

REPUBLIC OF SOUTH AFRICA

**STANDING COMMITTEE AMENDMENTS
TO
CREDIT RATING SERVICES
BILL**

[B 8—2012]

(As agreed to by the Standing Committee on Finance (National Assembly))

[B 8A—2012]

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AMENDMENTS AGREED TO

CREDIT RATING SERVICES BILL

[B 8—2012]

CLAUSE I

1. On page 4, in line 15, to insert a line break after “instrument,”.
2. On page 4, from line 18, to omit “incorporated under the Companies Act, and who is registered to provide credit rating services in terms of this Act” and to substitute “who provides credit rating services”.
3. On page 4, in line 21, after “review” to insert “, for the purposes”.
4. On page 4, in line 26, after “person” to insert “who provides credit rating services and who is”.
5. On page 4, in line 46, after the third “the” to insert “registered”.
6. On page 4, in line 48, before “credit” to insert “registered”.
7. On page 5, after line 10, to insert the following definition:

“registered credit rating agency” means a credit rating agency or an external credit rating agency registered in terms of section 5;”.
8. On page 5, in line 13, after “state” to insert “as defined in section 239 of the Constitution of the Republic of South Africa, 1996,”.
9. On page 5, in line 22, to omit “assets” and to substitute “asset”.
10. On page 5, in line 23, after “transaction” to insert “or other structured financial transaction”.
11. On page 5, in line 25 to omit “approval or”.
12. On page 5, in line 26, to omit “, or any other decision of” and to substitute “by”.
13. On page 5, in line 26, after “registrar” to insert “, that have general application”.
14. On page 5, in line 38, after “A” to insert “registered”.

CLAUSE 3

1. On page 6, in line 27, to omit “published” and to substitute “issued by credit rating agencies registered”.
2. On page 6, from line 28, to omit “that are published”.
3. On page 6, in line 31, to omit “that is published”.
4. On page 6, in line 32, after “is” to insert “a”.
5. On page 6, in line 32, after “registered” to omit “as a”.

6. On page 6, from line 32, to omit “in terms of this Act”.
7. On page 6, in line 38, after “ratings” to insert “and private credit rating services”.

CLAUSE 4

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

“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
 - (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

1. On page 6, in line 46, to omit “OF CREDIT RATING AGENCY”.

CLAUSE 5

1. On page 6, in line 48, after “a” to insert “registered”.
2. On page 6, in line 51, after “Act” to insert “, 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”.
3. On page 7, in line 1, after “(i)” to insert “incorporation,”.
4. On page 7, in line 7, after “branches” to insert “are”.
5. On page 7, in line 39, to omit “for registration”.
6. On page 7, in line 56, to omit “for registration”.
7. On page 7, in line 60, to omit “for registration”.
8. On page 8, in line 4, after “A” to insert “registered”.
9. On page 8, in line 9, after “the” to insert “registered”.
10. On page 8, after line 9, to insert the following subsection:

“(10) The registrar must maintain a list on the FSB official website of registered credit ratings agencies.”.

CLAUSE 6

1. On page 8, in line 11, after “consultation” to insert “, where applicable,”.
2. On page 8, in line 13, after “a” to insert “registered”.
3. On page 8, in line 14, after the second “the” to insert “registered”.
4. On page 8, in line 23, after “a” to insert “registered”.
5. On page 8, in line 27, after the first “the” to insert “registered”.
6. On page 8, in line 31, after the first “the” to insert “registered”.
7. On page 8, in line 33, after the first “the” to insert “registered”.
8. On page 8, in line 37, after “the” to insert “registered”.
9. On page 8, in line 40, after “a” to insert “registered”.
10. On page 8, in line 42, after the first “a” to insert “registered”.
11. On page 8, from line 48, to omit “, securities, financial instrument or issuer”.
12. On page 8, in line 49, after “were” to insert “also”.
13. On page 8, from line 51, to omit “, securities, financial instrument or issuer”.

CHAPTER 3

1. On page 9, in line 2, after “OF” to insert “REGISTERED”.

CLAUSE 7

1. On page 9, in line 4, to omit “(1)”.
2. On page 9, in line 4, after “A” to insert “registered”.
3. On page 9, from line 6, to omit “, and any additional information requested by the registrar”.
4. On page 9, in line 9, to omit “changes” and to substitute “has changed”.
5. On page 9, in line 18, to omit “and” and to substitute “or”.
6. On page 9, in line 19, after “the” to insert “registered”.

CLAUSE 8

1. On page 9, in line 34, after “A” to insert “registered”.
2. On page 9, in line 38, after the second “a” to insert “registered”.
3. On page 9, in line 41, after “a” to insert “registered”.
4. On page 9, in line 42, after the second “the” to insert “registered”.
5. On page 9, in line 43, after the first “the” to insert “registered”.

6. On page 9, in line 44, after the first “a” to insert “registered”.
7. On page 9, in line 45, after the first “the” to insert “registered”.
8. On page 9, in line 47, after “the” to insert “registered”.
9. On page 9, in line 50, after “The” to insert “registered”.
10. On page 9, in line 51, after “the” to insert “registered”.

CLAUSE 9

1. On page 9, in line 54, after “A” to insert “registered”.

CLAUSE 10

1. On page 10, in line 13, after “A” to insert “registered”.
2. On page 10, from line 19, after “rating” to insert “, so”.
3. On page 10, in line 23, after “A” to insert “registered”.
4. On page 10, in line 28, after “A” to insert “registered”.
5. On page 10, in line 30, after “A” to insert “registered”.

CLAUSE 11

1. On page 10, in line 34, after “A” to insert “registered”.
2. On page 10, in line 39, after “A” to insert “registered”.
3. On page 10, in line 40, after “A” to insert “registered”.

CLAUSE 12

1. On page 10, in line 44, after “A” to insert “registered”.
2. On page 10, in line 46, after the second “the” to insert “registered”.
3. On page 10, in line 47, after “A” to insert “registered”.

CLAUSE 13

1. On page 10, in line 50, after “A” to insert “registered”.
2. On page 11, in line 3, after “A” to insert “registered”.
3. On page 11, in line 5, after “A” to insert “registered”.
4. On page 11, in line 7, after “A” to insert “registered”.
5. On page 11, in line 8, after “clients” to insert “by revenue”.
6. On page 11, in line 10, after “the” to insert “registered”.
7. On page 11, in line 12, to omit “persent” and to substitute “per cent”.

8. On page 11, in line 12, after the second “the” to insert “registered”.

CLAUSE 14

1. On page 11, in line 14, after “A” to insert “registered”.

CLAUSE 15

1. On page 11, in line 18, after “A” to insert “registered”.
2. On page 11, in line 20, to omit “Detailed” and to substitute “detailed”.
3. On page 11, in line 21, to omit “ensures” and to substitute “ensure”.
4. On page 11, in line 31, before “credit” to insert “registered”.
5. On page 11, in line 32, to omit “three months after the end of each financial year” and to substitute “a period prescribed by the registrar or such later date as the registrar may allow on application by a registered credit rating agency”.
6. On page 11, in line 33, after the second “the” to insert “registered”.

CLAUSE 16

1. On page 11, in line 36, after “A” to insert “registered”.
2. On page 11, in line 36, after the second “the” to insert “registered”.
3. On page 11, in line 37, to omit “to”.
4. On page 11, in line 38, after “registrar” to insert “, in accordance with the criteria and guidelines prescribed by the registrar”.
5. On page 11, in line 39, after “A” to insert “registered”.
6. On page 11, in line 46, after the third “the” to insert “registered”.
7. On page 11, in line 47, after the second “the” to insert “registered”.
8. On page 11, in line 50, after “the” to insert “registered”.
9. On page 11, in line 52, after the second “the” to insert “registered”.
10. On page 12, in line 4, after the second “the” to insert “registered”.
11. On page 12, in line 12, after the second “the” to insert “registered”.
12. On page 12, in line 13, after the second “the” to insert “registered”.
13. On page 12, in line 16, after “the” to insert “registered”.
14. On page 12, in line 18, to omit “a” and to substitute “the”.
15. On page 12, in line 19, after the second “the” to insert “registered”.
16. On page 12, in line 20, to omit “a” and to substitute “the”.
17. On page 12, in line 24, after the third “the” to insert “registered”.

18. On page 12, in line 32, after the first “a” to insert “registered”.

CLAUSE 17

1. On page 12, in line 36, after “a” to insert “registered”.
2. On page 12, in line 37, to omit “of the credit rating agency”.
3. On page 12, in line 39, to omit the first “the” and to substitute “its”;
4. On page 12, in line 39, to omit “of the credit rating agency”.
5. On page 12, in line 47, after “A” to insert “registered”.
6. On page 12, in line 51, after “The” to insert “registered”.
7. On page 12, in line 52, to omit “six months after its financial year-end” and to substitute “a period prescribed by the registrar or such later date as the registrar may allow on application by a registered credit rating agency”.
8. On page 12, in line 54, after “a” to insert “registered”.

CLAUSE 18

1. On page 13, in line 4, after “A” to insert “registered”.
2. On page 13, from line 5, to omit “credit ratings issued by an external credit rating agency in countries other than the Republic for use in the Republic” and to substitute “external credit ratings”.
3. On page 13, in line 9, after “the” to insert “registered”.
4. On page 13, in line 10, after “that” to insert “registered”.
5. On page 13, in line 12, after “the” to insert “registered”.
6. On page 13, in line 23, after the first “the” to insert “registered”.
7. On page 13, in line 39, to insert “registered” before “credit”.
8. On page 13, in line 41, after “A” to insert “registered”.
9. On page 13, in line 43, after “A” to insert “registered”.
10. On page 13, in line 48, after the first “the” to insert “registered”.
11. On page 13, in line 49, after “A” to insert “registered”.
12. On page 13, after line 50, to insert the following subsection:

“(6) The registrar must maintain a list on the FSB official website of external credit ratings agencies whose ratings may be endorsed in terms of this section.”

CHAPTER 5

1. On page 13, in line 52, after “OF” to insert “REGISTERED”.

CLAUSE 19

1. On page 13, in line 53, to omit “credit rating agencies” and to substitute “registered credit rating agency”.
2. On page 13, in line 54, after “A” to insert “registered”.
3. On page 13, from line 54, to omit “to an investor or a member of the public”.
4. On page 14, in line 3, after “a” to insert “registered”.
5. On page 14, from line 6, to omit subsection (3).

CLAUSE 20

1. On page 14, in line 12, after the first “a” to insert “registered”.

CLAUSE 22

1. On page 14, from line 22, to omit subclause (1) and to substitute the following subclause:

“(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.”.

CLAUSE 23

1. On page 14, in line 42, after “a” to insert “registered”.
2. On page 14, in line 48, after “a” to insert “registered”.
3. On page 14, in line 52, after “a” to insert “registered”.
4. On page 15, in line 17, after “international” to insert “regulatory and”.
5. On page 15, in line 18, after the second “a” to insert “registered”.

CLAUSE 24

1. On page 15, in line 29, after “for” to insert “registered”.
2. On page 15, in line 30, after “of” to insert “registered”.
3. On page 15, in line 31, after “by” to insert “registered”.
4. On page 15, in line 36, to omit paragraph (f).
5. On page 15, in line 37, to omit paragraph (g).
6. On page 15, in line 38, to omit “(h)” and to substitute “(f)”.
7. On page 15, in line 39, to omit “(i)” and to substitute “(g)”.

8. On page 15, in line 40, to omit “(j)” and to substitute “(h)”.
9. On page 15, in line 41, to omit “(k)” and to substitute “(i)”.
10. On page 15, in line 43, to omit “(l)” and to substitute “(j)”.
11. On page 15, in line 43, after “a” to insert “registered”.
12. On page 15, in line 45, to omit “(m)” and to substitute “(k)”.
13. On page 15, in line 45, after “of” to insert “registered”.
14. On page 15, in line 46, to omit “(n)” and to substitute “(l)”.
15. On page 15, from line 47, to omit subclauses (2), (3) and (4) and to substitute the following subclauses:
 - “(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.
 - (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
 - (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.
 - (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—
 - (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.
 - (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.”.

CLAUSE 25

1. On page 16, in line 8, to omit “authorise any suitable person to”.
2. On page 16, in line 8, after “a” to insert “registered”.

3. On page 16, from line 13, to omit subclause (2) and to substitute the following subclause:
 - “(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;
 - (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;
 - (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)—
 - (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).”.
4. On page 16, in line 31, after “the,” to insert “registered”.
5. On page 16, in line 38, after “(c)” to insert “after having considered the impact upon and the interests of the credit rating agency,”

CLAUSE 26

1. On page 16, in line 42, to omit “protect investors and the public in general” and to substitute “further the objects of the Act in section 2”.
2. On page 16, in line 42, after “a” to insert “registered”.
3. On page 16, in line 51, after “to” to insert “registered”.
4. On page 16, in line 53, after “specific” to insert “registered”.
5. On page 16, in line 54, after “of” to insert “registered”.
6. On page 17, in line 6, after “appropriate” to insert “, and a copy of the published directive must be submitted to Parliament”.

CLAUSE 27

1. On page 17, in line 8, after “may” to insert “, on application or on the registrar’s initiative,”.
2. On page 17, in line 8, after the first “any” to insert “person, category of persons or registered”.
3. On page 17, in line 15, after “of” to insert “registered”.
4. On page 17, from line 20, to omit subsection (2) and to substitute the following subsection:

- “(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.”.

5. On page 17, after line 25, to insert the following subsection:

“(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.”.

CLAUSE 28

1. On page 17, in line 40, after “a” to insert “registered”.
2. On page 17, in line 45, after “the” to insert “registered”.
3. On page 17, in line 47, after the first “the” to insert “registered”.
4. On page 17, in line 52, after “the” to insert “registered”.
5. On page 17, in line 54, after the second “the” to insert “registered”.
6. On page 17, in line 55, after the second “the” to insert “registered”.
7. On page 18, in line 1, after “a” to insert “registered”.
8. On page 18, in line 3, after the third “the” to insert “registered”.

CLAUSE 29

1. On page 18, in line 24, after “agency” to omit “or” and to substitute “an”.

CLAUSE 32

1. On page 19, from line 3, to omit “a provision of sections 3(2) or 4 or any other provision of this Act” and to substitute “section 3(2)”.

CLAUSE 34

1. Clause rejected.

NEW CLAUSE

“**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.

(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

- (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.

(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*.

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

CLAUSE 37

1. On page 19, in line 34, after “2012” to insert “, and comes into operation on a date determined by the Minister by notice in the *Gazette*.”

LONG TITLE

1. On page 2, in the fourth line, after “provide” to insert “for”.

ARRANGEMENT OF SECTIONS

1. On page 2, in line 11, to omit “OF CREDIT RATING AGENCY”.
2. On page 2, in line 15, after “OF” to insert “REGISTERED”.
3. On page 3, in line 5, after “OF” to insert “REGISTERED”.
4. On page 3, line 6, to omit “credit rating agencies” and to substitute “registered credit rating agency”.