

Authorisation guidelines

(Money market)

April 2010

**Detailed rules of the authorisation procedures
conducted pursuant to Act CXII of 1996 on Credit
Institutions and Financial Enterprises (ACIFE)**

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Rules of proceeding for authorisation procedures

The administrative deadline for an authorisation procedure following the receipt of the relevant application shall be as follows:

- **90 days** for a procedure to authorise a foundation, merger or demerger, or to obtain an operating license (*the Hungarian Financial Supervisory Authority (HFSA) may, if justified, extend the deadline on one occasion by not more than 90 days*) [Article 40 Paragraph (1) of Act CXXXV of 2007 on the Hungarian Financial Supervisory Authority - The HFSA Act];
- **60 days** for a procedure to obtain authorisation for the transfer of contractual positions (*the HFSA may, if justified, extend the deadline on one occasion by not more than 60 days*) [Article 40 Paragraph (3) of the HFSA Act];
- **30 days** as a general administrative deadline for other authorisation procedures (*the HFSA may, if justified, extend the deadline on one occasion by not more than 30 days*) [Article 33 Paragraph (1) of the Public Administration Procedures Act];

If a customer submits an incomplete application for an authorisation procedure, then within 30 days of its receipt of the application the HFSA shall call upon the applicant to disclose the missing details, setting an adequate deadline and reminding the applicant of the legal consequences of any failure to disclose the missing details [Article 40 Paragraph (5) of the HFSA Act].

If an application that is available as complete, and its annexes fail to meet the conditions as specified in the statutory regulation, if they contain an impractical or an unprofessional provision, then within 30 days of its receipt of the complete application the HFSA shall call upon the customer to submit supplements or an amended application or annex, setting an adequate deadline. [Article 40 Paragraph (6) of the HFSA Act]

When ordering the submission of supplements, the HFSA shall remind the customer that upon failure to do so or if inadequate supplements are submitted, then the HFSA shall proceed to adjudge the application on its merits, on the basis of the data available. [Article 40 Paragraph (7) of the HFSA Act]

The HFSA may, in an authorisation procedure, adopt a simplified resolution. [Article 40 Paragraph (8) of the HFSA Act]

In an authorisation procedure **for the acquisition of qualified influence** the HFSA shall confirm in writing to the applicant or to the person holding the interest, its receipt of the application within 2 working days from its submission, wherein it shall also inform of the administrative deadline. (This provision is also applicable for the disclosure of missing details) [Article 38/A Paragraph (1) of the ACIFE].

Within sixty working days of the issuance of its confirmation of receipt the HFSA shall examine the intent to acquire the influence with regard to whether or not compliance with the

provisions of the ACIFE can be ensured upon its realisation [*Article 38/A Paragraph (2) of the ACIFE*].

If the information specified in the ACIFE is submitted incompletely or inadequately, then within 50 working days of the issuance of its confirmation of receipt the HFSA may request in writing, by indicating the information it requires for the completion of its assessment, for further information or for the missing details to be disclosed (the disclosure of missing details). [*Article 38 Paragraph (3) of the ACIFE*]

The deadline for the disclosure of missing details is 20 working days. [*Article 38 Paragraph (4) of the ACIFE*]

The deadline for the disclosure of missing details is 30 working days

a) if the registered address of the applicant is located in a third country; or

b) if the applicant is not subject to supervision pursuant to the statutory regulations of a member state that transpose *Directives 85/611/EEC and 92/49/EEC of the Council and Directives 2002/83/EC, 2005/68/EC and 2006/48/EC of the European Parliament and of the Council* [*Article 38/A Paragraph (5) of the ACIFE*].

Upon failure to disclose the missing details or if the information disclosed is inadequate, the HFSA shall proceed as provided for under Article 31 Paragraph (2) of Act CXL of 2004 on the general rules for procedures and services in public administration (the Public Administration Procedures Act).

Following adequate disclosure of the missing details by the applicant, the HFSA is entitled to request the applicant to also provide other information. However, the deadline set for the fulfilment of this information disclosure is to be considered when calculating the administrative deadline.

In the course of an authorisation procedure and in the absence of an opposing party the HFSA may waive the requirement for the mandatory use of the Hungarian language and for documents to be submitted in the Hungarian language. In such a case the HFSA may set an obligation to prepare a summary of the documents in the Hungarian language. (*Article 29 of the HFSA Act*)

In the course of an authorisation procedure the HFSA may not request the submission of a document, the content of which is officially known to the HFSA. The applicant shall declare that he/she has disclosed to the HFSA all material facts and data that may be necessary for the authorisation to be issued. (*Article 38 Paragraphs (1) and (3) of the HFSA Act*)

Scope of licensing for credit institutions

Scope of licensing of the HFSA

The HFSA's permission is required for:

a) the foundation;

b) the merger (takeover, fusion), demerger;

c) the amendment of the bylaws of a **credit institution** in the following cases:

- changing the company's name and registered address (headquarters),
- amendment of the sphere of activities,
- reducing the subscribed capital,
- changing the class of shares, issuing a new class of shares or modifying the class of previously issued shares,
- amendment of the powers and authority of the Board of Directors,
- issuing convertible bonds or bonds with subscription right, and amendment of the regulations applicable thereto,
- establishing and changing pre-emption rights relating to shares;

d) the acquisition of its shares in an extent to constitute qualifying participation and for increasing the qualifying participation up to threshold limit prescribed in the ACIFE;

e) the election or appointment of executive officers;

f) the commencement of operation;

g) the amendment of the sphere of activities;

h) the performance of financial services through a person authorized to mediate the financial services specified in Point 12 a) of Chapter I of Schedule No. 2 of the ACIFE (hereinafter referred to as "agent");

- i) founding representative offices, branch offices or - as described by Act C of 2000 on Accounting - subsidiaries (credit institutions, financial enterprises or other companies) in a third country;
- j) the acquisition of qualifying participation in a non-resident enterprise;
- k) the transfer of the account portfolio and the contracts for repayment of monetary instruments (hereinafter referred to as "assignment of customer accounts");
- l) the exemption from the obligation to maintain a trading book;
- m) the termination of operations;
- n) repaying subordinated loan capital before the deadline specified in the contract or before five years;
- o) repaying supplementary subordinated loan capital before the deadline specified in the contract or before two years,
- p) loan security value assessment regulations;
- q) the revocation of its primary loan capital or subsidiary loan capital, as well as repayment of principal before the notice period specified in an agreement.

(ACIFE Section 14 (1))

The HFSA's permission is required for:

- a) the foundation,
 - b) the commencement of operations,
 - c) the amendment of the sphere of activities;
 - d) performing financial services through intermediation,
 - e) the appointment of an executive officer,
 - f) the assignment of customer accounts,
 - g) the exemption from the obligation to maintain a trading book,
 - h) the termination of operations of a credit institution operating as a **branch office**.
- (ACIFE Section 14 (2))*

The HFSA's authorisation is not required to establish a credit institution branch office in another Member State of the European Union. *(CIFE Section 14 (3))*

The documents required for the application for authorisation must be submitted to the HFSA in three copies, and for documents in foreign languages their certified Hungarian translation must also be attached. (HFSA Act, Section 11/K (4)) The submission of documents may not be required if the HFSA has official knowledge of their content. A statement specified in Section 11/K (3) of the HFSA Act must be attached to the application for authorisation to the effect that the applicant has disclosed to the HFSA all material facts and data required for the issue of a licence.

I. Licensing of the foundation of credit institutions

Pursuant to Article 14 Paragraph (1) Section a) of the ACIFE, the foundation of a credit institution is subject to authorisation by the HFSA. Before making its resolution – in the case of the foundation of a bank or a specialised credit institution – the HFSA consult the Magyar Nemzeti Bank (MNB, National Bank of Hungary).

Article 17 of the ACIFE stipulates that an **application for the authorisation of the foundation** of a credit institution must be submitted together with the following documents **attached**:

1. The articles of association of the credit institution to be founded, which should clearly specify its type and its scope of activities (*Article 17 Paragraph (1) Section a) of the ACIFE*);
2. The document containing the specification of the planned operational area (with national extent or limited to a specific territorial unit; *Article 17 Paragraph (1) Section b) of the ACIFE*);
3. Certificates confirming that at least fifty percent of the subscribed capital as specified in the ACIFE (two billion Hungarian Forints for a bank, the subscribed capital specified under separate relevant legal regulations for a specialised credit institution, two hundred fifty million Hungarian Forints for a cooperative credit institution) has been actually paid by the founders and is available (*Article 17 Paragraph (1) Section c) of the ACIFE*);
4. Presentation of a draft for the credit institution's organisational structure and systems for management, decision making and audits, and its organisational regulations, if these are not contained in detail within its articles of association (*Article 17 Paragraph (1) Section d) of the ACIFE*);
5. In the case of an applicant with its registered address abroad a declaration stating the applicant's agent for service of process, which may only be an attorney or law office registered in Hungary (*Article 17 Paragraph (1) Section e) of the ACIFE*);
6. In the case of a credit institution subject to supervision on a consolidated basis or subject to supplementary supervision, a presentation of the system for information transfer and declarations by the persons closely related to the

credit institution stating that they will make available to the HFSA all data, facts and information that may be necessary for the supervision of the credit institution on a consolidated basis or for its supplementary supervision (*Article 17 Paragraph (1) Section g) of the ACIFE*);

7. In the case of a credit institution subject to supervision on a consolidated basis or subject to supplementary supervision, declarations by the persons closely related to the credit institution stating that they approve of their personal details, provided to the credit institution, to be managed and forwarded for the purposes of performing the supervision of the credit institution on a consolidated basis or its supplementary supervision in compliance with the ACIFE (*Article 17 Paragraph (1) Section h) of the ACIFE*);
8. Proof of payment of administrative service fees in the amount of three hundred thousand Hungarian Forints for banks or specialised credit institutions, or one hundred thousand Hungarian Forints for cooperative credit institutions (*Decree No. 12/2002 (of February 20) by the Minister of Finance*).

If among the founders there are persons who (or that) wish to acquire a **qualified influence** in the credit institution to be founded, then in addition to the above documents the following documents shall also be attached to the application for the authorisation:

- a) The identification details of the applicant as specified under Chapter I of Annex No. 3. (*Article 17 Paragraph (2) Section a) of the ACIFE*);
- b) Proof of the lawful origin of the funds necessary for the acquisition of the qualified influence (*a personal income tax return for a natural person and balance sheets and income statements or annual financial statements for the previous 3 years for a non natural person*) (*Article 17 Paragraph (2) Section b) of the ACIFE*);
- c) Documentary proof dated not earlier than thirty days prior to the submission date of the application that the person or entity has no outstanding debt owed to the tax authority, customs authority or social insurance organisation with jurisdiction over its person (*Article 17 Paragraph (2) Section c) of the ACIFE*);
- d) Proof, that his/her other ownership interests and activities pose no threat to the operations of the credit institution (*Article 17 Paragraph (2) Section d) of the ACIFE*);
- e) For natural persons an official certificate of criminal history (good-conduct certificate) dated not earlier than thirty days prior to the submission date of the application, or an equivalent official document from the applicant's personal jurisdiction (*Article 17 Paragraph (2) Section e) of the ACIFE*);
- f) If the applicant is not a natural person, its instrument of constitution and documentary proof dated not earlier than thirty days prior to the submission date of the application that its incorporation (registration) in its home jurisdiction has actually occurred, that it is not subject to a bankruptcy, liquidation or final settlement procedure, and that the persons filling its senior positions are not subject to any exclusion criteria [with regard to not being subject to a bankruptcy, liquidation or final settlement procedure it is

sufficient for the applicant to make a declaration] (*Article 17 Paragraph (2) Section f) of the ACIFE*);

- g) If the applicant is not a natural person, a detailed description of its ownership structure, and if the applicant is subject to supervision on a consolidated basis, then a detailed description of this circumstance and the consolidated annual financial statements for the previous year of the credit institution or investment enterprise subject to consolidated supervision, if it is obliged to prepare consolidated financial statements (*Article 17 Paragraph (2) Section g) of the ACIFE*);
- h) A declaration of its contingent and future liabilities – as specified in the Act on Accounting (*Article 17 Paragraph (2) Section h) of the ACIFE*);
- i) A declaration by the applicant in a private document of full probative value, stating that the applicant consents to the verification, at organisations contacted by the HFSA, of the veracity of the contents of the document attached to its application for the authorisation (*Article 17 Paragraph (2) Section i) of the ACIFE*);
- j) In the case of a credit institution subject to supervision on a consolidated basis or subject to supplementary supervision, a presentation of the information transfer related to the supervision on a consolidated basis or to the supplementary supervision and declarations by the persons closely related to the credit institution stating that they will make available to the HFSA all data, facts and information that may be necessary for the supervision of the credit institution on a consolidated basis or for its supplementary supervision (*Article 17 Paragraph (1) Section g) of the ACIFE*);
- k) In the case of a credit institution subject to supervision on a consolidated basis or subject to supplementary supervision, declarations by the persons closely related to the credit institution stating that they approve of their personal details, provided to the credit institution, to be managed and forwarded for the purposes of performing the supervision of the credit institution on a consolidated basis or its supplementary supervision in compliance with the ACIFE (*Article 17 Paragraph (1) Section h) of the ACIFE*).

If among the founders there are financial institutions, insurance institutions or investment associations domiciled abroad that wish to acquire a qualified influence, then in addition to the documents specified under Paragraphs (1)-(2) the applicant shall also submit with the application for the authorisation a certificate or declaration issued by the competent supervisory authority of the country of its registered address stating that the enterprise operates in compliance with the rules for prudent operations. (*Article 17 Paragraph (3) of the ACIFE*)

The issuance of the license of foundation is subject to a declaration stating that the financial institutions will be managed from a head office to be established in Hungary. (*Article 17 Paragraph (4) of the ACIFE*)

In the case of the **foundation of a financial institution operating as a branch office**, in addition to the documents listed under Article 17 Paragraph (1) of the ACIFE, the applicant

shall also attach to the application for the authorisation of the foundation the following documents:

1. The articles of association of the foreign financial institution (*Article 17/A Paragraph (1) Section a) of the ACIFE*);
2. An original certificate of incorporation for the foreign financial institution dated not earlier than three month prior to the submission date of the application, or documentary proof that the foreign financial institution was registered into the registry of corporations (economic entities) (*Article 17/A Paragraph (1) Section b) of the ACIFE*);
3. Copies of the licenses issued by the supervisory authority with competence over the registered address of the foreign financial institution (*Article 17/A Paragraph (a) Section c) of the ACIFE*);
4. A certificate dated not earlier than thirty days prior to the submission date of the application that the foreign financial institutions participating in the foundation have no outstanding debt owed to the tax authorities, customs authorities and social insurance organisations in Hungary and in the state of their registered address (*Article 17/A Paragraph (1) Section d) of the ACIFE*);
5. A certificate from the competent supervisory authority of the state where the registered address is located, stating that the head office performing the management of the financial institution is located in the state where its registered address is located (*Article 17/A Paragraph (1) Section e) of the ACIFE*);
6. The balance sheets and income statements of the founder for the previous three business years, certified by its auditors (*Article 17/A Paragraph (1) Section f) of the ACIFE*);
7. A declaration stating the off balance sheet obligations of the foreign financial institution (*Article 17/A Paragraph (1) Section g) of the ACIFE*);
8. A detailed description of the founder's ownership structure and of the circumstances due to which the founder qualifies as a related party, and the consolidated annual financial statements of the leading company for the previous year if the leading company is obliged to prepare consolidated financial statements (*Article 17/A Paragraph (1) Section h) of the ACIFE*);
9. Declarations by the persons involved in the application, in private documents of full probative value, stating that they consent to the verification, at organisations contacted by the HFSA, of the veracity of the contents of the documents attached to their application for the authorisation (*Article 17 Paragraph (2) Section i) of the ACIFE*);
10. Indication of the activities conducted by the applicant, authorised by the supervisory authority with competence over its registered address – following the terminology used by the ACIFE for financial services and supplementary financial services – and of the places where the activities are conducted (*Article 17/A Paragraph (1) Section j) of the ACIFE*);

11. The decision making powers of the chief executive of the credit institution operating in the form of a branch office, and the bodies of the applicant without the approval of which certain decisions are not valid (*Article 17/A Paragraph (1) Section k) of the ACIFE*);
12. A declaration by the supervisory authority with competence over the registered address of the applicant that the person in senior position who is not a Hungarian citizen is not subject to any exclusion criteria as to filling and discharging this position (*Article 17/A Paragraph (1) Section l) of the ACIFE*).

In addition to meeting the conditions mentioned above, the HFSA shall grant a license for the foundation of a credit institution operating in the form of a branch office if:

- There is a valid and effective international cooperation agreement between the HFSA and the supervisory authority with competence over the registered address of the applicant financial institution, which is based on the mutual recognition of the supervisory authorities and if it also extends to the supervision of branch offices (*Article 17/A Paragraph (2) Section a) of the ACIFE*);
- The state where the registered address of the applicant financial institution is located has anti money laundering provisions in place that meet the requirements set by the Hungarian legal regulations (*Article 17/A Paragraph (2) Section b) of the ACIFE*);
- The applicant financial institution has data management regulations in place that meet the requirements set by the Hungarian legal regulations (*Article 17/A Paragraph (2) Section c) of the ACIFE*);
- The applicant financial institution has data management regulations in place that meet the requirements set by the Hungarian legal regulations (*Article 17/A Paragraph (2) Section b) of the ACIFE*);
- The applicant financial institution declares that it will honour, without limitation, all commitments incurred in the corporate name of the branch office (*Article 17/A Paragraph (2) Section d) of the ACIFE*);
- The applicant financial institution submits the license issued by the supervisory authority with competence over its registered address for the establishment of a branch office, or its declaration of consent or its acknowledgement of the same (*Article 17/A Paragraph (2) Section e) of the ACIFE*);
- The legal regulations of the state where the registered address of the applicant financial institution is located ensure the prudent and secure operation of financial institutions (*Article 17/A Paragraph (2) Section f) of the ACIFE*).

II. Licensing of the operation of credit institutions

Pursuant to its license of foundation a credit institution may engage in activities related to the establishment of banking operations (Article 17 Paragraph (6) of the ACIFE). The resolution for the authorisation of the foundation of a credit institution becomes invalid if the credit institution fails to submit an application to the HFSA for an operating license within six months following the receipt of the resolution.

The commencement of operations – the provision of financial services and supplementary financial services – by a credit institution is subject to a separate authorisation by the HFSA. In the course of the procedure – in the case of a bank or a specialised credit institution – the HFSA also consult the Magyar Nemzeti Bank (MNB, National Bank of Hungary).

The following documents are to be attached to an application for an operating license:

1. The original statement testifying that the subscribed capital was paid in full (*Article 18 Paragraph (2) Section a) of the ACIFE*);
2. If the entire amount as specified under Section 1) was fully or partially used up, a certificate or a declaration stating that the amount was used for the purposes of the foundation and to commence operations (*Article 18 Paragraph (2) Section b) of the ACIFE*);
3. The details suitable for the identification of the owners holding shares of at least 5% of the subscribed capital of the credit institution or of its voting rights (*Article 18 Paragraph (2) Section c) of the ACIFE*);
4. The business plan for the medium term – for the first three years of operation – and the facts related to the assurance of the personal and material conditions that are necessary for the operations (*Article 18 Paragraph (2) Section d) of the ACIFE*);
5. The official documents necessary for the determination of the suitability of the persons in senior positions (executives, members of the Board of Directors and of the Supervisory Board; the detailed listing of the official documents is contained in the chapter titled Election/Appointment of Persons to Senior Positions at Credit Institutions). The granting of the operating license is also subject to the credit institution having persons in senior positions who meet the conditions specified in the ACIFE, i.e., having at least two executives, a Board of Directors of at least three members – of which at least two members shall be Hungarian citizens or residents of Hungary under the Foreign Exchanges Act who have held a permanent residence in Hungary for at least one year – and a Supervisory Board of at least three members. The license for the election/appointment of persons into senior positions is granted in the resolution for the authorisation of the credit institution's operations. The applicant shall attach to its application the documents that confirm that the exclusion criteria specified under Article 44 and – with regard to executives – under Article 68 of the ACIFE do not apply, and that the conditions listed therein are met. In the case of universal banks the applicant shall also submit, with regard to the inside members of its Board of Directors and with regard to its executives, a declaration as specified under Article 25 Paragraph (2) of Act CXXXVIII of 2007 on investment enterprises

and service providers active on the commodity exchange (the Investment Services Act);

6. The single or several business regulations containing also the general terms and conditions of contracts for the activities to be pursued (*Article 18 Paragraph (2) Section e) of the ACIFE*);
7. A declaration stating when the applicant intends to commence operations (*Article 18 Paragraph (2) Section f) of the ACIFE*);
8. A copy of the declaration of accession sent to the National Deposit Insurance Fund of Hungary – in the case of a credit cooperative also a copy of the declaration of accession sent to the voluntary institution protection fund – except, if the branch office has deposit insurance as prescribed by Directive 94/19/EC of the European Parliament and of the Council (*Article 18 Paragraph (2) Section g) of the ACIFE*);
9. A declaration stating that the applicant is ready to meet the information disclosure requirements as specified in the legal regulation and on the basis of the legal regulation and the results of the test runs of the computer software to be used for information disclosure (*Article 18 Paragraph (2) Section h) of the ACIFE*);
10. The draft of its accounting policies and of its detailed accounting regime (*Article 18 Paragraph (2) Section i) of the ACIFE*);

The accounting policies and their mandatory attachments are as follows:

- Chart of accounts and system of accounts;
- Valuation rules for assets and liabilities;
- Rules for the classification of customers and counterparties;
- Rules for the valuation of collateral;
- Rules for the classification of assets;
- Rules for impairment reserves and provisions pursuant to accounting requirements;
- Cash management rules;
- Rules for risk-taking;
- Internal rules for the system of cost accounting (cost calculation regulations); pursuant to Article 3 Paragraph (8) of Government Decree No. 250/2000 there is no possibility to grant an exemption from the obligation to prepare this;
- Inventory and stock-taking rules for assets and liabilities;
- Rules for the management, record-keeping and accountability of documents and printed forms subject to strict accountability requirements, and for their audits;

- Rules for the clearing and record-keeping of forward, option and swap transactions, and for the definition and separated management of hedge transactions;
- Investment rules;
- Rules related to the management of accounts and the collection of deposits;
- In the case of an institution that qualifies as a parent company, the rules for compiling the consolidated annual financial statements.

Article 13 Paragraph (1) Sections a) and b) of the ACIFE, Article 14 of the Act on Accounting, Article 3 of Government Decree No. 250/2000 (of December 24) on the special features of the obligation of credit institutions and financial enterprises in preparing their annual financial statements. The various regulations are in each case to be prepared in accordance with the activities that the applicant wishes to pursue.)

11. A declaration to directly join some funds transfer system that handles clearing traffic between credit institutions and a certification by the auditor of the information technology system ensuring the connection, or the declaration provided of the acceptance of an indirect connection (*Article 18 Paragraph (2) Section j) of the ACIFE*);
 12. The declaration of accession to the Central Credit Information System (*Article 18 Paragraph (2) Section l) of the ACIFE*);
 13. The procedures to be followed – as accepted by the directors of the credit institution – in the case of a situation that poses a grave threat to the liquidity and solvency of the credit institution (*Article 18 Paragraph (2) Section n) of the ACIFE*);
 14. The applicant's organisational structure, systems for management, decision making and audits, and its organisational regulations, if these are not contained in detail within its articles of association (*Article 18 Paragraph (2) Section o) of the ACIFE*);
- Banks and specialised credit institutions shall operate systems for internal audit while cooperative credit institutions shall employ at least one internal auditor. The internal audit system shall be developed in accordance with the special features of the credit institution's service provider activities and their extent, complexity and risks. The organisation, powers and duties of the internal audit function and the professional requirements and procedures set for internal auditors shall be set forth in internal regulations (*Article 67 of the ACIFE*);
15. Proof of unrestricted possessory rights to the registered address (with the presentation of a title deed, contract of lease or sublease, etc.) (*Article 13 Paragraph (1) Section d) and Paragraph (2) of the ACIFE*);
 16. The internal regulations for keeping the trading book (*Government Decree No. 244/2000 (of December 24)*);
 17. The regulations for the prevention and deterrence of money laundering and terrorist financing (*Act CXXXVI of 2007*);

18. The bank security regulations prepared in order to continuously ensure that the material conditions and the security requirements necessary for the operations of the applicant are continuously met, and a presentation of the regulatory system for the secure operation of the information technology system. (*Article 13/B of the ACIFE*). The credit institution must develop its regulatory system for the security of the information technology system used for its activities to provide financial services and supplementary financial services and must ensure that the information technology system is protected in proportion to risks. The regulatory system must discuss the requirements set for the information technology system and the assessment and management, within the areas of planning, purchasing, operation and control, of the security risks inherent in its use;
19. The contract for services, signed with an auditor registered, with a resolution, on the register of auditors of financial institutions maintained by the HFSA, and a declaration by the auditor stating that it is not subject to any of the exclusion criteria as specified in the ACIFE (*Article 133 of the ACIFE*);
20. In the case of legal representation: a power of attorney (*Article 40 Paragraph (2) of the Public Administration Procedures Act*). In case of an applicant with its registered address abroad, a declaration about the applicant's agent for service of process, which may only be an attorney or law office registered in Hungary (*Article 17 Paragraph (1) Section e) of the ACIFE*).

For an application for an operating license for the **branch office of a credit institution domiciled in a third country**, if the applicant does not join the National Deposit Insurance Fund of Hungary, in addition to the above the applicant shall also attach the following:

1. A statement of commitment to provide information to customers – about the forms of insured deposits – in the Hungarian language;
2. A statement of commitment by the parent institution to indemnify depositors in Hungary;
3. The conditions, means and procedural course for indemnification and the contracts ensuring that the indemnity will be paid.

(*Article 18 Paragraph (2) Section p) of the ACIFE*)

III. Termination of the operation of credit institutions (revocation of license)

The **termination of a credit institution's operations** is subject to the revocation of its license by the HFSA. The HFSA shall revoke the license in the cases listed under Articles 29

and 30 of the ACIFE. These cases are predominantly situations where for some reason the credit institution discontinues its operations for a longer period of time, or where its operations are not prudent and are therefore in violation of a legal regulation. These cases include the following:

1. If the license was obtained by deceiving the HFSA, or in some other criminal way;
2. If the credit institution engages in activities that are prohibited – by the law;
3. If the credit institution fails to commence its operations within 12 months from receiving its operating license;
4. If the credit institution no longer meets the provisions of the ACIFE or some other legal regulation with regard to prudent operations;
5. If the credit institution has on several occasions seriously violated the provisions on accounting, independent and reliable management and audits, or the provisions of the ACIFE or of other legal regulations for prudent operations, or the provisions of the resolutions issued by the HFSA;
6. If there is some circumstance due to which the operations of the credit institution represent a grave danger to or a violation of the interests of its depositors or other customers, or if they hinder the flow of funds or the adequate functioning of the financial and capital markets;
7. If in the case of a credit institution subject to supervision on a consolidated basis or subject to supplementary supervision, the transfer of information is not ensured;
8. In the case of a credit institution that is a member of a group engaged in composite activities or is a member of a financial holding, if the delivery to the HFSA of the information necessary for the supervision of the institution is not ensured;
9. If the credit institution has discontinued its operations for a period that is longer than six months;
10. If there is a danger that the credit institution may not be able to meet its obligations;
11. If the credit institution has failed to pay an undisputed debt within five days following its becoming due, or if its assets would not provide sufficient cover even to satisfy the claims of its known creditors;
12. If its membership in the National Deposit Insurance Fund of Hungary is terminated with its expulsion.

(Articles 29-30 of the ACIFE)

The HFSA may revoke the license of a **branch office**, if

1. Any one of the conditions contained in the ACIFE and related to the licensing of branch offices is no longer met;

2. If the license of the foreign financial institution is withdrawn by the supervisory authority with competence over its registered offices. (*Article 29 Paragraph (2) of the ACIFE*).

In addition to the HFSA, the credit institution may itself also initiate the revocation of its license, by returning its operating license to the HFSA. Pursuant to *Article 31 of the ACIFE* a credit institution may return its operating license if it proves that it has no outstanding obligations from the provision of financial services. The credit institution is obliged to continue its operations pursuant to the corresponding rules, until it meets the conditions and stipulations that may be set by the HFSA.

The revocation of a credit institution's operating license by the HFSA is subject to the approval of the Minister of Finance and of the president of the Magyar Nemzeti Bank (MNB, National Bank of Hungary). (*Article 30 Paragraph (4) of the ACIFE*)

Concurrently with revoking the license, the HFSA shall make a resolution for the final settlement of the credit institution or initiate its liquidation. The HFSA may initiate the liquidation of the credit institution if the operating license is revoked for the failure of the credit institution to pay an undisputed debt within five days following its becoming due, or if its assets would not provide sufficient cover even to satisfy the claims of its known creditors. In all other cases the HFSA shall resolve for a final settlement.

The final settlement or the liquidation of a credit institution is subject – in addition to the rules of the Bankruptcy Act and of the Business Associations Act – to the special rules contained under *Articles 176/A-185/H* of the ACIFE. It is a common rule that only a non-profit corporation established by the HFSA may be appointed as the liquidator or the receiver of a financial institution.

IV. Authorisation of the transformation, merger or demerger of credit institutions

Reorganisation

The rules governing foundation are to be applied if a credit institution is reorganised into a credit institution of another type or into a financial enterprise, or if a financial enterprise is reorganised into a credit institution. The rules on authorisation of Act CXXXVIII of 2007 on investment enterprises and service providers active on the commodity exchange (hereinafter referred to as the Investment Services Act) are to be applied if a credit institution is reorganised into an investment enterprise. At the same time, the rules of the Investment Services Act for authorisation need not be applied for investment service provider activities and for activities supplementary to investment service provider activities that are already pursued by the credit institution that is to be reorganised into an investment enterprise if those are already authorised.

A credit institution may be reorganised into a financial enterprise or an investment enterprise only if it has already transferred its stock of deposit in full prior to the resolution made for the reorganisation by its general meeting. (*Article 21 of the ACIFE*)

With regard to the application of the rules for foundation the following documents are to be submitted pursuant to Article 17 of the ACIFE:

1. The articles of association of the credit institution to be reorganised, containing a clear specification of its type and scope of activities (*Article 17 Paragraph (1) Section a) of the ACIFE*);
2. The document containing the specification of its planned operational area (extending to the country or limited to a specific territorial unit) (*Article 17 Paragraph (1) Section b) of the ACIFE*);
3. Proof of the availability of the minimum subscribed capital (proof that the applicant has a subscribed capital in excess of 2 billion Hungarian Forints based on its statement of holdings transferred and its inventory of holdings) (*Article 17 Paragraph (1) Section c) of the ACIFE*).

If among the owners there are persons who (or that) wish to acquire a **qualified influence** in the credit institution being reorganised, then in addition to the above documents the following documents shall also be attached to the application for the authorisation:

- a) The identification details of the applicant as specified under Chapter I of Annex No. 3. (*Article 17 Paragraph (2) Section a) of the ACIFE*);
- b) Proof of the lawful origin of the funds necessary for the acquisition of the qualified influence (*Article 17 Paragraph (2) Section b) of the ACIFE*);
- c) Documentary proof dated not earlier than thirty days prior to the submission date of the application that the person or entity has no outstanding debt owed to the tax authority, customs authority or social insurance organisation with jurisdiction over its person (*Article 17 Paragraph (2) Section c) of the ACIFE*);
- d) Proof, that his/her other ownership interests and activities jeopardize the operations of the financial institution (*Article 17 Paragraph (2) Section d) of the ACIFE*);
- e) For natural persons an official certificate of criminal history dated not earlier than thirty days prior to the submission date of the application, or an equivalent official document from the applicant's personal jurisdiction (*Article 17 Paragraph (2) Section e) of the ACIFE*);
- f) If the applicant is not a natural person, its instrument of constitution in effect on the submission date of the application and documentary proof dated not earlier than thirty days prior to the submission date of the application that its incorporation (registration)

in its home jurisdiction has actually occurred, that it is not subject to a bankruptcy, liquidation or final settlement procedure, and that the persons filling its senior positions are not subject to any exclusion criteria (*Article 17 Paragraph (2) Section f) of the ACIFE*);

- g) If the applicant is not a natural person, a detailed description of its ownership structure, and if the applicant is subject to supervision on a consolidated basis, then a detailed description of this circumstance and the consolidated annual financial statements for the previous year of the credit institution or investment enterprise subject to consolidated supervision, if it is obliged to prepare consolidated financial statements (*Article 17 Paragraph (2) Section g) of the ACIFE*);
- h) A declaration of its contingent and future liabilities – as specified in the Act on Accounting (*Article 17 Paragraph (2) Section h) of the ACIFE*);
- i) A declaration by the applicant in a private document of full probative value, stating that the applicant consents to the verification, at organisations contacted by the HFSA, of the veracity of the contents of the document attached to its application for the authorisation (*Article 17 Paragraph (2) Section i) of the ACIFE*).

If there are financial institutions, insurance institutions or investment associations domiciled abroad that wish to acquire a qualified influence, then in addition to the documents specified under Paragraphs (1)-(2) the applicant shall also submit with the application for the authorisation a certificate or declaration issued by the competent supervisory authority of the country of its registered address stating that the enterprise operates in compliance with the rules for prudent operations. (*Article 17 Paragraph (3) of the ACIFE*)

In view of the fact that a reorganisation is authorised in a single procedure, of the documents required for an application for an operating license as specified in Article 18 of the ACIFE, the following need to be submitted for an application for the authorisation of a reorganisation:

- The details suitable for the identification of the owners holding shares of at least 5% of the subscribed capital of the credit institution or of its voting rights (*Article 18 Paragraph (2) Section c) of the ACIFE*);
- The business plan for the medium term – for the first three years of operation – that underlies the concept of reorganisation (*Article 18 Paragraph (1) Section d) of the ACIFE*);
- The single or several business regulations containing also the general terms and conditions of contracts for the new activities to be pursued that have not yet been authorised earlier (*Article 18 Paragraph (1) Section e) of the ACIFE*);
- A declaration stating when the applicant intends to commence operations as a reorganised credit institution following its reorganisation (*Article 18 Paragraph (1) Section f) of the ACIFE*);

- A copy of the declaration of accession sent to the National Deposit Insurance Fund of Hungary – in the case of a credit cooperative also a copy of the declaration of accession sent to the voluntary institution protection fund – if the accession has not yet taken place (*Article 18 Paragraph (1) Section g) of the ACIFE*);
- A declaration stating that the applicant is ready to meet the information disclosure requirements as specified in the legal regulation and on the basis of the legal regulation and the results of the test runs of the computer software used for information disclosure (*this is necessary only if there is a change in the contents of the information disclosure*) (*Article 18 Paragraph (2) Section h) of the ACIFE*);
- The draft of its accounting policies and of its detailed accounting regime (*this is to be attached only if there is a change in the contents of the accounting policies*) (*Article 18 Paragraph (1) Section i) of the ACIFE*);
- A declaration to directly join some funds transfer system that handles clearing traffic between credit institutions and a certification by the auditor of the information technology system ensuring the connection, or the declaration provided of the acceptance of an indirect connection (*this is to be attached only if there is a change in the system of connection*) (*Article 18 Paragraph (1) Section j) of the ACIFE*);
- The declaration of accession to the Central Credit Information System (*this is to be attached only if there is a change in the system of connection*) (*Article 18 Paragraph (2) Section l) of the ACIFE*);
- The procedures to be followed – as accepted by the directors of the credit institution – in the case of a situation that poses a grave threat to the liquidity and solvency of the credit institution (*this is to be attached only if there is a change to the current system due to changes in organisational structure and decision making powers, or if the applicant had no such procedures earlier*) (*Article 18 Paragraph (2) Section n) of the ACIFE*);
- The applicant's organisational structure, systems for management, decision making and audits, and its organisational regulations, if these are not contained in detail within its articles of association (*Article 18 Paragraph (1) Section o) of the ACIFE*);
- Internal audit regulations (*Article 67 of the ACIFE*) (*this is to be attached only if there is a change to the regulations*);
- Proof of unrestricted possessory rights to the registered address (with the presentation of a title deed, contract of lease or sublease, etc.) (*Article 13 Paragraph (1) Section d) and Paragraph (2) of the ACIFE*) (*this is to be submitted only if there is a change in the registered offices*);
- The internal regulations for keeping the trading book (*Article 103 of the Investment Services Act and Government Decree No. 244/2000 (of December*

24)) *(this is to be attached only if there is a change to the regulations or if the applicant had no such regulations earlier);*

- The regulations for the prevention and deterrence of money laundering and terrorist financing (*Act CXXXVI of 2007*) *(to be attached only in case of an organisational change);*
- The official documents necessary for the determination of the suitability of the persons in senior positions (executives, members of the Board of Directors and of the Supervisory Board; the detailed listing of the official documents is contained in the chapter titled Election/Appointment of Persons to Senior Positions at Credit Institutions). The granting of the operating license is also subject to the credit institution having persons in senior positions who meet the conditions specified in the ACIFE, i.e., having at least two executives, a Board of Directors of at least three members – of which at least two members shall be Hungarian citizens or residents of Hungary under the Foreign Exchanges Act who have held a permanent residence in Hungary for at least one year – and a Supervisory Board of at least three members. The license for the election/appointment of persons into senior positions is granted in the resolution for the authorisation of the credit institution's operations. The applicant shall attach to its application the documents that confirm that the exclusion criteria specified under Article 44 and – with regard to executives – under Article 68 of the ACIFE do not apply, and that the conditions listed therein are met. In the case of universal banks the applicant shall also submit, with regard to the inside members of its Board of Directors and with regard to its executives, a declaration as specified under Article 25 Paragraph (2) of Act CXXXVIII of 2007 on investment enterprises and service providers active on the commodity exchange (the Investment Services Act); These authorisations must be requested and the above documents must be attached also if the management before the reorganisation will not change;
- The declaration stating that the material conditions of operation are ensured (the proof of the existence of the material conditions is justified only if the corporation has not provided such proof earlier), the bank security regulations prepared in order to continuously ensure that the material conditions and the security requirements necessary for the operations of the applicant are continuously met, and a presentation of the regulatory system for the secure operation of the information technology system. (*Article 13/B of the ACIFE*);
- The contract for services, signed with an auditor registered, with a resolution, on the register of auditors of financial institutions maintained by the HFSA, and a declaration by the auditor stating that it is not subject to any of the exclusion criteria as specified in the ACIFE (*Article 133 of the ACIFE*) *(to be attached only if there is a change in auditors);*
- In the case of legal representation: a power of attorney (*Article 40 Paragraph (2) of the Public Administration Procedures Act*);
- A declaration of completeness duly signed by the applicant, stating that the applicant has disclosed all essential facts and data to the HFSA that may be

necessary for issuing the license (*Article 38 Paragraph (3) of the Act on the Hungarian Financial Supervisory Authority*);

- Proof of payment of administrative service fees in the amount of three hundred thousand Hungarian Forints for banks or specialised credit institutions, or one hundred thousand Hungarian Forints for cooperative credit institutions (*Decree No. 12/2002 (of February 20) by the Minister of Finance*).

Merger, Merger by Acquisition, Demerger

A credit institution may acquire and merge another credit institution, financial enterprise, accessory enterprise or investment enterprise, and a credit institution may merge with another credit institution. (*Article 22 Paragraph (1) of the ACIFE*)

A financial institution operating in the form of a joint stock company may not merge with a financial institution operating in the form of a cooperative. (*Article 22 Paragraph (2) of the ACIFE*)

In the case of a **merger of credit institutions** the following documents are to be submitted with the application for the authorisation (*Article 22 Paragraph (3) of the ACIFE*):

1. The merger agreement;
 - a. The minimum contents for the merger agreement are as follows:
 - The names, registered addresses and corporate registration numbers of the merging corporations and the form, name and registered address of the corporation that is created;
 - The means of the merger;
 - Details of persons in senior positions;
 - Listing of the activities using the terminology of the ACIFE;
 - The assets of the merging corporations separately and the assets of the legal successor corporation;
 - The detailed rules for the transfer of the shares of the acquiring corporation;
 - b. The following are the attachments to the application for the authorisation:
 - Resolutions by the founders (minutes or extracts);
 - The organisational structure of the credit institution;
 - The amended bylaws (prepared in a unified structure);

- The medium term business plan for 3 years;
 - Listing of regulations;
 - Regulations amended in the course of the merger;
 - Declaration of readiness for data disclosure as per Article 18 Paragraph (2) Section h) of the ACIFE (with an auditor's certificate in relation to the information technology systems of the merging corporations);
 - Declaration on the date for the commencement of operations following the merger;
 - If an investment enterprise is acquired by a credit institution, and if the credit institution would become a universal credit institution with the acquisition, then the emphasis in the application for the authorisation is on the documents for the Chinese wall regulations;
2. The draft statement of holdings and the statement of payables and receivables certified by the auditor;
 3. All documents specified under Article 18 of the ACIFE that are required for the authorisation of the scope of activities that the entity intends to engage in;
 4. Data that can be used to ascertain that the condition under Article 74 Paragraph (2) of the ACIFE is met. (A separate report is to be made of the guarantee capital, which should contain the components of the guarantee capital of both the legal predecessor and legal successor financial institutions.)

A credit institution operating in the form of a branch office may not merge with a legal entity or with a business organisation that is not a legal entity. *(Article 22 Paragraph (4) of the ACIFE)*

The authorisation provided by the HFSA for the merger of the financial institutions does not substitute for the authorisation of the Hungarian Competition Authority. *(Article 23 of the ACIFE)*

In the case of a merger the HFSA may make a resolution for the authorisation of the foundation and of the commencement of operations in a single procedure. *(Article 24 of the ACIFE)*

In the case of a Demerger the rules on foundation are to be applied as appropriate.

V. Authorisation for the acquisition of qualified influence

The acquisition of qualified influence in a credit institution and increases in the percentage of qualified influence to 20%, 33%, and 50% are subject to authorisation by the HFSA. (*Article 14 Paragraph (1) Section d) of the ACIFE*)

Qualified influence:

Pursuant to Chapter III Section 2 of Annex No. 2 to the ACIFE, “*qualified influence*” is an indirect and direct relationship with an enterprise on the basis of which the person holding the influence.

a) Holds an ownership stake (participation) of at least ten percent in the enterprise or can exercise at least ten percent of its voting rights;

b) Can appoint or dismiss at least twenty percent of the members of the decision making, executive or supervisory organs and bodies of the enterprise;

c) Can exert decisive influence on the operations of the enterprise on the basis of its instrument of constitution or an agreement.”

Indirect ownership: (instead of the earlier definition with the following textual content)

Possession of an ownership stake or exercising the voting rights of an enterprise by way of an ownership stake or voting rights in another enterprise (for the purposes of Annex No. 4: an intermediate enterprise) that has an ownership stake or voting rights in the enterprise.

(*Chapter III Section 12 of Annex No. 2 to the ACIFE*)

Calculation of indirect ownership:

- In order to ascertain the percentage of indirect ownership the voting rights or the ownership stake in the intermediate enterprise of the indirect owner is to be multiplied by either the ownership stake or the voting share of the intermediate enterprise in the original enterprise, whichever is higher. If the voting share or ownership stake in the intermediate enterprise exceeds 50%, then it is to be considered as a whole unit.
- In the case of a natural person the joint ownership stakes or the voting shares of the natural person and his/her close relatives are to be calculated together.
- Voting rights are to be considered in the same way as ownership stakes.

General rules for qualified influence:

In order to be eligible for a qualified ownership stake in a credit institution a person or entity:

- a. Must be independent of any influence that could threaten the cautious, circumspect and reliable – prudent – operation of the credit institution and must be able to ensure reliable and diligent ownership governance and control, and;
- b. Must have transparent business networks and a transparent ownership structure whereby the efficient supervision of the credit institution is not excluded (*Article 11 of the ACIFE*).

Rules for establishing the percentage of the qualified influence

1. When establishing the percentage of the qualified influence, voting rights are calculated on the basis of all participations that are connected with voting rights pursuant to the provisions of the enterprise's instrument of constitution, independently of any rules that may restrict the exercise of such voting rights.
2. When establishing the percentage of the qualified influence, in addition to the participation held by the applicant, the voting rights pursuant to paragraphs 3) and 4) below are also to be considered.
3. When establishing the percentage of the qualified influence consideration must be made of the following:
 - a) Voting rights held by an investment fund manager or an undertaking for collective investment in transferable securities, if the investment fund manager or the undertaking for collective investment in transferable securities exercises the voting rights connected to the managed securities on the basis of instructions given directly, indirectly, or in any other way by the applicant or by another enterprise controlled by the applicant;
 - b) Voting rights held by a credit institution or an investment enterprise, if the credit institution or the investment enterprise exercises the voting rights connected to the managed portfolio on the basis of instructions given directly, indirectly, or in any other way by the applicant or by another enterprise controlled by the applicant.
4. When establishing the percentage of the qualified influence the following voting rights connected to the participation are to be considered as voting rights held by the applicant:
 - a) Voting rights that can be exercised by the applicant and a third party on the basis of an agreement that enables the parties to the agreement to exercise voting rights in a coordinated way;

- b) Voting rights that the applicant may exercise on the basis of an agreement for a temporary transfer of voting rights;
- c) Voting rights that the applicant may exercise on the basis of an agreement related to a participation placed with the applicant as collateral;
- d) Voting rights that the applicant may exercise on the basis of a beneficial interest (usufruct) in the participation;
- e) Voting rights that can be exercised by a controlled enterprise of the applicant on the basis as specified under a)-d) above;
- f) Voting rights that the applicant may exercise as a custodian in its own judgement, in the absence of specific instructions from the depositor;
- g) Voting rights that may be exercised by a third party in its own name, to the benefit of the applicant, on the basis of an agreement with the applicant; and
- h) Voting rights that the applicant may exercise as a proxy in its own judgement, in the absence of specific instructions from the principal. (*Article 37/A Paragraph (1)-(4) of the ACIFE*).

The following are to be excluded from the above when establishing the percentage of the qualified influence:

When establishing the percentage of the qualified influence, the voting rights of an enterprise controlled by the applicant need not be considered, if the applicant and its controlled enterprise, when acquiring the participation, declare the following:

- a) That they will not exercise the voting rights, or that the voting rights will be exercised by a third party independently of the applicant and its controlled enterprise, and that the participation will be sold within one year from its acquisition date;
- b) That the voting rights may be exercised on the basis of specific instructions issued on paper or electronically by a third party that is independent of the applicant and its controlled enterprise;
- c) That the applicant will not take part in making any decisions for the appointment or dismissal of the members of the financial institution's decision making, executive or supervisory organs (*Article 37/A Paragraph (5) of the ACIFE*).

A further exception set forth in the legal regulation is that the voting rights of a credit institution or investment enterprise operating as an enterprise controlled by the applicant need not be considered if the credit institution or investment enterprise has a license to engage in portfolio management activities, and if it can exercise the voting rights related to its managed portfolio

a) on the basis of instructions given on paper or electronically;

b) independently of the applicant.

(Article 37/A Paragraph (6) of the ACIFE)

In relation to qualified influence an authorisation by the HFSA is to be requested in the following cases:

1. Someone

- Wishing to acquire a qualified influence, or
- Wishing to change his/her qualified influence so that it reaches a threshold of twenty, thirty three, or fifty percent,

is obliged to apply for authorisation by the HFSA prior to signing a contract.
(Article 37 Paragraph (1) of the ACIFE)

2. A license by the HFSA is required in order for the owner of a credit institution to enter into an agreement in relation to ownership rights or voting rights and with benefits that exceed those. *(Article 37 Paragraph (3) of the ACIFE);*

3. Someone wishing to acquire a majority participation in an enterprise that holds a qualified influence in a credit institution, must apply for authorisation by the HFSA prior to signing a contract. *(Article 37 Paragraph (4) of the ACIFE);*

For an authorisation to acquire a qualified influence as indicated under Section 1, the following documents shall be submitted:

a) An application for an authorisation, that should contain the following:

- The name of the enterprise holding a qualified influence in the credit institution *(Article 37 Paragraph (5) Section a) of the ACIFE);*
- Indication of the participation held by the participant in the enterprise that holds a qualified influence in the credit institution *(Article 37 Paragraph (5) Section b) of the ACIFE);*
- The percentage of participation to be acquired *(Article 37 Paragraph (5) Section c) of the ACIFE);*
- The contractual offer made for the acquisition of ownership or for the agreement to provide significant benefits in connection with voting rights *(Article 37 Paragraph (5) Section d) of the ACIFE);*
- For persons holding a senior office with the applicant, the facts needed for the judgement on the exclusion criteria as specified under Article 44 Paragraph (4) and the declaration related to the criminal procedure as

specified under Article 44 Paragraph (6). (*Article 37 Paragraph (5) Section e) of the ACIFE*);

(For the purposes of the judgement on the exclusion criteria, in addition to the declaration on the items specified under Article 44 Paragraph (4), the original official certificates of criminal history of the senior officers are also to be submitted. In the case of a foreign applicant, senior officers shall include all persons who are to be considered as senior officers under the law of the country where the registered address is located.)

b) The identification details of the applicant as specified under Chapter I of Annex 3 of the ACIFE (*Article 17 Paragraph (2) Section a) of the ACIFE*);

c) Proof of the lawful origin of the funds necessary for the acquisition of the qualified influence;

(*A personal income tax return for a natural person and balance sheets and income statements or annual financial statements for the previous 3 years for a non natural person*) (*Article 17 Paragraph (2) Section b) of the ACIFE*);

d) Documentary proof dated not earlier than thirty days prior to the submission date of the application that the person or entity has no outstanding debt owed to the tax authority, customs authority or social insurance organisation with jurisdiction over its person (*Article 17 Paragraph (2) Section c) of the ACIFE*);

e) Proof, that his/her other ownership interests and activities pose no threat to the operations of the financial institution (*Article 17 Paragraph (2) Section d) of the ACIFE*);

f) For natural persons an official certificate of criminal history dated not earlier than thirty days prior to the submission date of the application, or an equivalent official document from the applicant's personal jurisdiction (*Article 17 Paragraph (2) Section e) of the ACIFE*);

g) If the applicant is not a natural person, its instrument of constitution in effect on the submission date of the application and documentary proof dated not earlier than thirty days prior to the submission date of the application that its incorporation (registration) in its home jurisdiction has actually occurred, that it is not subject to a bankruptcy, liquidation or final settlement procedure, and that the persons filling its senior positions are not subject to any exclusion criteria [with regard to not being

subject to a bankruptcy, liquidation or final settlement procedure it is sufficient for the applicant to make a declaration] (*Article 17 Paragraph (2) Section f) of the ACIFE*);

- h) If the applicant is not a natural person, a detailed description of its ownership structure, and if the applicant is subject to supervision on a consolidated basis, then a detailed description of this circumstance and the consolidated annual financial statements for the previous year of the credit institution or investment enterprise subject to consolidated supervision, if it is obliged to prepare consolidated financial statements (*Article 17 Paragraph (2) Section g) of the ACIFE*);
- i) A declaration of its contingent and future liabilities – as specified in the Act on Accounting (*Article 17 Paragraph (2) Section h) of the ACIFE*);
- j) A declaration by the applicant in a private document of full probative value, stating that the applicant consents to the verification, at organisations contacted by the HFSA, of the veracity of the contents of the document attached to its application for the authorisation (*Article 17 Paragraph (2) Section i) of the ACIFE*);
- k) In the case of a credit institution subject to supervision on a consolidated basis or subject to supplementary supervision, a presentation of the information transfer related to the supervision on a consolidated basis or to the supplementary supervision and declarations by the persons closely related to the credit institution stating that they will make available to the HFSA all data, facts and information that may be necessary for the supervision of the credit institution on a consolidated basis or for its supplementary supervision (*Article 17 Paragraph (1) Section g) of the ACIFE*);
- l) In the case of a credit institution subject to supervision on a consolidated basis or subject to supplementary supervision, declarations by the persons closely related to the credit institution stating that they approve of their personal details, provided to the credit institution, to be managed and forwarded for the purposes of performing the supervision of the credit institution on a consolidated basis or its supplementary supervision in compliance with the ACIFE (*Article 17 Paragraph (1) Section h) of the ACIFE*).

If the parties wishing to acquire a qualified influence include financial institutions, insurance institutions or investment companies domiciled abroad, then in addition to the documents specified under Paragraphs (1)-(2) the applicant shall also submit with the application for the authorisation a certificate or declaration issued by the competent supervisory authority of the

country of its registered address stating that the enterprise operates in compliance with the rules for prudent operations (*Article 17 Paragraph (3) of the ACIFE*);

If the applicant

- a) Is a financial institution, investment enterprise, insurer, reinsurer or an undertaking for collective investment in transferable securities, holding a license to operate in another member state of the European Union;
- b) Is the parent company of the enterprise under a) above; or
- c) Controls the enterprise under section a) as a controlled enterprise, then the HFSA promptly forwards the application to the supervisory authority with competence over the registered address of the financial institution, investment enterprise, insurer, reinsurer or undertaking for collective investment in transferable securities. (*Article 38/B Paragraph (1) of the ACIFE*)

If within the deadline specified for the administrative procedure the HFSA does not refuse to grant approval for the acquisition of a qualified influence or for an increase of an existing qualified influence, then the approval shall be deemed to have been granted.

If the HFSA does not refuse to grant approval for the acquisition of a qualified influence or for an increase of an existing qualified influence, then it may set a deadline for the transaction, which may not exceed six months. (*Article 39/A of the ACIFE*)

The HFSA shall **refuse** the application for an authorisation specified under 1)-2) above, if the applicant (including its owner or senior officer)

- a.) is engaged in activities or has an influence on the financial institution that pose a threat to the independent, reliable and circumspect governance of the financial institution by its owners (*Article 39 Paragraph (1) Section a) of the ACIFE*);

(The activities or the influence on the financial institution of the applicant or its owner or senior officer are of particular threat to the independent, reliable and circumspect governance of the financial institution by its owners, if

- Its financial and economic situation cannot be classified as appropriate in relation to the size of the share acquisition subject to the offer;
- The lawfulness of the funds used for the acquisition of the participation or the veracity of the personal details of the person indicated as the owner of the funds cannot be verified;
- It does not comply with the conditions specified by the HFSA for the credit institution in the reinstatement plan;
- The execution of its voting rights has been suspended by the HFSA within five years prior to the notice;

- If for a natural person there are grounds for exclusion pursuant to Article 44 Paragraph (4).)

b.) Is engaged in business activities or has contacts of a nature, or has a direct or indirect ownership stake in other enterprises in a structure that could hinder the supervisory activities (*Article 39 Paragraph (1) Section b) of the ACIFE*).

In order to verify the facts or circumstances as specified above, the HFSA may request any interested party to provide data and information that may be managed pursuant to a legislative authorisation. (*Article 39 Paragraph (4) of the ACIFE*)

If there are no grounds to refuse an authorisation for a qualified influence, but if there is an on-going criminal procedure as specified under Article 44 Paragraph (6) of the ACIFE versus the natural person applicant, then the HFSA may grant the license with a suspension of the voting rights of the owner until the completion of the criminal procedure. (*Article 39 Paragraph (3) of the ACIFE*)

If the conditions for the acquisition of the qualified influence are no longer met, the HFSA may suspend the right to exercise the voting rights of the owner until the unlawful situation is eliminated or until there is repeated proof that the conditions are met. (*Article 39 Paragraph (5) of the ACIFE*)

Upon failure to submit an application for an authorisation as prescribed, or upon the refusal of an application, or upon failure to observe the deadline specified for the notification, or upon refusal to provide data disclosure, the HFSA may prohibit exercising the voting rights that originate from the contract for the acquisition of the participation or for a benefit until the legal conditions are met. (*Article 40 of the ACIFE*)

An authorisation by the HFSA does not substitute for the authorisation by the Hungarian Competition Authority for the acquisition of control. (*Article 39 Paragraph (7) of the ACIFE*)

Compulsory notification in relation to the acquisition of a qualified influence:

- a. A person must make a written notification within thirty days after signing the contract if he/she
 1. Has acquired a qualified influence in a credit institution;
 2. Has changed his/her qualified interest in a credit institution to reach a threshold of twenty, thirty three or fifty percent;
 3. Has entered into an agreement that ensures significant benefits in connection with an ownership stake or ownership rights, or has amended such an agreement;

(*Article 41 Paragraph (1) of the ACIFE*)

- b. A credit institution must make a written notification within five working days if it learns of an acquisition, sale, or modification of a participation. (*Article 41 Paragraph (2) of the ACIFE*);
- c. A person holding a qualified interest must notify the HFSA two days prior to signing a contract if
 - He/she intends to give up a qualified influence in its entirety;
 - He/she intends to modify his/her qualified influence to reduce it to below a threshold value of twenty, thirty three or fifty percent. (*Article 38 Paragraph (1) of the ACIFE*)

Rules for establishing the percentage of the qualified influence

1. When establishing the percentage of the qualified influence, voting rights are calculated on the basis of all participations that are connected with voting rights pursuant to the provisions of the enterprise's instrument of constitution, independently of any rules that may restrict the exercise of such voting rights.
2. When establishing the percentage of the qualified influence, in addition to the participation held by the applicant, the voting rights pursuant to paragraphs 3) and 4) below are also to be considered.
3. When establishing the percentage of the qualified influence consideration must be made of the following:
 - a) Voting rights held by an investment fund manager or an undertaking for collective investment in transferable securities, if the investment fund manager or the undertaking for collective investment in transferable securities exercises the voting rights connected to the managed securities on the basis of instructions given directly, indirectly, or in any other way by the applicant or by another enterprise controlled by the applicant;
 - b) Voting rights held by a credit institution or an investment enterprise, if the credit institution or the investment enterprise exercises the voting rights connected to the managed portfolio on the basis of instructions given directly, indirectly, or in any other way by the applicant or by another enterprise controlled by the applicant;
4. When establishing the percentage of the qualified influence the following voting rights connected to the participation are to be considered as voting rights held by the applicant:

a) Voting rights that can be exercised by the applicant and a third party on the basis of an agreement that enables the parties to the agreement to exercise voting rights in a coordinated way;

b) Voting rights that the applicant may exercise on the basis of an agreement for a temporary transfer of voting rights;

c) Voting rights that the applicant may exercise on the basis of an agreement related to a participation placed with the applicant as collateral;

d) Voting rights that the applicant may exercise on the basis of a beneficial interest (usufruct) in the participation;

e) Voting rights that can be exercised by a controlled enterprise of the applicant on the basis as specified under a)-d) above;

f) Voting rights that the applicant may exercise as a custodian in its own judgement, in the absence of specific instructions from the depositor;

g) Voting rights that may be exercised by a third party in its own name, to the benefit of the applicant, on the basis of an agreement with the applicant; and

h) Voting rights that the applicant may exercise as a proxy in its own judgement, in the absence of specific instructions from the principal. (*Article 37/A Paragraph (1)-(4) of the ACIFE*)

The following are to be excluded from the above when establishing the percentage of the qualified influence:

When establishing the percentage of the qualified influence, the voting rights of an enterprise controlled by the applicant need not be considered, if the applicant and its controlled enterprise, when acquiring the participation, declare the following:

a) That they will not exercise the voting rights, or that the voting rights will be exercised by a third party independently of the applicant and its controlled enterprise, and that the participation will be sold within one year from its acquisition date;

b) That the voting rights may be exercised on the basis of specific instructions issued on paper or electronically by a third party that is independent of the applicant and its controlled enterprise;

c) That the applicant will not take part in making any decisions for the appointment or dismissal of the members of the financial institution's decision making, executive or supervisory bodies (*Article 37/A Paragraph (5) of the ACIFE*).

A further exception set forth in the legal regulation is that the voting rights of a credit institution or investment enterprise operating as an enterprise controlled by the applicant need not be considered if the credit institution or investment enterprise has a license to engage in portfolio management activities, and if it can exercise the voting rights related to its managed portfolio

- a) on the basis of instructions given on paper or electronically;
- b) independently of the applicant.

(Article 37/A Paragraph (6) of the ACIFE)

VI. Authorisation for amendment of the bylaws

An amendment of the bylaws of a credit institution is subject to authorisation by the HFSA in the following cases:

- a. upon changes to the credit institution's name and registered address;
- b. upon amendment of its scope of activities;
- c. upon a reduction of its subscribed capital;
- d. upon changes to a type of shares, the issue of a new type of shares, or an amendment to types of shares issued earlier;
- e. upon an amendment of the powers of the Board of Directors;
- f. upon the issue of convertible bonds or bonds with pre-emptive rights and upon modifications of the corresponding rules;
- g. upon the establishment of or changes to pre-emptive rights for shares
(Article 20 of the ACIFE).

In each case the application shall include attachments with the text of the original bylaws and the text of the amended bylaws presented in a uniform structure including all planned amendments – highlighting the amendments in some way – in one copy each.

In the case of a bank or a specialised credit institution, prior to an amendment of the bylaws for the reduction of the subscribed capital, the HFSA shall also consult the Magyar Nemzeti Bank (MNB, National Bank of Hungary).

In case of an amendment of the bylaws for a change of the registered address, the senior executive of the credit institution must declare in writing that the new registered address meets the personal and material conditions specified under Article 13 of the ACIFE, as well as the requirements of Recommendation No. 10/2001 issued by the HFSA.

VII. Change in a credit institution's scope of activities

In the case of a change in the scope of activities the applicant should submit the documents specified under Article 18 Paragraph (3) of the ACIFE, namely:

- A declaration about the personal, material and technical conditions necessary for the new activity to be authorised, including the availability of the computerised office equipment (*Article 13 Paragraph (1) Sections c) and d) of the ACIFE*);
- The business plan for the medium term (3 years), with a numerical presentation of the pro-forma balance sheets, income statements and cash flows, and a description of how the applicant plans its activities depending on the expansion of its scope of activities, with a textual evaluation. When preparing the business plan please consider also the contents of the HFSA's Methodology Guideline No. 4/2005. (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18 Paragraph (2) Section d) of the ACIFE, and the Methodology Guideline with the referenced number available on the Internet page www.pszaf.hu*);
- The general contractual terms and conditions and the business regulations for the activity. When preparing the Business Regulations and the general contractual terms and conditions and when developing their content elements, particular attention should be paid to the rules prescribed by the ACIFE, the application of which is mandatory, and also to the other legal regulations that are in effect. (Act IV of 1959 on the Civil Code, consumer protection provisions, etc.) (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18 Paragraph (2) Section e) of the ACIFE, Articles 207-211 of the ACIFE*);
- All internal regulations that are amended due to the expansion of the scope of activities;
- A declaration stating when the applicant intends to commence the activity (*Article 18 Paragraph (1) Section f) of the ACIFE*);
- A declaration stating that the applicant is prepared to meet *the data disclosure requirements and the results of the test runs of the software used for data disclosure* (*Article 18 Paragraph (1) Section h) of the ACIFE*);
- *The draft of its accounting policies and its detailed accounting regime* (*Article 18 Paragraph (1) Section i) of the ACIFE*);
- With regard to currency exchange activities the contents of *Government Regulation No. 297/2001 (of December 27)* are also to be considered.

VIII. Election / appointment of a person into a senior position at a credit institution

The election or appointment of a person into a senior position at a credit institution is subject to prior authorisation by the HFSA (*Article 44 Paragraph (1) of the ACIFE*).

Persons in senior positions shall include:

1. In the case of banks and specialised credit institutions operating in the form of a joint stock company:
 - the Chairman and the Members of the Board of Directors;
 - the Chairman and the Members of the Supervisory Board;
 - an Executive Manager;
2. In the case of a cooperative credit institutions operating in the form of a cooperative:
 - the Chairman of the Board of Directors;
 - the Chairman of the Supervisory Board;
 - an Executive Manager;
3. In the case of branch offices:
 - the person appointed by the foreign financial institution to lead the branch office and his/her immediate deputy.

(Annex No. 2 to the ACIFE, Chapter III "Other Definitions" Section 25)

An Executive Manager shall mean:

A President elected by the credit institution's Board of Directors and employed by the credit institution, a Chief Executive appointed to manage the credit institution and employed by the credit institution, and all deputies of such an executive. (*Annex No. 2 to the ACIFE, Chapter III "Other Definitions" Section 21*)

In the case of credit institutions operating in the form of a joint stock company this shall mean the Chief Executive Officer employed by the credit institution.

A credit institution's Board of Directors:

- Only natural persons may serve as members of a credit institution's Board of Directors.
- For credit institutions operating in the form of a joint stock company two members shall be inside members (must be employed by the credit institution).

- For cooperative credit institutions one member shall be an inside member (must be employed by the credit institution). (*Article 62 Paragraphs (1)-(2)-(3) of the ACIFE*)
- The Board of Directors of a credit institution shall include two members who are Hungarian citizens, who qualify as residents under the Foreign Exchanges Act and have been permanent residents of Hungary for at least one year. (*Article 63 Paragraph (1) of the ACIFE*)
- Only Executive Managers of a credit institution may be elected as the inside members of its Board of Directors.
- If the employment of an inside member of the Board of Directors is terminated, his/her membership on the Board of Directors shall also terminate simultaneously. (*Article 63 Paragraph (3) of the ACIFE*)

Exclusion criterion: A person may not serve as a member of the Board of Directors if during the prior three years he/she has served as an auditor with the credit institution or with a financial institution closely related to the credit institution.

A credit institution's Supervisory Board

Only natural persons may serve as members of a credit institution's Supervisory Board.

The supervisory board is a body comprised of not less than three and not more than nine members whose members shall not be employed by the credit institution, with the exception of the persons serving as the employee representatives.

(*Article 66 Paragraphs (1)-(2) of the ACIFE*)

General terms and conditions for authorisation:

To be eligible for appointment into a senior position a person may not be subject to any of the grounds for exclusion as specified under *Article 44 Paragraphs (4)-(5) and (6) of the ACIFE*.

Grounds for exclusion:

- a. The person holds (or held) a qualified influence, or is (or was) a person in a senior position at a financial institution
 - the insolvency of which could only be avoided with exceptional measures taken by the HFSA; or
 - that had to be liquidated due to the revocation of its operating license;

And was found, in a conclusive resolution, to be personally responsible for the emergence of this situation (*Article 44 Paragraph (4) of the ACIFE*);

- b. The person has gravely or regularly violated this Act or the provisions of other legal regulations governing banking operations or the management of financial institutions, and this was found by the HFSA, by some other authority or by a court in a conclusive ruling dated not longer than five years ago (*Article 44 Paragraph (4) of the ACIFE*);
- c. The person has a criminal record (*Article 44 Paragraph (4) of the ACIFE*);
- d. A person who has been indicted by the prosecutor for a crime specified under Chapter XV Titles VII and VIII and Chapters XVII and XVIII of Act IV of 1978 on the Criminal Code, or who has been indicted by a competent authority abroad for a crime against property or an economic crime punishable under Hungarian law, may not be employed as a person in a senior position or must be suspended in such until the criminal procedure is completed. (*Article 44 Paragraph (6) of the ACIFE*).

In drafting the declaration to be submitted it is acceptable:

- a. To transcribe the text of the legislation in detail and to negate its contents;
- b. To designate the legislature and to provide a detailed list of the paragraph numbers.

It is important for the declaration to include all of paragraphs (4)-(5)-(6) of Article 44.

The declaration is to be made in the presence of two witnesses whose signatures and addresses should also be shown on the declaration.

Thus, the following documents are to be attached to the application in every case:

- Declaration concerning the mentioned grounds for exclusion;
- Original official certificate of criminal history issued by the authority of the country of citizenship or in its absence of the country of residence, or a certified copy thereof.

It is the uniform practice of the HFSA not to accept official certificates of criminal record that are older than 3 months.

(To separately certify Article 44 Paragraph (4) Section c))

Particular terms and conditions for authorisation:

1. To be eligible for election / appointment as an executive manager (at a credit institution operating in the form of a joint-stock company or in the form of a cooperative) or
2. As a person in a senior position (at a credit institution operating in the form of a branch office)
 - A person must meet the general requirements for persons in senior positions as specified under Article 44 Paragraph (4) Sections a), b), c), Paragraph (5) and Paragraph (6);
 - Must have at least three years of managerial experience obtained in finance or business, in banking, corporate management or public administration;
(Article 44 Paragraph (5) Section a) of the ACIFE)
 - May not serve as the auditor of another financial institution *(Article 44 Paragraph (5) Section b) of the ACIFE)*;
 - May not serve in a function that may constrain the performance of his/her professional duties. *(Article 44 Paragraph (5) Section c)*
 - His/her person must have been notified to the HFSA thirty days prior to his/her election or appointment to obtain prior authorisation and the HFSA must have granted the prior license or must be deemed to have granted it under Article 44 Paragraph (2);

Must have:

1. A relevant academic qualification and at least four years of managerial experience obtained with a credit institution;
2. A relevant academic qualification and at least five years of managerial experience obtained with the Magyar Nemzeti Bank (MNB, National Bank of Hungary), the HFSA, the National Deposit Insurance Fund, or with a voluntary deposit insurance fund or institutional protection fund, or with an equivalent foreign institution;
3. A relevant academic qualification and at least six years of relevant managerial experience obtained with an enterprise or in public administration;

Relevant academic qualification shall include a university diploma certifying a qualification in economics, law, finance and accounting or foreign trade, or a certificate of collegial education and qualification as an auditor or a higher level or postgraduate qualification in banking and in particular as a banking consultant *(Article 68 Paragraph (3) of the ACIFE)*;

4. An academic qualification that is not relevant, but at least six years of relevant managerial experience obtained with a financial institution or investment enterprise of the same type or of a similar size (*Article 68 Paragraph (1) Sections a)-c) of the ACIFE*);

The following documents are to be attached to an application for the authorisation of the election or appointment of an executive manager as a person in a senior position:

- A declaration by the candidate person concerning the grounds for exclusion as specified under Article 44 Paragraphs (4), (5) and (6) of the ACIFE;
- An original official certificate of criminal history issued by the authority of the country of citizenship or in its absence of the country of residence, or a certified copy thereof.
- For the citizen of a foreign country a certified translation of the official certificate of criminal history is also to be submitted.

(To certify Article 44 Paragraph (4) Section c) of the ACIFE);

- A curriculum vitae (*to certify Article 68 Paragraph (1) Section c) of the ACIFE*);
- The curriculum vitae must contain the places of work, the positions and functions occupied, and the time spent in the individual positions (with indication of the exact dates). If the curriculum vitae cannot be used to establish the existence of the required managerial experience the HFSA may request the submission of documents issued by earlier employers to certify the existence of the managerial experience;
- Certified copies of diplomas.

In the case of universal credit institutions, with regard to candidates for inside members of the Board of Directors and for executive managers, the application shall include the attachment of a declaration as specified under Article 25 Paragraph (2) of Act CXXXVIII of 2007 on investment enterprises and service providers active on the commodity exchange and on the rules for their permitted activities.

The following documents shall be attached to an application for the election or appointment of a member of the Supervisory Board of a bank or specialised credit institution operating in the form of a joint-stock company:

- A declaration by the candidate person as specified under Article 44 Paragraphs (4) and (6) of Act CXII of 1996 on credit institutions and financial enterprises (the ACIFE);
- An original official certificate of criminal history issued by the authority of the country of citizenship or in its absence of the country of residence.

The license shall be deemed to have been granted if it is not refused by the HFSA or if the authorisation procedure is not suspended by the HFSA within thirty days following its receipt of the application. If the person in a senior position is the subject of an on-going criminal procedure as specified under Article 44 Paragraph (6) of the ACIFE, the HFSA shall suspend its procedure for the judgement of the application until the completion of the criminal procedure. *(Article 44 Paragraph (2) of the ACIFE)*

The HFSA may refuse an application for the authorisation of the election or appointment of a natural person only if the person proposed for appointment (election) is subject to one of the grounds for exclusion as listed under Article 44 Paragraphs (4)-(5) of the ACIFE, or in the case of an executive manager, if the proposed person does not meet the conditions as specified under Article 68. *(Article 44 Paragraph (3) of the ACIFE)*

Re-election of persons in senior positions

1. If a person in a senior position was elected prior to 1 January 1997 – the entry into force of the ACIFE – then the authorisation procedure shall be governed by the above.

2. If a person in a senior position was elected after 1 January 1997 then the authorisation of the re-election shall only require attachment of the declaration concerning Article 44 Paragraphs (4)-(5)-(6) of the ACIFE and of the *official certificate of criminal history*.

IX. Providing financial services through an agent

Within financial services the intermediation of financial services (agency activity) is a unique activity considering, that as a business activity it is permitted not only for financial institutions. The ACIFE makes a distinction between two types of agency activity, according to which the intermediation of a financial service (agency activity) is either

- a. An activity performed for the benefit, in the name and at the responsibility and risk of the financial institution with the aim to provide the financial services and the supplementary financial services of the financial institution under an agency contract;

or

- b. An activity performed in order to facilitate the activities of a financial institution in providing financial services and supplementary financial services, in the course of which the money or the assets owned by the customer are not managed and no obligations are independently accepted at the risk of the financial institution.

(Annex No. 2 to the ACIFE, Section 12)

The ACIFE specifies the conditions for the pursuit of the agency activity and the range of persons entitled to pursue the activity according to whether the agency activity being pursued is of version a) or b), and whether it is performed for a credit institution or for a financial enterprise.

Agency activities specified under Section a) may be pursued by corporations or cooperatives that do not qualify as financial institutions but are legal entities. (*Article 8 Paragraph (3) of the ACIFE*)

Agency activities specified under Section b) may be pursued by corporations, cooperatives or individual entrepreneurs that do not qualify as financial institutions. (*Article 8 Paragraph (4) of the ACIFE*)

If an agent performs an agency activity specified under Section a) for a credit institution, then in order to pursue the activity both the agent and the credit institution shall be obliged to apply for authorisation by the HFSA. (*Article 3 Paragraph (1) Section h) of the ACIFE, Article 14, Paragraph (1) Section h) of the ACIFE*)

General provisions:

A Type a) agent shall attach the following documents to its application for authorisation:

- Proof of payment of administrative service fees in the amount of HUF 30,000 as specified in Decree No. 12/2002 (of February 20) issued by the Minister of Finance;
- Regulations prepared on the basis of the provisions of Act CXXXVI of 2007 on the prevention and deterrence of money laundering and terrorist financing, analogous to the sample regulations provided by the HFSA.

An activity to provide financial services may be started or pursued only if the personal and material conditions regulated by the ACIFE are met (*Article 13 of the ACIFE*). *These conditions are to be ensured also for an agency activity, to an extent depending on the nature of the activity.*

An enterprise pursuing an agency activity shall transfer supervisory fees of fifty thousand Hungarian Forints per annum to the account of the HFSA, in a single amount until the 31st day of January each year. (*Article 139/A Paragraphs (3)-(4) of the ACIFE and Article 54 Paragraph (1) of the HFSA Act*)

Activities permitted as agency activities also include the handling of purchase loans, lending against security and currency exchange.

Particular provisions:

1. For an agent involved in the handling of purchase loans it is sufficient to submit the documents as listed above.

2. If a credit institution uses an agent to **lend against collateral** (pawn broking or mortgage lending), then additional documents shall be requested for the authorisation procedure:

To verify whether the personal conditions are met:

- a. Proof of qualification as an appraiser with a certificate (on the basis of which the appraiser is eligible to perform the activity indicated in the agency contract);
- b. Certificates of criminal history for the appraiser and for the cashier.

To verify whether the material conditions are met:

- a. Proof of entitlement to use the place of business (ownership sheet, rental contract);
- b. If the agent also trades in precious metals, the notification about the registration procedure of the Directorate for the Authentication of Precious Metals (operating license if the agent is involved in the retail trading of jewellery);
- c. Property insurance designating the credit institution as the beneficiary (a proficient insurance broker shall verify if money and valuables are stored appropriately, in the absence of which the contract for the property insurance shall not be concluded);
- d. Types of collateral suggested as further security for loans against security (security deposit, surety contract, mortgage contract);
- e. Signature registration card for the examination of the company's legal status;
- f. bylaws (shall be submitted by an agent lending against security that already holds a license, if there is a change in its structure of ownership).

Proof of compliance with the listed personal and material conditions shall be required not only to authorise market entry, but also when establishing a new place of business.

Pursuant to *Article 26 Paragraph (1) of the ACIFE*, in the course of its procedure for the authorisation of the activity the HFSA may also perform on-site investigations as to whether or not certain authorisation criteria are met.

A credit institution shall attach the following to its application for authorisation:

- The agency contract concluded with the agent, that should also contain a contractual stipulation that the HFSA or the credit institution may verify, without limitation, the management and the business books of the agent in relation to the activity subject to the agency agreement (*Article 19 of the ACIFE*);

- Business regulations for lending against security, approved by the directors of the credit institution (and also the internal regulations to be used in the branch by the agent lending against security, if the business regulations do not contain detailed procedures for lending against security);
- A list of terms or a notice as an annex to the agency contract or to the business regulations (concerning interest rates, service fees, etc.);
- A 3-year business plan related to the activity;
- Declaration by the credit institution stating that the material and technical conditions are met by the branch that lends against security;
- Mortgage or surety contract to provide collateral;
- Declaration stating that the branch that lends against security operates with a staff of at least 2 - indicating the names - and that the division of responsibilities has been regulated.

3. For the authorisation of its **currency exchange activities** as an agent of a credit institution the applicant shall submit the following documents in addition to those specified under the general provisions:

- a. The applicant's instrument of constitution;
- b. The order issued by registry court for the incorporation, or a certificate of incorporation dated not earlier than three months prior to the application date;
- c. Certified statement dated not earlier than thirty days prior to the application date, stating that the applicant has no outstanding debt owed to a tax authority, customs authority or social insurance agency;
- d. A document containing the specification of the planned operational area (with nationwide extent or limited to a specific territorial unit);
- e. presentation of the applicant's organisational structure and of its governance, decision-making and audit arrangements, if not contained in detail in its instrument of constitution;
- f. A business plan for the medium term, for the first three years of operation;
- g. Proof that the applicant meets the personal and material conditions required to engage in currency exchange activities;
- h. The general terms and conditions of contract and the business regulations for the activities to be pursued, approved by the credit institution;
- i. A declaration stating when the applicant intends to commence its currency exchange activity;

- j. A declaration stating that the applicant has made preparations to fulfil the data disclosure requirements as specified in the statutory regulation and as required on the basis of the statutory regulation;

(Article 3 Paragraph (1) Sections a)-j) of Government Decree No. 297/2001 (of December 27))

Pursuant to *Article 5 of Government Decree No. 297/2001 (of December 27)* the following shall be attached to verify whether or not the personal conditions are met:

- a. Certificates of criminal history for persons in an executive position (*Article 5 Section a) of the Government Decree*);
- b. A declaration by the applicant stating that there are no grounds, as defined under Article 13 Paragraphs (4)-(5) of the ACIFE, for the exclusion of the applicant;
- c. For persons directly involved in the currency exchange activity:
 - A certificate recognised by the state, certifying the completion of a foreign currency cashier and administrator course;
 - A language proficiency certificate recognised by the state, certifying at least a basic level of proficiency in a foreign language (*Article 5 Section d) of the Government Decree*);
- d. A certificate of criminal history (*Article 5 Section a) of the Government Decree*).

Pursuant to Government Decree No. 297/2001 (of December 27) the following documents shall be attached to verify whether or not the material conditions are met:

- a. Proof of the right to use premises that can be adequately locked and are suitable for pursuing the activity (proof of unrestricted possessory rights, ownership sheet, right of use, rental agreement) (*Article 10 Paragraph (1) Section a) of the Government Decree*);
- b. A strongbox required for the safe storage of money (wall safe, or a plate cabinet if the monthly average turnover does not exceed 100,000 Hungarian Forints per day) (*Article 10 Paragraph (1) Section b) of the Government Decree*);
- c. Devices required to verify whether currency and cheques are negotiable: currency and cheque information brochures, UV lamp and magnifying glass (*Article 10 Paragraph (1) Section c) of the Government Decree*);

- d. At least one main telephone line (contract of service concluded with a telecommunications service provider) (*Article 10 Paragraph (1) Section d) of the Government Decree*);
- e. List of exchange rates (*Article 17 Paragraph (1) Section e) of the Government Decree*);
- f. Information board containing the provisions that affect the customer in connection with currency exchange in English and in German (*Article 10 Paragraph (1) Section f) of the Government Decree*);
- g. Installation and operation of a technical device suitable for recording the processes that take place in the premises of the money changer where it receives its customers, on film strip or in some other similar visual way that enables the subsequent reconstruction of events (camera) - to be evidenced with a contract concluded with the installer or the operator of the system (*Article 11 Paragraph (1) of the Government Decree*);
- h. Internal professional instructions for the currency exchange activity.

The credit institution shall attach the following to its application for authorisation:

- The agency contract concluded with the agent, that should also contain a contractual stipulation that the HFSA or the credit institution may verify, without limitation, the management and the business books of the agent in relation to the activity subject to the agency agreement (*Article 19 of the ACIFE*);
- Business regulations for the activity, approved by the directors of the credit institution;
- Declaration by the credit institution stating that the material and technical conditions of the premises are provided (*Article 13 of the ACIFE*).

The HFSA shall grant authorisation to a credit institution to provide financial services through an agent subject to the following conditions:

- The credit institution shall repeatedly obtain license from the HFSA if the agency contract created between the credit institution and the agent and stamped by the HFSA is amended.
- The credit institution shall be responsible for compliance with the statutory regulations and provisions on banking secrecy and on the provision of financial services, also when it performs its activity through an agent to provide financial services. In this regard the credit institution shall continuously audit the activities of the agent.

- The credit institution shall notify the HFSA within two days if the agency contract is terminated.

If an agent performs an activity listed under Section b), then neither the credit institution nor the agent are required to apply for authorisation to pursue the activity. In such cases the credit institution shall notify the HFSA of the identity of the agent as follows:

The credit institution shall notify the HFSA of the name and of the registered address of the agent electronically over the "KAP" system, within 5 working days of the creation of the agreement or of the termination of the agency relationship.

Pursuant to Article 1 Paragraph (4) Section a) of Act CXXXVI of 2007 on the prevention and deterrence of money laundering and terrorist financing, so called Type b agents are not required to prepare regulations for the prevention and deterrence of money laundering and terrorist financing.

X. Authorisation for the transfer of contracts for the repayment of deposits and monetary assets

Deposits and other repayable monetary assets may be transferred, on the basis of an agreement between the transferring and receiving credit institutions, if authorised by the HFSA.

For transfers of positions the rules of the Civil Code on the assumption of debt shall apply with the derogation, that a transfer of the positions shall not require the consent of the contracting party. (*Article 161 Paragraph (1) of the ACIFE*)

An application for an **authorisation to transfer positions** shall include the following:

- a) Legal statements from the transferor and from the receiver for the transfer and receipt of the positions (*Article 161 Paragraph (2) Section a) of the ACIFE*);
- b) Designation of the assets and collateral related to the positions to be transferred (*Article 161 Paragraph (2) Section b) of the ACIFE*);
- c) Designation of the date of and the consideration for the transfer of positions (*Article 161 Paragraph (2) Section c) of the ACIFE*);
- d) Proof that in addition to the regulatory capital for its own positions the receiving credit institution also has the minimum regulatory capital required for the positions being received (*Article 161 Paragraph (2) Section d) of the ACIFE*).

The credit institution receiving the contracts shall notify all involved contracting parties in writing about the transfer, within thirty days of its receipt of the resolution of authorisation. For demand deposits and bearer securities the notification shall be published as an announcement in two daily newspapers in nationwide circulation. *(Article 161 Paragraph (3) of the ACIFE)*

The HFSA may refuse to grant license for a transfer of positions if the transfer would jeopardise the fulfilment of the obligations as agreed in the deposit contracts concluded by the transferring or by the receiving credit institution. *(Article 161 Paragraphs (3) and (4) of the ACIFE)*

In the case of a transfer of deposits, separate deposits of the same depositor, placed with the transferring and with the receiving credit institutions, shall continue to constitute separate deposits for a maximum of five years with regard to the amount limit for indemnification by the National Deposit Insurance Fund. *(Article 101 Paragraph (8) of the ACIFE)*

XI. Rules for exemption from the requirement to keep a trading book

A credit institution is not required to keep a trading book if

a. The combined total of the trading book positions – regardless of sign – is less than four billion Hungarian Forints.

(Article 76 Paragraph (6) of the ACIFE)

Pursuant to Article 76 Paragraph (7) of the ACIFE, subject to authorisation by the HFSA a credit institution is not required to keep a trading book and to use it to specify the capital requirement, if

- a. Its revenues from all of its positions in financial assets and goods held for trading do not exceed five percent of the sum of its quarterly revenues from interest received and similar income, revenues from other financial services, other revenues, revenues from investment service activities, and revenues from non financial and investment service activities; and
- b. The combined total of the trading book positions – regardless of sign – is less than four billion Hungarian Forints.

Pursuant to Article 76 Paragraph (7), subject to authorisation by the HFSA a credit institution shall also be exempted from the requirement to keep a trading book, if

- Within a calendar year it exceeds the percentage specified in the previous paragraph in a single quarter at most, with the ratio mentioned there not exceeding six percent; and
- The combined total of the trading book positions – regardless of sign – is less than five billion Hungarian Forints.

The credit institution must submit documents documenting the existence of the exemption criteria, demonstrating that the application complies with the statutory provisions presented above, as well as the reporting tables underlying the corresponding declaration made in the application for the exemption.

XII. Repayment of subordinated/supplementary subordinated loan capital prior to the deadline specified in the contract or within five/two years

The repayment of subordinated debt prior to the deadline as specified in the contract or prior to five years, and the repayment of supplementary subordinated debt prior to the deadline as specified in the contract or prior to two years, is subject to authorisation by the HFSA.

The applicant must attach to the application an original or a certified copy of the loan contract for the subordinated debt / supplementary subordinated debt.

The HFSA shall grant license if the capitalisation of the credit institution following the repayment of the subordinated debt / supplementary subordinated debt will comply with the rules on capital as specified in Chapter XI of the ACIFE.

XIII. Acquisition of a qualifying interest in an enterprise considered as non-resident

The acquisition of an influencing share in an enterprise considered as non-resident under the Foreign Exchanges Act is subject to authorisation by the HFSA. An application for authorisation shall be submitted together with the following documents:

- The agreement for the acquisition of the share;
- The instrument of constitution of the enterprise considered as non-resident under the Foreign Exchanges Act;
- If the enterprise considered as non-resident under the Foreign Exchanges Act is a credit institution, a document issued by the supervisory authority having jurisdiction over its registered address, stating the services that the credit institution is permitted to provide;
- The balance sheet and the income statement for the previous calendar year, of the enterprise considered as non-resident under the Foreign Exchanges Act, certified by its auditor;

- The business plan of the credit institution containing an outline of its plans related to the acquisition of the share;
- The identification details of the enterprises in which the enterprise considered as non-resident under the Foreign Exchanges Act holds shares greater than 5% (in case of a share greater than 10% an authorisation procedure shall be conducted for that enterprise as well).

XIV. Authorisation of a foreign representative office of a credit institution

Establishment of a foreign representative office of a credit institution:

A bank representation may maintain relationships with individuals and organisations, may disclose data and information about the represented credit institution within the framework of the legal regulations, and may promote its services and customer contacts, but may not engage in any businesslike activities (*Article 33 Paragraph (1) of the ACIFE*);

The establishment of a bank representation abroad for a credit institution with its registered address in Hungary and the commencement of the operations of such a bank representation are subject to authorisation by the HFSA (*Article 34 of the ACIFE*);

An application for the authorisation of the establishment of a representative office abroad of a credit institution with its registered address in Hungary shall contain the following:

- a. The name of the bank representation with an indication of its representation nature;
- b. Designation in detail of the activities to be performed;
- c. Its planned period of operation;
- d. The number of actual administrators to be employed and their curricula vitae;
- e. The name of the manager of the bank representation and his/her curriculum vitae.

(Article 35 Paragraph (1) of the ACIFE)

The manager of the bank representation is responsible for compliance with the provisions specified for bank representations in this Act. (*Article 36 Paragraph (1) of the ACIFE*)

The bank representation has an obligation to notify the HFSA about any transfers of the bank representation or about its termination, or about any changes to the person carrying out the representation. (*Article 36 Paragraph (2) of the ACIFE*) If the bank representation does not meet the conditions specified under Article 33 Paragraph (1) of

the ACIFE, then the HFSA shall strike the bank representation off its records and at the same time it shall prohibit the representative office from exercising the bank representation activities. *(Article 36 Paragraph (3) of the ACIFE)*

In its procedure for the authorisation of a representative office abroad of a credit institution with its registered address in Hungary the HFSA registers the following:

- a) The date and place of the establishment of the representative office of the credit institution *(Article 186 Paragraph (2) Section i) of the ACIFE)*;
- b) The names of the individuals entrusted with the management of the representative office *(Article 186 Paragraph (2) Section j) of the ACIFE)*;
- c) Any changes to the data as listed earlier *(Article 186 Paragraph (2) Section l) of the ACIFE)*.

The HFSA is to be notified about the establishment of a bank representation in Hungary for a credit institution with its registered address abroad. The notification must contain the following documents from the competent supervisory authority with jurisdiction over the entity making the notification:

- The authorisation for the representative office or a declaration of consent or acknowledgement;
- A declaration stating that no grounds for exclusion were found with regard to the person appointed as the manager of the representative office.

(Article 35 Paragraph (2) of the ACIFE)

In the case of the establishment of a bank representation for a credit institution with its registered address abroad the applicant must also attach proof of having paid administrative procedural fees in the amount of fifty thousand Hungarian Forints. *(Article 12 Paragraph (6) of Decree No. 12/2002 (of February 20) by the Minister of Finance)*

Scope of licensing of financial enterprises

Scope of licensing of the HFSA

The HFSA's permission is required for:

- a) the foundation of a **financial enterprise**,
- b) the amendment of the sphere of activities,

- c) the transformation, merger (takeover, fusion), demerger,
- d) the election or appointment of executive officers,
- e) the acquisition of its shares in an extent to constitute qualifying participation and for increasing the qualifying participation up to the thresholds prescribed in the CIFE.

For financial enterprises operating as **branch offices**, the HFSA's permission is required for:

- a) the foundation
- b) the amendment of the sphere of activities
- c) the appointment of an executive officer.

The documents required for the application for authorisation must be submitted to the HFSA in three copies, and for documents in foreign languages, unless an Act of Parliament provides otherwise, their certified Hungarian translation must also be attached. (*Section 11/K (4) of Act CXVI of 1999 on the Hungarian Financial Supervisory Authority*)

I. Authorisation of the founding and operation of a financial enterprise

Pursuant to Article 15 Paragraph (1) Section a) of Act CXII of 1996 on credit institutions and financial enterprises (the ACIFE) the founding of a financial enterprise is subject to authorisation by the HFSA, while Paragraph (3) of the same Article stipulates that *a license granted for the founding of a financial enterprise shall also include authorisation for establishing its scope of activities and authorisation for the commencement of its operation.*

Pursuant to Article 6 Paragraph (1) of Act IV of 2006 on business associations (the Companies Act), legislation may require that the founding of a business association be subject to obtaining a license from an authority. Pursuant to the second paragraph of the same Article, if a statutory regulation - not to include a municipal ordinance - stipulates some business activity to be subject to authorisation by an authority (a license to exercise the activity), then in order to commence and to pursue this activity, the business association must hold a license.

Furthermore, Article 17 Paragraph (1) of the Companies Act also stipulates, that *if the creation of a business association is subject to an authorisation of founding, then the notification to be filed with the court of registration shall be filed within 15 days from receiving the license.* A business association is created with its registration in the companies register, on the date of its registration.

The provisions of the referenced Article 17 of the Companies Act also clearly specify the sequence of the supervisory and incorporation procedures in relation to each other. With

regard to the sections of the ACIFE and of the Companies Act as quoted above, the resolution adopted by the HFSA in its procedure for the authorisation of the founding and operation of a financial enterprise constitutes an indispensable annex to the documents to be submitted to the court of registration, and the incorporation of a financial enterprise may be initiated with the court of registration only in possession of, and within 15 days of the receipt of the license issued by the HFSA for its founding and operations. On the basis of the above statutory provisions **the HFSA cannot grant a license for the founding and operation of an association that has already been registered or for which the relevant application has already been filed with the registry court prior to the completion of the supervisory authorisation procedure.**

In such cases the applicant must provide for the firm that was registered in the register of companies in violation of the statutory regulations to be removed from the register by the court of registration, or must revoke its application for registration if it is already being reviewed. In the contrary event, exercising its right provided under Article 51 Paragraph (2) of Act CXL of 2004 on the general rules for procedures and services in public administration (the Public Administration Procedures Act) the HFSA shall make a decision on the basis of the data available and shall refuse the application.

The following documents shall be submitted in a procedure **for the authorisation of the founding and operation of a financial enterprise:**

1) An application for the authorisation of the founding and operation of an association as a financial enterprise - with an indication of the financial services and supplementary financial services under the ACIFE that the association requests to be authorised to pursue. It is to be noted that on the basis of Article 4 Paragraph (3) of the ACIFE, which specifies "clean profile requirements", in addition to financial services a financial enterprise may only pursue the businesslike activities that are itemised thereunder. (*Article 17 Paragraph (1) of the ACIFE*)

2) The instrument of constitution (bylaws) of the financial enterprise that is planned to be founded. (*Article 17 Paragraph (1) Section a) of the ACIFE*)

We hereby draw your attention to the following:

- Pursuant to Article 8 Paragraph (1) a financial enterprise may operate in the form of a company limited by shares, a cooperative, a foundation or a branch office;
- Pursuant to Article 42 of the ACIFE, the shares of a financial enterprise operating in the form of a company limited by shares may be exclusively registered shares, with the exception of preferential shares without voting rights;
- If in its instrument of constitution (bylaws) the business has resolved to create its shares in a dematerialised form, then subsequently it shall not have the option to create its shares in a printed form. (*Article 6 Paragraph (5) of Act CXX of 2001 on the Capital Market - The Capital Market Act*)

3) The document containing the specification of its planned operational area (with nationwide extent or limited to a specific territorial unit);

4) The original proof of the actual payment by the founders and of the availability of the full amount of the subscribed capital, which pursuant to Article 9 Paragraph (4) of the

ACIFE and with the exception of a financial holding company, shall not be less than fifty million Hungarian Forints. *(Article 17 Paragraph (1) Section c) of the ACIFE)*

Pursuant to Article 10 Paragraph (1) of the ACIFE the subscribed capital is to be paid in cash to a credit institution that does not participate in the founding, and in which none of the founders hold an ownership share, and which holds no ownership share in any of the founders. We hereby draw your attention that it is not possible to use the subscribed capital during the course of the procedure for the authorisation of the founding.

5) Presentation of the draft for the organisational structure, the governance, decision-making and audit arrangement, and the organizational and operational regulations of the financial enterprise. The organizational and operational regulations shall present the organisational structure of the business, its governance, decision-making and audit arrangement, and its rules for substitution and operations. *(Article 17 Paragraph (1) Section d) of the ACIFE)*

6) In the case of a financial enterprise, proof that it complies with the **personal and material conditions necessary for providing the financial service**, and the items listed under Article 18 Paragraph (2) Sections d)-f), h) and k)-l). *(Article 17 Paragraph (1) Section f) of the ACIFE)*

6.1 Proof of compliance with personal conditions:

- 6.1.1 The resolution on the appointment of the chairman of the board of directors and of the executive manager *(Article 15 Paragraph (1) Section d) of the ACIFE)*;
- 6.1.2 Declarations by the chairman of the board of directors and by the chairman of the supervisory board on the grounds for exclusion as specified under Article 44 Paragraphs (4) and (6) of the ACIFE and their official certificates of criminal history (original certificate of criminal history dated not earlier than 3 months prior to the submission date, issued by the authority of the country of citizenship or in its absence of the country of residence, or a certified copy thereof). *(Article 44 Paragraphs (1)-(4) and (6) of the ACIFE)*
- 6.1.3 Declaration by the executive manager concerning Article 44 Paragraphs (4) and (6) of the ACIFE; his/her official certificate of criminal history (official certificate of criminal history dated not earlier than 3 months prior to the submission date, issued by the authority of the country of citizenship or in its absence of the country of residence, or a certified copy thereof); proof of academic qualification using copies of diploma certificates certified by a notary public; proof of at least three years of professional experience obtained at a financial institution, the Magyar Nemzeti Bank (MNB, National Bank of Hungary), the HFSA or in public administration, or of at least three years of managerial experience obtained in a different field of business, using a curriculum vitae or employers' letters of reference. *(Article 44 Paragraphs (1)-(4) and (6) and Article 68 Paragraph (4) of the ACIFE)*
- 6.1.4 A contract for services signed with an auditor included on the records maintained by the Chamber of Hungarian Auditors and entered with a resolution onto the register of auditors licensed to audit financial institutions, and the declaration by the auditor

stating that it is not subject to any of the grounds for exclusion as specified in the ACIFE. (*Article 133 of the ACIFE*)

- 6.1.5 A contract of employment or a contract of services signed with the internal auditor to be employed, and other documents providing proof that the person meets the employment criteria. (*Article 67 of the ACIFE; Article 67 Paragraph (9) of the ACIFE with regard to the employment criteria*)
- 6.1.6 Presentation of the staff.

6.2 Proof of compliance with material conditions

6.2.1 Presentation of the personal, material and technical conditions required for operations, including information technology and office equipment (*Article 13 Paragraph (1) Sections c) and d) of the ACIFE*);

6.2.2 Proof of unrestricted possessory rights in the registered address and in the place of business (using an ownership sheet or a contract for sublease, etc.) (*Article 13 Paragraph (1) Section d) and Paragraph (2) of the ACIFE*);

6.2.3 A policy or proposal for property insurance that covers both the registered address and any other places of business (*Article 13 Paragraph (1) Section e) of the ACIFE*). A property insurance policy shall be acceptable only if the insured party is the financial enterprise.

6.3 As proof that the accounting and record-keeping systems of the institution being founded comply with the statutory regulations and that it has adequate internal regulations for prudent operation as specified under Article 14 of Act C of 2000 on accounting, the applicant shall submit the following:

- 6.3.1 the accounting policies and their mandatory annexes;
- 6.3.2 the chart of accounts and the system of accounts;
- 6.3.3 inventory and stock-taking regulations for assets and liabilities;
- 6.3.4 valuation regulations for assets and liabilities;
- 6.3.5 internal regulations for the cost accounting system (cost calculation regulations); pursuant to Article 3 Paragraph (8) of Government Decree No. 250/2000, no exemption may be granted from the obligation to prepare this;
- 6.3.6 cash management regulations.

Regulations to be prepared and submitted pursuant to Article 3 Paragraphs (3), (5) and (7) of Government Decree No. 250/2000:

- 6.3.7 regulations for the rating of customers and counterparties;
- 6.3.8 regulations for the valuation of collateral;

- 6.3.9 regulations for the rating and valuation of contracts;
- 6.3.10 regulations for the creation of impairment reserves and provisions;
- 6.3.11 regulations for the handling of accounting documents and printed matter subject to strict accountability requirements, for the related record-keeping and accountability arrangements and for their audits;
- 6.3.13 Regulations for the clearing and record-keeping of futures, options and swap contracts and for the definition and separated handling of hedging transactions (*these regulations need only be prepared before the business concludes such a transaction*).

We hereby draw your attention that pursuant to Article 3 Paragraph (3) and Annex 7 of Government Decree No. 250/2000 the regulations for the valuation of assets and liabilities should include a heading titled "Particular valuation provisions" that should present the following:

- the accounting requirements of the financial enterprise for the rating of customers and counterparties;
- the accounting requirements for the valuation of collateral;
- the accounting requirements for the rating of assets;
- the accounting requirements for the creation of impairment reserves and provisions.

The regulations to be prepared pursuant to Article 77 Paragraph (1) of the ACIFE are the

- 6.3.14 Regulations for the assumption of risk;

We hereby draw your attention that the above accounting regulations are to be prepared in compliance with Article 13 Paragraph (1) Sections a) and b) of the ACIFE, Article 14 of the Accounting Act and Article 3 of Government Decree No. 250/2000 (of December 24) on the particular features of the annual financial reporting and book-keeping obligations of credit institutions and financial enterprises, so that they can be applied and matched comprehensively to the activities to be pursued. You are reminded in particular, that in its authorisation procedure the HFSA shall also examine whether or not the internal accounting regulations as listed above, of the institution being founded, are consistent with the contents of the business regulations and of the general terms and conditions of contract for the activities to be pursued.

7) Business regulations and general terms and conditions of contract. If the financial enterprise intends to pursue several activities then these documents should be prepared for each activity separately. **The business regulations and the general terms and conditions of contract shall also include attachments of the standard contracts to be used, as well as of the sample for the collateral contracts.**

When preparing the business regulations and the general terms and conditions of contract and when developing their content, particular attention should be paid to the rules stipulated as mandatory under the ACIFE, as well as to other effective statutory regulations. (Articles 207-211 of the ACIFE, Act IV of 1959 on the Civil Code,

consumer protection regulations, with particular consideration to stipulations governing the unilateral amendments of contracts that are detrimental to the customer (*Article 18 Paragraph (2) Section e) of the ACIFE*)

8) Business plan for the medium term - three years - with a numerical presentation of the pro-forma balance sheets, profit and loss accounts and cash flow statements, and a description with a textual assessment of how the enterprise plans its activities. When preparing the business plan you are requested to consider also the contents of the HFSA's Methodological Guideline No. 4/2005. The methodological guideline with the above number may be found on the following Internet page: www.pszaf.hu. (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18, Paragraph (2) Section d) of the ACIFE*)

9) A declaration stating that the enterprise is prepared to comply with the data disclosure requirements as specified in the statutory regulations as well as based on those, and the results of the test runs of the computer software used for the disclosure of data (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18 Paragraph (2) Section h) of the ACIFE*). When drafting the regulations related to the information technology system and when setting up the system itself, consideration should also be paid to the provisions of *Article 13/B of the ACIFE*.

10) When the financial enterprise intends to commence operations. (A financial enterprise may commence operations only in possession of the license of its founding and operations by the HFSA, and only following its registration by the registry court (incorporation).) (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18, Paragraph (2) Section f) of the ACIFE*)

11) Declaration of joining a recognized credit information system (at least with a declaration of intent confirmed as received by the addressee, the Inter-Bank Information Technology Services Company Limited by Shares (BISZ Zrt)) (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18 Paragraph (2) Section l) of the ACIFE*)

12) Presentation of the information and control system for the mitigation of operational risks, and the plan for the management of emergencies.

The financial institution must develop a regulatory system for the security of the information technology system used for its activities to provide financial and supplementary financial services, and must provide for the protection of the information technology system in proportion to the risks. The regulatory system should discuss the requirements set for the information technology and for the assessment and management of the security risks inherent in its use, within the areas of planning, purchasing, operations and audits. (*Article 13 Paragraph (81) Section f) and Article 13/B of the ACIFE*)

13) The regulations containing the internal audit organisation, its competency, its duties, the professional requirements set for the internal auditor, and the rules of procedure. (*Article 66 Paragraph (1) Section d) of the ACIFE*)

14) *Internal regulations analogous to the sample regulations issued by the HFSA (Article 33 of Act CXXXVI of 2007 on the prevention and deterrence of money laundering and terrorist financing). The form of the sample regulations is available for download from www.pszaf.hu.*

II: If the group of the founders includes a person who (or that) intends to acquire a qualified influence (an ownership share equal to or exceeding 10%) in the financial institution being founded, then in addition to the documents listed above the following shall also be attached to the application:

- The identification details of the applicant as specified in Chapter I of Annex No. 3 (Article 17 Paragraph (2) Section a) of the ACIFE);
- Proof of the lawful origin of the financial resources necessary for the acquisition of the qualified influence;

As proof of this, the HFSA will primarily consider the amounts presented on the profit line and on the retained earnings line of the company's annual financial statements. For the proof of the lawful origin of the financial resources necessary for the acquisition of the qualified influence it is the practice of the HFSA to also require proof that the financial resources were continuously available to the applicant from the time that they were generated throughout the period until the acquisition of ownership. (Article 17 Paragraph (2) Section b) of the ACIFE)

- Documented confirmation dated not earlier than thirty days prior to the application date, stating that the applicant has no debt owed to a tax authority, customs authority or social insurance organisation with competency over its personal jurisdiction;

We hereby draw your attention that it is also required to submit proof that the applicant has no local tax liability. (Article 17 Paragraph (2) Section c) of the ACIFE)

- Proof that the applicant's other ownership interests and activities pose no threat to the operation of the financial institution (*Article 17 Paragraph (2) Section d) of the ACIFE*);
- The applicant's instrument of constitution in effect on the submission date of the application, documented confirmation dated not earlier than thirty days prior to the application date that the applicant has been incorporated (registered) in its personal jurisdiction, that it is not subject to an ongoing bankruptcy, liquidation or final settlement procedure, and that the person in the executive position is not subject to any of the grounds for exclusion as specified under Article 44 Paragraphs (4) and (6) of the ACIFE. (*Article 17 Paragraph (2) Section f) of the ACIFE*) With regard to not being subject to an ongoing bankruptcy, liquidation or final settlement procedure, it is sufficient for the applicant to make a declaration.
- Detailed description of the applicant's ownership structure, and if it is subject to supervision on a consolidated basis, a description of this fact, and the consolidated annual statements for the previous year of the credit institution or of the investment

enterprise subject to supervision on a consolidated basis, if it is obliged to prepare consolidated statements (*Article 17 Paragraph (2) Section g) of the ACIFE*);

- Declaration on the applicant's contingent liabilities and future liabilities as defined under the Accounting Act (*Article 17 Paragraph (2) Section h) of the Credit Market Act*);
- Declaration by the applicant in a private document of full probative value, stating that the applicant consents to the verification of the authenticity of the contents of the document attached to the application, using agencies contacted by the HFSA (*Article 17 Paragraph (2) Section i) of the Credit Market Act*);
- If the founders include a financial institution, insurance institution or investment enterprise having its registered address abroad that intends to acquire a qualified influence, then in addition to the documents listed under Paragraphs (1)-(2) the applicant shall also submit with the application a confirmation or a declaration by the competent supervisory authority of the country of its registered address, stating that the enterprise operates in compliance with the rules on prudent activities. (*Article 17 Paragraph (3) of the Credit Market Act*)
- Having met the condition as set forth in the previous section, a declaration shall be provided as an additional condition for authorisation, stating that the governance of the financial institution shall take place from the main office to be established in Hungary. (*Article 17 Paragraph (4) of the Credit Market Act*)
- A declaration that the applicant has disclosed to the HFSA all material facts and data that may be necessary for the authorisation to be issued. (*Article 38 Paragraph (3) of the HFSA Act*)

For a natural person intending to acquire a qualified influence in the financial enterprise to be founded:

- The identification details of the applicant as specified in Chapter I of Annex No. 3 (*Article 17 Paragraph (2) Section a) of the ACIFE*);
- Proof of the lawful origin of the financial resources necessary for the acquisition of the qualified influence, and thus primarily personal income tax certificates for the prior years, sales and purchase agreements, official documents confirming inheritance, official documents confirming the payment of dividends, etc. (*Article 17 Paragraph (2) Section b) of the ACIFE*)

For the proof of the lawful origin of the financial resources necessary for the acquisition of the qualified influence it is the practice of the HFSA to also require proof that the financial resources were continuously available to the applicant from the time that they were generated throughout the period until the acquisition of ownership.

- Documented confirmation dated not earlier than thirty days prior to the application date, stating that the applicant has no outstanding debt owed to a tax authority,

customs authority or social insurance organisation with competency over its personal jurisdiction (Article 17 Paragraph (2) Section c) of the ACIFE);

- Proof that the applicant's other ownership interests and activities pose no threat to the operation of the financial institution (Article 17 Paragraph (2) Section d) of the ACIFE);
- For natural persons an official certificate of criminal history dated not earlier than thirty days prior to the application date, or an equivalent official document from the personal jurisdiction of the applicant (for foreign persons an original certificate of criminal history issued by the authority of the country of citizenship or in its absence of the country of residence, or a certified copy thereof, with a certified translation into Hungarian (Article 17 Paragraph (2) Section e) of the ACIFE));
- Declaration by the applicant in a private document of full probative value, stating that the applicant consents to the verification of the authenticity of the contents of the document attached to the application, using agencies contacted by the HFSA. (Article 17 Paragraph (2) Section i) of the ACIFE)
- A declaration that the applicant has disclosed to the HFSA all material facts and data that may be necessary for the authorisation to be issued. (Article 38 Paragraph (3) of the HFSA Act)

Proof of payment of the administrative service fee to the account of the HFSA to account number 10032000-00283834-00000000 (*pursuant to Article 12 Paragraph (3) of Decree No. 12/2002 (of February 20) issued by the Minister of Finance on the administrative service fees payable for public administration procedures carried out by the Hungarian Supervision of the Money and Capital Markets, the fee for the authorisation of the foundation of a financial enterprise is one hundred thousand Hungarian Forints, please indicate the payment title on your transfer*).

In case of legal representation: a power of attorney (*Article 40 Paragraph (2) of the Public Administration Procedures Act*). For an applicant having its registered address abroad, a declaration about the applicant's agent for service of process, who may be either a lawyer or a law firm registered in Hungary. (*Article 17 Paragraph (1) Section e) of the ACIFE*)

Founding of a financial institution operating in the form of a branch office

Pursuant to Article 17/A Paragraph (1) of the ACIFE, for the founding of a financial institution operating in the form of a branch office, in addition to the documents **listed under** Article 17 Paragraph (1), an application for the authorisation of founding shall also include the following attachments:

- The foreign financial institution's instrument of constitution (Article 17/A Paragraph (1) Section a) of the ACIFE);
- An original certificate of incorporation for the foreign financial institution, dated not earlier than three months prior to the application date, or confirmation that the foreign financial institution was registered in the registry of corporations (businesses) (Article 17/A Paragraph (1) Section b) of the ACIFE);
- A copy of the foreign financial institution's license received from the supervisory authority having jurisdiction over its registered address (Article 17/A Paragraph (1) Section c) of the ACIFE);
- A certified statement dated not earlier than thirty days prior to the application date that the foreign financial institution participating in the founding has no outstanding debt owed to tax authorities, customs authorities or social insurance organisations in Hungary or in the state where its registered address is located (Article 17/A Paragraph (1) Section d) of the ACIFE);
- Certified statement from the competent supervisory authority of the state where the registered address is located, stating that the main office performing the governance of the financial institution is located in the state where the registered address is located (Article 17/A Paragraph (1) Section e) of the ACIFE);
- The founder's balance sheets and income statements, certified by its auditor, for the previous three business years for a credit institution and for the previous business year for a financial enterprise (Article 17/A Paragraph (1) Section f) of the ACIFE);

A declaration about the foreign financial institution's off balance sheet liabilities (Article 17/A Paragraph (1) Section g) of the ACIFE);

- Detailed description of the founder's ownership structure and of the circumstances that make the founder a member of the group of related persons, and the consolidated annual financial statements of the leading company for the previous year, if the leading company is obliged to prepare consolidated financial statements (Article 17/A Paragraph (1) Section h) of the ACIFE);
- Declarations in private documents of full probative value, from the persons involved in the application, stating that they consent to the authenticity of the contents of the document attached to the application for the authorisation to be verified using agencies contacted by the HFSA (Article 17/A Paragraph (1) Section i) of the ACIFE);
- Designation of the activities as per Article 3, pursued by the applicant and authorised by the supervisory authority having jurisdiction over its registered address, and of the locations where these activities are pursued (Article 17/A Paragraph (1) Section j) of the ACIFE);

The decision making powers of the person in the executive position at the financial institution operating in the form of a branch office, and the bodies of the applicant

without the consent of which certain decisions are not valid (Article 17/A Paragraph (1) Section k) of the ACIFE);

- Declaration by the supervisory authority having jurisdiction over the registered address, that there are no grounds for the exclusion of the person in the executive position, who is a foreign citizen, from filling this position and from discharging the duties associated therewith (Article 17/A Paragraph (1) Section l of the ACIFE).

Pursuant to Article 17/A Paragraph (2) of the ACIFE the HFSA shall grant license for the founding of a financial institution operating in the form of a branch office, if in addition to meeting the conditions as specified under Paragraph (1) and under Article 17 Paragraph (1),

- There is a valid and effective international cooperation agreement between the HFSA and the regulatory authority having jurisdiction over the registered address of the applicant financial institution, which is based on the mutual recognition of the supervisory authorities and also extends to the supervision of branch offices (Article 17/A Paragraph (2) Section a));
- The state where the registered address of the applicant financial institution is located, has statutory provisions against money laundering that are conform with the requirements set by the Hungarian statutory regulations (Article 17/A Paragraph (2) Section b) of the ACIFE);
- The applicant financial institution has data management regulations that comply with the requirements set by the Hungarian statutory regulations (Article 17/A Paragraph (2) Section c) of the ACIFE);
- The applicant financial institution declares that it will honour, without limitation, all liabilities originated in the corporate name of the branch office (Article 17/A Paragraph (2) Section d) of the ACIFE);
- The applicant financial institution submits the license, declaration of consent or acknowledgement issued by the supervisory authority having jurisdiction over its registered address, for the establishment of a branch office (Article 17/A Paragraph (2) Section e) of the ACIFE);
- The statutory regulations of the state where the registered address of the applicant financial institution is located ensure that financial institutions operate in a prudent and secure way. (Article 17/A Paragraph (2) Section f) of the ACIFE)

II. Change in a credit institution's scope of activities

We hereby draw your attention that it shall constitute an expansion of a financial enterprise's scope of activities if it intends to engage in activities to provide financial services in addition to the scope of activities that were authorised earlier. According to the above it shall not constitute the expansion of the scope of activities if a financial enterprise intends to engage in an activity listed under Article 4 Paragraph (3) Sections b)-j) of the ACIFE that is not subject to authorisation.

Pursuant to Article 18 Paragraph (3) of the ACIFE, for an **application for authorisation** of the expansion of the scope of activities of a financial enterprise already active, with an activity to provide a financial service, the applicant shall attach proof that the personal and material conditions required to perform the activity are met, as well as the documents listed under Article 18 Paragraph (2) Sections d)-f), h), and k)-l) as follows:

1) The accounting policies and their mandatory annexes (the existing internal regulations that are affected by the application to expand the scope of activities shall be amended in accordance with the requested expansion of the scope of activities):

- chart of accounts and system of accounts;
- valuation regulations for assets and liabilities;
- cash management regulations;
- regulations for the rating of customers and counterparties;
- regulations for the assumption of risk;
- regulations for the creation of impairment reserves and provisions;
- regulations for the system of cost accounting (cost calculation regulations);
- stock taking and inventory regulations for assets and liabilities;
- regulations for the rating and valuation of contracts;
- regulations for the valuation of collateral;
- regulations for the handling of accounting documents and printed matter subject to strict accountability requirements, for the related record-keeping and accountability arrangements and for their audits (Article 3 Paragraph (5) of Government Decree No. 250/2000 (of December 28));
- regulations for the clearing and record-keeping of futures, options and swap contracts and for the definition and separated handling of hedging transactions (Article 3 Paragraph (7) of Government Decree No. 250/2000 (of December 28)) [these regulations need only be prepared before the business concludes such a transaction];
- if the applicant is a financial institution that qualifies as a parent company, then its regulations for the compilation of its consolidated annual financial statements (Article 3 Paragraph (9) of Government Decree No. 250/2000 (of December 28)).

We hereby draw your attention that pursuant to Article 3 Paragraph (3) of Government Decree No. 250/2000 (of December 28) the regulations for the valuation of assets and

liabilities should include a heading titled "Particular valuation provisions" that should present the following:

- the accounting requirements for the rating of customers and counterparties;
- the accounting requirements for the valuation of collateral;
- the accounting requirements for the rating of assets;
- the accounting requirements for the creation of impairment reserves and provisions.

The internal regulations shall be prepared in each case in compliance with Article 14 of the Accounting Act and Article 3 of Government Decree No. 250/2000 (of December 24) on the special features of the annual financial statement preparation and book-keeping obligations of credit institutions and financial enterprises.

2) Description of the personal, material and technical conditions required for operations, including the availability of the information technology and office equipment (Article 13 Paragraph (1) Sections c) and d) of the ACIFE).

3) Business plan for the medium term - for three years - with a numerical presentation of the pro-forma balance sheets, profit and loss accounts and cash flow statements, and a description with a textual assessment of how the enterprise plans its activities as a function of the expansion of its scope of activities. When preparing the business plan please consider also the contents of Methodology Guideline No. 4/2005 issued by the HFSA. (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18 Paragraph (2) Section d) of the ACIFE, and the methodology guideline available on the homepage: www.pszaf.hu*)

4) Business regulations and general terms and conditions of contract. If the financial enterprise intends to add several activities to its scope of activities, then these documents should be prepared for each additional activity separately. The business regulations and the general terms and conditions of contract shall also include attachments for the standard contracts to be used, as well as for the collateral contracts. When preparing the business regulations and the general terms and conditions of contract and when developing their content, particular attention should be paid to the rules stipulated as mandatory under the ACIFE, as well as to other effective statutory regulations. (*Act IV of 1959 on the Civil Code, consumer protection provisions, etc.*) (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18 Paragraph (2) Section e) of the ACIFE, Articles 207-211 of the ACIFE*)

5) Declaration as to when the financial enterprise intends to commence its activity. (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18, Paragraph (2) Section f) of the ACIFE*)

6) A declaration stating that the applicant has made preparations to fulfil the data disclosure requirements as specified in the statutory regulation and as required on the basis of the statutory regulation (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18 Paragraph (2) Section h) of the ACIFE*).

7) A declaration that the applicant has disclosed to the HFSA all material facts and data that may be necessary for the license to be issued. (*Article 38 Paragraph (3) of the HFSA Act*)

It is to be noted, that pursuant to Article 32 of the ACIFE the HFSA may dispense with the requirement to submit the documents required for the authorisation procedure, if their contents are known to the HFSA. Taking this into account, of the documents listed under Article 18 Paragraph (3) of the ACIFE, the HFSA shall not request the submission of the document containing the results of the test runs of the computer program used to disclose data as listed under Section d), and the declaration of joining the central credit information system recognised by the HFSA as listed under Section g), because these are already known to the HFSA in the case of a financial enterprise that is already active.

III. Transformation, merger and demerger of financial enterprises

For the transformation of a credit institution into a financial enterprise and of a financial enterprise into a credit institution the rules on founding shall apply. (Article 21 Paragraph (1) of the ACIFE)

A financial enterprise may merge only with another financial enterprise, and may be merged into a credit institution by acquisition. (Article 22 Paragraph (1) of the ACIFE)

A financial enterprise operating in the form of a company limited by shares may not merge with a financial enterprise operating in the form of a cooperative. (Article 22 Paragraph (2) of the ACIFE)

A financial enterprise operating in the form of a branch office may not merge with a legal entity or with a business corporation that is not a legal entity. (Article 22 Paragraph (4) of the ACIFE)

An license granted by the HFSA for the merger of financial enterprises shall not substitute for an license granted by the Hungarian Competition Authority. (Article 23 of the ACIFE)

For the demerger of a credit institution or of a financial enterprise the rules on founding shall apply as appropriate. (Article 25 Paragraph (1) of the ACIFE)

You are reminded that in the event of a merger or demerger involving credit institutions or financial enterprises financial institutions shall proceed in compliance with the rules on transformation as contained in both Act IV of 2006 on business associations and in the ACIFE, and thus the new firm created with the transformation may not be incorporated until the HFSA has authorised the transformation and the founding of the new financial institution created with the demerger or with the merger.

The following documents shall be submitted in a procedure **for the authorisation of the merger of financial enterprises**:

1) The **application** for the authorisation of the merger (*Article 22 Paragraph (3) of the ACIFE*);

2) The **contract for the merger** (*Article 22 Paragraph (3) Section a) of the ACIFE*);

3) The **draft statement of holdings** certified by the auditor and the inventory of liabilities and assets - **inventory of holdings** - (*Article 22 Paragraph (3) Section b) of the ACIFE*);

4) All documents (if required) that are required for the authorisation of the scope of activities to be pursued as defined under Article 18 of the ACIFE (*Article 22 Paragraph (3) Section c) of the ACIFE*);

Business regulations and general terms and conditions of contract If the financial enterprise changes or expands its scope of activities in the course of the transformation, then these documents shall be prepared separately for each activity. The business regulations and the general terms and conditions of contract shall also include attachments for the standard contracts to be used, as well as for the collateral contracts. When preparing the business regulations and the general terms and conditions of contract and when developing their content, particular attention should be paid to the rules stipulated as mandatory under the ACIFE, as well as to other effective statutory regulations. (*Act IV of 1959 on the Civil Code, consumer protection provisions, etc.; Article 17 Paragraph (1) Section f) of the ACIFE, Article 18 Paragraph (2) Section e) of the ACIFE, Articles 207-211 of the ACIFE*). If there is no change to the scope of activities following the transformation (such as in the case of a merger) then the applicant shall declare this to the HFSA.

5) An application for authorisation of the election or appointment of the persons in executive positions (Chairman of the Board of Directors, Chairman of the Supervisory Board, Executive Manager) at the new financial enterprise created with the transformation. With regard to the authorisation of election or appointment see the authorisation conditions presented in the chapter on the authorisation of the founding and of the operation of a financial enterprise.

6) The accounting policies and their mandatory annexes (existing regulations shall be modified in accordance with the requested transformation, while in the case of a demerger they shall be prepared for the new company): For detailed rules see the chapter on the founding of a financial enterprise.

7) Description of the personal, material and technical conditions required for the activity to be pursued following the transformation, including the availability of the information technology and office equipment (*Article 13 Paragraph (1) Sections c) and d) of the ACIFE*).

8) Business plan for the medium term - three years - with a numerical presentation of the pro-forma balance sheets, profit and loss accounts and cash flow statements, and a description with a textual assessment of how the enterprise plans its activities as a function of the transformation. When preparing the business plan please consider also the contents of Methodology Guideline No. 4/2005 available on the homepage of the HFSA at www.pszaf.hu (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18 Paragraph (2) Section d) of the ACIFE*).

9) Declaration as to when the transformed financial enterprise intends to commence its activity (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18, Paragraph (2) Section f) of the ACIFE*)

10) A declaration stating that the financial enterprise created with the transformation has made preparations to fulfil the data disclosure requirements as specified in the statutory regulation and as required on the basis of the statutory regulation (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18 Paragraph (2) Section h) of the ACIFE*).

11) Declaration of joining a recognized credit information system recognised by the HFSA (at least with a declaration of intent confirmed as received by the addressee, the Inter-Bank Information Technology Services Company Limited by Shares (BISZ Zrt)) if a new financial enterprise is created as a result of the transformation. (*Article 17 Paragraph (1) Section f) of the ACIFE, Article 18, Paragraph (2) Section l) of the ACIFE*)

12) A declaration that the applicant has disclosed to the HFSA all material facts and data that may be necessary for the license to be issued. (*Article 38 Paragraph (3) of the HFSA Act*)

IV. Election / appointment of a person into a senior position at a financial enterprise

Pursuant to Annex No. 2 Chapter III “Other Definitions” Section 25 Subsection c) of the ACIFE, in the case of a financial enterprise operating in the form of a joint-stock company persons in senior positions include the Chairman of the Board of Directors, the Chairman of the Supervisory Board and the executive manager.

Only a natural person may serve as a member of the Board of Directors of a financial enterprise.

The ACIFE sets requirements only for the executive manager – regarding school qualifications and professional experience – as contained under Article 68 Paragraph (4) of the ACIFE.

Pursuant to Annex No. 2 to the ACIFE, Chapter III “Other Definitions” Section 21, an executive manager shall include a President elected by the Board of Directors of the investment enterprise and employed by the investment enterprise, a Chief Executive appointed to manage the investment enterprise and employed by the investment enterprise, and all deputies of such an executive.

To be eligible for appointment or election into a senior position a person may not be subject to any of the grounds for exclusion as specified under Article 44 Paragraphs (4) and (6) of the ACIFE. The grounds for exclusion are as follows:

a) The person holds (or held) a qualified influence, or is (or was) a person in a senior position at a financial institution

1. the insolvency of which could only be avoided with exceptional measures taken by the HFSA; or
2. that had to be liquidated due to the revocation of its operating license;

And was found, in a conclusive resolution, to be personally responsible for the emergence of this situation;

b) The person has gravely or regularly violated this Act or the provisions of other legal regulations governing the business of financial institutions, and this was found by the HFSA, by some other authority or by a court in a conclusive ruling dated not longer than five years ago;

c) The person has a criminal record (*Article 44 Paragraph (4) of the ACIFE*);

d) A person who has been indicted by the prosecutor for a crime specified under Chapter XV Titles VII and VIII and Chapters XVII and XVIII of Act IV of 1978 on the Criminal Code, or who has been indicted by a competent authority abroad for a crime against property or an economic crime punishable under Hungarian law, may not be employed as a person in a senior position or must be suspended in such until the completion of the criminal procedure. (*Article 44 Paragraph (6) of the ACIFE*)

The following documents are to be submitted in a procedure for an application for the authorisation of the election or appointment of a person into a senior position at a financial enterprise:

1. A declaration concerning the items specified under Article 44 Paragraphs (4) and (6) of the ACIFE;
2. An original official certificate of criminal history not older than three months, issued by the authority of the country of citizenship or in its absence of the country of residence, or a certified copy thereof.
3. For an executive manager: a certificate of academic qualification (copy of diploma certified by a notary public), and a document (curriculum vitae, employer's certificate) certifying at least three years of professional experience obtained with a financial institution, the Magyar Nemzeti Bank (MNB, National Bank of Hungary), the HFSA, or in public administration, or at least three months of managerial experience in a different field of business. (*Article 68 Paragraph (4) of the ACIFE*)

The license shall be deemed to have been granted if it is not refused by the HFSA or if the authorisation procedure is not suspended by the HFSA within thirty days following its receipt of the application. If the person in a senior position is the subject of an on-going criminal procedure as specified under Article 44 Paragraph (6) of the ACIFE, the HFSA shall suspend its procedure for the judgement of the application until the criminal procedure is completed. (*Article 44 Paragraph (2) of the ACIFE*)

The HFSA may refuse an application for the authorisation of the election or appointment of a natural person only if the person proposed for appointment (election) is subject to one of the

grounds for exclusion as listed under Article 44 Paragraphs (4)-(5) of the ACIFE. (*Article 44 Paragraph (3) of the ACIFE*)

V. Authorisation of the acquisition and increase of qualified influence in a financial enterprise

Qualified influence (*Annex No. 2 to the ACIFE, Chapter III Other Definitions, Section 2*) shall mean

An indirect or direct relationship established with an enterprise, on the basis of which the holder of the influence

- a) Holds a percentage of ownership (participation) in the enterprise, or may exercise voting rights of at least **ten percent**;
- b) **May appoint or dismiss at least twenty percent** of the members of its decision-making, executive or supervisory organs or bodies; or
- c) **May exercise deciding influence** on the operation of the enterprise on the basis of its instrument of constitution or on the basis of an agreement.

Pursuant to Article 37 Paragraph (1) of the ACIFE a person must apply for authorisation by the HFSA if he/she

- a) Intends to acquire qualified influence in a financial enterprise; or
- b) Intends to modify his/her qualified influence in a financial enterprise so that it reaches a **threshold value of twenty, thirty three or fifty percent**.

In order to be eligible to hold qualified influence in a financial institution, a person (or entity)

- a) Should be independent of all influence that could threaten the cautious, circumspect and reliable (hereinafter prudent) operation of the financial institution and should be capable of ensuring the governance and control of the financial institution as a reliable and careful owner; and
- b) Should have business networks and an ownership structure that are transparent and thereby which do not exclude the effective supervision of the financial institution. (Article 11 of the ACIFE)

Pursuant to Article 37 Paragraph (3) of the ACIFE the owner of a financial enterprise shall require authorisation by the HFSA in order to conclude agreements related to ownership rights or voting rights that ensure more than proportional benefits.

A person wishing to acquire a *majority share* in a financial enterprise where he/she already holds qualified influence, shall be obliged to apply to the HFSA for authorisation prior to concluding a contract. (Article 37 Paragraph (4) of the ACIFE)

Establishing the percentage of qualified influence and calculating the voting rights

When establishing the percentage of qualified influence, voting rights shall be calculated on the basis of all participations that have voting rights attached pursuant to the provisions of the enterprise's instrument of constitution - independently of any restrictions that may be imposed on exercising such voting rights. (Article 37/A Paragraph (1) of the ACIFE)

When establishing the percentage of qualified influence, consideration shall be made not only of the participation held by the applicant, but also of the voting rights listed under Article 37/A Paragraphs (3) and (4) of the ACIFE.

When discussing these rules we need to mention the concept of a controlled enterprise as used in the ACIFE, which is not defined in the ACIFE itself, but is referenced - in Annex No. II, Chapter III, Other Definitions, Section 50 - and is taken from the definition included in Act CXX of 2001 on the Capital Market (the Capital Market Act) as contained in Chapter II Definitions, Section 136 of the Capital Market Act as follows:

Controlled Enterprise: Shall mean an enterprise,

- a) The majority of the voting rights of which are exercised by a single person;
- b) That has an owner who is entitled to appoint or dismiss the majority of the members of its decision making, executive or supervisory organs or bodies;
- c) The majority of the voting rights of which are exercised by a single person alone, on the basis of an agreement concluded with another of its owners; or
- d) Over which a single person exercises or may exercise deciding influence and control on the basis of its instrument of constitution or on the basis of an agreement.

In certain cases consideration should also be made of indirect ownership. Pursuant to Annex No. 2 to the ACIFE, Chapter III Other Definitions, Section 12, *Indirect Ownership* shall mean: *Holding or exercising a certain percentage of ownership or voting rights in an enterprise through a certain percentage of ownership or voting rights in another enterprise that holds a certain percentage of ownership or voting rights in the enterprise.*

Pursuant to the provisions of Annex No. 4 to the ACIFE indirect ownership is calculated as follows:

1. In order to establish the percentage of ownership, the voting rights or the percentage of ownership of the indirect owner in the intermediate enterprise (Annex No. 2 Chapter III Section 12) shall be multiplied by the higher of the voting rights or the percentage of ownership of the intermediate enterprise in the enterprise. If either the voting rights or the percentage of ownership in the intermediate enterprise exceeds fifty percent, then it shall be considered as a whole unit of 100 percent.
2. For a natural person the percentages of ownership held or the voting rights exercised by the natural person together with his/her close relatives shall be calculated together.
3. Voting rights shall be considered in the same way as percentages of ownership.

If the change mentioned under Article 37 Paragraph (1) or the modification occurs only with regard to the indirect ownership in the financial enterprise, then in order to institute the authorisation procedure the applicant shall be obliged to submit the documents listed under Article 37 Paragraph (5) of the ACIFE.

Pursuant to Article 37/A Paragraph (3), when establishing the percentage of the qualified influence the following voting rights shall also be considered in addition to the percentage held by the applicant:

a) The voting rights of an investment fund manager or of an undertaking for collective investment in transferable securities (to mean the manager of a European investment fund as specified under Articles 284-288 of the Capital Market Act, also known as a fund manager managing a UCITS fund), if the investment fund manager or the enterprise managing the UCITS fund may exercise the voting rights associated with its managed securities on the basis of instructions issued directly, indirectly or in some other way by the applicant or by another enterprise controlled by the applicant;

b) The voting rights of a credit institution or of an investment enterprise, if the credit institution or the investment enterprise may exercise the voting rights associated with its managed portfolio on the basis of instructions issued directly, indirectly or in some other way by the applicant or by another enterprise controlled by the applicant.

Pursuant to Paragraph (4) of the referenced Article the following voting rights shall be considered as the voting rights of the applicant:

a) Voting rights that may be exercised by the applicant and a third party on the basis of an agreement that enables the parties to the agreement to exercise their voting rights in a coordinated way;

b) Voting rights that the applicant may exercise on the basis of an agreement for a temporary transfer of voting rights;

c) Voting rights that the applicant may exercise on the basis of an agreement in relation to ownership shares placed with him/her as collateral;

d) Voting rights that the applicant may exercise on the basis of a right of enjoyment related to the ownership share;

e) Voting rights that an enterprise controlled by the applicant may exercise on any basis included under sections a)-d);

f) Voting rights that the applicant as a custodian may exercise at his/her own discretion in the absence of specific instructions from the depositor;

g) Voting rights that a third party may exercise in his/her own name to the benefit of the applicant, on the basis of an agreement concluded with the applicant; or

h) Voting rights that the applicant as a proxy may exercise at his/her own discretion in the absence of specific instructions from the principal;

Article 37/A Paragraphs (5)-(6) of the ACIFE specify exceptions to the above for establishing the percentage of qualified influence, as follows: Article 37/A Paragraph (5) stipulates the following:

When establishing the percentage of qualified influence, it is not necessary to consider the voting rights of an enterprise controlled by the applicant, if the applicant and his/her controlled enterprise declare the following in writing at the time when the participation is acquired:

a) That they will not exercise the voting rights, or that the voting rights will be exercised by a third party independently of the applicant and of its controlled enterprise, and that the ownership share will be sold within one year of its acquisition;

b) That they may exercise the voting rights on the basis of specific instructions issued on paper or by way of an electronic device by a third party that is independent of the applicant and of its controlled enterprise;

c) That they will not participate in making decisions for the appointment or dismissal of the members of the financial institution's decision making, executive or supervisory organs or bodies.

Article 37/A Paragraph (6) provides as follows: "When establishing the percentage of qualified influence, it is not necessary to consider the voting rights of a credit institution or investment enterprise operating as an enterprise controlled by the applicant, if the credit institution or the investment enterprise holds a license to engage in portfolio management activities, and may exercise the voting rights associated with its managed portfolio

- a) On the basis of instructions issued on paper or by way of an electronic device;
- b) Independently of the applicant.

The contents of an application for authorisation:

For an application for authorisation the applicant shall submit the documents as specified under Article 17 Paragraph (1) Sections *g*, *h*) and under Article 17 Paragraphs (2)-(3) (see the documents listed in detail for the founding of an investment enterprise).

Furthermore, pursuant to Article 37 Paragraph (5) an application for authorisation shall contain the following:

- a) Designation of the holders of qualified influence in the financial institution;
- b) Indication of the ownership share held by the applicant in an enterprise that holds a qualified influence in the financial institution;
- c) The percentage of ownership that the applicant intends to acquire;
- d) The contractual offer made for the acquisition of ownership or for the agreement to ensure significant benefits attached to voting rights;
- e) For a person who holds a senior officer position at the applicant, the facts required to make a judgement on the grounds for exclusion as specified under Article 44 Paragraph (4) and a declaration related to the criminal procedure as specified under Article 44 Paragraph (6).

Rejection of an application (Article 39 Paragraphs (1)-(2) of the ACIFE)

The HFSA shall reject the application (as specified under Article 37 Paragraphs (1) and (3) of the ACIFE) to authorise the acquisition or increase of a qualified influence, if the applicant (also to include its owner or senior officer)

- Engages in activities or exerts influence on the financial institution that threaten the independent, reliable and circumspect governance of the financial institution by its owners;
- Has business activities or contacts of a nature, or holds indirect or direct ownership shares in other enterprises in a structure that hinder the supervisory activities.

The activities of the applicant person or of its owner or of its senior officer, and their influence on the financial institution shall be considered a threat to the independent, reliable and circumspect governance of the financial institution by its owners if in particular

- Its economic situation cannot be considered as adequate in relation to the size of the acquisition subject to the offer;
- It is not possible to prove the lawful origin of the monetary assets used to acquire the ownership, or the veracity of the personal details of the person designated as the owner of the monetary assets;

- It does not meet the conditions established by the HFSA for the credit institution in the reconstruction plan;
- Its voting rights have been suspended by the HFSA within five years prior to the notification date;
- There are grounds for the exclusion of a natural person as set forth under Article 44 Paragraph (4).

In order to verify any facts or circumstances as specified under Article 39 Paragraphs (1)-(2) of the ACIFE and as referenced above, the HFSA may request any of the interested parties to provide any such data or information that it may handle on the basis of its legislative authorisation. (Article 39 Paragraph (4) of the ACIFE)

Authorisation of an application for the acquisition of qualified influence with the suspension of voting rights (Article 39 Paragraph (3) of the ACIFE)

If there is no circumstance to justify a refusal to grant license for a qualified influence, but if the applicant who is a natural person is subject to an ongoing criminal procedure as specified under Article 44 Paragraph (6), then the HFSA may grant license with the suspension of the voting rights of the owner until the criminal procedure is completed.

Other provisions:

If the conditions for the acquisition of a qualified influence are no longer met, then the HFSA may suspend the voting rights of the owner until the unlawful condition is eliminated or until repeated proof is provided that the conditions are met. (Article 39 Paragraph (5) of the ACIFE)

If an owner of the financial institution is not allowed to exercise his/her voting rights pursuant to the provisions of some Act, then such voting rights shall not be considered when establishing whether or not a quorum is present. (Article 39 Paragraph (6) of the ACIFE)

An authorisation by the HFSA shall not substitute for an authorisation by the Hungarian Competition Authority for the acquisition of control. (Article 39 Paragraph (7) of the ACIFE)

If the prescribed application for authorisation is not submitted, if the application is rejected, if the prescribed disclosure obligation is not met, or if the disclosure of data is refused, then the HFSA may prohibit the exercise of the voting rights originating from the contract for the acquisition of ownership or to ensure the benefit, until the corresponding statutory conditions are met. (*Article 40 of the ACIFE*)

Deadline for the completion of an authorised transaction

With regard to this, Article 39/A Paragraph (2) of the ACIFE stipulates as follows: "If the acquisition of a qualified influence or an increase of an existing qualified influence is not refused by the HFSA, then it may set a deadline for the completion of the transaction, which may not exceed six months.

Administrative service fee

Decree No. 12/2002 (of February 20) issued by the Minister of Finance on administrative service fees payable for public administration procedures instituted by the Hungarian Financial Supervisory Authority does not prescribe a fee payment obligation in this authorisation procedure.

Prohibition of the exercise of voting rights

If the prescribed application for authorisation is not submitted, if the application is rejected, if the prescribed disclosure obligation is not met, or if the disclosure of data is refused, then the HFSA may prohibit the exercise of the voting rights originating from the contract for the acquisition of ownership or to ensure the benefit, until the corresponding statutory conditions are met. (Article 40 of the ACIFE)

Notification obligation in relation to the acquisition or change (increase, reduction) of qualified influence - after obtaining authorisation from the authority

1/ By the person acquiring/increasing/reducing his/her qualified influence:

A person shall be obliged to notify the HFSA within thirty days of signing a contract,

- a) If he/she has acquired a qualified influence in a financial institution;
- b) If he/she has modified his/her qualified influence so
 - 1 That it reaches the threshold value of twenty, thirty three or fifty percent; or
 - 2 That it no longer reaches the threshold value of twenty, thirty three or fifty percent; or
- c) Has signed an agreement ensuring significant benefits in relation to ownership rights or voting rights, or has amended such an agreement. (Article 41 Paragraph (1) of the ACIFE)

2/ By the involved financial enterprise:

The financial institution shall notify the HFSA in writing within five working days if it learns about the acquisition, sale or modification of an ownership share of a percentage as specified under Articles 37-38. (Article 41 Paragraph (2) of the ACIFE)

Notification obligation without the obligation to obtain authorisation - for the termination or reduction of qualified influence and the election of a new senior officer

A person holding a qualified influence in a financial enterprise shall be obliged to notify the HFSA two days in advance of signing a contract, if

- a) He/she intends to completely terminate the qualified influence, or
- b) He/she intends to modify his/her qualified influence so that it is reduced to below a threshold value of twenty, thirty three or fifty percent. (Article 38 Paragraph (1) of the ACIFE)

A person holding a qualified influence in a financial enterprise shall be obliged to notify the HFSA within two days if he/she has elected a new senior officer. (Article 38 Paragraph (2) of the ACIFE) This notification - in the case of Article 38 Paragraph (1) Section b) - shall also

contain the remaining ownership share, the percentage of the voting rights, or the amendment of the contract ensuring a significant benefit.