

(28 September 2018 – to date)

[This is the current version and applies as from **28 September 2018**, i.e. the date of commencement of further sections of the Financial Sector Regulation Act 9 of 2017 – to date]

## CREDIT RATING SERVICES ACT 24 OF 2012

*(Government Notice 15 in Government Gazette 36071 dated 14 January 2013. Commencement date: 15 April 2013 with the exception of section 3(2): 17 December 2013 [Proc. No. 271, Gazette No. 36337])*

### As amended by:

*Financial Services Laws General Amendment Act 45 of 2013 – Government Notice 15 in Government Gazette 37237, dated 16 January 2014. Commencement date: 28 February 2014, unless otherwise indicated [Government Notice 120, Gazette No 37351, dated 18 February 2014].*

*Financial Sector Regulation Act 9 of 2017 - Government Notice 853 in Government Gazette 41060 dated 22 August 2017. Commencement date of certain sections: **1 April 2018** [GenN 169 in Gazette 41549 dated 29 March 2018]*

*Financial Sector Regulation Act 9 of 2017 - Government Notice 853 in Government Gazette 41060 dated 22 August 2017. Commencement date of further sections: **28 September 2018** [GN 1019 in Gazette 41947 dated 28 September 2018]*

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

\_\_\_\_\_  
*(English text signed by the President)*  
*(Assented to 9 January 2013)*  
\_\_\_\_\_

## ACT

**To provide for the registration of credit rating agencies; to provide for the regulation of certain activities of credit rating agencies; to provide conditions for the issuing of credit ratings and rules on the organisation and conduct of credit rating agencies; and to provide for matters connected therewith.**

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

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Prepared by:

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## CHAPTER 1 DEFINITIONS, OBJECTS AND APPLICATION

### 1. Definitions and interpretation

(1) In this Act, unless the context indicates otherwise -

**"associate"**, in relation to -

(a) a juristic person -

(i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof as defined in section 1 of the Companies Act;

(ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;

(iii) which is not a company or close corporation, means another juristic person which would have been its subsidiary or holding company -

(aa) had it been a company; or

(bb) in the case where that other juristic person is not a company either, had both it and that other juristic person been a company;

(iv) means any person in accordance with whose directions or instructions its board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person, acts; or

(b) any person -

(i) means any juristic person whose board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person, acts in accordance with its directions or instructions; or

(ii) means a trust controlled or administered by the juristic person;

**"Authority"** means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;

*(Definition of "Authority" inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

**"Companies Act"** means the Companies Act, 2008 (Act No. 71 of 2008);

**"conduct standard"** has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;

*(Definition of "conduct standard" inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

**"credit rating"** means an opinion regarding the creditworthiness of -

(a) an entity;

(b) a security or a financial instrument; or

(c) an issuer of a security or a financial instrument,

using an established and defined ranking system of rating categories, excluding any recommendation to purchase, sell or hold any security or financial instrument;

**"credit rating agency"** means a person who provides credit rating services;

**"credit rating services"** means data and information analysis, evaluation, approval, issuing or review, for the purposes of credit ratings;

**"deputy registrar"** .....

*(Definition of "deputy registrar" deleted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

**"external credit rating"** means a credit rating issued by an external credit rating agency;

**"external credit rating agency"** means a person who provides credit rating services and who is authorised or registered by a regulatory authority to perform credit rating services similar to those regulated under this Act and who is subject to the laws of a country other than the Republic, which laws-

- (a) establish a regulatory framework which is approved by the registrar as being equivalent to that established by this Act; and
- (b) are supervised and monitored by a regulatory authority;

**"Financial Sector Regulation Act"** means the Financial Sector Regulation Act, 2017;

*(Definition of "Financial Sector Regulation Act" inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

**"Financial Services Board Act"** .....

*(Definition of "Financial Services Board Act" deleted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

**"FSB official website"** .....

*(Definition of "FSB official website" deleted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

**"group"** means a group consisting of two or more juristic persons, irrespective of whether any of those persons is domiciled in the same country as any of the others, and one or more of which is a credit rating agency, where -

- (a) each of the juristic persons is an associate of any one of the others; or
- (b) the juristic persons are so interconnected that should one of them experience financial difficulties, another one or all of them would likely be adversely affected;

**"Minister"** means the Minister of Finance;

**"outsource"** means the contracting out of a function to an external provider in a manner that may materially impair the quality of the internal control of the registered credit rating agency and the ability of the registrar to supervise the compliance of the registered credit rating agency with its obligations under this Act;

**"person"** means any natural person, partnership or trust, and includes -

- (a) an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;
- (b) any company incorporated or registered as such under any law; or
- (c) any body of persons, corporate or unincorporate;

**"prescribe"** .....

*(Definition of "prescribe" deleted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

**"Promotion of Administrative Justice Act"** means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

**"publish"** means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person seeks to bring any information to the attention of a person, or all or part of the public, and **"published"**, **"publishes"** or **"made public"** has a corresponding meaning;

**"public regulation"** means any legislation, including subordinate legislation, or any registration, licence, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;

**"rating category"** means a rating symbol, such as a letter symbol or a numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the type of rated entity, issuer or financial instrument or other asset;

**"Register"** means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;

*(Definition of "Register" inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

**"registrar"** .....

*(Definition of "registrar" deleted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

**"registered credit rating agency"** means a credit rating agency or an external credit rating agency registered in terms of section 5;

**"regulated person"** means a person that has been granted authority to conduct business or activities by a regulatory authority;

**"regulatory authority"** means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996, responsible for the supervision or enforcement of legislation dealing with the regulation of institutions and the provision of financial services, or a similar body designated in the laws of a country other than the Republic to supervise and enforce legislation of that country;

**"regulatory purposes"** means the use of credit ratings for the specific purpose of complying with national legislation or the listings requirements made by an exchange under section 11 of the Financial Markets Act, 2012 (Act No. 19 of 2012);

*(Definition of "regulatory purposes" substituted by section 261 of Act 45 of 2013)*

**"rule"** means a rule made in terms of section 24;

**"structured finance instrument"** means a financial instrument or other asset resulting from a securitisation transaction or other structured financial transaction or scheme;

**"this Act"** includes the regulations, rules and any notices or directives issued, exemption granted, determinations made, requirements determined or conditions imposed by the registrar, that have general application; and

**"Tribunal"** means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;

*(Definition of "Tribunal" inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

**"website"** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

- (2) For purposes of this Act, any reference to "company", "holding company" or "subsidiary" means a reference to a company, holding company or subsidiary, as the case may be, as defined in the Companies Act, or a similar entity incorporated under the laws of a country other than the Republic.
- (3) Any decision or other action of an administrative nature taken by the registrar that affects the rights of another person, including a regulated person, must comply with the Promotion of Administrative Justice Act or this Act.

- (4) Nothing in this Act deprives any person of any right that such person holds under the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- (5)
- (a) A registered credit rating agency that publishes any information or any credit rating in the performance of credit rating services or is required to publish, disclose, produce or provide a policy, code, document or information under this Act, must publish, disclose, produce or provide that credit rating, information, policy, code or document -
- (i) in a prescribed form; or
- (ii) in plain language, if no form has been prescribed.
- (b) For the purposes of this Act, a credit rating, policy, code, document or information is in plain language if it is reasonable to conclude that a person of the class of persons for whom the credit rating, policy, code, document or information is intended, with average literacy skills and experience in dealing with credit ratings, credit rating services and credit rating agencies, could be expected to understand the content, significance and import of the credit rating, information, policy, code, document or information without difficulty, having regard to -
- (i) the context, comprehensiveness and consistency of the credit rating, information, policy, code, document or information;
- (ii) the organisation, form and style of the credit rating, policy, code, document or information;
- (iii) the vocabulary, usage and sentence structure of the credit rating, policy, code, document or information; and
- (iv) the use of any illustrations, examples, headings or other aids to reading and understanding the credit rating, policy, code, document or information.
- (6) If, in terms of this Act, a credit rating, policy, code, document, information, record or statement is required to be -
- (a) retained, it is sufficient if an electronic original or reproduction of that credit rating, policy, code, document, information, record or statement is retained as provided for in sections 15 and 16 of the Electronic Communications and Transactions Act, 2002 (Act. No. 25 of 2002); or
- (b) published, disclosed, produced or provided, it is sufficient if -
- (i) an electronic original or reproduction of that credit rating, policy, code, document, information, record or statement is published, disclosed, produced or provided by electronic



communication in such a manner and form that the credit rating, policy, code, document, information, record or statement can conveniently be printed by the recipient within a reasonable time and at a reasonable cost; or

- (ii) a notice of the availability of that credit rating, policy, code, document, information, record or statement, summarising its content and satisfying any prescribed requirements, is delivered to each intended recipient of the policy, code, document, information, record or statement, together with instructions for receiving the complete policy, code, document, information, record or statement.

- (7) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.

*(Section 1(7) added by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

#### **1A. Relationship between Act and Financial Sector Regulation Act**

- (1) A reference in this Act to the registrar must be read as a reference to the Authority.

*(Section 1A(1) inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

- (2) Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.

*(Section 1A(2) inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

- (3) A reference in this Act to the Authority determining or publishing a matter by notice in the *Gazette* must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.

*(Section 1A(3) inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

- (4) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed, a reference in this Act to a matter being—

- (a) prescribed must be read as a reference to the matter being prescribed in a conduct standard; or
- (b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.

*(Section 1A(4) inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

- (5) A reference in this Act to an onsite visit in terms of a provision of this Act must be read as a reference to a supervisory on-site inspection in terms of the Financial Sector Regulation Act.

*(Section 1A(5) inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

- (6) A reference in this Act to an inspection in terms of a provision of this Act must be read as a reference to an investigation in terms of the Financial Sector Regulation Act.

*(Section 1A(6) inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

(7)

- (a) A reference in this Act to the Authority announcing or publishing information or a document on a web site must be read as a reference to the Authority publishing the information or document in the Register.

- (b) The Authority may also publish the information or document on its web site.

*(Section 1A(7) inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

- (8) A reference in this Act to a prescribed fee must be read as a reference to the relevant fee determined in terms of section 237 and Chapter 16 of the Financial Sector Regulation Act.

*(Section 1A(8) inserted by section 290 of Act 9 of 2017, with effect from 1 April 2019)*

- (9) A reference in this Act to a review of a decision of the Authority must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

*(Section 1A(9) inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

## **1B. Regulatory instruments**

For the purposes of the definition of “regulatory instrument” in section 1(1) of the Financial Sector Regulation Act, any matter prescribed by the Authority in respect of which notice in the Gazette is specifically required by this Act is a regulatory instrument.

*(Section 1B inserted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

## **2. Objects of Act**

The objects of this Act are to -

- (a) ensure responsible and accountable credit rating agencies;
- (b) protect the integrity, transparency and reliability of the credit rating process and credit ratings;
- (c) improve investor protection;
- (d) improve the fairness, efficiency and transparency of financial markets; and
- (e) reduce systemic risk.

### **3. Application of Act**

- (1) Subject to subsection (4), this Act applies to -
  - (a) credit rating services performed in the Republic;
  - (b) credit ratings that are issued by credit rating agencies registered in the Republic; and
  - (c) any person that performs credit rating services or issues credit ratings in the Republic.
- (2) With effect from a date determined by the Minister by notice in the *Gazette*, a person may not perform credit rating services or issue a credit rating in the Republic, unless that person is a registered credit rating agency.

*(Commencement date of section 3(2): 17 December 2013)*

- (3) This Act does not create a general obligation for -
  - (a) all securities or financial instruments to be credit-rated;
  - (b) financial institutions or investors to invest only in entities, securities or financial instruments that are credit-rated.
- (4) This Act does not apply to private credit ratings and private credit rating services produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription.

### **4. Use of credit ratings**

- (1) Where a regulated person uses published credit ratings for regulatory purposes, such a regulated person must only use credit ratings that are -
  - (a) issued or endorsed by credit rating agencies which are registered in accordance with this Act; or
  - (b) issued or endorsed by an external credit rating agency approved by the registrar.
- (2) The registrar may prescribe additional requirements in respect of the use of credit ratings for regulatory purposes.

## **CHAPTER 2 REGISTRATION**

### **5. Application for registration**

Prepared by:

- (1) An application for registration as a registered credit rating agency must be made in the form and manner prescribed by the registrar, and must be lodged with the registrar and be accompanied by -
  - (a) a certificate of incorporation of the applicant under the Companies Act, where the applicant is located in the Republic, or proof of registration of the applicant as an external company under the Companies Act, where the applicant is an external credit rating agency.
  - (b) details of its -
    - (i) incorporation, registration, authorisation or approval in countries other than the Republic to undertake credit rating services, if applicable;
    - (ii) ownership structure, organisational structure and corporate governance;
    - (iii) subsidiaries, if any;
    - (iv) resources and expertise to perform credit rating services;
    - (v) programme of operations, including indications of where the main business activities are expected to be carried out, branches are to be established, and the type of business that will be undertaken;
    - (vi) expected outsourcing arrangements, including details of the persons that will be assuming outsourcing functions;
    - (vii) policies and procedures to identify, manage and disclose any conflicts of interests;
    - (viii) compensation and performance evaluation arrangements; and
    - (ix) compliance with or adherence to the code of conduct prescribed in terms of section 11;
  - (c) a description of the procedures and methodologies to be used to issue and review credit ratings;
  - (d) information to satisfy the registrar that the applicant, its directors and employees comply with the fit and proper requirements prescribed by the registrar, in respect of -
    - (i) personal character qualities of honesty and integrity;
    - (ii) competence;
    - (iii) operational ability; and

- (iv) financial soundness;
  - (e) the application fee prescribed by the registrar; and
  - (f) any other information prescribed by the registrar.
- (2) An applicant must promptly amend its application for registration and inform the registrar if, during the application process, the information contemplated in subsection (1) becomes inaccurate.
- (3) The registrar may exempt an applicant who, or whose holding company, or a related company in the same group, is registered, authorised or approved by a foreign regulatory authority as a credit rating agency from providing some or all of the information required under subsection (1), if -
- (a) the applicant requests an exemption;
  - (b) the applicant provides proof of such registration, authorisation or approval; and
  - (c) the registrar is satisfied that such registration, authorisation or approval was granted in accordance with public regulation that is equivalent to this Act.
- (4) The registrar must give notice of the receipt of an application on the FSB official website, which notice must state -
- (a) the name of the applicant; and
  - (b) the period within which objections to the application may be lodged with the registrar.
- (5) The registrar may -
- (a) require an applicant to furnish additional information and require that information or any information that accompanied the application to be verified; and
  - (b) take into consideration any other information regarding the applicant, derived from any other source, including another regulatory authority.
- (6)
- (a) The registrar must, after consideration of an application and after consultation with any local regulatory authority that relies on, refers to or uses credit ratings in its supervision and regulatory activities -

- (i) if satisfied that an applicant complies with the requirements of this Act, grant the application; or
  - (ii) if not so satisfied, subject to paragraph (b), refuse the application.
- (b) If an application is refused, the registrar must -
- (i) notify the applicant of the refusal;
  - (ii) provide the applicant with written reasons for the refusal; and
  - (iii) advise the applicant of the right to appeal, in accordance with section 33.
- (7) The registrar may grant an application subject to any condition that the registrar may determine, which condition may not be inconsistent with this Act.
- (8) The registrar must, on granting an application, issue a certificate of registration to the credit rating agency and publish a notice of the registration on the FSB official website.
- (9) A registered credit rating agency must ensure that -
- (a) a reference to the fact that such a certificate of registration is held, is contained in all business documentation and advertisements; and
  - (b) its certificate of registration is at all times available to any person requesting proof of its registration status under authority of a law or for the purpose of entering into a business relationship with the registered credit rating agency concerned.
- (10) The registrar must maintain a list on the FSB official website of registered credit rating agencies.

## **6. Suspension and cancellation of registration**

- (1) The registrar may, after consultation, where applicable, with any local regulatory authority that relies on, refers to or uses credit ratings in its supervision and regulatory activities, at any time, suspend or cancel the registration of a registered credit rating agency if the registrar is satisfied, on the basis of available facts and information, that the registered credit rating agency -
- (a) expressly renounces the registration or has provided no credit rating services for the preceding six months;
  - (b) has obtained the registration by providing false information or by any other irregular means;

- (c) no longer meets the conditions under which it was registered;
  - (d) has failed to comply with any condition imposed under this Act;
  - (e) has failed to comply with any directive issued under this Act; or
  - (f) has been liquidated.
- (2)
- (a) If the registrar suspends or cancels the registration of a registered credit rating agency under subsection (1), the registrar may do so subject to any conditions that the registrar may determine, which conditions may not be inconsistent with this Act.
  - (b) The registrar may revoke any suspension under subsection (1) if the registrar is satisfied that the registered credit rating agency has complied with all the conditions to which the suspension was made subject.
- (3) Subject to the provisions of the Promotion of Administrative Justice Act, the registrar must, before the suspension or cancellation of a registration -
- (a) notify the registered credit rating agency in writing of the registrar's intention to suspend or cancel the registration and the reasons therefor;
  - (b) give the registered credit rating agency 30 days' written notice, calculated from the date on which the notice was given, to make representations on why its registration should not be suspended or cancelled; and
  - (c) consider any representations received.
- (4)
- (a) The registrar must notify the registered credit rating agency of its decision and publish a notice of any suspension or cancellation of registration, the reasons therefor and any conditions attached thereto on the FSB official website and any other appropriate media.
  - (b) The suspension or cancellation of the registration of a registered credit rating agency takes effect on a date specified in the notice contemplated in paragraph (a).
  - (c) If a registered credit rating agency has appealed against a suspension or cancellation of registration, the registrar must not publish the notice contemplated in paragraph (a) until the appeal process has been finalised.
- (5)

- (a) Credit ratings issued by a credit rating agency whose registration has been suspended or cancelled, may continue to be used for regulatory purposes for -
  - (i) 14 days after the publication of the notice contemplated to in subsection (4)(a), if credit ratings of such credit rating agency were also issued by other credit rating agencies registered under this Act; or
  - (ii) three months after the publication of the notice contemplated in subsection (4)(a), if no credit ratings of such credit rating agency were issued by other credit rating agencies registered under this Act.
- (b) The registrar may extend the period referred to in paragraph (a)(ii), in order to mitigate any potential market disruption or to ensure financial stability.

### **CHAPTER 3**

#### **DUTIES OF REGISTERED CREDIT RATING AGENCY**

#### **7. Duties**

A registered credit rating agency must -

- (a) comply with this Act;
- (b) provide the registrar with any information required in terms of this Act;
- (c) within 14 days of becoming aware of any change, inform the registrar if any information submitted in respect of its application under section 5 has changed;
- (d) be organised in a way that ensures that its business interest does not impair the independence and integrity of its credit ratings or the accuracy of its credit rating services;
- (e) have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguarding arrangements for information-processing systems;
- (f) establish appropriate and effective organisational and administrative arrangements to -
  - (i) prevent, identify, eliminate, manage or disclose any conflicts of interest of the registered credit rating agency, its analysts and employees; and
  - (ii) protect confidential information made available to it by issuers, including prohibiting its analysts and employees from using such information to enter into transactions;



- (g) employ appropriate systems, resources and procedures to ensure continuity and regularity in the performance of its credit rating services;
- (h) regularly monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements and take appropriate measures to address any deficiencies;
- (i) ensure that at all times it has the necessary knowledge and experience to issue credit ratings and perform its credit rating services; and
- (j) establish a unit within its organisation whose function is to communicate with investors, potential investors and the public about any questions, concerns or complaints that it may receive.

## **8. Appointment of directors**

- (1) A registered credit rating agency must, within 14 days after the appointment of a director, inform the registrar of the appointment and furnish the registrar with such information on the appointment as the registrar may require.
- (2) The provisions of subsection (1) may not be construed as rendering the appointment of a director of a registered credit rating agency subject to the approval of the registrar.
- (3) If the registrar is of the opinion that a director does not meet the prescribed fit and proper requirements contemplated in section 5(1)(d), the registrar may instruct a registered credit rating agency to remove that director from the board of the registered credit rating agency, and if so instructed, the registered credit rating agency must remove the director.
- (4) The registrar must, before instructing a registered credit rating agency to remove a director from its board, give notice to the registered credit rating agency concerned, and, unless it is impracticable to do so, also notify the director concerned.
- (5) The registrar must consider any representations received from the registered credit rating agency or director, as the case may be, regarding the instructions to remove such director.
- (6) The registered credit rating agency must ensure that the director concerned does not in any way, directly or indirectly, take part in the management of the registered credit rating agency, pending the final outcome of any action under section 33.

## **9. Methodologies, models and key rating assumptions**

A registered credit rating agency must -

- (a) adopt, implement and enforce adequate measures to ensure that the credit ratings it issues, are based on a thorough analysis of all the information that is available to it and that is relevant to its analysis according to its rating methodologies;
- (b) use rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing;
- (c) regularly review its methodologies, models and key rating assumptions such as mathematical or correlation assumptions, any significant changes or modifications to them and the appropriateness of those methodologies, models and key rating assumptions if they are used or are intended to be used for the assessment of new financial instruments; and
- (d) establish internal arrangements to monitor the impact of changes in macro-economic or financial market conditions on credit ratings.

## 10. Credit ratings

- (1) A registered credit rating agency must -
  - (a) publish any credit rating or any decision to discontinue a credit rating impartially and timeously;
  - (b) when publishing a credit rating -
    - (i) state clearly and prominently any attributes and limitations of the credit rating; and
    - (ii) provide an explanation of the key elements underlying the credit rating, so that an investor, a potential investor or a member of the public, as the case may be, is able to understand how a rating was arrived at; and
  - (c) monitor credit ratings and regularly review its credit ratings.
- (2) A registered credit rating agency must, when issuing a credit rating for a structured finance instrument, ensure that the rating categories that are attributed to structured finance instruments are clearly differentiated, using an additional symbol which distinguishes them from rating categories used for any other entities, securities, financial instruments or issuers.
- (3) A registered credit rating agency must disclose its policies and procedures regarding unsolicited credit ratings.
- (4) A registered credit rating agency must refrain from issuing a credit rating if the lack of reliable data, the complexity of a new type of financial instrument or the quality of information available may result in a non-credible credit rating.

## 11. Code of conduct

- (1) A registered credit rating agency must adopt, publish and adhere to a code of conduct that -
  - (a) adopts the principles contained in a relevant international code of conduct prescribed by the registrar; and
  - (b) describes how the code of conduct will be enforced.
- (2) A registered credit rating agency must publish any changes to its code of conduct.
- (3) A registered credit rating agency must publish on an annual basis any material deviations of its code of conduct from that of the code of conduct prescribed by the registrar in subsection (1)(a) and the reasons therefor.

## 12. Outsourcing and other services

- (1) A registered credit rating agency may not, without the prior written approval of the registrar, outsource any of its operational functions, save for outsourcing to an entity in the same group as the registered credit rating agency.
- (2) A registered credit rating agency may provide services ancillary to its credit rating services, as prescribed by the registrar.

## 13. Disclosures

- (1) A registered credit rating agency must disclose to the public and its subscribers -
  - (a) the practices, procedures, processes, methodologies, models and key rating assumptions it uses in its credit ratings and credit rating services and any material modification thereto;
  - (b) its code of conduct;
  - (c) the general nature of its compensation arrangements; and
  - (d) its policy on publishing credit ratings and other related communication.
- (2) A registered credit rating agency must, every 12 months, disclose to the public and its subscribers data about the historical default rates of its rating categories.

- (3) A registered credit rating agency must provide prominent links to the disclosures contemplated in subsections (1) and (2) on its website.
- (4) A registered credit rating agency must annually disclose to the registrar -
  - (a) a list of its 20 largest clients by revenue, and the percentage of revenue that each of those 20 clients, individually or together with affiliates, contribute to the total annual revenue of the registered credit rating agency; and
  - (b) the name of any client who, individually or together with affiliates, contributes more than ten per cent to the total annual revenue of the registered credit rating agency.

#### **14. Records**

A registered credit rating agency must arrange for adequate records and, where appropriate, audit trails of its credit rating services, which must be kept for a minimum period of five years or such longer period as may be prescribed in any other applicable law.

#### **15. Annual report**

- (1) A registered credit rating agency must annually publish a report to the public, which report must include at least the following:
  - (a) detailed information on its legal structure and ownership;
  - (b) a description of its internal control mechanisms that ensure the quality of the credit rating services;
  - (c) a description of its record-keeping policy;
  - (d) the outcome of the annual internal review undertaken by its independent compliance unit;
  - (e) financial information on its revenue sources, divided into fees from credit rating services, ancillary services and other services; and
  - (f) any other prescribed information.
- (2) The annual report contemplated in subsection (1) must be -
  - (a) submitted to the registrar together with the audited financial statements of the registered credit rating agency; and

- (b) published within a period prescribed by the registrar or such later date as the registrar may allow on application by a registered credit rating agency and must remain available on the website of the registered credit rating agency for at least five years.

**16. Independent compliance unit**

- (1) A registered credit rating agency or the group to which the registered credit rating agency belongs, must establish and maintain a permanent, independent and effective compliance unit approved by the registrar in accordance with the criteria and guidelines prescribed by the registrar.
- (2) A registered credit rating agency must -
  - (a) ensure that the compliance unit has the necessary authority, resources, expertise and access to all relevant information; and
  - (b) appoint a compliance officer who is responsible for the compliance unit and for any compliance reporting, and inform the registrar of such appointment and the details of that person.
- (3) A compliance officer must -
  - (a) monitor and report to the registrar on the compliance of the registered credit rating agency and its employees in respect of the obligations of the registered credit rating agency under this Act and any codes, policies, procedures or systems required to be established under this Act;
  - (b) advise and assist the registered credit rating agency in complying with its obligations under this Act;
  - (c) report directly to the board of the registered credit rating agency;
  - (d) review compliance with policies and procedures to manage conflicts of interest and assess the risk of non-compliance for the integrity of the credit rating process;
  - (e) review compliance with internal controls with regard to the procedures and methodologies for determining credit ratings, including quantitative and qualitative models used in the rating process; and
  - (f) in consultation with the board of the registered credit rating agency, resolve, avoid or mitigate any conflicts of interest that may arise.
- (4) A compliance officer may not -
  - (a) perform credit ratings;

- (b) participate in the development of rating methodologies or models;
  - (c) perform marketing or sales functions; or
  - (d) participate in establishing compensation levels, other than for employees working for the compliance officer.
- (5) The compensation of a compliance officer by the registered credit rating agency may not be linked to the business performance of the registered credit rating agency, and shall be structured in a manner that ensures independence of judgment.
- (6)
- (a) A compliance officer must annually prepare a compliance report on the compliance of the registered credit rating agency with this Act and any codes, policies, procedures or systems required to be established under this Act.
  - (b) The compliance officer must submit the compliance report to the registrar, together with the audited financial statements of the registered credit rating agency.
- (7) The compliance officer must submit any other reports to the registrar in the prescribed manner.
- (8) Despite anything to the contrary contained in any law, a compliance officer must report to and inform the registrar in writing of any irregularity or suspected irregularity in the conduct or the affairs of the registered credit rating agency or any breach of this Act.
- (9) If the appointment of a compliance officer is terminated, the compliance officer must -
- (a) submit to the registrar a statement of what the compliance officer believes to be the reasons for that termination; and
  - (b) if the compliance officer would, but for that termination, have had reason to submit to the registrar a report contemplated in subsection (8), submit such a report to the registrar.
- (10) The registrar may direct a registered credit rating agency to terminate the appointment of a compliance officer, if the compliance officer fails to comply with any provision of this section in a material manner.

## **17. Accounting and auditing requirements**

- (1) Except to the extent exempted by the registrar, a registered credit rating agency must annually prepare, in respect of the relevant financial year, financial statements reflecting -

- (a) its financial position at its financial year-end;
  - (b) the results of operations, the receipt and payment of cash and cash equivalent balances;
  - (c) all changes in equity for the period then ended, and any additional components required in terms of International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body; and
  - (d) a summary of significant accounting policies and explanatory notes on the matters referred to in paragraphs (a) to (c).
- (2) A registered credit rating agency must cause the statements contemplated in subsection (1) to be audited and reported on by an external auditor in accordance with auditing pronouncements as defined in section 1 of the Auditing Profession Act, 2005 (Act No. 26 of 2005).
- (3) The registered credit rating agency must submit its audited financial statements to the registrar within a period prescribed by the registrar or such later date as the registrar may allow on application by a registered credit rating agency.
- (4) The provisions of section 16(8), (9) and (10) apply, with the necessary changes, to the external auditor of a registered credit rating agency.

## **CHAPTER 4**

### **ENDORSEMENT OF EXTERNAL CREDIT RATINGS**

#### **18. Requirements for endorsement of external credit ratings**

- (1) A registered credit rating agency may, subject to the approval of the registrar, endorse external credit ratings, if -
- (a) the credit rating services resulting in the issuing of the credit rating to be endorsed are undertaken partly or entirely -
    - (i) by the registered credit rating agency; or
    - (ii) by an external credit rating agency belonging to the same group as that registered credit rating agency;
  - (b) the registered credit rating agency has verified and is able to demonstrate on an ongoing basis to the registrar that the external credit rating agency is authorised or registered by a regulatory authority to perform credit rating services similar to those regulated under this Act and is subject to the laws of a country other than the Republic, which laws -

- (i) establish a regulatory framework equivalent to that established by this Act; and
  - (ii) are supervised by a regulatory authority;
- (c) the ability of the registrar to assess and monitor the compliance of the external credit rating agency with the regulatory framework referred to in paragraph (b) is not limited;
- (d) the registered credit rating agency provides the registrar, on the registrar's request, with all information necessary to enable the registrar to monitor, on an ongoing basis, compliance with this Act;
- (e) there is an objective reason for the credit ratings to be issued in a country other than the Republic, or by an external credit rating agency; and
- (f) an agreement contemplated in section 29 has been entered into between the registrar and the relevant regulatory authority of the external credit rating agency, which agreement, at least, provides for -
- (i) mechanisms for the exchange of information; and
  - (ii) procedures for the coordination of regulatory activities to facilitate the monitoring of credit rating activities resulting in the issuing of the endorsed credit rating on an ongoing basis.
- (2) A credit rating endorsed under this section is deemed -
- (a) to be a credit rating issued by a credit rating agency registered under this Act; and
  - (b) to have been issued when the credit rating is published on the website of the registered credit rating agency or by other means, or is distributed by subscription and presented and disclosed in accordance with the requirements of this Act.
- (3) A registered credit rating agency that endorsed a credit rating under this section remains fully responsible for that credit rating and for compliance with this Act.
- (4)
- (a) A registered credit rating agency must apply to the registrar in the manner prescribed, for the approval of the external credit rating agencies whose credit ratings it intends to endorse under this section.



- (b) If the registrar is of the opinion that a credit rating cannot be endorsed in accordance with this section or the requirements of this Act, the registrar may instruct the registered credit rating agency not to endorse the credit rating.
- (5) A registered credit rating agency may not use endorsement with the intention of avoiding the requirements of this Act.
- (6) The registrar must maintain a list on the FSB official website of external credit rating agencies whose ratings may be endorsed in terms of this section.

## **CHAPTER 5**

### **LIABILITY AND INDEPENDENCE OF REGISTERED CREDIT RATING AGENCIES**

#### **19. Liability of registered credit rating agency**

- (1) A registered credit rating agency may be delictually liable, in respect of a credit rating issued or credit rating services performed in the ordinary course of business in terms of this Act, for any loss, damages or costs sustained as a result of such credit rating or credit rating service.
- (2) Subsection (1) does not affect any additional or other liability of a registered credit rating agency to an investor or member of the public, arising from a contractual relationship or the application of any law.

#### **20. Independence**

No person, including the registrar, may hinder, interfere with, obstruct or improperly attempt to influence a credit rating, the content of a credit rating, or any methodology, model or key assumption used by a registered credit rating agency to derive a credit rating.

## **CHAPTER 6**

### **ADMINISTRATION OF ACT**

#### **21. ....**

*(Section 21 repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

#### **22. ....**

*(Section 22 repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

#### **23. Powers and functions of registrar**

- (1) The registrar, in addition to the other powers and functions conferred on the registrar in terms of this Act, and subject to subsection (2) -

- (a) must supervise and enforce compliance with this Act;
  - (b) must take such steps as the registrar considers necessary, in accordance with the requirements of this Act and other applicable legislation, to protect investors in their dealings with credit ratings, credit rating services and credit rating agencies;
  - (c) .....  
*(Section 23(1)(c) deleted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*
  - (d) may impose conditions that are consistent with this Act in respect of any registration or approval granted or requirement imposed by the registrar, and may amend or withdraw such conditions;
  - (e) .....  
*(Section 23(1)(e) deleted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*
  - (f) must determine the form, manner and period, if a period is not specified in this Act, within which any documentation, information or report that a registered credit rating agency is required to publish, disclose, provide or submit under this Act must be published, disclosed, provided or submitted;
  - (g) may, despite the provisions of any law, furnish information acquired by the registrar under this Act to any person charged with the performance of a function under any law, including a regulatory authority;
  - (h) .....  
*(Section 23(1)(h) deleted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*
  - (i) may take any measures that the registrar considers necessary for the proper performance and exercise of the powers and functions of the registrar for the implementation of this Act, in accordance with the requirements of this Act and other applicable legislation.
- (2) The registrar must, in performing his or her powers and functions under this Act or any other applicable law -
- (a) act in a manner which -
    - (i) is compatible with the objects of this Act; and
    - (ii) is most appropriate for meeting the objects of this Act; and
  - (b) have regard to -

- (i) international regulatory and supervisory standards;
- (ii) the principle that a restriction which is placed on a registered credit rating agency, the issuing of credit ratings or the performance of credit rating services, should be proportionate to the purpose for which it is intended;
- (iii) the international nature of credit rating agencies, credit ratings and credit rating services;
- (iv) the principle that competition between regulated persons should not be impeded or distorted; and
- (v) the need to use resources in the most effective and cost-efficient manner.

## 24. Rules

- (1) A conduct standard for or in respect of credit rating agencies may be made on any of the following matters:

*(Words preceding section 24(1)(a) substituted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

- (a) organisational requirements for registered credit rating agencies;
- (b) the independence of registered credit rating agencies and the avoidance of conflicts of interest by registered credit rating agencies;
- (c) the quality and integrity of credit ratings;
- (d) the presentation of credit ratings;
- (e) additional obligations in relation to credit ratings of structured finance instruments;
- (f) additional disclosures;
- (g) adequate and appropriate record-keeping;
- (h) fraudulent and misleading advertising, canvassing and marketing;
- (i) suitable guarantees, professional indemnity or fidelity insurance cover, and mechanisms for adjustments of such guarantees or cover;
- (j) the control or prohibition of incentives given or accepted by a credit rating agency;
- (k) the responsibilities of credit rating agencies to investors and the public; and

(l) any matter that the registrar is required or permitted to prescribe in terms of this Act.

(2) The conduct standards contemplated in subsection (1) may—

*(Words preceding section 24(2)(a) substituted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

(a) apply to registered credit rating agencies, credit ratings, endorsed credit ratings or credit rating services generally; or

(b) be limited in application to a particular type of registered credit rating agency, credit rating or credit rating service.

(3) .....

*(Section 24(3) deleted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

(4) .....

*(Section 24(4) deleted by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

25. ....

*(Section 25 substituted by section 262 of Act 45 of 2013)*

*(Section 25 repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

26. ....

*(Section 26 repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

## 27. Exemptions

(1) The registrar may, on application or on the registrar's initiative exempt any person, category of persons or registered credit rating agency from, or in respect of, any provision of the Act if the registrar is satisfied that -

(a) practicalities impede the strict application of a specific provision of the Act; and

(b) the granting of the exemption will not -

(i) conflict with the public interest;

(ii) prejudice the interests of -

(aa) the clients of registered credit rating agencies;

(bb) the users of credit ratings or credit rating services; or

(cc) regulatory authorities that rely on, refer to or use credit ratings in their supervision and regulation activities; and

(iii) frustrate the achievement of the objects of this Act.

(2) An exemption contemplated in subsection (1) may -

(a) apply to any person, category of persons or registered credit rating agencies generally, a specific registered credit rating agency or be limited in its application to a particular type of registered credit rating agency; and

(b) be made subject to conditions and be granted for a period that the registrar may determine.

(3) The registrar may, at any time by notice on the FSB official website, withdraw, wholly or in part, and on any ground which the registrar deems sufficient, any exemption granted under subsection (1).

(4) The registrar must, where an exemption applies generally or to a type of registered credit rating agency, publish the exemption in the *Gazette* and any other media that the registrar deems appropriate, and a copy of the published exemption must be submitted to Parliament.

## **28. Fees and penalties**

(1)

(a) The registrar may by notice on the FSB official website determine the fees payable to the registrar by any person, or category of persons seeking a decision, applying for registration or the performance of any other act by the registrar under this Act, and the registrar may in a similar manner amend, substitute or withdraw any such notice.

(b) The fees are payable in the manner, and are subject to the requirements, determined by the registrar by notice on the FSB official website.

(2)

(a) A person who is liable to pay the fees contemplated in subsection (1)(a) and who fails to pay the amount due on the date or within the period specified, must pay interest on the amount outstanding at the prescribed rate.

(b) The fees and interest owed in respect thereof are regarded as debts due to the registrar and may be recovered by the registrar by way of a judicial process in a competent court.

(3) .....

*(Section 28(3) repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)*

(4) .....  
(Section 28(4) repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)

(5) .....  
(Section 28(5) repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)

(6) .....  
(Section 28(6) repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)

29. ....  
(Section 29 repealed by section 263 of Act 45 of 2013)

## CHAPTER 7 ENFORCEMENT ACTIONS AND REMEDIES

30. ....  
(Section 30 repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)

31. ....  
(Section 31 repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)

### 32. Offences and penalties

Any person who -

- (a) contravenes or fails to comply with section 3(2);
- (b) deliberately makes a misleading, false or deceptive statement, or conceals any material fact; or
- (c) in the execution of duties imposed by this Act, gives an auditor or compliance officer information which is false, misleading or conceals any material fact,

is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

33. ....  
(Section 33 repealed by section 290 of Act 9 of 2017, with effect from 1 April 2018)

## CHAPTER 8 GENERAL PROVISIONS

**34. Regulations**

(1) The Minister may make regulations not inconsistent with this Act with regard to any matter that is required or permitted to be prescribed in terms of this Act.

(2) .....

*(Section 34(2) deleted by section 290 of Act 9 of 2017, with effect from 28 September 2018)*

**35. Saving of rights**

No provision of this Act, and no act performed under or in terms of any provision thereof, may be construed as affecting any right of a person to seek appropriate legal redress in terms of common law or any other relevant legislation, whether relating to civil or criminal matters, in respect of a credit rating or credit rating agency.

**36. Amendment of law**

The law referred to in the Schedule is hereby amended to the extent specified in the third column thereof.

**37. Short title and commencement**

This Act is called the Credit Rating Services Act, 2012, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

**SCHEDULE**  
**LAW AMENDED**  
(Section 36)

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 97 of 1990	Financial Services Board Act, 1990	Amends section 1 by the addition in the definition of "financial institution" of the following subparagraph after paragraph (xii):  "(xiii) any <b>"credit rating agency"</b> as defined in section 1 of the Credit Rating Services Act, 2012;"