

DIRECTIVE 2015/20/EAC
OF THE COUNCIL OF MINISTERS

Of

(Date of Approval by Council of Ministers)

DIRECTIVE ON THE REGISTRATION OF CREDIT RATING AGENCIES

PREAMBLE

The Council of Ministers of the East African Community

Having regard to the Treaty establishing the East African Community and in particular Articles 85 (d), 14 and 16;

Having regard to the recommendations of the Sectoral Council on Finance and Economic Affairs;

WHEREAS Article 31 of the Common Market Protocol provides that for proper functioning of the Common Market the Partner States undertake to co-ordinate and harmonize their financial sector policies and regulatory framework to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system;

WHEREAS Article 47 of the Common Market Protocol provides that the Partner States shall undertake to approximate their national laws and to harmonize their policies and systems for purposes of implementing this Protocol and that the Council shall issue directives for the purposes of implementing this Article;

HAS ADOPTED THIS DIRECTIVE

ARTICLE 1 INTERPRETATION

In this Directive, unless the context otherwise requires –

“associate” in relation to –

- (a) an individual, means –
 - (i) that individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;
 - (ii) any company of which that individual is a director;
 - (iii) any company in which that individual, or any of the persons mentioned in subparagraph (i), has control of twenty percent or more of the voting power in the company, whether such control is exercised individually or jointly;
 - (iv) any employee of that individual; or
- (b) a company, means another company in which the first-mentioned company has control of not less than twenty percent of the voting power in that company, and a reference in this Directive to an associated person or associated company shall be construed accordingly;

“Community” means the East African Community established by Article 2 of the Treaty;

“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State;

“Council of Ministers” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“controller” in relation to a credit rating agency means a holding company of the credit rating agency or a person who:

- (i) has the power to appoint or cause to be appointed a majority of members of the board of directors of a credit rating agency; or
- (ii) has the power to make or cause to be made, decisions in respect of the business or administration of a credit rating agency, and to give effect to such decisions or cause them to be given effect to;

“Credit rating agency” means a person registered by the Competent Authority to provide credit rating services for issuance or offerings of debt securities;

“holding company” has the meaning assigned to in the Partner States laws relating to companies;

“independent director” has the meaning assigned to it under EAC Council Directive on Corporate Governance Code for listed companies;

“IOSCO” means the International Organization of Securities Commissions;

“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda, and any other country granted membership to the Community under Article 3 of the Treaty;

“rating holding company” means a holding company whose core business is providing credit rating services, derives more than fifty percentage of its consolidated revenue or profit from the credit rating agency, or invests more than fifty percentage of its assets in the credit rating agency over a period of three years consecutively;

“**Secretary General**” means the Secretary General of the Community appointed under Article 67 of the Treaty; and

“Treaty” means the Treaty for the Establishment of the East African Community and any Annexes and Protocols thereto.

ARTICLE 2 PRINCIPLES

This Directive is based on the following principles-

- (a) quality and integrity in the rating process
- (b) avoidance of conflicts of interest or factors that impinge on a credit rating agencies analytical independence which may undermine investor confidence in the credit rating agencies opinions and ratings;
- (c) disclosure and transparency in rating activities by credit rating agencies; and
- (d) protection of non-public information from premature disclosure or by use in ways unrelated to a credit rating agencies rating activities.

ARTICLE 3 SCOPE

This Directive shall apply to credit rating agencies registered by a Competent Authority in a Partner States.

ARTICLE 4 OBJECTIVE

The objective of this Directive is to:

- (a) harmonise the registration requirements of credit rating agencies in the Partner States with a view to protecting investors and developing the securities market in the region; and
- (b) ensure that credit rating agencies conduct their credit rating activities in accordance with the principles set out in Article 2.

ARTICLE 5 REGISTRATION REQUIREMENTS

1. A credit rating agency shall apply for registration in the form set out in the First Schedule.
2. An application for registration shall be accompanied by the following-
 - (a) evidence of an adequate and stable financial base;
 - (b) the shareholding structure at the point of registration;
 - (c) a letter of no objection from the primary regulatory authority of country of incorporation, licensing or registration;
 - (d) corporate information and information pertaining to the operations of the credit rating agency or its rating holding company,; and
 - (e) a declaration that the credit rating agency shall comply with all the requirements provided in this Directive.
3. A director, chief executive officer and key personnel of a credit rating agency shall meet the fit and proper test as provided for under the Council Directive on Regulated Activities.
4. The Competent Authority may require an applicant or its holding company to furnish any further information or clarification as it may consider necessary.
5. The Competent Authority shall consider the application for registration of a credit rating agency and make a decision not later than three months after receipt of the application.
6. The Competent Authority may grant an exemption or vary the requirements for registration.

ARTICLE 6 SHAREHOLDING STRUCTURE

1. A credit rating agency shall maintain a shareholding structure that will enable it to carry out its functions independently and objectively.
2. A credit rating agency shall notify the Competent Authority where a significant change with shareholding structure occurs.
3. A significant change under sub article 2 shall include:

- (a) the creation of a holding company or ultimate holding company of a credit rating agency; or
- (b) the change of shareholdings which results in a person controlling twenty percent or more of the paid-up capital of the credit rating agency, and any subsequent cumulative increase in shareholding of ten percent or more of the paid-up capital of the credit rating agency, whether directly or indirectly.

ARTICLE 7 RATING CRITERIA, METHODOLOGIES AND POLICIES

1. A credit rating agency shall consistently use rating criteria, methodologies and policies that are robust and systematic.
2. The rating criteria and methodologies in sub Article (1) shall be:
 - (a) developed for each type of debt securities and industry to which they are applied; and
 - (b) published before any rating is assigned to a debt instrument issue, an issuer or an institution.
3. The credit rating agency shall provide the approach adopted and parameters which will be considered for different rating categories including the benchmarks used, where applicable.
4. The credit rating agency shall publish a set of rating criteria and methodologies as set out in the Second Schedule of this Directive or as may be specified by the Competent Authority from time to time.
5. A credit rating agency shall incorporate corporate governance analysis and corporate governance practices into its rating framework to assess any impact on the credit risks of a debt instrument issue.
6. A credit rating agency shall structure its rating teams and processes to promote continuity, consistency and avoid bias in the rating process.
7. A credit rating agency shall regularly assess the adequacy of its staffing strength and shall subject its rating analysts to an appropriate rotation mechanism to safeguard objectivity.
8. A credit rating agency shall develop policies, controls and procedures to ensure consistency and transparency of its rating operations.
9. As a minimum standard, the credit rating agency shall develop and publish rating policies as specified in the Third Schedule of this Directive.

ARTICLE 8 TRANSPARENCY AND DISCLOSURE

1. A credit rating agency shall ensure timely disclosure of rating opinions and publish information to support its rating opinions which shall include assumptions and rationale of its opinion.
2. The rating reports shall contain current and critical information with sufficient analytical depth.
3. A credit rating agency shall publish the information and documents required in this Directive on its website and ensure that the information and documents are freely and easily accessible by the public.
4. A credit rating agency shall establish an effective communication platform to inform the stakeholders immediately on its rating results.
5. A credit rating agency shall clearly and publicly disclose public offers of securities graded as default on its website for the last five years in the format as provided in the Fourth Schedule.
6. A credit rating agency may withdraw a rating of public offers of securities only after it has assigned the latest rating action which includes downgrading the rating to default in order to ensure completeness of the default probability statistics.
7. A credit rating agency shall disclose any other withdrawal and suspension of rating not covered in sub Article 6 in its withdrawal and suspension policy.
8. A credit rating agency shall publish sufficient information about the historical default rates of the credit rating agency rating categories and whether the default rates of these categories have changed over time in a manner as provided in the Fourth Schedule.

ARTICLE 9 INDEPENDENCE, OBJECTIVITY AND CONFLICT OF INTEREST

1. A credit rating agency shall :
 - (a) have a sound governance structure to maintain its independence, objectivity and professionalism;
 - (b) where applicable, adopt and comply with the relevant corporate governance standards as set out in the Directive on Corporate Governance for Market Intermediaries;
 - (c) establish appropriate policies and procedures governing investments in and trading of securities by its employees;

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- (d) establish adequate procedures and mechanisms in place to ensure that its ancillary business does not lead to a conflict of interest situation with its credit rating activities;
 - (e) disclose the fees received for rating a public offer; and
 - (f) ensure that the rating teams are able to perform their duties without undue intervention or influence from the shareholders and board of directors.
2. Where a credit rating agency, its employees, or any of its associates, has an interest in the securities to be rated, the credit rating agency or that person shall not be involved in the rating and monitoring process or be involved in decisions on ratings.
 3. A credit rating agency shall include a statement in its rating report specifying the percentage of its revenue in the preceding year that is earned as rating fees for a securities issue or a group of related issuers.
 4. A credit rating agency shall disclose in their rating report for all public issues of securities all potential areas of conflict of interest, including those of their associates, and where there is no conflict of interest to be disclosed, the credit rating agency shall make a declaration that it is not aware of any conflict of interest relating to the public offer of securities it has rated.
 5. A credit rating agency shall maintain integrity when seeking rating business.
 6. A credit rating agency shall create a function responsible for the credit rating agency's compliance with the provisions of its code of conduct and applicable laws.
 7. A person responsible for the credit rating agency's compliance function shall be independent of the credit rating agency's rating operations.

ARTICLE 10

MONITORING OF PUBLIC OFFERS OF SECURITIES RATED BY CREDIT RATING AGENCIES

1. A credit rating agency shall, on request by an issuer or the public, conduct timely rating reviews of outstanding public offers of securities and publish its rating reviews and reports on a timely and consistent basis.
2. Notwithstanding sub Article (1), the issuer shall monitor ratings to ensure that the credit rating agency effects changes in the assigned rating on a timely manner depending on the business situation of the issuer.
3. A credit rating agency shall implement rating outlook and rating watch into their ratings monitoring framework with the necessary parameters.

ARTICLE 11

HUMAN RESOURCES AND EXPERTISE

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1. A credit rating agency shall put in place appropriate policies and procedures, including proper review and oversight on all matters relating to its human resource and expertise requirements.
2. A credit rating agency shall:
 - (a) have analysts who are competent and qualified to carry out rating assignments and subsequent monitoring of public offers of debt securities;
 - (b) ensure that in assessing the competence of its analysts consider, their level of education, experience within sectors, industries and geographic regions, experience with particular transactions and asset classes and other specialty areas;
 - (c) ensure that analysts maintain a high level of analytical and monitoring standards;
 - (d) ensure that all staff involved in the rating and monitoring process are qualified and receive continuous training; and
 - (e) ensure that the chief executive officer is responsible for rating operations.

ARTICLE 12 OPERATIONAL REQUIREMENTS

1. A credit rating agency shall:
 - (a) have adequate infrastructure and information systems to provide reliable public offers of debt securities rating services;
 - (b) maintain its credit rating operations and facilities with adequate security, system capacity and contingency arrangements including a business continuity plan;
 - (c) ensure that a rating agreement with an issuer or originator of debt securities shall contain adequate information and provisions to ensure that the credit rating agency can conduct effective and timely assessment of the debt securities throughout the tenure of the agreement;
 - (d) keep proper records in line with all applicable statutory requirements including accounting records and other books.
 - (e) have detailed whistle-blower policies which promotes confidentiality;

- (f) conduct investigations in accordance with its policies and procedures;
 - (g) prevent discrimination, retaliation or harassment against any whistle-blower or participant in the investigation process;
 - (h) ensure proper governance of the credit rating agency; and
 - (i) ensure that all its dealings and transactions with its holding company, where applicable, commercial in nature or otherwise, are periodically reviewed by independent directors who shall ensure that such dealings and transactions are undertaken in a fair and justifiable manner, and are made in the best interest of the credit rating agency and its shareholders.
2. The records in sub Article (1) (d) shall be kept for a period of not less than ten years.

ARTICLE 13

CONFIDENTIALITY OF INFORMATION

1. A credit rating agency shall:
- (a) maintain the confidentiality of the information obtained from its clients in accordance with the confidentiality provisions or agreements entered into with its clients; and
 - (b) not disclose the information to any other person except where such disclosure is permitted under any law for the time being in force or where the disclosure is required to be made to the Competent Authority.
2. A credit rating agency shall establish, maintain and implement written policies, controls and procedures to prevent the misuse of confidential information and monitor compliance with policies, controls and the procedures.

ARTICLE 14

ADOPTION OF THE IOSCO CODE OF CONDUCT FUNDAMENTALS FOR CREDIT RATING AGENCIES

A credit rating agency shall adopt the IOSCO credit rating agency Code of Conduct Fundamentals for Credit Rating Agencies.

ARTICLE 15

TRANSITIONAL ARRANGEMENTS FOR EXISTING CREDIT RATING AGENCIES

1. A credit rating agency which has been previously registered by a Competent Authority, shall within one year of the commencement of this Directive ensure compliance with this Directive.
2. The Competent Authority may register a credit rating agency referred to in this

Article where :

- (a) the credit rating agency and its rating holding company, where applicable, submit the information and documents as required in Article 5 to the Competent Authority; and
- (b) the credit rating agency has made satisfactory submissions and fully complied with the requirements of Article 5 of this Directive.

ARTICLE 16 CONTINUOUS COMPLIANCE AND REPORTING REQUIREMENTS

1. A credit rating agency or its rating holding company, where applicable, shall comply with the following requirements for the purposes of maintaining its registration as a credit rating agency:
 - (a) the requirements stated in this Directive; and
 - (b) any additional terms, conditions, information or documents as may be specified by the Competent Authority from time to time.
2. A credit rating agency shall submit the following information to the Competent Authority:
 - (a) changes of any information provided in the registration application in the First Schedule as soon as is reasonably possible but not more than thirty days after making such changes;
 - (b) its latest audited financial statements, as soon as is reasonably possible but not more than four months after the close of each financial year; or
 - (c) a list of all ancillary services provided to the clients to whom credit ratings have been provided throughout the year and income received from these services.
3. The Competent Authority shall continuously monitor compliance of a credit rating agency and take the necessary action.

ARTICLE 17 AMENDMENTS

1. This Directive may be amended by the Council of Ministers
2. Any proposals for amendment may be submitted in writing by the Partner States to the Secretary General for submission to the Council of Ministers.

ARTICLE 18 IMPLEMENTATION

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1. Partner States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of the Council of Ministers' approval and inform the Council of Ministers.
2. When Partner States adopt those measures they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods for making such reference shall be laid down by Partner States.

FIRST SCHEDULE

(Made under Articles 5(1) & 16(2)(a))

APPLICATION FOR REGISTRATION OF CREDIT RATING AGENCY

1. Corporate Information

- (a) Name of company :
- (b) Date of incorporation :
- (c) Date of commencement of operations (if applicable) :
- (d) Company number :
- (e) Authorized capital :
- (f) Paid-up capital :
- (g) End of Financial Year :

2. Address and Contact Details

- (a) Registered address :
- (b) Business address :
- (c) Telephone number :
- (d) Fax number :
- (e) Website address :
- (f) Corporate email address :
- (g) Name and telephone number, and email of contact person(s) :

3. Shareholders

Name of shareholder	Percentage of Shareholding
Total	

4. Directors

Name of Director	Status (Please indicate independent or non-independent status as well Chairman of the Board. Also indicate if director has executive status)	Directorship in all other companies

5. Senior management (including CEO, chief operating officer, chief rating officers and portfolio heads) and compliance officer(s)

Name of Personnel	Position	Qualification & Experience(Attach Relevant information)	Directorship (for employee), if any

6. Corporate and organizational structure
7. A copy of its code of conduct and statement of compliance with the IOSCO code of conduct fundamentals for credit rating agencies
8. Details of all rating criteria, methodologies, policies and process
9. Details of rating monitoring process
10. Any other relevant information to support the application

Note: A rating holding company of a credit rating agency is only required to submit

information in items 1-5, 6 and 10 above.

SECOND SCHEDULE *(Made under Article 7(4))*

CRITERIA AND METHODOLOGIES TO BE DEVELOPED AND DISCLOSED BY CREDIT RATING AGENCY

1. Rating watch and rating outlook – its meaning, usage, timeline before final rating actions.
2. Monitoring of ratings– process and timeline for rating reviews.
3. Consideration of letters of support and comfort.
4. State Government guarantees.
5. Methodology for bank-guaranteed issues.
6. Rating of Government related entities.
7. Methodology governing linkages between parent and subsidiary companies.
8. Equity weight for hybrid capital of rated issuer.
9. Analysis of short and long term ratings.
10. Methodology for foreign entities raising local currency-denominated debt securities.
11. Treatment of guarantees and warranties.
12. Criteria on subordinated loans and preferred public offers of debt securities by corporate and financial institutions.
13. Business and financial risks analysis – relationship between financial ratios and business outlook for each rating category.
14. Definition of default and how default rates are calculated.
15. Any other additional criteria and methodologies as specified by the Competent Authority from time to time.

THIRD SCHEDULE (Made under Article 7(6))

RATING POLICIES TO BE DEVELOPED AND DISCLOSED BY CREDIT RATING AGENCY

1. Rating withdrawal and suspension policy.
2. Unsolicited rating policy.
3. Rating fee guide for all products.
4. Analyst rotation policy.
5. Rating appeal process.
6. Rating announcement policy
7. Policy on treatment of confidential information.
8. Policy on comments by issuer on press release and rationale.
9. Whistle blower policy.
10. Business continuity planning.
11. Personal investment and trading policy.

FOURTH SCHEDULE
(Made under Article 8(5))

SAMPLE REPORTING SCHEDULE
LIST OF DEFAULTS BY RATING CATEGORY IN A FINANCIAL YEAR

I. Long Term scale						
No.	Name of Issuer	Initial Rating	Date of Initial Rating	Rating Prior to Default	Date of Default Recognition	Instruments Type *
Where initial rating is AAA,						
1 st Rating						
2 nd Rating						
3 rd Rating						
Nth Rating						
Where initial rating is AA,						
1.						
2.						
3.						
Where initial rating is A,						
1.						
2.						
3.						
Where initial rating is BBB,						
1.						
2.						
3.						
Where initial rating is BB,						
1.						
2.						
3.						
Where initial rating is B,						
1.						
2.						
3.						
Where initial rating is C,						
1.						
2.						
3.						