shall be made by voting, which shall be individual and open. Exceptionally, votes relating to the ethics, qualities or conduct of the subject of disciplinary proceedings shall be taken by secret vote.

15. Each member shall have the right to one vote. In no case may the right to vote be delegated to another member of the Disciplinary Commission or third persons.

16. Decisions of the Disciplinary Commission shall be made by a majority of votes of all members. Abstention is not permitted. The Chairman of the Commission shall vote last. The member in the minority may request that the fact and reasons for voting against a decision taken by the Commission be recorded in the minutes.

17. In the case of paragraphs 7 and 8, of Chapter II, of this Order, when at the end of the voting the result of the votes is equal, the vote of the Chairman shall be decisive.

18. The votes of the members of the Disciplinary Commission shall be recorded in the minutes of the meeting.

IV. ORGANIZATION OF DISCIPLINARY PROCEEDINGS

1. Disciplinary proceedings against a real estate intermediary shall commence when, during the investigation conducted by the Minister of Justice, reasonable suspicions have been created that a disciplinary violation has been committed by the real estate intermediary, in accordance with the law on real estate intermediary.

2. When, for the violations ascertained during the disciplinary investigation, it is proposed to take a disciplinary measure, pursuant to paragraph 5, of Article 22, of Law no. 9/2022, "On the profession of real estate intermediary", the minister orders the initiation of disciplinary proceedings by submitting to the Disciplinary Commission the investigation report and the investigation file.

3. The investigation report and the investigation file include the detailed reasoning of the violation and the analysis of the lawfulness of the disciplinary measure that is requested to be imposed, together with the legal references on which the reasoning and analysis are based, as well as the supporting evidence.

4. The subject/entity of the disciplinary proceedings is notified at least 10 days before the hearing, regarding the date, time and place of its holding. S/He is notified on the right:

- a) to submit a written submission, within 10 days from the date of receipt of the notification;
- b) to participate in the hearing;
- c) to call witnesses who can testify to facts of interest to the case;
- ç) to submit documents;
- d) to take other measures to present evidence in support of his/her defense;
- dh) to be represented, according to the provisions of the Code of Administrative Procedures.

5. Notification of the entity, for whom the initiation of disciplinary proceedings has been decided, shall be made via the official e-mail of the real estate intermediary or by post to the addresses declared in the Register of Real Estate Intermediary.

6. The parties to the disciplinary proceedings have the right to appear and provide explanations at the hearing, in person or through a representative. If the subject of the disciplinary proceedings or his legal representative is not present, the Commission shall assess the reasons for the failure to appear at the hearing. If the failure to appear has occurred for reasons that are not considered reasonable, the Commission considers the continuation of the hearing without the presence of the party or his legal representative, otherwise when it is assessed that the subject of the proceedings has presented reasonable reasons or reasons that are assessed as such, the Commission adjourns the hearing by making a second announcement for another date as soon as possible. If even on this date the subject duly notified and/or his representative does not appear before the Commission, it is decided to hold the hearing *in absentia*.

7. After reviewing all the facts and evidence, the Disciplinary Commission decides:

- a) to dismiss the request for disciplinary proceedings, because the alleged facts have not occurred or they do not constitute a disciplinary violation; or
- b) to accept the request, impose one or more disciplinary measures and notify the Minister of Justice of the decision, in order to issue the relevant order for the implementation of the measures imposed in the disciplinary proceedings.

8. The Disciplinary Commission reviews the disciplinary measure proposed by the Minister and issues a reasoned decision in writing within 15 days from the end of the hearing.

9. The Disciplinary Commission reviews the case and makes a decision within 30 days from the date of submission of the investigation report, together with the investigation file before it.

10. The final decision contains:

- a) the panel that made the decision;
- b) the identity of the individual/entity against whom the disciplinary proceedings were conducted;
- c) the date of approval;
- ç) the circumstances of the fact and the alleged violation(s);
- d) the legal basis;
- dh) the reasoning;
- e) the enacting clause;
- ë) the right and deadlines for appeal;
- f) the signature of the chairman and secretary of the Disciplinary Commission.

11. The parties have the right to be notified of any decision of the Disciplinary Commission, within 5 days from its adoption.

12. An appeal may be filed against the decisions of the Disciplinary Commission with the competent administrative court, within 45 days from the date of announcement of the decision.

V. FINAL PROVISIONS

1. The structures responsible under this order are hereby charged with its implementation.

This order becomes immediately effective and shall be published in the Official Gazette.

MINISTER OF JUSTICE

Ulsi Manja