

Inspector-General Practice Statement 4

IGPS 4 - ~~Guidelines and p~~Processes for registration of debt agreement administrators

1. Introduction

~~1.1 Amendments to Part IX of the *Bankruptcy Act 1996* (the Act), which came into effect in 2007, to provide for greater regulation of debt agreement administrators including the introduction of a requirement for administrators to be formally registered in certain circumstances. These circumstances are outlined in this practice statement.~~

~~1.21 The purpose of this document is to~~This practice statement outlines the process for becoming a registered debt agreement administrator under the *Bankruptcy Act 1966* (the Act). This includes an overview of the qualifications and capabilities needed, how you provide prospective administrators with guidelines as to how the registration system operates, what you will need to have in place to be registered (including the mandatory qualifications), how you can apply to become a registered administrator and the process that occurs in assessing and registering debt agreement administrators. Further information can be found in the *Guidelines relating to the registration and cancellation of registration of a debt agreement administrator (Guidelines)*.

~~1.32 AFSA Regulation and Enforcement has responsibility for administering the registration system on behalf of the Inspector-General in Bankruptcy and for ensuring that administrators are complying with the duties and obligations under the Act. As from ~~4 July 2007~~27 June 2019 AFSA's Debt Agreement team (DAT) will not accept a debt agreement proposal (a proposal) from a person unless that person is a registered trustee or, a registered debt agreement administrator, ~~or is the administrator of not more than five active debt agreements.~~~~

~~1.4 Applications for registration must be lodged by~~

~~email to rpo@afsa.gov.au~~

~~• or by post to:~~

~~Regulation Practitioner Officer
AFSA Regulation and Enforcement
PO Box 10443 Adelaide Street
BRISBANE QLD 4000~~

2. Overview of **duties**, qualifications and capabilities needed

2.1 In order for you to become registered it will be necessary for you to have ~~both~~ the mandatory qualifications ~~detailed below~~required under the Regulations, be a fit and

[proper person as required under the Act](#) and for you to demonstrate that you have the **ability** to immediately [satisfactorily](#) perform ~~satisfactorily~~ the duties of a debt agreement administrator and comply with the obligations as set out in the Act.

2.2 As an administrator you will have to certify, at the time the debt agreement proposal is lodged with AFSA's [DA+DAT](#), 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 Bankruptcy 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
- 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

There may be higher thresholds where a debt agreement administrator lodges a certificate under section 185C(4C)(b) of the Act (i.e. the payment to income ratio has been exceeded). Further information can be found at [IGPD 13 DAA Guidelines to Certification](#).

2.3 The lack of capability to properly certify these four matters will be relevant in AFSA Regulation and Enforcement determining whether to register an applicant. [Further information on these points outlined in 2.1-2.2 and the detailed duties of an administrator are explained in the Guidelines.](#)

2.4 If a debt agreement proposal is lodged after 27 June 2019, you must specify on the certificate under section 185C(2D) of the Act, any relationship or payments made to a broker who referred the debtor to you and the name and nature of any relationship with a related entity that is also an affected creditor. ~~More details about 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.~~

3. The fit and proper test

3.1 From 27 June 2019 an additional fit and proper test has been introduced for individual and corporate applicants, and directors of any corporate applicants. The intent of this new requirement is to ensure that only persons of good fame and character who will act with honesty and integrity should be allowed to enter and operate within the personal insolvency sector.

3.2 The evidence to meet the fit and proper test is by way of referees who can confirm your honesty and integrity. The referees may be the same individuals who confirm your knowledge and abilities, but also may be separately provided. The date of the referee reports must be within **three months** before the date of the application.

The delegate will review the written references and may contact your referees or may require additional references to be provided.

~~2.4 The duties and obligations required of administrators will include:~~

- ~~• ensuring the certifications provided to AFSA with debt agreement proposals is correct~~
- ~~• dealing with debtors' property in the manner specified in the debt agreements~~
- ~~• responding in a timely manner to reasonable requests from creditors about the progress of individual agreements~~
- ~~• responding in a timely manner to reasonable requests from debtors for information~~
- ~~• ensuring creditors are informed about defaults~~
- ~~• informing AFSA within five working days after the end of agreements~~
- ~~• paying all money received from debtors under agreements to the credit of a single interest-bearing bank account that bears the administrator's name and the words 'Debt Agreement Administration Trust Account'. You must only pay into these accounts money received from debtors under debt agreements~~
- ~~• keeping such accounts, books and records as are necessary to give full and correct accounts of the administration of debt agreements and, if required to do so by the Inspector-General, making those accounts and records available for inspection by the Inspector-General~~
- ~~• when required, answering any enquiries about debt agreements and cooperating with any enquiries or investigations made by the Inspector-General~~
- ~~• 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 agreement and, at least once every 45 days, reconcile the balance held in the bank account with these records.~~

~~2.5 You also will have obligations to:~~

- ~~• inform AFSA's DA of the occurrence of certain circumstances detailed in the Act and listed later in these guidelines~~
- ~~• take fees in a particular way as required by law.~~

~~2.6 AFSA's DA will also have the power to reject a proposal if the proposal is not lodged with the within 14 days of the debtor signing the proposal.~~

~~2.7 All these are areas that will be examined in determining whether a person should be registered and whether breaches have occurred.~~

~~3. Who needs to be registered?~~

~~3.1 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~~

~~you, or the company, are already administering more than five active agreements and you are not already registered.~~

~~3.2 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 these 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.~~

~~3.3 If you are a registered trustee and intend to act as an administrator in your own name, you will not need to become registered as an administrator. 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. A breach of any of these duties will be a ground under which a registered trustee may lose their registration as a trustee, pursuant to section 155H of the Act.~~

~~4. Who can apply?~~

~~Individuals~~

~~4.1 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~~
- ~~• have such qualifications and experience as are prescribed by the regulations.~~

~~4.2 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~~

~~b. you have been convicted of an offence involving fraud or dishonesty during the preceding 10 years~~

~~c. you are disqualified, under Part 2D.6 of the *Corporations Act 2001*, from managing a corporation~~

~~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~~

~~e. at any time during the preceding 10 years, your registration as a trustee under the Act was cancelled for a reason specified in paragraph 155H(1)(a), (b), (e), (f) or (g)~~

~~f. during the preceding 10 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 10 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 cooperate with an inquiry or investigation of the Inspector-General or~~

~~h. during the preceding 10 years your registration was cancelled by order of the court.~~

Companies

~~4.3 Companies can be registered as a debt agreement administrator if:~~

- ~~• the company passes the basic eligibility test~~
- ~~• the company has the ability to satisfactorily perform the duties of a debt agreement administrator.~~

~~4.4 A company will not pass the basic eligibility test if:~~

~~a. during the preceding 10 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 10 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) or~~

~~e. the company was previously declared ineligible for failing to perform its duties as an administrator.~~

~~4.5 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.~~

~~4.6 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.~~

~~4.7 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. The person with management responsibilities 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. AFSA Regulation and Enforcement will assess who in the company needs to be registered on a case-by-case basis.

4.8 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, AFSA Regulation and Enforcement be notified so there can be confirmation 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

4.9 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 to then act in your own name as the administrator named on the debt agreement proposal and not in the name of the business or partnership.

4.10 Proposals for agreements to be administered by joint administrators will not be accepted.

5. Mandatory qualifications

5.1 The qualifications prescribed in the regulations are a Certificate IV in Accounting or a higher level of accounting qualification.

5.2 This course is offered by most TAFE institutions and also offered through TAFE distance education programs. Some details are available through the government's [training website](#). It is suggested you contact your local TAFE institution for more details on what is offered. This course takes six months to two years, depending on the hours you choose to do each week.

5.3 A company's registered debt agreement administrator with overall management responsibility for debt agreement activities will also need to obtain the qualification.

6. How do I apply to become registered as an administrator?

The form

6.1 In order to apply to become registered it will be necessary to complete and lodge the approved form with the AFSA Regulation Practitioner Officer.

- [Form 24A Application for Registration as a Debt Agreement Administrator \(Individual or Person with Overall Management Responsibility\) \[PDF\]](#)
- [Form 24B Application for Registration as a Debt Agreement Administrator \(Company\) \[PDF\]](#)

6.2 You will also need to provide certified copies of your qualifications and criminal database check for yourself or company (for company applications) and officers with overall management responsibility for the company's debt agreement activities to become registered.

How to lodge your application

6.3 Applications must be lodged by:

- email at
- or by post at:

**Regulation Practitioner Officer
AFSA Regulation and Enforcement
PO Box 10443 Adelaide Street
BRISBANE QLD 4000.**

6.4 There is an application fee, which can be paid by direct credit but you will need to specifically arrange this through the Regulation Practitioner Officer.

47. The assessment process

74.1 An application for registration must be on the approved form (online form) and submitted with:

- certified copy of qualifications
- certified copy of academic record relating to qualification
- two referee reports attesting to the applicant's **business acumen and if known, their current knowledge and ability where the applicant has previously been employed by an RDAA** (must be dated within 3 months before the date of application)
- two referee reports attesting to the applicant being a fit and proper person in business, who displays honesty and integrity and is of good fame and character (the referees used may be the same as those attesting to current knowledge and ability)
- a National Police Certificate issued by the Australian Federal Police (AFP), covering the previous 10 year period prior to making the application. This must be dated within the last six months.
- A police check from any country outside Australia where the applicant has resided for at least one year in the last 10 years. This should also be dated within the last six months.
- the prescribed application fee (AFSA should be contacted to arrange payment of this fee)

[4.2](#) 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.

[47.32](#) If the preliminary ~~ineligibility~~ checks have been successfully completed, the application will be assessed by ~~AFSA Regulation and Enforcement as the~~ delegate of the Inspector-General, to determine whether you should be registered. Once the assessment of abilities ~~and character~~ has commenced, irrespective of whether the delegate decides to register you or ~~refuses~~not, you will not be entitled to a refund of the application fee.

[74.43](#) Suitability to become registered will be based on a person's demonstrated capability to perform the duties of a debt agreement administrator immediately upon registration, as previously detailed. 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 to enable you to carry out the duties of an administrator immediately upon registration, and whether you are a fit and proper person to act as an administrator. With this in mind, whilst ~~the G~~guidelines are included in this document provide information regarding the required knowledge and systems it is suggested you contact AFSA Regulation and Enforcement to discuss your intentions and ascertain the level of knowledge and type of systems you will be required to have.

[74.54](#) 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, your response to ethically based questions, and may include referee assessments and a review of references provided. ~~Details of the knowledge requirement and practices follow in the 'Assessment of capabilities' section.~~

[4.6](#) References will be reviewed by the delegate, both to confirm your experience and skills, but also to confirm that you have the appropriate level of honesty and integrity to act as an administrator. The delegate may contact your referees or may ask for additional referees to be provided.

[47.75](#) Should you demonstrate sufficient knowledge and abilities at interview, and meet the fit and proper test, an on-site inspection by AFSA Regulation and Enforcement 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~~all aspects.

Insurance

[4.8](#) Prior to approving registration the delegate will also need to be satisfied that the applicant will take out:

- (i) adequate and appropriate professional indemnity insurance; and

(ii) adequate and appropriate fidelity insurance

against the liabilities that the applicant may incur working as a debt agreement administrator.

4.9 The level of professional indemnity insurance to be taken out is expected to comply with the professional standards scheme of the national occupational association to which the administrator belongs. If the administrator does not belong to a national occupational association then a level of insurance equivalent with either of the schemes of Chartered Accountants Australia and New Zealand (CAANZ) or CPA Australia is considered adequate. There is no particular expectation about the level of fidelity insurance except that it be adequate and appropriate for the administrator's circumstances and should at least cover the value of assets held.

Interview

4.7.106 As part of the assessment of your application, you will initially be interviewed by one or more delegates of the Inspector-General from AFSA Regulation and Enforcement at one of AFSA's offices. 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.

7.74.11 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.

7.84.12 To ensure an accurate record is maintained of the responses, the interview will be recorded.

7.94.13 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.

7.104.14 In the case of a corporate 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.

7.114.15 If there is only one person with overall management responsibility, the two interview processes can, with your permission, be held concurrently.

7.124.16 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 and 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.

Referee reports

4.17 As mentioned earlier, two referee reports are required. Each report provided should contain the following details (or additional reports provided to cover all items):

- the referee's name, address, email address and telephone number
- the referee's occupation
- the period during which, and the circumstances under which, the referee has known the applicant
- the referee's opinion about the following matters:
 - the applicant's abilities in oral and written communication
 - if known to the referee, the applicant's knowledge of the powers, duties and functions of a debt agreement administrator
 - the applicant's knowledge of business matters and his or her ability to successfully conduct business activities
 - the referee's opinion as to the applicant's honesty and integrity and whether they are of good fame and character
 - whether, in the referee's opinion, the applicant has the skills and ability to carry out the duties of a debt agreement administrator within the meaning of the Bankruptcy Act, and if so, the referee's reasons for supporting the application.

Inspection of systems and practices-controls

7.134.18 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-controls in the business to perform the work.

7.144.19 This will be assessed by officers of AFSA Regulation and Enforcement 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-controls you need will depend for example on your business size, structure and location.

7.154.1920 If you intend to utilise agents, employees or brokers to provide some of the services to debtors, 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-monitor and supervise the services being provided on your behalf.

~~7.164.210~~ AFSA Regulation and Enforcement 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 ~~4560~~ day time frame if these are capable of being remedied within that time.

Assessment of capabilities and character(~~basis on which decision will be made~~)

~~7.174.2212~~ The delegate's decision will focus on determining whether an administrator has the abilities and knowledge to properly perform the duties required and is a fit and proper person to act as an administrator.- The duties of an administrator and how the delegate will assess the capabilities to perform those duties are outlined in the Guidelines.

~~4.232~~ In considering your application for registration, the delegate may refer to information held or made available by a relevant professional body such as the Personal Insolvency Professionals Association (PIPA). Applicants who are current members of PIPA are also advised that the material they provide in their application may be shared by the delegate with the relevant professional bodies in order to seek their views on the applicant. The response provided by those professional bodies may form part of the information the delegate will consider to arrive at their decision on the application.

~~4.243~~ In considering your application for registration, the delegate may also refer to publicly available information held or made available by other regulators and external dispute resolution schemes, such as ASIC, Australian Financial Complaints Authority (AFCA) etc. The information made available to record outcomes such as enforceable undertakings or complaint findings may form part of the information the delegate will consider to arrive at their decision on the application.

~~7.18~~ It is a fundamental requirement that the debt agreement proposal lodged with AFSA be accompanied by a certificate by the proposed administrator. The three areas required to be certified are:

- ~~1. you have provided the debtor with information prescribed by the regulations~~
- ~~2. 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~~
- ~~3. 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~~

~~7.19 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.~~

~~7.20 When 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 those contained in the Act. You must therefore be able to understand the general bankruptcy concepts covered by a debtor formulating a proposal and completing a statement of affairs and 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.~~

~~7.21 The type of general insolvency and business knowledge that 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 will need to include the bankruptcy, personal insolvency agreement and debt agreement options available under the Act, how people become bankrupt, what is divisible property, bankrupts' and creditors' rights, income contributions, provable 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, basic contract law and documents including leases, hire purchase, guarantees, caveats, mortgages and other security.~~

~~7.22 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 AFSA's DAt 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.~~

~~7.23 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, understanding money and debt, budgeting and planning and recognising and competently informing 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
- how you plan to assist the debtor to 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?

7.24 During the inspection phase of the assessment, AFSA Regulation and Enforcement 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
- 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.

7.25 AFSA Regulation and Enforcement will examine documented practices and checklists, delegations and, where you are relying on others to assist, how you will properly supervise and train your employees, agents or brokers to competently perform these duties on your behalf.

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

7.26 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.

7.27 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 AFSA are informed about default

7.28 You have a duty to inform creditors when the debtor is in arrears for a period of three months. There are also termination duties imposed on an administrator requiring you to advise AFSA when the debtor has not made a payment in terms of

the debt agreement for a continuous period of six months and or when the debt agreement is not completed within six months of its due date for completion.

7.29 AFSA Regulation and Enforcement will examine the payment monitoring and reporting systems which will allow you to quickly comply with these duties.

Taking fees and expenses

7.30 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 agreement. The debtor, when paying those amounts under the agreement in respect of provable debts, must also pay the remuneration due to the administrator.

7.31 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 constitute 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.

7.32 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.

7.33 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
- b. how the actual expense for a particular matter was calculated.

7.34 Costs not able to be identified as relating to an individual administration and which can only be recovered as a general fixed amount charged across all administrations periodically are considered as remuneration. Such costs are unable to be recovered as out-of-pocket expenses.

Handling and properly accounting for money

7.35 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 bookkeeping knowledge, correct banking processes, the ability to monitor un-presented and stale cheques, the ability to reconcile accounts and interest, the ability

to monitor when dividends and fees are due and to calculate and pay dividends and fees accurately.

7.36 Some of the specific elements to be considered are:

- 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'.
- You must only pay into these accounts money received from debtors under debt agreements.
- 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.
- When required, you must answer any enquiries about the debt agreement and cooperate with any enquiry or investigation made by the Inspector General.
- 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.
- You must account for interest and bank charges.

7.37 The delegate(s) 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 and ledgers for each debt agreement, and you will need to properly account 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 amounts received and paid out and the balance on hand for each debt agreement. You must also be able to account for interest.

~~Inform AFSA's Debt Agreement team within five days of the end of the agreement~~

7.38 You will need to demonstrate that you have a reporting system in place that allows the progress of individual agreements to be monitored so that details of completed agreements can be provided within five working days to AFSA's DAT, 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.

7.39 When notifying AFSA's DAT 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.

5. How do I apply to become registered as an administrator?

The form and how to submit

5.1 In order to apply to become registered it will be necessary to complete and submit the approved online form with AFSA. The form can be found on our website.

- Form 24A Application for Registration as a Debt Agreement Administrator (Individual or Person with Overall Management Responsibility)
- Form 24B Application for Registration as a Debt Agreement Administrator (Company)

5.2 You will also need to submit with the form:

- certified copies of your qualifications
- certified copy of academic record
- national criminal database check for yourself or company (for company applications), directors of the company and officers with overall management responsibility for the company's debt agreement activities
- criminal database check from any overseas countries where you have resided for at least one year in the last 10 years
- two references (or more) who can attest to your **business acumen, knowledge, skills (where you have previously been employed by an RDAA) and good character.**

5.3 There is an application fee, which can be paid by direct credit but you will need to specifically arrange this through the Regulation and Enforcement division. You can contact our call centre on 1300 364 785 to arrange this.

86. How long will it take for my application to be assessed?

~~86.1 Your application will be acknowledged within **five business seven** days of receipt of the completed application. If you are eligible you will be **informed of the process that follows within seven days** contacted to arrange a suitable date and time for an interview. The interview will be arranged for a time convenient to you and you will be informed at least 14 days in advance of the date, time and place of the interview.~~

~~8.2 AFSA Regulation and Enforcement aims to carry out the formal assessment, including the interview and inspection, within 60 days of receipt of the application and criminal database extract.~~

79. Notification of result

~~79.1 You will be advised of the outcome of the delegate's assessment of the application **within within 60 days** **45 business days** of the **completed application being received** **after the date of the interview.**~~

7.9.2 If you are successful, a request will be made for the payment of the [registration fee](#) covering the first three years of the registration.

7.9.3 Upon receipt of the registration fee the registration will be recorded [on the National Personal Insolvency Index \(NPII\) on our website](#) and commence from the time of recording. ~~For successful applicants whose application has been processed and fee received prior to 1 July 2007, those registrations will take effect on 1 July 2007.~~ A registration certificate will be sent to you. ~~A registration may be issued with conditions imposed.~~

7.9.4 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).

7.5 [Your registration may have additional conditions imposed by the delegate. For further information on these conditions, please refer to the Guidelines.](#)

10. Conditional registration

- ~~• 10.1 The decision of the delegate may be to register you or your company with conditions.~~

~~10.2 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.~~

~~10.3 Other conditions might include:~~

- ~~• completion of additional studies, for example, the applicant may have substantially completed the minimum course of study but be yet to receive the final results~~
- ~~• installation of further systems, controls and practices within a set time frame or limiting the number of administrations that can be active because of the naivety of current business systems and controls.~~

~~10.4 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.~~

~~10.5 Applications can be made in the approved form for removal of conditions. In such an instance a further interview is needed and the delegate will advise of their requirements concerning any further documents. Refusal of such an application is on application reviewable in the AAT.~~

811. Changing circumstances

811.1 The onus is on each administrator to advise AFSA Regulation and Enforcement of any changes to their business that might impact on their registration. Examples [of changes that should be communicated](#) would include (but are not limited to):

- changes of address and contact details
- changes of financial institution
- significant system changes, particularly regarding the accounting package used
- extended absences or likely loss of the registered person in a company with overall management responsibility
- disciplinary or enforcement action taken against individuals or the company by other regulators, professional associations or dispute resolution schemes
- changes in company directors.

912. Renewal of registration

~~912.1 An administrator~~You will be registered for three years and can apply to be registered for another three years, as long as your application for renewal is received prior to the end of your~~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.

~~912.2 The Regulation Practitioner Officer from AFSA Regulation and Enforcement~~We will endeavour to remind you two months to renew your registration two months prior to the time your registration~~it~~ is due to lapse.

13. Cancellation of registration

Ineligibility after registration leading to involuntary cancellation

~~13.1 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.~~

~~13.2 A company must ensure at all times that it has in its employ a qualified individual who has overall management responsibility for the company's debt agreement activities, as this will be a condition of the company's registration. The basic eligibility test will also 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, this will prompt the commencement of the involuntary cancellation process described below.~~

~~13.3 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.~~

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~~— Involuntary cancellation and ineligibility for other reasons~~

~~13.4 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~~
- ~~b. has failed to properly carry out the duties of an administrator in relation to a debt agreement~~
- ~~c. no longer has the qualifications or experience prescribed by the regulations, or~~
- ~~d. has contravened a condition of registration.~~

~~13.5 Such action may follow the determination of breaches and deficiencies in practices either during AFSA Regulation and Enforcement'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:~~

- ~~a. the importance of the duty that has not been complied with or the breach of the Act~~
- ~~b. the seriousness of the effect of a failure to comply, including the impact the failure to comply has~~
- ~~c. an administrator's performance history including whether previous failures to comply with the Act or undertake the duties have been raised.~~

~~13.6 Usually an administrator will be given the opportunity to rectify a simple problem area. However, if the issue is serious or has not been rectified, the delegate(s) of the Inspector General from AFSA Regulation and Enforcement 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.~~

~~13.7 Should the individual with overall management responsibility resign from his/her employment with the registered company administrator, the onus is on both 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.~~

~~13.8 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.

~~13.9 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.~~

~~13.10 An administrator's activity will also be monitored by AFSA and should there be periods where an administrator has ceased to practice this may give rise to enquiries aimed at establishing whether the administrator has maintained their knowledge and ability.~~

~~13.11 If registration is cancelled or a non-registered administrator registered trustee is declared ineligible, the administrator will be provided with reasons for the decision and details of the right of review.~~

Voluntary cancellation

~~13.12 Only registered administrators will be able to voluntarily resign with the approval of the Inspector-General. When this is proposed you need to give a written request in the approved form to the Regulation Practitioner Officer.~~

~~AFSA Regulation and Enforcement will then 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 AFSA 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.~~

~~13.13 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 AFSA unless other arrangements for transfer as prescribed by law have taken place.~~

Loss of registration fee

~~13.14 A person who ceases to be registered for whatever reason is not entitled to a refund of any registration fee paid.~~

104. How can I appeal decisions I don't agree with?

~~104.1 If you are not satisfied with a decision to not register you or, a decision to impose additional 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.

115. Further information

~~115.1~~ More information on debt agreement legislation, duties and regulation can be found on AFSA's website at www.afsa.gov.au. The application forms are 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 AFSA Regulation Director or contact~~ the Regulation Practitioner Officer by email at rpo@afsa.gov.au, ~~or~~ by telephone on [1300 364 785](tel:1300364785). ~~by facsimile on 07 3360 5402 or by post at:~~

~~Regulation Practitioner Officer
AFSA Regulation and Enforcement
PO Box 10443 Adelaide Street
BRISBANE QLD 4000.~~

~~15.2 If you require information on AFSA's lodgement requirements both in processing of proposals and during the administration, please contact the Debt Agreement team on 1300 364 785.~~ ~~11.2 For further information about voluntary or involuntary cancellation of registration refer to the Guidelines.~~