

Act CL of 2009 on the amendment of certain acts governing financial matters introduced new definitions for the agent activities defined in Chapter I 12 a) b) and c.) of Schedule 2 of the CIFE Act, which was effective until 31 December 2009.

Article 6/C (1) of the CIFE Act, as modified from 1 January 2010, defines actors mediating financial services as **Intermediaries** and distinguishes them as to whether they perform their services as an **independent** or a dependent **intermediary**.

Intermediaries

Independent intermediaries	Dependent intermediaries
multiple special intermediary Article 6/C (1) ba) of the CIFE Act	special intermediary Article 6/C (1) aa) of the CIFE Act
multiple agent Article 6/C (1) bb) of the CIFE Act	agent Article 6/C (1) ab) of the CIFE Act
broker Article 6/C (1) bc) of the CIFE Act	payment services intermediary Article 6/C (1) ac) of the CIFE Act

Dependent Intermediaries

	Dependent Intermediaries	
	Financial institution or payment institution	
special intermediary Article 6/C (1) aa) of the CIFE Act	agent Article 6/C (1) ab) of the CIFE Act	payment intermediary Article 6/C (1) ac) of the CIFE Act

Independent intermediaries
Multiple special intermediary Article 6/C (1) ba) of the CIFE Act
Multiple agent Article 6/C (1) bb) of the CIFE Act
Broker Article 6/C (1) bc) of the CIFE Act

A dependent intermediary does not need an operational licence for pursuing intermediary activities, while the financial institution using the services of a dependent intermediary must apply for a permit to use an intermediary. [Article 14 (1) h) of the CIFE Act]

The activities of independent intermediaries do not relate to the financial services of one specific financial institution, therefore independent intermediaries may perform their intermediary services pursuant to an operational licence issued by the Supervisory Authority.

I. Independent intermediaries, mediating financial services are

1. **multiple special intermediaries** specified in Article 6/C (1) ba) of the CIFE Act;
2. **multiple agents** specified in Article 6/C (1) bb) of the CIFE Act;
3. **brokers** specified in Article 6/C (1) bc) of the CIFE Act.

Multiple special intermediaries, multiple agents and brokers classified as independent intermediaries **may perform their intermediary services only based on a licence of the Supervisory Authority** specified in the Act. [Article 6/C (3) of the CIFE Act]

A special intermediary may perform intermediary services with regard to competitive financial services of several financial institutions pursuant to an operational licence of the Supervisory Authority issued **to a multiple special intermediary** specified in Point I/1 above.

The concept of **special intermediary service** is defined in Chapter I.12.1 of Schedule 2 of the CIFE Act: ‘**activities pursued for, within the scope of an agency contract with the financial institution, in the name and on behalf of, and at the risk of a financial institution, for the purpose of promoting the conclusion of a contract for the supply financial services or auxiliary financial services, including also a commitment made or a contract concluded, in the name or for the benefit and at the risk of, the financial institution.**’

An **intermediary** may perform **agent services related to competitive financial services of several financial institutions as a multiple agent**, specified in Point I/2 above, pursuant to an **operational licence** issued by the Supervisory Authority.

The **agency activity** specified in Chapter I.12.2 of Schedule 2 of the CIFE Act is a service performed **within the scope of an agency contract concluded with the financial institution for the promotion of the supply of financial services and auxiliary financial services, and the conclusion of a contract for such services, within the framework of which the agent does not assume any commitment or enter into any contract at the risk** of the financial institution.

The **concept of competitive services** is defined in Chapter III.19 of Schedule 2 of the CIFE Act (Interpretative provisions) as follows:

a) credit and loan or real estate leasing, offered for the shortest term of five years or more, secured against a mortgage on the real property (including also an independent charge),

b) credit loan and financial leasing offered for the longest term of not more than five years, secured against a mortgage established on the real property (including also an independent charge) and any credit or loan offered without a mortgage established on the real property serving as collateral, including also a credit facility and credit card attached to a payment account (bank account);

c) deposit and payment account (bank account).

A **broker**, specified in Point I/3 above, requires an **operational licence** of the Supervisory Authority in order to perform **brokerage services** defined in Chapter I.12.4 of the Schedule 2 of the CIFE Act as follows: **an activity performed on the basis of a contract concluded with, and on behalf of, a client** intending to use financial services **for the purpose of selection and assistance in the conclusion of a contract on financial services with the financial institution, without assuming any risk on behalf or for the benefit of the client.**

II. Pursuant to Article 6/C (1) of the CIFE Act, a **dependent intermediary activity** is

1. the **special intermediary activity**¹, specified in subpoint aa), which involves the intermediation of **non-competitive** financial services of **one** financial institution (including also a group of financial institutions), **or several** financial institutions;
2. the **agent activity**², specified in subpoint ab) which involves the intermediation of **non-competitive** financial services of **one** financial institution (including also a group of financial institutions), **or several** financial institutions;
3. the **payment intermediary activity**³ specified in subpoint ac), which involves the intermediary services performed for a payment institution.

Procedures for the employment of Dependent intermediaries:

- **ATTENTION!!** Of the Dependent intermediaries **permission is required for the employment of special intermediaries** only, but the application must be submitted by **the financial institution employing the intermediary (credit institution/financial enterprise)** and not by the intermediary. (Pursuant to Article 14 (1) h) and Article 15 (1) f) of the CIFE Act) The special intermediary must certify only that he fulfils the requirements specified by law.

No permission is required from the Supervisory Authority for employing a dependent agent [Article 3 (9) of the CIFE Act],

¹ for the definition of the concept of special intermediary activity see the multiple intermediary

² for the definition of the agent activity see the multiple agent

³ *Payment intermediary activity*: activities pursued, within the scope of a contract signed with the payment institution, for, in the name and on behalf of, and the risk of a payment institution, for the purpose of promoting the conclusion of a contract for payment and other services, including also contracts for payment services, concluded in the name for the benefit and at the risk of the payment institution; (I/12.3 of Schedule 2 of the CIFE Act)

For **payment intermediaries** classified as **dependent** intermediaries the **payment institution** intending to employ the intermediary **must report** to the Supervisory Authority if it intends to pursue payment services with the employment of a payment intermediary. The report on the employment of an intermediary must **be submitted** to the Supervisory Authority **within five working days from the conclusion of the contract**, in compliance also with the provisions of **Article 18/B (1)** of the CIFE Act.

III. Transitional provisions:

Pursuant to Article 170 (10) of Act CL of 2009 the **independent intermediaries** listed above

may pursue their activities without an operational licence until 30 September 2010.

The above provision also applies to companies operating as a) or b)-type agents based on a licence or notification under the previous regulations if, based on the activities pursued by them, they are classified as independent intermediaries after 1 January 2010, and also to the independent intermediaries intended to be employed by financial institutions after 1 January 2010.

From 1 January 2011 all intermediaries must fulfil the professional requirements stated in Article 219/D of the CIFE Act on top of which independent intermediaries must also satisfy the requirements stated in Article 13/E of the CIFE Act.

Pursuant to the provisions of the Article 14 (1) h) and Article 15 (1) f) of the CIFE Act, the financial institution employing intermediaries **must apply to the Supervisory Authority** for the permission of the employment of special intermediaries and multiple special intermediaries after 1 January 2010, **even during the period until 30 September 2010 in order to establish a contract between the principal and the intermediary.**

IV. Rules of the licensing/notification procedure with regard to the various actors of the intermediary system based on the assignment of a financial institution (credit institution/financial enterprise)

IV./1. Dependent intermediaries

IV./1.1. Special intermediary:

- the financial institution acting as principal must apply to the Supervisory Authority for pursuing financial services with the employment of a major intermediary by submitting the contract concluded with the intermediary (*Article 14 (1) h) and 15 (1) f) of the CIFE Act*),

- during the permission granting procedure requested by the financial institution acting as principal, the intermediary must certify that the personal and physical conditions specified in Article 13 of the CIFE Act are in place.

IV./1.2. Dependent agent:

- a dependent agent may perform agent services for financial institutions (credit institution/financial enterprise) **without the** Supervisory Authority's **permission**, yet

- the financial institution acting as principal must report to the Supervisory Authority the dependent agent in a manner and at the frequency specified by the Authority, (*Article 3 (9) and (10) of the CIFE Act*)

- the dependent agent must certify to the financial institution acting as principal that the physical requirements of pursuing the financial service specified in Article 13 of the CIFE Act are fulfilled.

IV./1.3. Payment intermediary:

The notification of a payment institution on the employment of an intermediary must contain the following information

- the payment intermediary's identification data specified in Chapter 1 of *Schedule 3*,
- a certificate stating that the payment intermediary satisfies the personal and physical requirements of the supply of the financial service,
- the contract between the parties, which also contains a provision, whereby the Supervisory Authority, the NBH acting within its competence and the principal may check the activities related to the service stated in the contract and the business books and records and the payment intermediary without any limitation,
- the payment intermediary's regulations and procedures on the prevention and combating of money laundering and terrorist financing,
- a certificate of the financial intermediary, issued within the previous thirty days, stating that he does not have any debt towards the competent tax authority, customs authority or social security agency,
- for natural persons the certificate of no criminal record, issued not more than within the previous 90 days, or the equivalent document according to the applicant's personal rights,
- for non-natural persons the Deed of Foundation, effective at the time of the notification and a certificate, issued within the previous thirty days stating that the entity was registered (entered into the records) according to the law applicable to it, and that it is not subject to bankruptcy, liquidation or winding-up procedures, as well as the documents of the Chief Executive Officer specified in Point *f*),
- a declaration in the form of a private document constituting full legal proof, stating that the payment intermediary consents to the verification of the document attached to the notification by the agencies assigned by the Supervisory Authority.

The Supervisory Authority **refuses to register the payment intermediary** if the items listed above are not complete, or they are not submitted in the required manner and the request for supplementation also leads to no result. [Article 18/B (5) of the CIFE Act]

IV./2. Licensing of activities of independent intermediaries

IV./2.1. General rules applicable to independent intermediaries:

An independent intermediary – *multiple special intermediary, multiple agent, broker* – may intermediate financial services only in possession of a licence of the Supervisory Authority (*Article 6/C (3) of the CIFE Act*).

An independent intermediary may be only a legal entity, an economic organisation without legal personality or an individual contractor,

a) whose chief executive officer (including also the individual contractor) has no criminal record,

at least three years of professional experience in this field and, with the exception of the broker, satisfies the professional requirements stated in Article 219/D.

b) the losses arising from whose activity are covered, **with the exception of a broker**, by a liability insurance policy providing compensation of at least HUF 5 million by claim event or, in total at least HUF 50 million a year.

The following information must be attached to the application for an operational licence of an independent intermediary:

- the identification data specified in Chapter 1 of Schedule 3 of the CIFE Act,
- the applicant's Deed of Foundation, effective at the time of submission of the application, a certificate issued within the previous thirty days stating that the entity was registered (entered into the records) according to the law applicable to it, and that it is not subject to bankruptcy, liquidation or winding-up procedures, and that the Chief Executive Officer satisfies the requirements of Article 13/E (1) a),
- a declaration stating that the personal and physical requirements of the service are in place,
- the business regulations containing also the general terms and conditions of contracts applicable to the activities intended to be pursued,
- a declaration stating when he intends to start operating as an independent intermediary,
- a declaration stating that he has prepared for the data supply, specified in and based on, the legal regulations,
- a declaration, in the form of a private document constituting full legal proof, stating that he consents to the verification of the contents of the document attached to the licence application by agencies assigned by the Supervisory Authority (*Article 18/C (1) of the CIFE Act*).

IV./2.2. Multiple special intermediary:

Apart from the satisfaction of the licensing requirements stated in Article 18/C (1) of the CIFE Act, multiple special intermediaries must also certify the following in relation to their operational licence:

- operation in the form of a company limited by shares or a limited liability company, (*Article 8 (5) of the CIFE Act*)
- the availability of the total amount of HUF 50 million initial capital, (*Article 9 (11) and Article 18 (2) of the CIFE Act*)
- the regulations and procedures prepared in accordance with the Supervisory Authority's sample regulations in compliance with the provisions of Act CXXXVI of 2007 on the prevention and combating of money laundering and terrorist financing, (*Article 18 (2) of the CIFE Act*)

IV./2.3. Multiple agent:

The Supervisory Authority registers a notification of a financial institution (credit institution/financial enterprise) on the employment of a multiple agent if the multiple agent possesses a provisional operational licence of the Supervisory Authority [Article 3 (10) of the CIFE Act].

IV./2.4. Broker:

Apart from the certification of the licensing requirements stating in Article 18/C (1) of the CIFE Act, brokers must attach the following to their applications:

- a certificate proving that they possess a liability insurance policy providing compensation of HUF ten million by claim event and in total HUF one hundred million a year,
- the regulations and procedures prepared in accordance with the Supervisory Authority's sample regulations in compliance with the provisions of Act CXXXVI of 2007 on the prevention and combating of money laundering and terrorist financing, (*Article 18 (2) of the CIFE Act*)

IV./3. Intermediary's subcontractor:

The intermediaries may employ subcontractors for performing their activities. If an intermediary employs a subcontractor, then the financial institution's notification obligation also applies to the subcontractor pursuant to the provisions of Article 3 (10) of the CIFE Act. According to Article 3 (2) of the CIFE Act, the intermediary's subcontractor **may not enter into any further agency contracts.**

The Supervisory Authority registers the intermediary's subcontractor in accordance with Article 188 (1) of the CIFE Act.

V. Procedures of licensing of intermediaries employed for the extension of secured loans and currency exchange services.

V./1. Extension of secured loans by an intermediary:

If a financial institution (credit institution/financial enterprise) extends secured loans through an intermediary, it must employ a special intermediary (one agent for secured loans/one financial institution as principal) or a multiple special intermediary (one agent for secured loans/several financial institutions as principals).

The financial institution must attach the following information to its application for the employment of an intermediary:

- an agency contract with the special intermediary/multiple special intermediary, which also contains the provision, whereby the Supervisory Authority or the financial institution may check the major intermediary's/multiple major intermediary's services related to activity stated in the agency contract and business books without any limitation, (*Article 19 of the CIFE Act*)
- the business regulations on secured loans, approved by the Board of Directors of the financial institutions (if the business regulations do not regulate the procedures of the secured loans in detail, then also the internal regulations to be applied by the agent for secured loans in his branch),

- a list of term and conditions or announcement attached to the agency contract or to the business regulations (with regard to interest rates service charges, etc.)
- a three-year business plan concerning the activity,
- a declaration of the financial institution stating that the branch of the agent for secured loans satisfied a physical and technical requirements,

The following documents must be submitted in relation to the Intermediary:

For verifying **personal** requirements:

- a. certification of the valuer's qualifications with the relevant certificate (pursuant to the which the valuer can perform the activities stated in the agency contract)
- b. the certificate of no criminal record of the valuer and the cashier.

For verifying **physical** requirements:

- a. certification of the entitlement to use the site (Title Deed, lease contract),
- b. if the major intermediary/multiple major intermediary trades also in precious metals, then a notification is required on his registration by the precious Metal Attestation Directorate (operational license, if the intermediary is engaged in the retail trade of jewellery)
- c. property insurance, in which the credit institution is the beneficiary (the adequacy of the storage of money and valuables is verified by a professional insurance agent, otherwise the property insurance agreement is not signed),
- d. collateral items proposed as additional collateral securing the loan (security deposit, surety contract, mortgage agreement),
- e. specimen signature for verifying the legal status of the company,
- f. Deed of Association (agents of secured loans, already possessing a licence must submit it when the capital structure changes)

Compliance with the personal and physical requirements stated above must be certified not only for the issue of an operational licence, but also for the establishment of a new site.

- mortgage of surety agreements for collateral purposes,
- a declaration stating that the branch of the agent for secured loans operates with at least 2 people (indicating their names) and the distribution of tasks between them

V./2. Performance of currency exchange services by intermediary:

Only a special intermediary or multiple special intermediary may be licensed for the intermediation of **currency exchange services** (Article 16 (1) of the CIFE Act)

If a credit institution performs **currency exchange services** via an intermediary, it may employ only a **special intermediary** (one intermediary/one credit institution as principal), or a **special major intermediary** (one intermediary/several credit institutions as principals).

The credit institution must attach the following documents to its application for the employment of a major intermediary/multiple major intermediary:

- an agency contract with the major intermediary/multiple major intermediary, which also contains the provision, whereby the Supervisory Authority or the credit institution may check the special intermediary's/multiple special intermediary's services related to activity stated in the agency contract and business books without any limitation, (*Article 19 of the CIFE Act*)
- the business regulations governing the activity, approved by the Board of Directors of the credit institution,
- a declaration of the credit institution stating that the business premises satisfy the physical/technical requirements (*Article 13 of the CIFE Act*)

For the purpose of certifying the requirements of the law with regard to the intermediary, the following documents must be attached:

- a. the Deed of Foundation of the intermediary,
- b. a decision of the Court of Registration on the intermediary's registration and a Certificate of Incorporation prepared within the previous thirty days,
- c. a certificate, issued within the previous thirty days, stating that the intermediary does not have any debt towards the tax authority, customs authority or the social security agency,
- d. the document specifying the intermediary's envisaged area of operation (nation-wide or limited to specific reasons),
- e. presentation of the organisational structure, management, decision-making and control procedures of the Intermediary [if they are not contained in detail in the Deed of Foundation, only if the intermediation of currency exchange services is the intermediary's exclusive activity]
- f. the Intermediary's medium-term business year for the first three years of operation, [only if the intermediation of currency exchange services is the Intermediary's exclusive activity]
- g. a certificate stating that the Intermediary satisfies the personal and physical requirements of currency exchange services,
- h. the general contracting terms and conditions and the business regulations with regard to the activities to be pursued, approved by the credit institution,
- i. a declaration stating when the Intermediary intends to commence the currency exchange service,
- j. a declaration stating that the Intermediary has prepared for the data supply specified in a based on, the law,

(Article 3 (1) a)-j) of the 297/200. (XII.27.) Government Decree)

To verify compliance with the personal requirements, the following documents must be attached:

- a. the certificate of no criminal record for the executive officer(s) of the Intermediary, (*Article 5 a of the Government Decree*),

- b. the Intermediary's declaration stating that no reason of exclusion specified in Article 13 (4-5) of the CIFE Act applies to him,
- c. with regard to the party pursuing the currency exchange services directly:
 - a certificate recognised by the state, verifying the completion of the currency cashier and administration skills course,
 - a certificate of a language examination, recognised by the state, verifying at least basic level foreign language skills, (*Article 5 d) of the Government Decree*),
- d. certificate of no criminal record (*Article 5 a) of the Government Decree*).

The following documents must be attached **for verifying the physical requirements**:

- a. certificate of the availability of lockable premises, suitable for the activity (Title Deed, usage right, lease contract) (*Article 10 (1) a) of the Government Decree*),
- b. vault or wall-mounted safe for the safe storage of money (or a metal case if the turnover does not exceed HUF 100,000 a month on the premises), (*Article 10 (1) b) of the Government Decree*),
- c. instruments and accessories for checking the authenticity of currencies, currency and check bulletin, UV lamp and magnifier (*Article 10 (1) c) of the Government Decree*)
- d. at least one main telephone line (service contract with a telecommunication service provider), (*Article 10 (1) d) of the Government Decree*)
- e. list of exchange rates, (*Article 10 (1) e) of the Government Decree*)
- f. customer information board on exchange regulations in the English and German languages, (*Article 10 (1) f) of the Government Decree*)
- g. installation and operation of a technical device, which registers the processes taking place in the customer area on tape or in any other technical means suitable for reconstructing the events subsequently (camera) - certified with contract concluded with the company installing or operating the system, (*Article 11 (1) of the Government Decree*)
- h. internal professional regulations on currency exchange activities.