

Inspector-General Practice Direction 15

Debt agreement administrator guide to proper accounts

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1. Introduction

1.1 The purpose of this document is to outline the Inspector-General in Bankruptcy's regulatory role in regard to the duty a registered debt agreement administrator (RDAA) has 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 relating to:

1. what constitutes the accounts, books and records that are necessary to give a full and correct account of each debt agreement
2. the minimum information that should be able to be provided by RDAA's to the Inspector-General at any time.

1.2. *The Bankruptcy Act 1966* (the Act) sets out the legislative framework for a RDAA's duty to keep accounts. This framework provides a specific duty in accordance with section 185LE and the Guidelines¹ and from 27 June 2019 has made non-compliance a strict liability offence.

1.3. At the outset, it should be noted that it is not the role of the Inspector-General or the Debt Agreement Team (DAT) 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.

1.4. This practice direction applies to all RDAA's regardless of the size of their operation.

Overview of duty to keep accounts

1.5 As stated in subsection 185LE(1) of the Act, an RDAA 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.

1.6 When required, RDAA's must also answer any inquiries about the debt agreement and cooperate with any inquiry or investigation made by the Inspector-General (s185LE(1)(c), (d)). Accordingly an RDAA's books and records must be maintained and presented in such a state to allow for a timely and efficient response to the Inspector-General and to enable AFSA Regulation staff to inspect the records during an inspection (onsite or remotely).

1.7 Administrators must note that their duty to keep and maintain proper accounts, books and records also relates to any work they perform leading up to the voting deadline for acceptance of a debt agreement (s185LG). From 27 June 2019 the Inspector-General will have the power to review conduct of an RDAA from the first point of contact with a debtor, and this power includes the ability to review books and records created from that time.

2. Inspector-General expectations

Accounting records

2.1 RDAAs must ensure that accounting records maintained for an administration exhibit a full, correct and informative account of the administration. It is expected that this principle is followed by all RDAAs in accordance with paragraphs 2.2 to 2.11 below.

2.2 The RDAA will maintain separate records of receipts (s185LE(2)(a)(i)) and payments (s185LE(2)(a)(ii)) for each administration.

2.3 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.

2.4 All payments from administrations will be verifiable by reference to appropriate supporting vouchers and original documents maintained on the administration file (hardcopy or electronic). 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.

2.5 All funds received in relation to an administration should be deposited into the trust bank account and adequately described to enable identification of the transactions. Administrators should ensure that sufficient information is given to debtors intending to make deposits via the internet so that the internet transactions are accurate and easily attributable to a particular debt agreement to minimise the risk of unidentified deposits.

2.6 In circumstances where a particular receipt has been reversed in the bank statement due to the payment being dishonoured, these transactions (deposit and reversal entry), should also be reflected in the cash book/ledger for the debt agreement to accurately reflect the transactions that have taken place.

2.7 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.

2.8 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 detailing how the error was 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.

2.9 Journal entries should 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.

2.10 Statements of receipts and payments forwarded to creditors and/or DAT 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 DAT should be able to use the information to quickly determine the current status of the administration.

2.11 The accounts of the administration must be available for inspection by the Inspector-General (s185LE(1)(b)). RDAs also have a duty to give information about the administration of a debt agreement to the debtor, a creditor or creditor's authorised representative who makes a reasonable request for that information (s185LA(b)&(c)). In appropriate circumstances this may include providing access to accounts and records of the administration.

File maintenance

2.12 RDAs must ensure 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 AFSA Regulation and Enforcement. It is expected that this principle is followed by all RDAs in accordance with paragraphs 2.13 to 2.18 below.

2.13 Separate files should be maintained for each administration (hardcopy or electronic).

2.14 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.

2.15 Administration files and records are to be maintained in a secure location to ensure authorised access only.

2.16 Where electronic storage is used as part of the administration process, the RDA 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.

2.17 The RDAA must be able to produce all records relating to the administration in such a manner that the processes of the administration, including decisions made, actions taken and accounts maintained for the administration, are readily traceable and verifiable.

2.18 To comply with the *Privacy Act 1988* 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 authorised by the person to whom the personal information relates.

'Minimum information'

2.19 The 'minimum information' that RDAAs should be able to provide to the Inspector-General at any time must 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

Date	Description	\$	\$ bal
02/07/07	Direct Dr Ref yyy	300	300
02/08/07	Direct Dr Ref yyy	300	600
02/08/07	Fees at 20% cheque no 245	(120)	480
02/09/07	Direct Dr ref yyy	300	780
02/09/07	Fees at 20% cheque no 546	(60)	720
02/09/07	GE Dividend 5 c in \$ cheque no 789	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 e.g. 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

2.20 All monies received will be banked to a single interest-bearing 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 realisations and interest charges, fees and dividends. Failure to comply with this provision is a strict liability offence.

2.21 The RDAA's 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.

2.22 The reconciliation should be performed using official bank 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 change.

2.23 If reconciliations are performed more frequently than specified in the Act and are performed using internet statements, then the monthly reconciliations must be done using the original bank statements or the reconciliations done using internet statements should be checked against the original bank statements each month.

2.24 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 detailing how the error was 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

2.25 It is our expectation that RDAAs will retain and archive records in hardcopy or electronic form for a minimum period of 7 years after the end of the debt agreement as a matter of best practice and to accord with requirements under the Act for registered trustees. Retaining records for this period is also consistent with the new obligation to consider and refer offences to the Inspector-General where these are identified. AFSA will need to obtain evidence of potential offences and this may be retained in the records of an administrator.

2.26 Retaining records for this period will also ensure RDAAs meet their obligations under the industry-wide conditions of registration. From 1 January 2021, all RDAAs must comply with a two-stage requirement relating to the disclosure of information to debtors². All RDAAs must retain a record of this information disclosed to a debtor for 6 years from the day a debt agreement is made. The retention of this information will assist the Inspector-General should any investigations or inquiries be made for any conduct between the period of first contact between the DAA and the debtor, and the signing of the DAP. Further information about this the two stage disclosure of information to debtors can be found at paragraph 3 of [Inspector-General Practice Direction 13: debt agreement administrators' guidelines to certification and disclosure standards](#)

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 2018

3. AFSA's role

Regulation and Enforcement (R&E)

3.1. Sections 12 and paragraphs 185LE(1)(b) to (d) of the Act provide R&E staff (as delegates of the Inspector-General) with the power to investigate debt agreement administrations. Where there are issues of concern identified either during the compliance 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 [Guidelines](#).

3.2. Where breaches of the law, including the [Guidelines](#), or lack of adequate record keeping are identified, an RDAA 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 an RDAA's registration or a show cause notice being issued.

3.3. During inspections or targeted compliance programs, we may examine the systems and controls an RDAA has in place in respect to keeping and maintaining records.

3.4. We will examine documented practices and check lists, delegations and, where an RDAA is relying on others to assist, how the RDAA supervises and trains employees, agents or brokers to properly perform these duties on their behalf.

3.5. All records relating to all debt agreement administrations being inspected should be provided to the inspector during the inspection including records stored in hardcopy or electronically.

4. Conclusion

4.1 This practice direction outlines the Inspector-General's position on RDAAs' duty to keep and maintain appropriate records. R&E will assess an RDAA's compliance with these duties in the context of the principles outlined in this practice direction and in the [Guidelines](#).

[1] [Guidelines Relating to the Registration and Cancellation of Registration of a Debt Agreement Administrator under the Bankruptcy Act 1966](#).

[2] [Bankruptcy \(Registered Debt Agreement Administrator Conditions\) Determination 2020](#)