



Australian Government

Insolvency and Trustee Service Australia

INSPECTOR-GENERAL PRACTICE DIRECTION 15.2

Debt Agreement Administrators Guidelines relating to keeping proper accounts

DRAFT

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PLEASE NOTE: This draft Practice Direction is released for comment and consultation at the Registered Debt Agreement Administrators Professional Development Day on 9 September 2010. It is therefore possible that the content of this Practice Direction may change before being finalised and published to [ITSA's Policies and Practices Website](#).

¹ Released in September 2010 for comment and consultation

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Introduction

1. The purpose of this document is to outline the Inspector-General in Bankruptcy's regulatory role in regard to the duty of a debt agreement administrator (DAA) to keep and maintain proper books of account for each agreement they administer. It provides details of the Inspector-General's expectations, including best practice principles in respect of:
 - (i) What constitutes accounts, books and records that are necessary to give a full and correct account of each debt agreement and;
 - (ii) The "minimum information" that should be able to be provided by DAAs to the Inspector-General at any point in time.
2. The *Bankruptcy Act 1966* sets out the legislative framework for a DAA's duty to keep accounts. This framework provides a specific duty in accordance with section 185LE and the [Legislative Instrument](#) in clauses 2.7.19 to 2.7.21.
3. At the outset, it should be noted that it is not the Inspector-General's role nor that of the Debt Agreement Service (DAS) to prescribe what or how records must be kept or maintained. Instead the Inspector-General offers general guidance in the form of this Practice Direction.
4. This Practice Direction applies to all DAAs regardless of the size of their operation and whether they are registered.

Overview of Duty to keep accounts

5. As stated in subsection 185LE(1) of the Bankruptcy Act a DAA of a debt agreement **must** keep such accounts, books and records as are necessary to give a full and correct account of the administration of the debt agreement.
6. When required, DAAs **must** also answer any inquiries about the debt agreement and co-operate with any inquiry or investigation made by the Inspector-General (s185LE(1)(c), (d)). Accordingly a DAA's books and records must be maintained and presented in such a state to allow for a response to be given in a timely and efficient manner.
7. Administrators **must** note that their duty to keep and maintain proper books and records also relates to any work they perform leading up to the voting deadline for acceptance of a debt agreement (s185LG).

Inspector-General Expectations

Accounting records

8. DAAs are to ensure that accounting records maintained for an administration exhibit a full and correct and informative account of the administration. It is expected that this principle is followed by all DAAs in accordance with clauses 9 to 18 below.
9. The DAA will maintain separate records of receipts (s185LE(2)(a)(i)) and payments (s185LE(2)(a)(ii)) for each administration.

10. All receipts and payments related to an administration are required to be reflected in the accounts maintained for the administration. Therefore, every transaction for a particular debt agreement that is recorded in the bank statement for the Trust bank account should also be recorded in the respective ledger/cash book for the debt agreement to which the transaction relates.
11. All payments from administrations will be verifiable by reference to appropriate supporting vouchers and original documents maintained on the administration file (either hard copy or electronic storage is acceptable). Where administrators use one payment for bulk transactions to a particular entity, the records supporting the bulk transaction should adequately identify the individual debt agreements to which the payment relates including the name of the debtor, the amount attributable to each debtor and the date of the payment. This also applies in circumstances where bulk receipts are received.
12. All funds received in relation to an administration should be deposited into the Part IX Trust bank account and will be adequately described to enable identification of the transactions giving rise to the receipt of funds. Administrators should ensure that sufficient information is given to debtors intending to make deposits via the internet so that the funds received through the use of internet transactions are accurate and easily attributable to a particular debt agreement to minimise the risk of having unidentified deposits.
13. In circumstances where a particular receipt has been reversed in the bank statement due to the payment being dishonoured, these transactions, being the deposit and the reversal entry, should also be reflected in the cash book/ledger for the debt agreement to accurately reflect the transactions that have taken place.
14. Similarly, where a payment has been made and needs to be cancelled if the cheque or funds are returned and a replacement payment needs to be made, the cash book/ledger for the debt agreement to which the payment relates should record the cancellation of the payment in question and the processing of the new payment.
15. Where an error is found and corrected in a debtor's ledger/cash book and/or the Trust bank account, the identification of the error should be documented as well as the action taken to correct the error to maintain an audit trail as to how the error has been rectified. The file note recording the identification of the error and the action taken should be made on or attached to the document in which the error has been found.
16. Journal entries should also not be used to correct an error in the ledger/cash book. If an error has been made when recording a receipt or payment in the ledger/cash book, the entry should be reversed and the correct entry made rather than using a journal entry to amend the entry.
17. Statements of receipts and payments forwarded to creditors and/or DAS shall accurately and meaningfully reflect the financial transactions of the administration. The statements should also be logical and easy to read and the creditors and or/DAS should be able to use the information to quickly determine the current status of the administration.
18. The accounts of the administration are to be available for inspection by the debtor, Inspector-General (s185LE(1)(b)), a creditor or creditor's authorised representative. (The DAA may consider deferring access to all or part of the account of a debtor depending on

the reasons advanced by the debtor or creditor when requesting to inspect the accounts. Requests must be of a reasonable nature (s185LA(b)&(c)).

File maintenance

19. DAAs are to ensure that they aid the efficiency of the administration through the orderly maintenance of administration documents, papers and accounts, to provide an orderly trail for reviewing decision making processes, and to aid the inspection of the administration by ITSA Regulation. It is expected that this principle is followed by all DAAs in accordance with clauses 20 to 25 below.
20. Separate files should be maintained for each administration (either stored in hard copy or electronically).
21. A record is to be maintained as part of the administration file of every significant step (including important conversations) in the administration of a matter.
22. Administration files and records are to be maintained in a secure location to ensure no unauthorized access.
23. Where electronic storage is utilized as part of the administration process the DAA should ensure that there is adequate security as to access and adequate supporting documentation to verify any changes to the electronically stored material. Adequate data backup procedures and contingency plans should also be documented and in place.
24. The DAA will be able to produce all records relating to the administration in such a manner that the processes of the administration, decisions made and actions taken and accounts maintained for the administration are readily traceable and verifiable.
25. Personal information obtained during the course of the administration is not to be disclosed to third parties unless the disclosure is required by law or authorized by the person to whom the personal information relates.

“Minimum Information”

26. The “minimum information” that should be able to be provided by DAAs to the Inspector-General at any point in time is to consist of:
 - (i) Individual cashbook and/or debtor’s ledger for each debt agreement. This should show the current and historical bank balances in each debt agreement and the individual receipts and payments. An example of a typical layout is shown below.

Debtor's Ledger

<u>Date</u>	<u>Description</u>	<u>£</u>	<u>£ Bal</u>
2/7/07	Direct Dr Ref yyy	300	300
2/8/07	Direct Dr ref yyy	300	600
2/8/07	Fees @20% Cheque no 245	(120)	480
2/9/07	Direct Dr ref yyy	300	780
2/9/07	Fees @20% Ch No 546	(60)	720
2/9/07	<u>GE Dividend</u> <u>5 c in \$ cheque no 789</u>	700	20



- (ii) Evidence, by a detailed bank reconciliation, that all individual cash books/debtor's ledgers reconcile to the balance in the bank account.
- (iii) Debt agreement summary information including, but not limited to:
 - (a) Overview of the terms of the debt agreement eg 104 payments of \$100 per week commencing on <date> with an expected completion date of <date>.
 - (b) Amount of payments made by the debtor to date.
 - (c) Amount of payments left to pay by the debtor (including over what time period).
 - (d) Arrears (if any) amount shown in length of time and dollar value.
 - (e) Amount of dividends paid.
 - (f) Amount of dividends left to pay.
 - (g) Amount of Realisations Charge paid to date.
 - (h) Amount of Realisations Charge left to pay.
 - (i) Amount of administration fees paid to date.
 - (j) Amount of administration fees left to pay.
 - (k) Amount of expenses paid to date, if any.

Bank Reconciliations

- 27. All monies received will be banked to a single interest-bearing bank administration bank account that bears the administrator's name and the words "Debt Agreement Administration Trust Account" (s185LD). This account is to be maintained for the sole purpose of depositing debt agreement monies and paying realisation and interest charges, fees and dividends.

28. The DAAs bank account and the receipts and payments for each administration must be reconciled at least once every 45 days (s185LE(2)(b)). The reconciliation record should clearly state the period being reconciled and the date the reconciliation was performed. The reconciliation should also be supported by readily available information including the bank statements for the period being reconciled, details of closing balances of the individual debtor's cash books/debtor's ledgers and details of any adjusting entries such as unrepresented cheques, interest, etc.
29. The reconciliation should be performed using official bank statements as opposed to internet statements as daily internet bank statements can be subject to change. They should also be done after the end of the period being reconciled and not during the middle of the last day of the period being reconciled as the balances for that day can be subject to change.
30. If reconciliations are performed more frequently than specified in the Act and are performed using internet statements, then either the monthly reconciliations are to be done to the original bank statements or alternately, the reconciliations done using internet statements should be checked against the original bank statements monthly.
31. Where an error is found and corrected in the reconciliation document, the identification of the error should be documented as well as the action taken to correct the error to maintain an audit trail as to how the error has been rectified. The file note recording the identification of the error and the action taken should be made on or attached to the reconciliation in which the error has been found as well as the reconciliation to which the error relates.

Retention and archiving of records

32. DAAs are required to retain and archive records in either hard copy or electronic form for a minimum period of six (6) years after the end of the debt agreement.
33. The time of "end" of a debt agreement is as stipulated in section 185N of the Bankruptcy Act 1966 which states:
"A debt agreement ends when all the obligations that it created have been discharged, unless the agreement has been terminated earlier under section 185P, 185Q, 185QA or 185R."
34. In most cases the debt agreement will end once the debtor has made the final payment required although reference should be made to any other obligations that may be contained within the debt agreement.

Practical Example

Event	Date
Debt agreement starts	15 August 2008
Debt agreement ends	31 October 2011
Earliest date that individual debt agreement record may be destroyed	1 November 2017

ITSA Role

Regulation and Enforcement

35. Sections 12 and paragraphs 185LE(1)(b) to (d) provide ITSA Regulation and Enforcement (R&E) with the power to investigate debt agreement administrations. Where there are issues of concern either during the annual inspection program or through a complaint being made, R&E will examine the adequacy and extent of accounts and records maintained by reference to the principles stated in this Practice Direction and the Legislative Instrument in clauses 2.7.19 to 2.7.21.
36. Where breaches of the law, including the Legislative Instrument, or lack of adequate record keeping are identified, a DAA will be asked to take appropriate remedial action including a change in practice. This may also lead to counselling or in serious or systemic cases to either litigation or disciplinary action being initiated including conditions being placed on a DAA's registration.
37. During annual inspections, R&E will examine the systems and controls a DAA has in place in respect to keeping and maintaining records.
38. R&E will examine documented practices and check lists, delegations and, where a DAA is relying on others to assist, how the DAA supervises and trains employees, agents or brokers to properly perform these duties on their behalf.
39. **All** records relating to **all** debt agreement administrations being inspected should be provided to the inspector/s during the inspection including records stored in hard copy or electronically.

Conclusion

40. This Practice Direction outlines the Inspector-General's position on a DAAs' duty to keep and maintain appropriate records. R&E will assess a DAAs' compliance with these duties in the context of the principles outlined in this Practice Direction and in the Legislative Instrument,
41. The Inspector-General will continue to develop policy and practice statements to assist practitioners as the need arises.,,