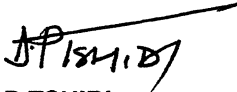


BOARD NOTICE 166 OF 2013**FINANCIAL SERVICES BOARD****CREDIT RATING SERVICES ACT, 2012****FIT AND PROPER REQUIREMENTS FOR CREDIT RATING AGENCIES**

I, Dube Phineas Tshidi, Registrar of Credit Rating Agencies, hereby prescribe under section 5(1)(d) of the Credit Rating Services Act, 2012 (Act No. 24 of 2012), fit and proper requirements for credit rating agencies and directors and key employees of credit rating agencies as set out in the schedule.


DP TSHIDI

REGISTRAR OF CREDIT RATING AGENCIES**SCHEDULE****1. Definitions**

In this Schedule, “**Act**” means the Credit Rating Services Act, 2012 (Act No. 24 of 2012). Any word or expression to which a meaning has been assigned in the Act has that meaning and, unless the context otherwise indicates-

“**applicant**” means a person applying for registration as a credit rating agency as contemplated in section 5 of the Act; and

“**key employee**” means any employee of the credit rating agency involved in credit rating services.

2. Honesty and integrity.

(1) A director or key employee of a registered credit rating agency must be a person who is honest and has integrity.

(2) In determining whether a director or key employee complies with subparagraph (1), the registrar may refer to any information in possession of the registrar or brought to the registrar's attention.

(3) Without prejudice to the generality of subparagraphs (2) and (4), any of the following factors constitutes *prima facie* evidence that the person does not qualify in terms of subparagraph (1), namely that the person—

- (a) has been found guilty in any civil or criminal proceedings by a court of law, whether in the Republic of South Africa or elsewhere, of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty;
- (b) has been found guilty by any professional or financial services industry body, whether in the Republic of South Africa or elsewhere, of an act of dishonesty, negligence, incompetence or mismanagement;
- (c) has been denied membership of any body referred to in sub-paragraph (b) on account of an act of dishonesty, negligence, incompetence or mismanagement;
- (d) has—
 - (i) been found guilty by any regulatory or supervisory body, whether in the Republic of South Africa or elsewhere; or
 - (ii) had its authorisation to carry on business refused, suspended or withdrawn by any such body on account of an act of dishonesty, negligence, incompetence or mismanagement;
- (e) has had any licence granted by any regulatory or supervisory body referred to in subparagraph (d) suspended or withdrawn by such body on account of an act of dishonesty, negligence, incompetence or mismanagement; or
- (f) has at any time prior to the date of application been disqualified or prohibited by any court of law, whether in the Republic of South Africa or elsewhere, from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective whether such disqualification has since been lifted or not.

(4) An applicant, director or key employee must be candid and accurate in the application and must of own accord disclose all facts or information at the disposal of, or which may be accessible to the applicant, director or key employee and which may be relevant for purposes of a decision by the registrar that the director or key employee complies or does not comply with subparagraph (1).

(5) An applicant must submit its application with completed Annexure B and D Forms in respect of each of its directors and key employees.

3. Competence.

(1) An applicant must satisfy the registrar that its directors and key employees are competent to undertake the credit rating services which it intends providing including, where appropriate, detailed knowledge of the structure, purpose and risks of the products associated with the type of credit rating service it intends providing.

(2) Without prejudice to the generality of subparagraph (1), in determining a person's competence, the registrar may have regard to, including, but not limited to the following matters:-

- (a) the person's past performance or expertise in the rendering of credit rating services;
- (b) the person's skills and experience to operate and manage, where applicable, the regulated activities of the credit rating agency;
- (c) the person's technical knowledge and ability to perform prescribed duties for which he or she is engaged, including recognised relevant professional qualifications and membership of relevant professional institutions.

(3) A registered credit rating agency must comply with the following conditions, in addition to any other conditions imposed by the registrar in terms of the Act (if any) as indicated on the applicant's registration form when granted: A registered credit rating agency must:-

- (a) maintain a register of directors and key employees, which must be regularly updated;
- (b) promptly inform the registrar when the appointment of a director or key employee is terminated and the reason therefor;
- (c) complete Annexure B where a new director or key employee is appointed, and promptly submit it to the registrar;
- (d) annually submit a written statement to the registrar wherein continued compliance with this Notice with respect to each director and key employee is confirmed.

4. Operational ability.

An applicant must have and be able to maintain the operational ability to fulfil the responsibilities imposed by the Act on registered credit rating agencies, including at least the following-

- (a) a fixed business address in the Republic of South Africa;
- (b) adequate access to communication facilities including at least a full-time telephone or cell phone service, administrative facilities, including electronic, typing and document duplication facilities;
- (c) adequate storage and filing systems for the safe-keeping of records, business communications and correspondence; and
- (d) an account with a registered bank in the Republic of South Africa.

5. Financial soundness of applicants.

(1) An applicant must not be under liquidation or provisional liquidation, or subject to business rescue proceedings as contemplated in the Companies Act, or have made composition arrangements with its creditors, filed for bankruptcy or filed for winding-up.

(2) The assets of an applicant (excluding goodwill and other intangible assets) must exceed the applicant's liabilities (excluding loans validly subordinated in favour of all other creditors).

(3) An applicant must maintain current assets which are at least sufficient to meet current liabilities.

(4) An applicant must not be subject to any judgment debt or award which remains outstanding or has not been satisfied within a reasonable period.

(5) An applicant must provide the registrar with a satisfactory credit reference.

6. Financial soundness of directors and key employees.

(1) A director or key employee of a registered credit rating agency must not be an unrehabilitated insolvent, sequestered, applied for sequestration or subject to debt review as contemplated by the National Credit Act, 2005 (Act No. 34 of 2005).

(2) A director or key employee of a registered credit rating agency must not be subject to any judgment debt or award which remains outstanding or has not been satisfied within a reasonable period.

(3) A director or key employee of a registered credit rating agency must provide the registrar with a satisfactory credit reference.

7. Commencement.

This Notice takes effect on the date of publication thereof.

ANNEXURE A**GENERAL INFORMATION ON COMPLETION OF QUESTIONNAIRES AS CONTAINED IN ANNEXURES B, C AND D****A. Instructions for completion and submission**

1. The questionnaires in Annexure B, C and D must be properly completed and the declaration signed. Questions must be answered either in full or indicated not applicable ("n/a"). The signatory(ies) of the questionnaires must be duly authorised to furnish the information.
2. The questionnaires in Annexure B, C and D must be completed in respect of directors, and key employees and the applicant as indicated therein.
3. The format of the questionnaire or the wording of questions may not be changed. However, this document may be reproduced.
4. Answers may be in handwriting or in typewriting.
 - 4.2. If the questionnaire is completed in writing and the space provided is not sufficient, the detail may be provided on a separate page, duly cross-referenced to the relevant question. Please indicate the number of any supplementary sheets attached to Annexures B and C.
 - 4.3. If the questionnaire submitted contains any changes to typed or written information, such changes must be duly signed.

ANNEXURE B**QUESTIONNAIRE TO BE COMPLETED IN RESPECT OF DIRECTORS AND KEY EMPLOYEES OF AN APPLICANT**

1. Personal details of the director or key employee in respect of which this questionnaire is being completed:

1.1. Surname and title:

1.2. Full first name(s):

1.3. Any previous surname(s) or first name(s):

1.4. Indicate the proposed position to be held, e.g. director or managing director:

1.5. Effective date of appointment:

1.6. Residential address and telephone number:

1.7. Postal address:

1.8. Personal Details

Date of birth: _____

Place of birth: _____

Identity Document number (attach a certified copy): _____

Passport number: (attach a certified copy): _____

Expiry date: _____

Country of issue: _____

1.9. Nationality

1.10. Professional qualification(s), the year(s) when, and the institution(s) at which, these were acquired (attach a certified copy of the qualification/s):

1.11. If notified and required by the FSB attach completed Personal Credential Verification Forms for purposes of the background screening of each director or key employee. The forms are obtainable on application from the Financial Services Board.

1.12. Attach detailed curriculum vitae.

2. General details in respect of an individual.

2.1. State in what capacity you are completing this document, i.e. as a current or prospective director (executive or non-executive) or key employee. State full job title and describe the particular duties and responsibilities:

2.2. Provide a record of significant investments and shareholding history (including indirect holdings) over at least the last five years (including those holdings which provided you a significant influence over the operations and affairs of the entity invested in or in which you had a shareholding)

3. Specific test to assess fitness and probity

If the answer to a question is 'yes' please provide details. A separate schedule may be completed and attached to this questionnaire with proper referencing.

3.1 Have you, or any business in which you have had a controlling interest or have exercised influence, been investigated, disciplined, suspended or censured by a regulatory or professional body, a court or tribunal, whether publicly or privately?

3.2 Have you ever been associated, in an ownership or management capacity, with a company, partnership or other business association that has been refused registration, authorisation, membership or a license to conduct trade, business or a profession, or has had that registration, authorisation, membership or license revoked, withdrawn or terminated?

3.3 As a result of the removal of the relevant licence, registration or other authority mentioned in question 3.2 above, have you ever been refused the right to carry on a trade, business or profession requiring a licence, registration or other authorisation?

3.4 Have you ever been the subject of any complaint, enquiry, investigation or proceedings which has resulted in disciplinary action being taken against you, your suspension or censure by a regulatory or professional body, a court or tribunal, whether publicly or privately?

3.5 Have you ever been found guilty in any civil or criminal proceedings by a court of law, whether in the Republic of South Africa or elsewhere, of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty, forgery, uttering a forged document, perjury or other criminal acts of a financial nature, or are any such proceedings pending?

3.6 Have you ever been found guilty of contravening any of the requirements and standards of a regulatory body, professional body, government or its agencies, or, been found guilty by any professional or financial services industry body, whether in the Republic of South Africa or elsewhere, of an act of dishonesty, negligence, incompetence or mismanagement or are any such proceedings pending?

3.7 Have you been denied membership of any professional or financial services industry body, whether in the Republic of South Africa or elsewhere, on account of an act of dishonesty, negligence, incompetence or mismanagement?

3.8 Have you at any time prior to the date of application been disqualified or prohibited by any court of law, whether in the Republic of South Africa or elsewhere, from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective of whether such disqualification has since been lifted or not?

3.9 Have you ever been a director, partner, or otherwise involved in the management of a business that has gone into business rescue, curatorship, bankruptcy or liquidation while you have been connected with that business or within one year after that connection?

3.10 Have you ever been dismissed, asked to resign or resigned from employment or from a position of trust, a fiduciary appointment or similar because of questions about and factors relating to your honesty and integrity?

3.11 Have you ever been disqualified, under the Companies Act, 2008, or its predecessor or any other financial services legislation or regulation, whether in the Republic of South Africa or elsewhere, the object of which is the protection of the public against financial loss from acting as a director or serving in a managerial capacity?

3.12 Have you ever been disciplined by a professional, trade or regulatory body, or dismissed or requested to resign from any position or office for dishonesty, negligence, incompetence or mismanagement?

3.13 Have you ever been the subject of any adverse judgment or award, whether in the Republic of South Africa or elsewhere, which remains outstanding or was not satisfied within a reasonable period?

3.14 Have you ever made any arrangements or composition with your creditors, been sequestrated or filed for voluntary sequestration, had your assets repossessed or liquidated or been involved in proceedings relating to these?

3.15 Have you ever been a senior officer or director of a company or a shareholder of a company in a position to exercise influence in the company that:

- (a) has been the subject of any adverse judgment or award, whether in the Republic of South Africa or elsewhere, which remains outstanding or was not satisfied within a reasonable period?

- (b) has, whether in the Republic of South Africa or elsewhere, made any arrangements or composition with its creditors, filed for business rescue, filed for bankruptcy, been adjudged bankrupt, had assets repossessed or liquidated, or been involved in proceedings relating to any of the foregoing?

DECLARATION

(to be completed by individual directors and key employees of an applicant and by the managing director on behalf of an applicant.)

I, the undersigned, (insert full first name(s) and surname) hereby certify that, to the best of my knowledge, the information given in the answers to the above questions are true, complete and accurate and not misleading in any respect.

I undertake that, as long as I continue to be a director or key employee of the registered credit rating agency, I will notify the registrar of any material changes to, or changes affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in no event later than 21 days from the day that the change comes to my attention.

I hereby authorise the Financial Services Board, and its duly authorised verification agent, to request or confirm any personal information as well as any other information that I have provided in support of

my application with any personal data holders (including but not limited to the South African Police Service, the Government of the Republic of South Africa, industry bodies and associations, employers and any educational, training, credit bureau and fraud prevention organisations) for the purpose of verifying my personal credentials and records.

Credential verification types include, but are not limited to, educational qualifications, professional membership, employment history, and employment references including industry employment registers, consumer credit, criminal records, driver's licence, and fraud prevention checks.

I authorise the personal data holders (including but not limited to the aforesaid institutions) to furnish information regarding my credentials, whether claimed or not, to the Financial Services Board and its duly appointed verification agent. I unconditionally indemnify the Financial Services Board, its verification agent and the personal data holders against any liability that may result from furnishing information in this regard.

Full name(s) and surname:

Position held:

SIGNATURE: DIRECTOR DATE

SIGNATURE: KEY EMPLOYEE DATE.....

SIGNATURE: COMPANY DIRECTOR, duly authorised as signatory

SIGNATURE: DATE

Documents to be submitted

- a certified copy of the identity document or passport;
- completed Personal Credential Verification Forms;
- curriculum vitae;
- signed declaration; and
- other documents, if any, mentioned in answers to questions and in support of the information required. (Indicate the pages of each enclosure and the number of the question to which the enclosure relates and is referenced).

ANNEXURE C**QUESTIONNAIRE TO BE COMPLETED IN RESPECT OF A DIRECTOR AND KEY EMPLOYEE WHO IS LEAVING / HAS LEFT THE EMPLOY OF THE CREDIT RATING AGENCY**

1. Specific information to be provided:
 - 1.1. Title, full name(s) and surname of director or key employee,
.....
 - 1.2. Position held (e.g. director or managing director),
.....
 - 1.3. Reason(s) for the termination or resignation of the director or key employee,
.....
 - 1.4. Effective date of the termination or resignation,
.....
2. Is there any information that you wish to bring to the attention of the registrar in relation to your termination or resignation?
YES: ()
NO: ()

If the answer is "Yes" specify the information or documents referred to. A separate schedule may be completed and attached to this document with proper referencing.

DECLARATION

(to be completed by directors and key employees who are leaving / have left a credit rating agency and by the managing director on behalf of a credit rating agency.)

I, the undersigned, (insert full first name(s) and surname) hereby certify that, to the best of my knowledge, the information given in the answers to the above questions are true, complete and accurate and not misleading in any respect.

Full name(s) and surname:

Position held:

SIGNATURE: COMPANY DIRECTOR, duly authorised as signatory

SIGNATURE: DATE

SIGNATURE: DIRECTOR DATE.....

SIGNATURE: KEY EMPLOYEE DATE.....

Documents to be submitted

- signed declaration; and
- other documents, if any, mentioned in answer to the question and in support of the information required.

ANNEXURE D

QUESTIONNAIRE TO BE COMPLETED IN RESPECT OF AN APPLICANT

1. Details of the Entity

1.1 Entity Name:

1.2 Registration Number:

1.3 Any other name under which the business is conducted and where is it used:

1.4 Registered address, website address and email address:

1.5 Postal address:

1.6 Telephone and facsimile numbers of the applicant:

1.7 Name, Physical and, postal addresses and telephone numbers of the applicant's bank

1.8 Name, Physical and, postal addresses and telephone numbers of the applicant's auditor

2. Specific test to determine the financial soundness of the applicant:

If the answer to a question is 'yes' please provide details. A separate schedule may be completed and attached to this questionnaire with proper referencing.

- (a) Provide confirmation that the assets of the applicant (excluding goodwill and other intangible assets) exceed the applicant's liabilities (excluding loans validly subordinated in favour of all other creditors).

- (b) Provide confirmation that the applicant maintains current assets which are at least sufficient to meet current liabilities.

- (c) Has the applicant been subject to any judgment debt or award which remains outstanding or has not been satisfied within a reasonable period?

(d) Has the applicant made arrangements or composition with creditors, filed for business rescue, filed for bankruptcy or winding-up?

(e) Has the applicant—

- (i) been found guilty by any regulatory or supervisory body, whether in the Republic of South Africa or elsewhere, on account of an act of dishonesty, negligence, incompetence or mismanagement; or
- (ii) had its authorisation to carry on business refused, suspended or withdrawn by any such body, on account of an act of dishonesty, negligence, incompetence or mismanagement;

(f) Has the applicant had any licence granted by any regulatory or supervisory body referred to in subparagraph (e) suspended or withdrawn by such body on account of an act of dishonesty, negligence, incompetence or mismanagement.

DECLARATION

(to be completed by the chief executive officer/managing director on behalf of an applicant.)

I, the undersigned, (insert full first name(s) and surname) hereby certify that, to the best of my knowledge, the information given in the answers to the above questions are true, complete and accurate and not misleading in any respect.

I undertake that, as long as I continue to be a director of the registered credit rating agency, I will notify the registrar of any material changes to, or changes affecting the completeness or accuracy of

the answers to the questions above as soon as possible, but in no event later than 21 days from the day that the change comes to my attention.

I hereby authorise the Financial Services Board, and its duly authorised verification agent, to request or confirm any information as well as any other information provided in support of this application (including but not limited to the South African Police Service, the Government of the Republic of South Africa, industry bodies and associations, employers and any educational, training, credit bureau and fraud prevention organisations) for the purpose of verifying the information provided.

I authorise the data holders (including but not limited to the aforesaid institutions) to furnish information to the Financial Services Board and its duly appointed verification agent. I unconditionally indemnify the Financial Services Board, its verification agent and the data holders against any liability that may result from furnishing information in this regard.

Full name(s) and surname:

Position held:

SIGNATURE: Chief Executive Officer / Managing Director.....

DATE

Documents to be submitted

- signed declaration; and
- other documents, if any, mentioned in answers to questions and in support of the information required. (Indicate the pages of each enclosure and the number of the question to which the enclosure relates and is referenced).