



Credit rating agency rules: Presentation to the NCOP: 5 November 2013



Background

- The Credit Rating Services Act, 2012 came into operation on **15 April 2013**
- During the public consultation period of the Bill (before tabling in Parliament) draft rules were published for comment with the Bill during August 2011
- Comments were received and considered
- On 15 March 2013 the Registrar of Credit Rating Agencies published draft rules for public comment for 30 days
- Comments, received from five commentators, were considered and incorporated in the draft rules submitted for Parliamentary scrutiny

Empowering provision



- **Section 24 of the Act empowers the Registrar to make rules for credit rating agencies.**
- **Before the registrar makes any rule under this section, the registrar must publish a the draft rule calling for public comment and submit the draft rule to Parliament while it is in session, for parliamentary scrutiny at least one month prior to promulgation.**

Rules



The rules are divided in **11 Parts-**

- Introduction
- Organisational requirements
- Independence and conflict of interest
- Quality and integrity of credit ratings
- Presentation of credit ratings
- Additional obligations in relation to structured finance instruments
- Disclosures and record-keeping
- Advertising
- Guarantee and insurance cover
- Control or prohibition of incentives
- Responsibilities to investors and the public



Introduction

- Contains definitions
- Provide that the rules apply to all registered credit rating agencies



Organisational requirements

Provides for

- the structure of the board of a CRA, and that it must have at least 2 independent members;
- A CRA to have proper controls to ensure compliance with the Act and the Rules; and
- The duties of a CRA when it outsources functions



Independence and conflict of interest

- A CRA must manage and disclose conflicts of interests
- A CRA must refrain from issuing ratings in instances where there are links between the agency or its employees and the instrument or institution to be rated
- Analyst and employee independence is required



Quality and integrity of credit ratings

- A CRA adopt reasonable measures so that the information it uses in assigning a credit rating is of sufficient quality to support a credible rating.
- A CRA is required to continuously monitor and surveil ratings to ensure that ratings are updated on a timely basis
- A CRA must ensure that its methodologies are such to ensure integrity of the rating and rating process

Presentation of ratings

A CRA must present its ratings in such a manner that

- methodologies are explained and how the different methodologies or other aspects are taken into account in the rating;
- any attributes and limitations of the rating are clearly and prominently stated

Obligations in relation to ratings of structured finance instruments



- Where a CRA rates a structured finance instrument, it must provide investors and subscribers with sufficient information on the transaction so that an investor intending to invest in the product can understand the basis for the agency's rating
- A CRA has additional duties of disclosure and assessment of ratings where it rates a structured finance instrument



Disclosure and record keeping

- A CRA must annually disclose to the registrar the number of ratings issued, rating scale used, reasons for changes or withdrawal of ratings
- Agencies must keep records of threats to the independence and agreements with rated entities



Chapters 8 -10

A CRA must –

- ensure advertising is not misleading;
- maintain appropriate guarantees or professional indemnity or fidelity insurance cover to mitigate the risks inherent in its business; and
- control and prohibit incentives to its analysts



Responsibilities to investors and the public

- General rule is to
 - render rating services honestly, fairly, with due skill and diligence and in the interest of the integrity of the credit rating services industry; and
 - deal fairly and honestly with rated entities, investors, other market participants and the public
- Ratings must be distributed in a timely and transparent manner
- Confidential information must be protected