



Australian Government

Insolvency and Trustee Service Australia

**INSPECTOR-GENERAL
PRACTICE STATEMENT NO. 4**

**Guidelines and Processes
for Registration of Debt
Agreement Administrators**

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Introduction

1. Amendments to Part IX of the *Bankruptcy Act 1996* will come into effect in 2007 that will provide for greater regulation of debt agreement administrators including the introduction of a requirement for administrators to be formally registered in certain circumstances, explained further in these guidelines.
2. The purpose of this document is to provide prospective administrators with guidelines as to how the registration system will operate, what you will need to have in place to be registered, including mandatory qualifications needed, how you can apply to become a registered administrator and the process that occurs in assessing and registering debt agreement administrators.
3. ITSA's Bankruptcy Regulation branch will have responsibility for administering the registration system on behalf of the Inspector-General and for ensuring that administrators are complying with the duties and obligations under the Act. As from 1 July 2007 ITSA's Debt Agreement Service ("DAS") will not accept a debt agreement proposal ("a proposal") from a person unless that person is a registered trustee, a registered debt agreement administrator or is the administrator of not more than five active debt agreements.
4. Applications must be lodged with the Registrations Officer, ITSA Bankruptcy Regulation branch, at PO Box 10443 Adelaide St, Brisbane, Qld 4000, or by email to br.qld@itsa.gov.au.
5. It is particularly important for administrators who are currently operating and who intend to lodge new proposals after the 1 July 2007 to make application as early as possible. While ITSA will attempt to deal with applications within a month some applications may take up to two months.

Overview of Duties, Qualifications and Capabilities Needed

6. In order for you to become registered it will be necessary for you to have both mandatory qualifications detailed below and demonstrate you have the **ability** to immediately perform satisfactorily the duties of a debt agreement administrator and comply with the obligations as set out in the legislation.
7. As an administrator you will have to certify, at the time the debt agreement proposal is lodged with ITSA's Debt Agreement Service that:
 - you have consented to be the administrator;
 - the debtor has received the information about alternative means of dealing with financial difficulty as prescribed by the regulations;
 - having regard to the circumstances in existence at the time when the debtor's statement of affairs was signed by the debtor, you have reasonable grounds to believe that the debtor is likely to be able to discharge the obligations created by the agreement as and when they fall due; and
 - you have reasonable grounds to believe that all information required to be set out in the debtor's statement of affairs and proposal statement, has been set out and a

reasonable basis for believing that the debtor has properly disclosed their affairs to creditors.

8. The lack of capability to properly certify these four matters will be relevant in ITSA Bankruptcy Regulation branch determining whether to register an applicant. More details on what is expected follow in these guidelines. The Inspector-General's powers to investigate have also been extended to include these pre-agreement activities of administrators.
9. The duties and obligations required of administrators will include:
 - ensure the certification provided to ITSA with the debt agreement proposal is correct;
 - deal with the debtor's property in the manner specified in the debt agreement;
 - respond in a timely manner to reasonable requests from creditors about the progress of individual agreements;
 - respond in a timely manner to reasonable requests from debtors for information;
 - ensure creditors are informed about default;
 - inform ITSA within 5 working days after the end of the agreement;
 - pay all money received from debtors under agreements to the credit of a single interest-bearing bank account that bears the administrators name and the words "Debt Agreement Administration Trust Account". You must only pay into these accounts money received from debtors under debt agreements;
 - keep such accounts, books and records as are necessary to give a full and correct account of the administration of the debt agreement; and if required to do so by the Inspector-General, make those accounts and records available for inspection by the Inspector-General;
 - when required, answer any inquiries about the debt agreement and cooperate with any inquiry or investigation made by the Inspector-General; and
 - if you are to be remunerated, you must maintain a separate record of money received, payments made and the balance of money held in relation to each debt agreements and at least once every 45 days, reconcile the balance held in the bank account with these records.
10. You also will have obligations to:
 - inform ITSA's Debt Agreement Service under certain circumstances detailed in the Act and listed later in these guidelines, and
 - take fees in a particular way as required by law.
11. ITSA's Debt Agreement Service will also have the power to reject proposal if the proposal is not lodged with the within 14 days of the debtor signing the proposal.
12. All these are areas that will be examined in determining whether a person should be registered and whether breaches have occurred.

Who needs to become Registered

13. If you, or the company you act for, intend to act as an administrator after 1 July 2007 you will need to become registered if:
 - you intend to lodge new debt agreement proposals after 1 July 2007; and
 - you, or the company, are already administering more than five active agreements and you are not already registered.
14. If you need to become registered but have not done so by 1 July 2007 any debt agreement proposals you lodge after that time will not be accepted for processing by ITSA.
15. An existing administrator who does not intend to nominate as administrator for agreements proposed after 1 July 2007 will not need to be registered and can continue to administer existing agreements on hand as at 1 July 2007 until they are completed. However the ineligibility provisions listed later will continue to apply to unregistered administrators and the Inspector-General will be able to declare non-registered administrators ineligible. This is discussed in more detail later.
16. If you are a registered trustee and intend to act as an administrator in your own name you will not need to become registered. You will need to become registered if the named administrator is a company. As a trustee you will be subject to the same duties and obligations as registered administrators. Breach of these duties will be a ground under section 155H under which a registered trustee may lose their registration as a trustee.

Who can Apply

Individuals

17. If you are an adult you can be registered as an administrator provided you:
 - pass the basic eligibility test;
 - have the ability (including the knowledge) to satisfactorily perform the duties of an administrator in relation to a debt agreement; and
 - have such qualifications and experience as are prescribed by the regulations.
18. You will not pass the basic eligibility test if:
 - (a) you have been an undischarged bankrupt or insolvent under administration, or became a party (as debtor) to a debt agreement or a Part X administration within the preceding 10 years; or
 - (b) you have been convicted of an offence involving fraud or dishonesty during the preceding 10 years; or
 - (c) you are disqualified, under Part 2D.6 of the *Corporations Act 2001*, from managing a corporation; or
 - (d) your registration as a liquidator under the *Corporations Act 2001* has been cancelled by the Companies Auditors and Liquidators Disciplinary Board during the preceding 10 years; or

- (e) at any time during the preceding 10 years, your registration as a trustee under the Bankruptcy Act 1966 was cancelled for a reason specified in paragraph 155H(1)(a), (b), (e), (f) or (g); or
- (f) during the preceding ten years, your registration as a debt agreement administrator was cancelled because you contravened a condition that applied in relation to that registration or because you failed to properly carry out the duties of an administrator;
- (g) during the preceding ten years, a determination was made by the Inspector-General either declaring that you are ineligible or cancelling your registration for failing to properly carry out duties of a debt agreement administrator or co-operate with an inquiry or investigation of the Inspector-General; and
- (h) during the preceding 10 years your registration was cancelled by order of the court.

A Company

19. A company can be registered as a debt agreement administrator if:
- the company passes the basic eligibility test; and
 - the company has the ability to satisfactorily perform the duties of a debt agreement administrator.
20. A company will not pass the basic eligibility test if:
- (a) during the preceding ten years, the company was insolvent under external administration;
 - (b) during the preceding 10 years, the company was convicted of an offence involving fraud or dishonesty;
 - (c) during the preceding ten years, the company's registration as a debt agreement administrator was cancelled because it contravened a condition that applied in relation to that registration or because it failed to properly carry out the duties of an administrator, or was cancelled by the court;
 - (d) a director of the company does not pass the basic eligibility test. (The basic eligibility test for directors is the same as that applying to individuals applying for registration); and
 - (e) the company was previously declared ineligible for failing to perform its duties as an administrator.
21. In addition, it will be a condition of a company's registration that the person(s) with overall management responsibility for the company's debt agreement activities must be either:
- (a) a registered debt agreement administrator; or
 - (b) a registered trustee who has not been declared ineligible to be a debt agreement administrator.
22. It is therefore desirable that a company's application to be a registered debt agreement administrator is accompanied or follows the application of the person(s) in the company

with overall management responsibility for its debt agreement activities. Application fees will apply for all applications.

23. Overall management responsibility in this context means making key decisions about practice and procedure for the company and includes supervision of the business, its employees, agents and brokers, money handling and finances, approving training, and approving implementation of systems and processes. They need not be the person who specifically deals with individual debt agreements. If there is more than one person responsible for these activities, all such people will need to be registered. ITSA's Bankruptcy Regulation will assess who in the company needs to be registered on a case-by-case basis.
24. Furthermore it is advisable that if a company's registered debt agreement administrator with overall management responsibility plans to take absence from duty for a significant period, ITSA's Bankruptcy Regulation be notified so there can be clarification that suitable arrangements have been put in place. If the person ceases in that capacity with the company the conditions of registration are breached. Given this will prompt cancellation proceedings the impact is essentially that the company has 28 days to remedy the situation.

Partnerships

25. If you are in a partnership and the partnership intends to act as an administrator it will be necessary for each partner to be separately registered. You would need then to act in your own name as the administrator, named on the debt agreement proposal and not the name of the business or partnership.
26. Proposals for agreements to be administered by joint administrators will not be accepted.

Mandatory Qualifications

27. Mandatory qualifications will apply from 1 July 2009. If you do not hold the mandatory qualifications you are able to become registered without the required qualifications; however you will need to obtain the qualifications before 1 July 2009 to maintain your registration. If the qualifications are not obtained by 1 July 2009 your registration will cease.
28. The qualifications prescribed in the regulations are a Certificate IV in Financial Services (specialising in accounting) or a higher level of accounting qualification.
29. This course is offered by most TAFE institutions and also offered through TAFE distance education programs. Some details are available through the government's National Training Information Service at <http://www.ntis.gov.au/Default.aspx?/trainingpackage/FNS04/qualification/FNS40604/rules>. It is suggested you contact your local TAFE institution for more details on what is offered. This course takes 6 months to 2 years depending on the hours you choose to do each week.
30. A company's registered debt agreement administrator with overall management responsibility for debt agreement activities will also need to obtain the qualifications.

How Do I apply to become Registered as an Administrator

The Form

31. In order to apply to become registered it will be necessary to complete and lodge the approved form with the ITSA Registrations Officer. The application form will be available once the legislation has received royal assent on ITSA's website www.itsa.gov.au or can be obtained by contacting the Registrations Officer, ITSA Bankruptcy Regulation branch, PO Box 10443, Adelaide St, Brisbane, 4000; by telephone 07 3360 5404 facsimile 07 3360 5402 or by email at br.qld@itsa.gov.au or through any ITSA office.
32. You will also need to obtain and forward certified copies of your qualifications and checks of the Criminal Database for yourself or those officers with overall management responsibility for the company's debt agreement activities, who will need to become registered. These can be obtained from any police station but may take over a month to issue so please plan accordingly.

How to Lodge

33. Applications must be lodged with the Registrations Officer, ITSA Bankruptcy Regulation branch, at PO Box 10443 Adelaide St, Brisbane, Qld 4000, by facsimile 07 3360 5402 or by email br.qld@itsa.gov.au along with the expected application fee and the Criminal Database check. The application fee is currently \$2,000. Payments can be made by direct credit but you will need to specifically arrange this through the Registrations Officer.

The Assessment Process

34. On receipt of your completed application, and accompanying fee, ineligibility checks will initially be carried out. If you are found to be ineligible your application will be refused, you will be advised of the basis of the decision and your right of appeal and you may be entitled to a refund of the application fee.
35. If the preliminary ineligibility checks have been successfully completed the application will be assessed by ITSA Bankruptcy Regulation branch, as the delegate of the Inspector General, to determine whether you should be registered. Once the assessment of abilities has commenced, irrespective of whether the delegate decides to register you or refuses, you will not be entitled to a refund of the application fee.
36. Suitability to become registered will be based on a person's demonstrated capability to perform the duties of a debt agreement administrator, as previously detailed, immediately upon registration. The focus of the assessment will therefore be to determine whether you have the required knowledge and abilities together with the appropriate business systems and controls, in order to carry out the duties of an administrator immediately upon registration. With this in mind while guidelines are included in this document it is suggested you contact ITSA Bankruptcy Regulation branch to discuss your intentions and ascertain the level of knowledge and systems you will be required to have.

37. The assessment will commence with an examination at interview aimed at assessing whether you, or in the case of a company the person with overall management responsibility, have sufficient relevant knowledge and abilities to undertake the work and properly perform the duties. This will include consideration of prior relevant experience and employment and may include referee assessments. Details of the knowledge requirement and practices follow in the “Assessment of Capabilities” section.
38. Should you demonstrate sufficient knowledge and abilities at interview an on site inspection by ITSA Bankruptcy Regulation branch of your business will occur, to ascertain whether your business systems, controls and practices are sufficient. The delegate’s decision on whether to approve the application will be based on both aspects.

Interview

39. As part of the assessment of your application, you will initially be interviewed by one or more delegates of the Inspector-General from ITSA Bankruptcy Regulation branch at ITSA’s office. You will be questioned to assess your knowledge across a range of both technical and general business commerce areas. The interview will be an “open text” style and will include an oral examination to ascertain your level of knowledge. The delegate(s) will also question you on the systems and practices you have in place. You will be provided the questions to be asked 30 minutes prior to the allotted interview time to enable you to prepare responses. The interview should take around one hour.
40. The area where knowledge is required to be demonstrated, and the type of knowledge, is listed in detail below in the “Assessment of Capabilities” section.
41. To ensure an accurate record is maintained of the responses the interview may be recorded.
42. In some instances the delegate(s) may be uncertain from the oral examination as to your level of knowledge in a particular area. In this case rather than refuse the application at that time, the delegate(s) may wish to check that area of knowledge by asking you to return at a later time to sit a short written examination on that particular area.
43. In the case of a company applicant each person applying to become the individual with overall management responsibility of the company’s debt agreement activities will also need to go through this process. It is therefore desirable that the application by the person with overall management responsibility is made either before or at the same time as the company application.
44. If there is only one person with overall management responsibility the two interview processes can be held concurrently with your agreement.
45. Should the delegate decide that you have not demonstrated sufficient knowledge or ability at the interview and any subsequent written examination held, the application will be refused. Should this occur, reasons for the refusal and your right of appeal will be provided to you. Refusal of a company’s application does not automatically result in refusal of the separate application of the person with overall management responsibility. That person may wish a further interview to be undertaken in determining their individual application. Refusal of an application does not prevent the company from later reapplying.

Inspection of Systems and Practices

46. Once the applicant has successfully completed the oral examination, and any subsequent written examination held, the applicant will also need to demonstrate that they have adequate systems and practices in the business to perform the work.
47. This will be assessed by officers of ITSA Bankruptcy Regulation branch who will contact you to arrange a time to visit your place of business. They will examine your business systems, controls and practices including accounting and banking arrangements and report their findings to the delegate. The level of the systems and practices you need will depend for example on your business size, structure and location.
48. If you intend to utilise agents, employees or brokers to provide some of the services to the debtor this may also include an inspection of the practices involving these parties, including the extent of training, quality assurance, documentation, your relationship with brokers and your ability to influence and supervise the services being provided on your behalf.
49. ITSA's Bankruptcy Regulation will provide immediate feedback of any deficiencies identified when undertaking its inspection of the systems and controls and may defer making a decision whilst still keeping within the 60 day time frame if these are capable of being remedied within that time.

Assessment of Capabilities- Basis on which decision will be made

50. The delegate's decision will focus on determining whether an administrator has the abilities and knowledge to properly perform the duties required.
51. It is a fundamental requirement that the debt agreement proposal lodged with ITSA be accompanied by a certificate by the proposed administrator. The three areas required to be certified are:
 - You have provided the debtor with information prescribed by regulation;
 - You have reasonable grounds to believe that the debtor has made full and true disclosure of their affairs in their Statement of Affairs and proposal; and
 - Having regard to the circumstances in existence at the time when the statement of affairs was signed, you have reasonable grounds for believing that the debtor is likely to be able to discharge the obligations created by the agreement as they fall due.

Duties to ensure certificate is correct and properly administer the agreement

52. It is a duty of the administrator to ensure the certification is correct. It is a further duty for an administrator to deal with the property in the manner described in the debt agreement.
53. In assisting debtors to make informed choices you will need to be capable of providing debtors with information about the options available to them, including but not limited to the Bankruptcy Act, understand the general bankruptcy concepts covered in a debtor

formulating a proposal and completing a statement of affairs, disclosing income, property and liabilities. It is expected that you will be able to explain to a debtor what the differences are between the various options and the consequences.

54. The type of general insolvency and business knowledge which you will therefore be required to demonstrate through the examination and interview process is as follows:
- A basic knowledge of the Bankruptcy Act. In particular you will need to know the options available along with the impact of these on a debtor. This would need to include the bankruptcy, personal insolvency agreement and debt agreement options available under the Bankruptcy Act; how people become bankrupt; what is divisible property; bankrupt's and creditors rights; income contributions and antecedent transactions provisions.
 - A detailed knowledge of debt agreement legislation including the duties of an administrator;
 - Other financial and banking options available including refinancing, mortgages, informal arrangements and banking industry hardship provisions;
 - Knowledge of common business structures such as companies, partnerships, trusts and sole traders, the liability implications arising from these structures, commercial and financial transactions and documents, including: leases, hire purchase, guarantees, caveats, mortgages and other security, and basic contract law;
55. To properly certify that you have reasonable grounds to believe that the debtor has made full and true disclosure, the type of knowledge which you will be required to demonstrate through the examination process is as follows:
- An understanding of what enquiries can be easily made both from the debtor and other resources to assist you in making this determination. For example you will be expected to explain what evidence you will require from a debtor concerning income, expenses, liabilities and assets; what simple checks can be undertaken and what evidence you might retain;
 - An understanding of how you can confidently form your belief and therefore be able to certify with assurance to ITSA's Debt Agreement Service that you have a reasonable basis for believing that the debtor has properly disclosed their affairs. This will include what questions you plan to ask the debtor, what simple enquiries you can make, what evidence can be produced and retained that will assist you regarding income and debt levels.
56. To properly certify that you have reasonable grounds for believing that the debtor is likely to be able to discharge the obligations created by the agreement as they fall due the knowledge and abilities you will be expected to demonstrate the following knowledge and abilities at interview:
- Your ability to discern between financial choices, understand money and debt, budget and plan, recognise and competently inform debtors on life events that affect everyday financial decisions, including events in the general economy;
 - What budgeting and processes you believe you need in place; and
 - How you plan to assist the debtor determine what they can afford to pay will also be assessed. For example do you plan to use supporting systems such as the [Australian](#)

[Bureau of Statistics Expenditure Survey](#) or Household, Income and Labour Dynamics in Australia ([HILDA](#)) research to assist determine whether the debtor's disclosed expenses are reasonable.

57. During the inspection phase of the assessment, ITSA Bankruptcy Regulation branch will examine the systems and controls you have in place in respect to these areas. This will include:
- your budgetary and assessment processes that will enable you to identify the debtor's income and likely expenses during the period of the proposed agreement; and
 - processes that will ensure you are able to explain to the debtor what the obligations are on them and the consequences of failing to meet those obligations.
58. ITSA Bankruptcy Regulation branch will examine documented practices and check lists, delegations and, where you are relying on others to assist, how you will properly supervise and train your employees, agents or brokers to properly perform these duties on your behalf.

Duty to respond in a timely manner to reasonable requests from debtors and creditors

59. You will need to demonstrate knowledge of the obligations of an administrator to respond in a timely manner to reasonable requests from creditors about the progress of individual agreements; and to respond in a timely manner to reasonable requests from debtors for information.
60. Depending on your business operation you may also need to outline what systems you have in place that will assist you in this regard. For example how do you ensure that the creditors are able to contact you during business hours, do you have a complaint handling process in place, how do you know of complaints received by your employees and that they are responded to in a timely manner?

Ensuring creditors and ITSA are informed about default

61. You have a duty to inform creditors when the debtor is in arrears for a period of 3 months. There are also termination duties on an administrator requiring you to advise ITSA when the debtor has not made a payment in terms of the debt agreement for a continuous period of 6 months and or when the debt agreement is not completed within 6 months of its due date for completion.
62. The payment monitoring and reporting system which will allow you to quickly comply with these duties will be examined.

Taking Fees and Expenses

63. A registered administrator who is entitled to be remunerated is required to express that remuneration as a percentage of the total amount payable by the debtor in respect of provable debts and must take remuneration proportionally over the duration of the

64. An administrator's systems for recovering remuneration will need to be capable of ensuring that only the correct percentage is taken when due. Furthermore systems need to be put in place to ensure that general overheads are only recovered through remuneration charged and not treated separately as expenses. Levying of overhead costs to specific agreements in addition to remuneration is not permitted. Administrators will therefore need to understand what constitutes genuine "out of pocket" expenses that, if detailed in the debt agreement proposal and creditors agree, are able to be recovered directly from funds held in trust for an individual agreement as opposed to an overhead recoverable only through remuneration.
65. By the general nature of an expense or outlay, an administrator will not know what it is until it is incurred. If expenses incurred in an administration are material, administrators are strongly encouraged to notify creditors and/or submit a variation for their consideration.
66. As a general guide any right to reimbursement for out of pocket expenses in a particular administration is limited to actual expenses incurred in respect of that debt agreement and the administrator must be able to show:
- (a) how it is directly attributable to the debt agreement; and
 - (b) how the actual expense for a particular matter was calculated.
67. Costs not able to be identified to an individual administration and which can only be recovered as a general fixed amount charged across all administrations periodically is considered as remuneration. Such costs are unable to be recovered as an out of pocket expense.

Handling and properly accounting for money

68. Money received is considered to be held in trust. In general you will need to demonstrate both an understanding of and have proper money handling processes, records and controls in place including: data backup and contingency plans, basic book-keeping knowledge, correct banking processes, the ability to monitor un-presented and stale cheques, reconcile accounts and interest, monitor when dividends and fees are due and calculate and pay dividends and fees accurately.
69. Some of the specific elements to be considered are:
- (i) You are required to pay all money received from debtors under agreements to the credit of a single interest-bearing bank account that bears the administrators name and the words "Debt Agreement Administration Trust Account".
 - (ii) You must only pay into these accounts money received from debtors under debt agreements;
 - (iii) You must keep such accounts, books and records as are necessary to give a full and correct account of the administration of the debt agreement; and if required

to do so by the Inspector-General, make those accounts and records available for inspection by the Inspector-General;

- (iv) when required, answer any inquiries about the debt agreement and cooperate with any inquiry or investigation made by the Inspector-General;
 - (v) if you are to be remunerated, you must maintain a separate record of money received, payments made and the balance of money held in relation to each debt agreements and at least once every 45 days, reconcile the balance held in the bank account with these records; and
 - (vi) you must account for interest and bank charges.
70. The delegate will assess your knowledge in these areas and your systems and practices. You will therefore need to maintain appropriate documentation such as a cash book, ledgers for each debt agreement and properly accounting for receipts, (including direct debits) and payments, (including cheques) both in the cash book and in a debtor's ledger, to enable you to determine quickly the amount received, paid out and the balance on hand for each debt agreement, and be able to account for interest.

Inform ITSA's Debt Agreement Service within 5 days from the end of the agreement

71. You will need to demonstrate that you have a reporting system in place which allows the progress of individual agreements to be monitored so that details of completed agreements can be provided within a 5 working days to ITSA's DAS, both for recording on the National Personal Insolvency Index and to provide the certificate of release to the debtor and discharge the debtor from their debts.
72. When notifying ITSA's Debt Agreement Service using the approved form you will be required to confirm that all money has been received and all creditors paid and provide a final accounting summary of the administration showing the receipts and payments including dividend and fee details.

How long will it take for my application to be assessed

73. Your application will be acknowledged within 7 days of receipt of the completed application. If you are eligible you will be informed of the process that follows within 7 days. The interview will be arranged at your convenience and you will be informed at least 14 days in advance of the date time and place of the interview.
74. ITSA Bankruptcy Regulation branch aims to carry out the formal assessment, including the interview and inspection within 30 days of receipt of the application and Criminal Database extract.

Notification of the result

75. You will be advised of the outcome of the delegate's assessment of the application within 60 days of the application being received.
76. If you are successful, a request will be made for the payment of the registration fee covering the first 3 years of the registration. This fee is currently \$1,200.

77. Upon receipt of the registration fee the registration will be recorded on the National Personal Insolvency System (NPII) and commence from the time of recording. For successful applicants whose application has been processed and fee received prior to 1 July, those registrations will take effect on 1 July. A registration certificate will be sent to you. A registration may be issued with conditions imposed.
78. If you are not successful you will be provided with reasons for the decision and details of your right of appeal to the Administrative Appeals Tribunal (AAT).

Conditional Registration

79. The decision of the delegate may be to register you or your company with conditions.
80. The requisite condition for a company as mentioned previously is that the person with overall management responsibility for debt agreement activities is registered as an administrator.
81. Other conditions might include:
 - completion of additional studies. For example the applicant may have substantially completed the minimum course of study but yet to received the final results;
 - installation of further systems controls and practices within a set timeframe or limiting the number of administrations that can be active because of the naivety of current business systems and controls.
82. If the delegate's decision is to register the administrator with conditions, the reasons for the decision will be provided to the applicant and they will be advised of their right of review in the Administrative Review Tribunal.
83. Applications can be made for removal of conditions in the approved form. In this instance the delegate will advise of their requirements concerning any further documents and a further interview is needed. Refusal of such an application is on application reviewable in the AAT.

Changing Circumstances

84. The onus is on administrators to advise ITSA's Bankruptcy Regulation branch any changes to their business that might impact on their registration. Examples would include (but are not limited to):
 - change of address and contact details;
 - change of financial institution;
 - significant system changes particular regarding the accounting package;
 - extended absence or likely loss of the registered person in a company with overall management responsibility; and
 - change in company directors.

Renewal of Registration

85. An administrator will be registered for three years and can apply to be registered for another three years prior to the end of their registration. A second application fee is unlikely to apply if the application to be re-registered is made prior to the expiration of registration. Because there will be annual inspections which should have confirmed good practice and revealed any problems, the re-registration process should not be as rigorous as the initial application. The registration fee for a further three year period will need to be paid prior to renewal.
86. The Registrations Officer from ITSA Bankruptcy Regulation branch will remind you two months prior to the time your registration is due to lapse.

Cancellation of Registration

Ineligibility after Registration leading to Involuntary Cancellation

87. The basic eligibility test detailed on pages three and four that applies at the time of application will continue to apply during registration. The Inspector-General must cancel the individual's registration as a debt agreement administrator if the Inspector-General is satisfied that the individual no longer passes the basic eligibility test.
88. A company must ensure that at all times it has in its employ a qualified individual who has overall management responsibility for the company's debt agreement activities as that will be a condition of the company's registration. The basic eligibility test also will apply to these individuals who are required to be registered and if they become ineligible they will automatically lose their registration. As this is a condition of the company's registration it will prompt the commencement of the involuntary cancellation process described below.
89. If a director becomes ineligible, any company of which the person is a director is also ineligible to act as an administrator and the registration must be cancelled.

Involuntary Cancellation and Ineligibility for Other Reasons

90. The Inspector-General may ask for a written explanation why an administrator should continue to be registered as a debt agreement administrator, if the Inspector-General has reasonable grounds to believe that the administrator:
 - (a) no longer has the ability (including the knowledge) to satisfactorily perform the duties of an administrator in relation to a debt agreement; or
 - (b) has failed to properly carry out the duties of an administrator in relation to a debt agreement; or
 - (c) no longer has the qualifications or experience prescribed by regulations; or
 - (d) has contravened a condition of registration.
91. Such action may follow the establishment of breaches and deficiencies in practices either during ITSA Bankruptcy Regulation's annual inspection, or through the investigation of complaints. When considering whether a registration should be cancelled and in determining whether a person should be declared ineligible the matters that the delegate(s) of the Inspector-General might consider will include:

- (i) the importance of the duty that has not been complied with or the breach of the Act; and
 - (ii) the seriousness of the effect of a failure to comply, including the impact the failure to comply has; and
 - (iii) an administrator's performance history including whether previous failures to comply with the Act or undertake the duties have been raised.
92. Usually an administrator will be given opportunity to rectify simple problem areas. However if the issue is serious or has not been rectified the delegate of the Inspector-General from ITSA Bankruptcy Regulation branch will issue a formal notice of that determination to the administrator. The administrator then has 28 days to explain or show cause why their registration should not be cancelled. The final decision as to whether the registration should be cancelled will be made by the Inspector-General's delegate upon review of the response from the administrator.
93. Should the individual with overall management responsibility resign from his/her employment with the registered company administrator, the onus is on the individual and the company to notify the Inspector-General as soon as possible. If a company continues to conduct debt agreement activities without a registered debt agreement administrator with overall management responsibility, the Inspector-General may seek an explanation as to why the company should remain registered.
94. The Inspector-General may also ask a non-registered administrator to give a written explanation why they should continue to be eligible to act as an administrator of debt agreements, if the Inspector-General has reasonable grounds to believe that the person has failed to properly carry out the duties of an administrator in relation to the debt agreement.
95. The failure on the part of a registered trustee, acting as an administrator, to properly carry out the duties of an administrator are grounds pursuant to section 155H for the Inspector-General to consider whether to continue their registration.
96. An administrator's activity will also be monitored by ITSA and should there be periods where an administrator has ceased to practise this may give rise to enquiries aimed at establishing whether the administrator has maintained their knowledge and ability.
97. If registration is cancelled or a non-registered administrator registered trustee declared ineligible the administrator will be provided with reasons for the decision and details of the right of review.

Voluntary Cancellation

98. Only registered administrators will be able to voluntarily resign with the approval of the Inspector-General. Where this is proposed you need to give a written request to the Registrations Officer, ITSA Bankruptcy Regulation branch in the approved form. BR will liaise with the administrator to ascertain the status of uncompleted debt agreements and to ensure that necessary work has been undertaken. Generally approval will only be given if:
- all accounts are reconciled and in order;
 - the administrator has assisted or is able to assist ITSA in the transfer of all funds and records needed; and

- any other outstanding work on the part of the administrator to comply with the Act and meet their duties, such as notification to creditors and terminations, has been completed.
99. The cancellation will only take place once the resignation is accepted by the delegate and recorded on the NPII and you will be advised when this occurs. Any incomplete agreements that remain at the time of the cancellation will be transferred to ITSA unless other arrangements for transfer as prescribed by law have taken place.

Loss of Registration Fee

100. A person who ceases to be registered for whatever reason is not entitled to a refund of any registration fee paid.

How can I appeal Decisions I don't agree with

101. If you are not satisfied with a decision to not register you, a decision to impose conditions on registration or a later decision to cancel an existing registration, you can apply for an administrative review of those decisions to the Administrative Appeals Tribunal. Details of how you can do this will be provided when any such decisions are made.

If You Need any Further Information

102. More information on Debt Agreement legislation, duties and regulation can be found on ITSA's website at www.itsa.gov.au. The Application Kit is also available on the website. If you require further information on the process for applying to become a registered debt agreement administrator please contact your local ITSA Bankruptcy Regulation branch Director or:

The Registrations Officer
ITSA Bankruptcy Regulation branch,
PO Box 10443, Adelaide St, Brisbane, 4000;
Telephone 07 3360 5404, facsimile 07 3360 5402

Email br.qld@itsa.gov.au

103. If you require information on ITSA's lodgement requirements both in processing of proposals and during the administration please contact The Compliance Manager ITSA Debt Agreement Service on (07) 3360 5434.