



Australian Government

Insolvency and Trustee Service Australia

**INSPECTOR-GENERAL
PRACTICE DIRECTION 15**

**Debt Agreement Administrators
Guidelines relating to keeping
proper accounts**

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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 principles on which a debt agreement administrator (DAA) has a duty 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 clearly noted that it is not the Inspector-General's role nor that of the Debt Agreement Service (DAS) to be prescriptive in advising what or how records must be kept or maintained. The Inspector-General offers general guidance in the form of this practice direction.
4. The guidelines in this Practice Direction are applicable to all DAAs regardless of the size of their operation and whether they are registered or not.

Overview of Duty to keep accounts

5. As stated in subsection 185LE(1) 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. 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 14 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 will be reflected in the accounts maintained for the administration.
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).
12. All funds received in relation to an administration will be adequately described to enable identification of the transactions giving rise to the receipt of funds.
13. Statements of receipts and payments forwarded to creditors and/or DAS shall accurately and meaningfully reflect the financial transactions of the administration.
14. 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

15. 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 16 to 21 below.
16. Separate files should be maintained for each administration (either stored in hard copy or electronically).
17. 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.
18. Administration files and records are to be maintained in a secure location to ensure no unauthorized access.
19. 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.
20. 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.
21. 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”

22. 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


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- (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.

Bank Reconciliations

23. 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.

24. The DAAs bank account and the receipts and payments for each administration must be reconciled at least once every 45 days (s185LE(2)(b)).

Retention and archiving of records

25. 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.
26. 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.”*
27. 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

28. Sections 12 and 185LE(1)(b) to (d) provide ITSA Regulation 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, ITSA Regulation 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.
29. 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.
30. During annual inspections, ITSA Regulation will examine the systems and controls a DAA has in place in respect to keeping and maintaining records.

31. ITSA Regulation 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.

Conclusion

32. This Practice Direction outlines the Inspector-General's position on the duty to keep and maintain appropriate records. It will be against these principles and those contained in the Legislative Instrument that a DAA's duty to keep records will be assessed by ITSA Regulation.
33. When there are other specific issues where clarification is required, following consultation with DAS, the Inspector-General will continue to develop policy and practice statements to assist practitioners.