

REPUBLIC OF SOUTH AFRICA

CREDIT RATING SERVICES BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 35022 of 7 February 2012)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 8B—2012]

ISBN 978-1-4850-0024-2

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

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:—

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS, OBJECTS AND APPLICATION 5

1. Definitions and interpretation
2. Objects of Act
3. Application of Act
4. Use of credit ratings

CHAPTER 2 10

REGISTRATION

5. Application for registration
6. Suspension and cancellation of registration

CHAPTER 3

DUTIES OF REGISTERED CREDIT RATING AGENCY 15

7. Duties
8. Appointment of directors
9. Methodologies, models and key rating assumptions
10. Credit ratings
11. Code of conduct 20
12. Outsourcing and other services
13. Disclosures
14. Records
15. Annual report
16. Independent compliance unit 25
17. Accounting and auditing requirements

CHAPTER 4**ENDORSEMENT OF EXTERNAL CREDIT RATINGS**

18. Requirements for endorsement of external credit ratings

CHAPTER 5**LIABILITY AND INDEPENDENCE OF REGISTERED CREDIT RATING AGENCY** 5

19. Liability of registered credit rating agency
20. Independence

CHAPTER 6**ADMINISTRATION OF ACT** 10

21. Registrar and deputy registrar of credit rating agencies
22. Delegation and assignment
23. Powers and functions of registrar
24. Rules
25. Inspections and on-site visits 15
26. Directives
27. Exemptions
28. Fees and penalties
29. Cooperation with regulatory authorities

CHAPTER 7 20**ENFORCEMENT ACTIONS AND REMEDIES**

30. Enforcement committee
31. Civil action
32. Offences and penalties
33. Right of appeal 25

CHAPTER 8**MISCELLANEOUS AND GENERAL PROVISIONS**

34. Regulations
35. Saving of rights
36. Amendment of laws 30
37. Short title and commencement

CHAPTER 1**DEFINITIONS, OBJECTS AND APPLICATION****Definitions and interpretation**

1. (1) In this Act, unless the context indicates otherwise— 35
“**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; 40
(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— 45

- (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;
- “Companies Act”** means the Companies Act, 2008 (Act No. 71 of 2008);
- “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”** means the deputy registrar of credit rating agencies contemplated in section 21;
- “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 Services Board Act”** means the Financial Services Board Act, 1990 (Act No. 97 of 1990);
- “FSB official website”** means the website of the Financial Services Board established by section 2 of the Financial Services Board Act;
- “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”** means prescribe by the Minister by regulation, or by the registrar by rule or by notice in the Gazette, and “prescribed” has a corresponding meaning;
- “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; 5

“registrar” means the registrar of credit rating agencies contemplated in section 21; 10

“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; 15

“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 12 of the Securities Services Act, 2004 (Act No. 36 of 2004); 20

“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; 25

“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 30

“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. 35

(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). 40

(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— 45

- (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— 50

- (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 55
- (iv) the use of any illustrations, examples, headings or other aids to reading and understanding the credit rating, policy, code, document or information. 60

- (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 5
 - (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 10
 - (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. 15

Objects of Act 20

2. 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; 25
 - (d) improve the fairness, efficiency and transparency of financial markets; and
 - (e) reduce systemic risk.

Application of Act

3. (1) Subject to subsection (4), this Act applies to—
- (a) credit rating services performed in the Republic; 30
 - (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 35 person may not perform credit rating services or issue a credit rating in the Republic, unless that person is a registered credit rating agency.
- (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 40 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. 45

Use of credit ratings

4. (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 50
 - (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

Application for registration

5. (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— 5
- (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. 10
 - (b) details of its— 15
 - (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; 20
 - (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; 25
 - (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— 30
 - (i) personal character qualities of honesty and integrity;
 - (ii) competence;
 - (iii) operational ability; and
 - (iv) financial soundness; 35
 - (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. 40
- (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; 45
 - (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— 50
- (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— 55
- (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. 60

- (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.

Suspension and cancellation of registration

6. (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 5
 - (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. 10

CHAPTER 3

DUTIES OF REGISTERED CREDIT RATING AGENCY

Duties

7. A registered credit rating agency must—
- (a) comply with this Act; 15
 - (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; 20
 - (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; 25
 - (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; 30
 - (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; 35
 - (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. 40

Appointment of directors

8. (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. 45
- (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. 50
- (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. 55

(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. 5

Methodologies, models and key rating assumptions

9. 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; 10
- (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 15
- (d) establish internal arrangements to monitor the impact of changes in macro-economic or financial market conditions on credit ratings. 20

Credit ratings

10. (1) A registered credit rating agency must—

- (a) publish any credit rating or any decision to discontinue a credit rating impartially and timeously; 25
- (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 30
- (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. 35

(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. 40

Code of conduct

11. (1) A registered credit rating agency must adopt, publish and adhere to a code of conduct that— 45

- (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. 50

Outsourcing and other services

- 12.** (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. 5

Disclosures

- 13.** (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; 10
 - (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. 15
- (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— 20
- (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. 25

Records

- 14.** 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. 30

Annual report

- 15.** (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; 35
 - (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; 40
 - (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— 45
- (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. 50

Independent compliance unit

- 16.** (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 5
 - (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; 10
 - (b) advise and assist the registered credit rating agency in complying with its obligations under this Act; 15
 - (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 20
 - (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— 25
- (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. 30
- (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. 35
- (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. 40
- (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— 45
- (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. 50
- (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.

Accounting and auditing requirements 55

17. (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; 60

- (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). 5
- (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. 10
- (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

15

ENDORSEMENT OF EXTERNAL CREDIT RATINGS

Requirements for endorsement of external credit ratings

- 18.** (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— 20
 - (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— 25
 - (i) establish a regulatory framework equivalent to that established by this Act; and 30
 - (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; 35
 - (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 40
 - (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— 40
 - (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. 45
- (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 50
 - (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. 55
- (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. 5

(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 10

Liability of registered credit rating agency

19. (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. 15

(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.

Independence

20. 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. 20

CHAPTER 6

ADMINISTRATION OF ACT 25

Registrar and deputy registrar of credit rating agencies

21. The executive officer and deputy executive officer contemplated in section 1 of the Financial Services Board Act are the registrar and deputy registrar of credit rating agencies, respectively, and have the powers and functions provided for under this Act or any other applicable law. 30

Delegation and assignment

22. (1) The registrar may in writing—

(a) delegate any of the powers and functions assigned to the registrar under this Act; and

(b) assign any of the duties or functions imposed on the registrar under this Act, to a deputy registrar or any other person, except the power to make rules. 35

(2) The delegation or assignment contemplated in subsection (1)—

(a) is subject to any limitations or conditions that the registrar may impose; and

(b) does not divest the registrar of the responsibility concerning the exercise of the delegated power. 40

(3) The registrar may confirm, vary or revoke any decision taken by a deputy registrar or any other person, subject to any rights that may have vested as a consequence of the delegation.

Powers and functions of registrar

23. (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)— 45

(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) may by notice require any person, including a registered credit rating agency, to furnish the registrar, within a specified period, with specified information or documents necessary for exercising his or her powers under this Act; 5
 - (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; 10
 - (e) may, on the written request of a registered credit rating agency, extend any period within which any documentation, information or report must be submitted to the registrar;
 - (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; 15
 - (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; 20
 - (h) may issue guidelines on the application and interpretation of this Act; and
 - (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. 25
- (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 30
 - (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; 35
 - (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. 40

Rules

- 24.(1)** Subject to section 20, the registrar may, by notice in the *Gazette*, make rules 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; 45
 - (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; 50
 - (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; 55
 - (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. 60

- (2) 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. 5
- (3) (a) Before the registrar makes any rule under this section, 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 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 10
 - (ii) submit the draft rule to Parliament while it is in session, for parliamentary scrutiny at least one month prior to promulgation.
- (b) If the registrar alters a draft rule because of any comment, the registrar need not publish the alteration prior to making the rule.
- (c) After consideration of any comments received in response to the publication and consideration of comments received in respect of the submission of the draft rule to Parliament in terms of paragraph (a)(ii), the registrar may publish the final rule in the *Gazette*, and a copy of the published final rule must be submitted to Parliament. 15
- (4) (a) The registrar may, if in the opinion of the registrar it would impair the achievement of the objects of the Act if a rule is not published immediately, publish that rule in the *Gazette* without complying with subsection (3)(a), provided that the notice of publication indicates— 20
- (i) the reason why circumstances necessitated publication of the rule without giving notice as contemplated in subsection (3)(a); and
 - (ii) that any person who is aggrieved by the rule may make representations to the registrar within a period stated in the notice, which may not be less than 30 days from the date of publication of the notice. 25
- (b) If the registrar publishes a rule in terms of paragraph (a), the notice referred to in subsection (1) must be submitted to Parliament, and Parliament may provide submissions on the rule, to the registrar. 30

Inspections and on-site visits

25. (1) The registrar may—
- (a) conduct an on-site visit of the business of a registered credit rating agency to determine compliance with this Act; and
 - (b) instruct an inspector appointed in terms of section 2 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), to carry out an inspection as contemplated in section 3 of that Act. 35
- (2) The registrar, when conducting an on-site visit in terms of subsection (1)(a)—
- (a) has a right of access at any reasonable time to any document as defined in terms of the Inspection of Financial institutions Act, 1998 (Act No. 80 of 1998) as may reasonably be required for the purposes of the on-site visit; 40
 - (b) may require a registered credit rating agency, associate, or any person holding, or who is accountable for, any such document or involved in the management of the business or affairs of the registered credit rating agency or associate, to provide such information and explanation as may be necessary for purposes of the on-site visit; 45
 - (c) may examine, make extracts from and copy any such document; and
 - (d) may, where a contravention of this Act has been detected during an on-site visit, and it may be necessary to commence an inspection in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998)— 50
 - (i) issue an instruction prohibiting the removal or destruction of any document or information; or
 - (ii) in order to prevent the destruction of information, against a receipt, temporarily remove the document,
- pending the completion of an inspection in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998). 55
- (3) After an on-site visit or inspection has been carried out in terms of subsection (1), the registrar may direct the registered credit rating agency or associate concerned to take any steps, to refrain from performing or continuing to perform any act, or to terminate or remedy any contravention of or failure to comply with any provision of this Act. 60

- (4) The registrar may, by notice on the FSB official website, or by means of any other appropriate public media, make known—
- (a) the status and outcome of an inspection;
 - (b) the details of an inspection, if disclosure is in the public interest;
 - (c) after having considered the impact upon and the interests of the credit rating agency, the outcome and details of an on-site visit, if disclosure is in the public interest. 5

Directives

- 26.** (1) The registrar may, in order to ensure proper implementation and administration of this Act, or to further the objects of the Act in section 2, issue a directive to a registered credit rating agency— 10
- (a) to implement specific practices, procedures or processes;
 - (b) to take specific actions or measures;
 - (c) to desist from undertaking specific practices, procedures, processes, actions or measures; or 15
 - (d) generally prohibiting certain practices, procedures, processes, actions or measures.
- (2) A directive contemplated in subsection (1) may—
- (a) apply to registered credit rating agencies, credit ratings or credit rating services generally; 20
 - (b) apply to a specific registered credit rating agency, credit rating or credit rating service; or
 - (c) be limited in its application to a particular type of registered credit rating agency, whether local or external, a credit rating service published or performed in the Republic, or a credit rating, whether relating to an opinion regarding— 25
 - (i) an entity;
 - (ii) securities or a financial instrument; or
 - (iii) an issuer of securities or a financial instrument.
- (3) A directive issued in terms of subsection (1) takes effect on the date determined by the registrar in the directive, and may take effect immediately. 30
- (4) The registrar may amend, cancel or revoke any previously issued directives.
- (5) The registrar must, where a directive is issued to ensure the protection of investors, potential investors or the public in general, publish the directive in the *Gazette* and in any other media that the registrar deems appropriate, and a copy of the published directive must be submitted to Parliament. 35

Exemptions

- 27.** (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— 40
- (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— 45
 - (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. 50
- (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. 55
- (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.

Fees and penalties

5

28. (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.

10

(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.

15

(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) The registrar may impose an administrative penalty on a registered credit rating agency for failure to submit, to the registrar within a period specified in terms of this Act, any statement, report, return or other document or information required to be submitted in terms of this Act, such penalty to be prescribed by the registrar for every day during which the failure continues.

20

(4) The registrar must, before imposing a penalty, by written notice to the registered credit rating agency—

25

(a) inform the registered credit rating agency of the intention of the registrar to impose a penalty;

(b) specify the particulars of the alleged failure;

(c) set out the reasons for the intended imposition of a penalty;

(d) specify the amount of the penalty intended to be imposed; and

30

(e) call upon the registered credit rating agency to show cause within a period specified by the registrar why the penalty should not be imposed.

(5) If the registrar, after consideration of representations made by the registered credit rating agency, decides to impose a penalty, the registrar must notify the registered credit rating agency in writing that it may—

35

(a) pay the penalty within a stipulated period; or

(b) appeal to appeal board in accordance with section 33 against the imposition of the penalty.

(6) If a registered credit rating agency fails to pay the penalty or to note an appeal within the periods stipulated in the notice contemplated in subsection (5), the registrar may, by way of civil action in any competent court, recover the amount of the penalty from the registered credit rating agency concerned.

40

Cooperation with regulatory authorities

29. (1) The registrar may—

(a) liaise with any regulatory authority on matters of common interest;

45

(b) negotiate agreements with any regulatory authority to—

(i) coordinate and harmonise the reporting and other obligations of credit rating agencies, external credit rating agencies and groups as defined in section 1;

(ii) provide mechanisms for the exchange of information in accordance with domestic law; and

50

(iii) provide 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;

(c) participate in the proceedings of any regulatory authority; and

55

(d) advise or receive advice from any regulatory authority.

(2) The registrar may, without detracting from the generality of subsection (1), enter into a written agreement, including a memorandum of understanding, with a foreign

regulatory authority in whose country a subsidiary or holding company of a credit rating agency is incorporated, which cooperation agreement may include—

- (a) a provision that the registrar or foreign regulatory authority may conduct an on-site examination or an inspection of a credit rating agency, an external credit rating agency or any member of a group as defined in section 1; 5
- (b) a provision that the registrar and foreign regulatory authority may share information relating to the financial condition and performance of the institutions contemplated in paragraph (a);
- (c) a provision that the registrar or foreign regulatory authority—
 - (i) be informed of adverse assessments of qualitative aspects of the operations of a credit rating agency or the institutions contemplated in paragraph (a); or 10
 - (ii) may provide information regarding significant problems that are being experienced within a credit rating agency or the institutions contemplated in paragraph (a); and 15
- (d) such other matters as the registrar may deem relevant.

CHAPTER 7

ENFORCEMENT ACTIONS AND REMEDIES

Enforcement committee

30. The registrar may, despite and in addition to taking any step that the registrar may take under this Act, refer any contravention of this Act to the enforcement committee established in terms of section 10(3) of the Financial Services Board Act. 20

Civil action

31. The registrar may, when satisfied on the basis of available facts and information that a person has contravened or not complied with any provision of this Act, or is likely to contravene or not to comply, apply to a court for an order— 25

- (a) restraining such person from continuing to commit any such act or omission;
- (b) restraining such person from committing such an act in future; or
- (c) requiring the person to take such remedial steps as the court deems necessary to rectify the consequences of the act or omission. 30

Offences and penalties

32. 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 35
- (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.

Right of appeal 40

33. (1) Whenever the registrar makes a decision in terms of this Act which adversely affects the rights of a person, the registrar must inform the affected person of that person's right to appeal in accordance with section 26 of the Financial Services Board Act.

(2) Any person who feels aggrieved by any decision of the registrar made in terms of this Act, may appeal in the prescribed manner to the appeal board established in terms of section 26(A) of the Financial Services Board Act, and in accordance with section 26 of that Act. 45

CHAPTER 8

GENERAL PROVISIONS

Regulations

34. (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. 5

(2) (a) Before the Minister makes any regulations under this section, the Minister must—

(i) publish a notice of the publication of the draft regulations in the *Gazette*, indicating that the draft regulations are available on the National Treasury 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 10

(ii) submit the draft regulations to Parliament while it is in session, for parliamentary scrutiny at least one month before promulgation.

(b) If the Minister alters a draft regulation because of any comment, the Minister need not publish the alteration before promulgating the regulation. 15

(c) After consideration of any comments received in response to the publication and consideration of comments received pursuant to the submission of the proposed regulations to Parliament in terms of paragraph (a)(ii), the Minister may promulgate the regulation in the *Gazette*. 20

(d) A copy of a regulation promulgated in terms of paragraph (c) must be submitted to Parliament.

Saving of rights

35. 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. 25

Amendment of law

36. The law referred to in the Schedule is hereby amended to the extent specified in the third column thereof. 30

Short title and commencement

37. 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*.

SCHEDULELAW 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 “credit rating agency” as defined in section 1 of the Credit Rating Services Act, 2012;”. |

MEMORANDUM ON OBJECTS OF CREDIT RATING SERVICES BILL, 2012

1. BACKGROUND AND PURPOSE

- 1.1 Credit rating agencies issue opinions on the creditworthiness of a particular issuer or financial instrument, or the likelihood that an issuer will honour its financial obligations on a timely basis. These opinions are referred to as credit ratings. Credit ratings carry considerable weight in financial markets, both in terms of business practice and regulatory requirements.
- 1.2 Credit rating agencies have hitherto not been regulated in South Africa. The only exception is section 85A of the Banks Act, 1990 (Act No. 94 of 1990), which requires the Registrar of Banks to approve an external credit assessment institution or export credit agency before a bank or controlling company may make use of its credit assessment in the calculation of its prescribed minimum amount of required capital and reserve funds.
- 1.3 As stated, credit ratings are applied for, *inter alia*, regulatory purposes. Apart from such ratings used by banks in the calculation of their prescribed minimum amount of required capital and reserve funds, there are other instances where institutions are legally required to obtain credit ratings. In terms of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), a municipality may invest funds only in investment types with an investment grade rating from a nationally or internationally recognised credit rating agency. The listing requirements of the Johannesburg Stock Exchange Limited refer to credit ratings, as well as the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), to name just a few examples. The investment mandates of most fund managers in South Africa require the use of credit ratings.
- 1.4 There are currently five credit rating agencies operating in South Africa. They are Moody's Investor Services Limited or Moody's Investor Services South Africa (Pty) Ltd, Fitch Rating Limited or Fitch Ratings Southern Africa (Pty) Limited, Standard & Poor's, Global Credit Rating Co. and Ratings Africa.
- 1.5 Following the global financial crisis, credit rating agencies have been criticised for their role in the crisis. The report of the Financial Stability Forum published on 7 April 2008 blamed credit rating agencies for—
 - 1.5.1 failure to detect the worsening of the financial market conditions and to adapt their ratings timeously;
 - 1.5.2 failure to adapt to the new risks of the credit market, e.g. structured credit products (*derivatives*) and hedge funds;
 - 1.5.3 having given investment-grade (*high*) ratings to securitisation transactions, i.e. collateralised debt obligations and mortgage-backed securities, as a result of the close relationship with the issuers of such securities;
 - 1.5.4 lowering some of their ratings due to pressure introduced by competition; and
 - 1.5.5 contributing to the crisis because of the poor quality of some of the ratings of the structured financial instruments.
- 1.6 The G20 response to the financial crisis included recommendations on credit rating agencies specifically. It was recommended that credit rating agencies whose ratings are used for regulatory purposes should be subject to a regulatory oversight regime that includes registration.

- 1.7 The International Organisation of Securities Commissions adopted the following principle on the regulation of credit rating agencies in June 2010: Credit rating agencies should be subject to adequate levels of oversight. The regulatory system should ensure that credit rating agencies whose ratings are used for regulatory purposes are subject to registration and ongoing supervision.

2. OBJECTS OF BILL

The Bill aims to—

- 2.1 ensure responsible and accountable credit rating agencies;
- 2.2 protect the integrity, transparency and reliability of the credit rating process and credit ratings;
- 2.3 improve investor protection;
- 2.4 improve the fairness, efficiency and transparency of financial markets; and
- 2.5 reduce systemic risk.

3. CHAPTER-BY-CHAPTER ANALYSIS

- 3.1 Chapter 1 contains the relevant definitions and sets out the objects and application of the Act.
- 3.2 Chapter 2 provides for the registration of credit rating agencies, and details the circumstances under which the registration of a credit rating agency may be suspended or cancelled.
- 3.3 Chapter 3 deals with the duties of credit rating agencies. The chapter requires credit rating agencies to inform the registrar of the appointment of directors. It deals with the methodologies to be adopted by credit rating agencies when credit ratings are issued and contains general requirements pertaining to credit ratings. The chapter further requires credit rating agencies to adopt a code of conduct, obtain the registrar's approval before outsourcing, make prescribed disclosures, maintain records, annually publish reports, and establish and maintain an independent compliance function. Finally, chapter 3 contains accounting and auditing requirements for credit rating agencies.
- 3.4 Chapter 4 contains requirements for the endorsement by credit rating agencies of external credit ratings.
- 3.5 Chapter 5 contains provisions regarding the liability of credit rating agencies. It further requires credit rating agencies to be independent.
- 3.6 Chapter 6 provides for the powers and functions of the registrar and deputy registrar of credit rating agencies. The registrar has the power to make rules, authorise inspections and issue directives. It also prescribes that the registrar may liaise with other regulatory authorities.
- 3.7 Chapter 7 deals with enforcement actions and remedies. It empowers the registrar to take civil action in cases of non-compliance or non-adherence to the provisions of the Act. It also prescribes offences and penalties. A right of appeal is provided to a person whose rights are adversely effected by a decision of the registrar.
- 3.8 Chapter 8 contains general provisions, such as powers of the Minister to make regulations, saving of rights and amendment of laws.

4. DEPARTMENTS OR BODIES CONSULTED

The National Treasury and the Financial Services Board have consulted extensively during the development of this Bill.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the National Treasury are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

6.2 Furthermore, the State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.