

**DIRECTIVE 2014/20/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

“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 20% 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 20% 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 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 CRA, means a holding company of the CRA 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 CRA; or
- (ii) has the power to make or cause to be made, decisions in respect of the business or administration of a CRA, and to give effect to such decisions or cause them to be given effect to;

“Core Business” means the business which provides the principal source of operating revenue to a corporation and which comprises the principal activities of the corporation and its holding or subsidiary companies;

“Credit rating agency” or —“CRA” means a registered person under the Competent Authority, which provides credit rating services for issuance or offerings of debt instruments;

“Holding company” has the meaning assigned to it in law relating to companies Acts of Partner States as amended to date.

“Independent director” has the meaning assigned to it under EAC Council Directive on Corporate governance code for listed companies;

“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 in rating services of CRA and includes but is not limited to a holding company that derives more than 50% of its consolidated revenue or profit from the CRA, or that invests more than 50% of its assets in the CRA over a period of three years consecutively.

The Competent Authority may exempt where it deems appropriate or upon application, grant exemptions or variations, from compliance with any requirement of these Guidelines, vary any provision in these Guidelines and impose any term or condition as it deems fit.

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

ARTICLE 2 PRINCIPLES

In implementing this Directive, Competent Authorities shall ensure that Credit Rating Agencies:

1. Adopt procedures and mechanisms to promote quality and integrity in the rating process, thereby improving the usefulness to investors of credit ratings;
2. Put in place mechanism to address the Conflicts of interest or factors that impinge on a CRA’s analytical independence can undermine investor confidence in the CRA’s opinions and ratings;
3. Observe disclosure and transparency in their rating activities; and
4. Promote procedures and mechanisms to protect non-public information from premature disclosure or by use in ways unrelated to a CRA’s rating activities.

ARTICLE 3 SCOPE

This Directive shall apply to all Credit Rating Agencies registered by a Competent Authority in the Partner States to rate debt securities, issuers of debt securities, or any other services incidental to dealing in securities.

ARTICLE 4 OBJECTIVE

To harmonize the registration requirements of Credit Rating Agencies in the Partner States with a view to protecting investors, development of securities market in the region and to ensure that CRAs conduct their credit rating activities in accordance with principles of integrity, transparency, quality and good governance.

ARTICLE 5 REGISTRATION REQUIREMENTS

1. The applicant shall have adequate and stable financial base;
2. The shareholding structure at the point of registration;
 - a) A letter of “no objection” from the primary regulatory authority of country of incorporation/licensing/registration;
 - b) Corporate information and information pertaining to the operations of the CRA and its rating holding company (as set out in the registration application in **Annexure 4**);
 - c) Declaration that the CRA would comply with all the requirements provided in this Directive;
3. A CRA, it’s Directors, Chief Executive and key personnel (including those in management and in key decision-making positions) shall be fit and proper as prescribed under Council Directive on Regulated Activities.
4. The Competent Authority may require the applicant and its holding company to furnish any further information or clarification as the Competent Authority considers necessary, for the purpose of considering the application.
5. To complete a registration of CRA under this Directive, the Competent Authority will use its best endeavor to approve or reject, as the case may be, the registration application of the CRA not later than three months upon the full receipt of documents and information.

ARTICLE 6 SHAREHOLDING STRUCTURE

1. A CRA shall maintain a shareholding structure that will enable it to carry out its functions independently and objectively.
2. A CRA shall notify the Competent Authority where a significant change with shareholding structure occurs, including:-

- (a) The creation of a holding company or ultimate holding company of a CRA; or
- (b) The change of shareholdings which results in a person controlling 20% or more of the paid-up capital of the CRA, and any subsequent cumulative increase in shareholding of 10% or more of the paid-up capital of the CRA, whether directly or indirectly.

ARTICLE 7

RATING CRITERIA, METHODOLOGIES AND POLICIES

1. A CRA shall use rating criteria, methodologies and policies that are robust, systematic and apply them consistently.
2. Rating criteria and methodologies shall be developed for each type of debt securities and industry to which they are applied. These rating criteria and methodologies shall be published before any rating is assigned to a debt instrument issue, an issuer or an institution.
3. The CRA shall include the rating philosophy or approach adopted the parameters or thresholds which will be considered for different rating categories and benchmarks used, where applicable.
4. The CRA shall develop and publish a set of rating criteria and methodologies as set out in Annexure 1 of this Directive. The criteria and methodologies listed in Annexure 1 are not meant to be exhaustive and, additional criteria and methodologies could be further specified by the Competent Authority from time to time.
5. A CRA shall, where relevant, incorporate corporate governance analysis and the relevant benchmark of corporate governance practices into its rating framework to assess any impact on credit risks of a debt instrument issue.
6. A CRA shall structure its rating teams and process to promote continuity, consistency and avoid bias in the rating process. Upon considering the adequacy of its staffing strength, the CRA shall use its best endeavor to subject its rating analysts to an appropriate rotation mechanism that provides for gradual change in rating teams.
7. A CRA shall establish a set of transparent policies, controls and procedures in order to ensure consistency of its rating operation as well as to maintain a fair and robust relationship with its external stakeholders. As a minimum standard, the CRA shall develop and publish rating policies as specified in Annexure 2 of this Directive.

ARTICLE 8

TRANSPARENCY AND DISCLOSURE

1. A CRA shall ensure timely disclosure of all rating opinions and adequately publish all information to support its rating opinions which include, but not limited to, assumptions and rationale of its opinion.
2. The rating reports shall contain all current and critical information with sufficient analytical depth.
3. A CRA shall publish all 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. In ensuring accountability of its rating opinions, a CRA shall arrange a robust and effective communication channel, either in the form of briefing or conference call, to explain and discuss its rating actions with the users, subscribers or any stakeholders of its rating services.
5. A CRA shall clearly and publicly disclose its definition of default. In addition, a list of public offers of debt securities downgraded to default should be disclosed and published by the CRA on its website on an annual basis based on the format prescribed in Annexure 3 of this Directive. A historical record of this default list (at least for the past five years) shall also be made available on the website.
6. To ensure completeness of the default probability statistics, public offers of debt securities rating shall be withdrawn by a CRA only after it has assigned the latest rating action which includes downgrading the rating to default. Other withdrawal and suspension of rating shall be disclosed in the CRA's withdrawal and suspension policy.
7. A CRA shall publish sufficient information about the historical default rates of the CRA rating categories and whether the default rates of these categories have changed over time.

ARTICLE 9

INDEPENDENCE, OBJECTIVITY AND CONFLICT OF INTEREST

1. It is essential that a CRA has a sound governance structure to maintain its independence, objectivity and professionalism. In this regard, the CRA shall, where possible, adopt and comply with the relevant corporate governance standards as laid out in the EAC Directive on Corporate Governance for Market Intermediaries.
2. A CRA shall ensure that its rating teams are able to perform its duties free of undue intervention or influence from its shareholders and its Board of Directors.
3. Where an analyst, or any of his or her associate, has any interest in the debt securities issue, the analyst shall not be involved in the rating and monitoring process

nor be involved in deciding on ratings.

4. A CRA shall establish appropriate policies and procedures governing investments in and trading of securities by its employees.
5. A CRA shall have adequate procedures and mechanisms in place to ensure that its ancillary business (if any) does not lead to a conflict of interest situation with its credit rating activities.
6. For public issues, CRA should disclose the fees they are receiving for purposes of rating that public offer.
7. A CRA shall include a specific statement in its rating reports if rating fees for a security issue or from a group of related issuers comprise one to ten, ten to twenty, or twenty percent and above of its rating revenue from the preceding year.
8. Analysts, management and Board of a CRA shall disclose all conflicts of interest, including those of their associates, to the public in their rating report for all public issues of debt securities. Even though there is no conflict of interest to be disclosed, the CRA shall include a statement in its rating report that the CRA, the analysts involved in the debt securities rating and management, Board of the CRA have not encountered nor are aware of any conflict of interest relating to the public offers of debt securities.
9. A CRA shall maintain principle of integrity in seeking rating business.
10. A CRA should institute policies and procedures that clearly specify a person responsible for the CRA's and CRA's employees' compliance with the provisions of the CRA's code of conduct and with applicable laws and regulations. This person's reporting lines and compensation should be independent of the CRA's rating operations.

ARTICLE 10

MONITORING OF PUBLIC OFFERS OF DEBT SECURITIES RATED BY CRAs

1. A CRA shall conduct timely and regular rating reviews of outstanding public offers of debt securities and publish its rating reviews and reports on a timely and consistent basis.
2. Notwithstanding the paragraph above, ratings shall be monitored such that any change in the issuer/issues' situation is reflected in the assigned rating on a timely and effective manner.
3. A CRA shall implement rating outlook and rating watch into their ratings monitoring framework with the necessary parameters.

ARTICLE 11

HUMAN RESOURCES AND EXPERTISE

1. A CRA shall have analysts who are competent and qualified to carry out rating assignments and subsequent monitoring of public offers of debt securities. In assessing the competence of its analysts, a CRA shall consider, among others, their level of education; experience within sectors, industries and geographic regions; experience with particular transactions and asset classes; and other specialty areas.
2. A CRA shall ensure that its analysts maintain sufficient high level of analytical and monitoring standards.
3. A CRA shall ensure that all staff involved in the rating and monitoring process are and remain qualified through adequate training.
4. A CRA shall ensure that its chief executive officer is primarily responsible for all key functions relating to rating operations. The CRA shall put in place appropriate policies and procedures, including proper review and oversight on all matters relating to its human resource and expertise requirements.

ARTICLE 12

OPERATIONAL REQUIREMENTS

1. A CRA shall have adequate infrastructure and information systems to provide reliable public offers of debt securities rating services and maintain its credit rating operations and facilities with adequate security, system capacity and contingency arrangements (including a business continuity plan).
2. A CRA shall ensure that its rating agreement with an issuer public offers of debt securities or originator contains sufficient provisions for it to obtain adequate information and to conduct effective and timely assessment of the debt securities, issuer or originator throughout the tenure of the debt securities' issue or program.
3. A CRA shall keep proper records in line with all applicable statutory requirements. Accounting records and other books shall be retained for a period of not less than ten years. Proper record keeping includes maintaining records to support credit ratings prepared by the CRA.
4. A CRA shall have detailed whistle-blower policies encouraging all employees to report (with complete confidentiality) any unethical practice or grave misconduct to a designated authority within the CRA. All reported events shall be taken seriously and investigated promptly in accordance with its policies and procedures. There shall be provisions to prevent discrimination, retaliation, or harassment against any whistle-blower or participant in the investigation process.
5. To ensure proper governance of the CRA, the CRA shall ensure that all its dealings and transactions with its holding company, commercial in nature or

otherwise, are periodically reviewed by its independent directors who should ensure that such dealings and transactions are undertaken in a fair and justifiable manner, and are made in the best interest of the CRA and its shareholders.

ARTICLE 13

CONFIDENTIALITY OF INFORMATION

1. A CRA and its staff shall maintain the confidentiality of the information obtained from its clients in accordance with the confidentiality provisions or agreements entered into with its clients and shall not disclose the same to any other person except where such disclosure is permitted by or under any law for the time being in force or where the disclosure is required to be made to the Authority.
2. A CRA shall establish, maintain and implement written policies, controls and procedures to prevent the misuse of non-public information and to take steps to monitor if these procedures are followed.

ARTICLE 14

ADOPTION OF THE INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSION'S CODE OF CONDUCT FUNDAMENTALS FOR CREDIT RATING AGENCIES (IOSCO CRA CODE)

A CRA shall adopt the IOSCO CRA Code of Conduct Fundamentals for CRAs (IOSCO CRA Code).

ARTICLE 15

TRANSITIONAL ARRANGEMENTS FOR EXISTING CRAs

1. CRAs which have been previously recognized by the Competent Authorities are allowed to continue their activities for a period of 1 year from the date this Directive takes effect subject to any terms and conditions that may be imposed by the Competent Authorities.
2. The Competent Authority may register a CRA referred to in this Article provided that the following requirements are met-
 - (a) The CRA and its rating holding company shall submit the information and documents as required in Article 5 to the Competent Authority; and
 - (b) The said submission and full compliance with the Directive shall have been satisfied by the CRA.

ARTICLE 16

CONTINUOUS COMPLIANCE AND REPORTING REQUIREMENTS

1. A CRA and its rating holding company, where applicable, shall at all times undertake to comply with the following requirements for the purposes of maintaining its registration as a CRA:
 - (a) All 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. Subsequent to its registration, a CRA shall submit the following information to the Competent Authority, on annual basis:
 - (a) Changes of any information provided in the registration application in **Annexure 4**;
 - (b) Its latest audited financial statements, as soon as reasonably possible but not more than six months after the close of each financial year;
 - (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 review the registration of a CRA. In its review, the Competent Authority shall take into account the compliance record of the CRA during the period under review and may take such action as it deems fit to address the findings in the review.

ARTICLE 17

SANCTIONS

Partner States shall lay down a system of Sanctions for breaches on national provisions adopted pursuant to this directive and shall take all measures necessary to ensure that these sanctions are applied. The sanctions provided shall be effective, proportional and dissuasive.

ARTICLE 18

COOPERATION

Competent Authorities in all Partner States shall cooperate with each other at all times for the purpose of establishing and sustaining an efficient rating system;

ARTICLE 19 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 of the East African Community.

ARTICLE 20 IMPLEMENTATION

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. They shall forthwith inform the Council of Ministers thereof.
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.

ARTICLE 21 ENTRY INTO FORCE

This Directive shall enter into force upon approval by the Council.

ARTICLE 22 ADDRESSEES

*This Directive is addressed to the Partner States.
Done in Arusha, Tanzania*

CRITERIA AND METHODOLOGIES TO BE DEVELOPED AND DISCLOSED BY CRA

1. Rating watch and rating outlook – its meanings, usage, timeline before final rating actions
2. Rating monitoring – process and timeline for rating reviews
3. Use of corporate governance in rating decisions
4. Treatment of letter of support and letter of comfort
5. State Government guarantees
6. Methodology for bank-guaranteed issues
7. Rating of Government related entities
8. Methodology governing linkages between parent and subsidiary companies
9. Equity weight for hybrid capital of rated issuer
10. Correlation between short and long term rating scale
11. Methodology for foreign entities raising local currency-denominated debt securities
12. Treatment of guarantees from foreign parent
13. Criteria on subordinated loans and preferred public offers of debt securities by corporate and financial institutions
14. Business and financial risk matrix – relationship between financial ratios and business outlook for each rating category
15. Definition of default and how default rates are calculated

RATING POLICIES TO BE DEVELOPED AND DISCLOSED BY CRA

1. Rating withdrawal and suspension policy
2. Unsolicited rating policy
3. Rating fee guide for all products
4. Analyst rotation policy, if any
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

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. | | | | | | |
| 2. | | | | | | |
| 3. | | | | | | |
| 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. | | | | | | |

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) Financial Year End :

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 CRA Code

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 CRA is only required to submit information in items 1-5, 6 and 10 above.