

Module	CREDIT RATING OF FINANCIAL PRODUCTS
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
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Module Scope

Does your organisation operate as a credit rating agency providing credit ratings of financial products?

Does your organisation currently hold or intend to acquire an Australian Financial Services Licence (AFSL)?

Does your organisation have systems and procedures in place to ensure adequate disclosure of information to assist investors and other users to understand the credit rating process?

Does your organisation have systems and processes in place to manage and monitor compliance with its AFSL licence obligations and other financial services laws?

Module Application

The CREDIT RATING OF FINANCIAL PRODUCTS module informs the credit rating agency holding an Australian financial services licence of their legislated legal obligations. The module also demonstrates effective practical advice and assistance to the credit rating agency to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the organisation.

To fulfil its purpose the module focuses on providing practical assistance to the credit rating agency intending to establish and maintain a robust foundational framework that determines:

- › How the organisation will function;
- › Who is the responsible decision maker;
- › What matters are relevant to the decision-making process; and
- › Whether the desired outcome has been achieved.

The organisation, their employees and authorised individuals are all expected to be familiar with the broad landscape of legal obligations to which they are subject as well as more specific obligations relevant to the particular sector they are operating in. The CREDIT RATING OF FINANCIAL PRODUCTS module should be subscribed by all credit rating agencies holding Australian financial services licenses, their employees and authorised individuals. The aim of the module is to equip the subscriber with knowledge of their obligations and the skills they require to establish relevant systems and processes to ensure compliance throughout their organisation.

In Australia, credit rating agencies (CRAs) must hold an Australian Financial Services licence (AFS) issued by the Australian Securities and Investment Commission (ASIC). The CREDIT RATING OF FINANCIAL PRODUCTS module covers CRA obligations imposed on them as AFS licensees under Australian corporations' legislation.

In addition to these general operational requirements under corporation's legislation, CRAs must also comply with conditions specific to the credit rating industry. Primarily these conditions derive from the 2015 International Organization of Securities Commissions (IOSCO) Code of Conduct Fundamentals for Credit Rating Agencies. The module also covers the obligations specific to the credit rating industry.

The broad scope of the CREDIT RATING OF FINANCIAL PRODUCTS module is to provide the credit rating agency with answers to these questions:

- What are our legal obligations?
- From where are our legal obligations derived?
- How can we ensure that we are complying with our legal obligations? and
- What are the consequences if we are not complying with our legal obligations?

The CREDIT RATING OF FINANCIAL PRODUCTS module covers all legislated legal obligations of credit rating agencies and demonstrates practical assistance and guidance to ensure that these obligations are complied with through the implementation and maintenance of best practice processes throughout the organisation. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply in particular circumstances.

The module fulfils this objective by comprehensively covering three areas;

- Legislation;
- Obligations; and
- Consequences.

Legislation

The legislative and regulatory landscape from which the primary legal obligations are derived:

- › Australian Securities and Investments Commission Act 2001 (Cth);
- › Corporations Act 2001 & Regulations 2001 (Cth);
- › 2015 International Organization of Securities Commissions (IOSCO) Code of Conduct Fundamentals for Credit Rating Agencies;
- › ASIC Regulatory Guides;
- › Electronic Transactions Act 1999 & Regulations 2000 (Cth);
- › Australian Prudential Regulation Authority Act 1998 (Cth);
- › ASIC Supervisory Cost Recovery Levy Act 2017 & Regulations 2017 (Cth);
- › ASIC Supervisory Cost Recovery Levy (Collection) Act 2017 (Cth);
- › ASIC Supervisory Cost Recover Levy (Consequential Amendments) Act 2017 (Cth); and
- › ASIC Corporations Instruments.

Obligations

The specific areas where legal and regulatory obligations apply to the Australian financial services licensee operating in the credit rating industry:

- › Licensing and authorisation of financial services providers;
- › Australian financial services licence;
- › Financial services business;
- › Authorisation of representatives; and
- › Prohibitions
- › General operational requirements;
- › Provision of services;
- › Compliance with conditions;
- › Resourcing;
- › Organisational competence; and
- › Risk management.
- › Disclosure of credit ratings;
- › Credit rating agencies;
- › Unsolicited; and
- › Credit rating action.
- › Provision of consent to issuer of financial products;
- › Inclusion of credit rating.
- › Credit rating methodology;
- › Application and enforcement;
- › Periodic review; and
- › Disclosure.

Management and disclosure of conflicts of interest:

- › Separation;
- › Disclosure; and
- › Training and management of employees.
- › Reporting and record keeping;
- › Confidential information;
- › Audited financial statements;
- › Annual compliance report; and
- › Historical transition.
- › Complaints management;
- › Internal system;
- › Investigation; and
- › Dispute resolution.
- › ASIC investigation management and enforcement.
- › Calculation of ASIC Supervisory Cost Recovery Levy and Impact on Particular Sectors;
- › Regulatory costs;
- › The corporate sector;
- › Deposit taking and credit sector;
- › Investment management and superannuation;
- › Financial advice sector;
- › Market infrastructure and intermediaries' sector;
- › Insurance;
- › Large institutions; and
- › Dashboard reports.
- › Payment of the ASIC Supervisory Cost Recovery Levy;
- › Liability;
- › Returns and default notices;
- › Payment, waiver and recovery;
- › Substantiation notices;
- › Review of decisions;
- › Partnerships, unincorporated associations, RSE licensees and multiple trustees; and
- › Deregistration and cancellation of licences.

Consequences

Significant consequences can apply to Australian financial services licensees operating in the credit rating industry, their employees and authorised individuals found to have breached or not complied with their legal obligations. These consequences vary considerably depending on the nature and extent of the breach or failure. The CREDIT RATING OF FINANCIAL PRODUCTS module covers specific consequences in detail. They can include monetary penalties, legal outcomes and even terms of imprisonment for individuals found to have committed serious criminal offences.

The CREDIT RATING OF FINANCIAL PRODUCTS module does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of obligations by Australian financial services licensees operating in the credit rating industry. The module does not cover the process that an entity or an individual would follow to report or seek compensation for the breach or their loss.

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