

140219  
joint delegates



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**LEGAL SERVICES**

PO Box 15 Cape Town 8000 Republic of South Africa  
Tel: 27 (21) 403 2911  
www.parliament.gov.za

Tel: (021) 403-2626  
Direct: (021) 403-8663  
Fax (021) 403-3888  
E-mail: fjenkins@parliament.gov.za

**LEGAL OPINION**  
**[Confidential]**

**TO: Co-Chairperson: Interim Joint Committee on Scrutiny of Delegated Legislation**  
**[Mr V Smith, MP & Ms M Boroto, MP]**

**COPY: Acting Secretary to Parliament [Ms P Tyawa]**

**FROM: Constitutional and Legal Services Office**  
**[Adv F S Jenkins, Senior Parliamentary Legal Adviser]**

**DATE: 12 February 2014**

---

**SUBJECT: Draft Credit Rating Agency Rules**

---

**MESSAGE: Attached please find a memorandum for your attention.**



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**LEGAL SERVICES**

PO Box 15 Cape Town 8000 Republic of South Africa  
Tel: 27 (21) 403 2911  
www.parliament.gov.za

**MEMORANDUM**

**TO: Co-Chairperson: Interim Joint Committee on Scrutiny of Delegated Legislation**  
**[Mr V Smith, MP & Ms M Boroto, MP]**

**COPY: Acting Secretary to Parliament**  
**[Ms P Twaya]**

**FROM: Constitutional and Legal Services Office**  
**[Adv F S Jenkins, Senior Parliamentary Legal Adviser]**

**DATE: 12 February 2014**

**REF. NO.: 16 / 14**

---

**SUBJECT: Draft Credit Rating Agency Rules**

---

**Background**

1. The Draft Credit Rating Agency Rules (hereinafter the "Draft Rules") were referred for consideration and report to the Interim Joint Committee on Scrutiny of Delegated Legislation (hereinafter the "Interim Joint Committee") and the Select Committee on Finance on 10 October 2013 (ATC, Thursday 10 October 2013, p. 3723).
2. Our Office was requested to comment on the Draft Rules.

**Regulatory framework**

3. The Minister of Finance submitted the Draft Rules to Parliament, for referral to both the Standing and Select Committees on Finance, in terms of section 24(3)(a)(ii) of the Credit Ratings Services Act, 2012 (Act No. 24 of 2012).



4. The Credit Rating Services Act provides for procedural aspects in making the Credit Rating Agency Rules. Section 24(3)(a)(ii) provides that before the registrar of credit rating agencies makes any rule under section 24, the registrar must:
  - (i) publish a notice of the release of the draft rule in the Gazette, indicating that the draft rules are available on the website of the Financial Services Board (hereinafter the "FSB official website"), and calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and
  - (ii) submit the draft rule to Parliament while it is in session, for parliamentary scrutiny at least one month prior to promulgation.
  
5. Section 24 of the Credit Rating Services Act empowers the registrar to make rules by notice in the Gazette with regard to—
  - 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.
  
6. Subsection (2) of section 24 provides that the rules contemplated in subsection (1) may—



- (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.
7. The Interim Joint Committee must, amongst others, scrutinise delegated legislation that requires consultation with Parliament in accordance with the criteria set out in the interim Rules applicable to the Committee (ATC, 19 April 2011, Rule 3(2)(iii) read with rule 4(1)). These are discussed below.
8. Interim rule 5 provides that upon completion of the scrutiny process, the Interim Joint Committee must report its findings to the House for information of the relevant portfolio or select committee (see ATC, 19 April 2011, referred to above).

#### **Advice**

9. The Draft Rules deal with the issues provided for in section 24(1) of the Credit Rating Services Act. It is necessary to compare the provisions of the draft Rules with the criteria set out in interim rule 4(1).
- 9.1 There are no provisions imposing levies, taxes or duties.
- 9.2 The Draft Rules comply with the procedural aspects pertaining to the Draft Rules.
- 9.2.1 The registrar published a notice in the Government Gazette of the release of the Draft Rules, indicating that the Draft Rules are available in the FSB official website, calling for public comment in writing within a period of 30 days from the date of publication of the notice (see Government Gazette, 15 March 2013, No. 36252).
- 9.2.2 The registrar submitted the Draft Rules to Parliament on 10 September 2013. Parliament was in session. The registrar promulgated the Credit Rating Agency



Rules on 15 November 2013 (see Government Gazette, 15 November 2013, No. 37014). In other words, more than a month passed from the date of submission to Parliament to the date of promulgation.

9.3 The Draft Rules do not impinge on the jurisdiction of the Courts.

9.4 There is no provision for retrospective operation of the draft Rules. Draft rule 20 provides that the Rules “take effect on the date of publication”.

9.5 The Draft Rules conform to the objects of the Act.

9.6 The provisions of the Draft Rules do not appear to make unusual use of powers conferred by the Act.

9.7 The Draft Rules are properly drafted.

9.8 The Draft Rules do not trespass on personal rights and liberties, including those set out in the Bill of Rights, in a manner inconsistent with the Constitution.

9.9 The Draft Rules do not amount to substantive legislation.

#### **Conclusion**

10. The Select Committee on Finance reported on the Draft Rules on 7 November 2013 (see ATC, 7 November 2013, p. 5739). The report recommended approval of the Draft Rules, and further recommended that the Draft Rules accommodate entities from the disadvantaged communities. Be that as it may, in essence the Select Committee’s report did not identify any issues relevant to the scrutiny criteria.



11. It appears that the Draft Rules were not referred to the Standing Committee on Finance.

12. Given the mandate of the Interim Joint Committee, it may report to the Houses for information of the relevant portfolio and select committees that the Draft Rules comply with the scrutiny criteria as determined by the resolution of both Houses.

A handwritten signature in black ink, appearing to read 'F S Jenkins'.

Adv F S Jenkins

Senior Parliamentary Legal Adviser