



Australian Government

Insolvency and Trustee Service Australia

COMMONWEALTH OF AUSTRALIA

Bankruptcy Act 1966

GUIDELINES RELATING TO THE REGISTRATION AND CANCELLATION OF A
REGISTERED DEBT AGREEMENT ADMINISTRATOR AND INELIGIBILITY OF AN
UNREGISTERED DEBT AGREEMENT ADMINISTRATOR

I, TERRENCE LEO GALLAGHER, Inspector-General in Bankruptcy acting under section 186Q of the *Bankruptcy Act 1966* make the attached legislative instrument as guidelines for the purposes of subsections 186C(6), 186K(7), 186L(7) and 186M(5) of that Act.

These guidelines commence on the day the *Bankruptcy (Fees and Remuneration) Determination 2007* commences.

Dated this 11 April 2007

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Inspector-General in Bankruptcy



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**GUIDELINES RELATING TO THE REGISTRATION AND
CANCELLATION OF A REGISTERED DEBT AGREEMENT
ADMINISTRATOR AND INELIGIBILITY OF AN
UNREGISTERED DEBT AGREEMENT ADMINISTRATOR
UNDER THE *BANKRUPTCY ACT 1966***

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1. Introduction

1.1 Amendments to Part IX of the *Bankruptcy Act 1996* (the Act) that were introduced by the *Bankruptcy Legislation Amendment (Debt Agreements) Act 2007* provide for greater regulation of debt agreement administrators including the introduction of a requirement for administrators to be formally registered in certain circumstances. Other changes to the Act impose new obligations on administrators in relation to a debt agreement proposal and set out the duties and eligibility of persons who administer debt agreements.

1.2. In order for a person to become registered it is necessary for them to pass a *basic eligibility test*, have mandatory qualifications and demonstrate they have the ability (including the knowledge) to immediately perform satisfactorily the duties of a debt agreement administrator. In making a decision, the Inspector-General's delegate will take into consideration information obtained by interviewing the applicant and an inspection of the applicant's systems and practices. If necessary, an applicant can also be required to complete a written examination.

1.3 After 1 July 2007, if an individual or a company intends to be nominated as administrator in more than five debt agreements, they need to be registered. They need not be registered if they do not intend to be nominated as administrator in more than five debt agreements or if they do not intend to be nominated as administrator in new debt agreements lodged after 1 July 2007.

1.4. These guidelines provide information on the factors that will be considered by the Inspector-General in deciding whether to approve an application for registration as a debt agreement administrator, whether to cancel an existing registration and whether to declare a person ineligible to act as a debt agreement administrator.

1.5 Overview of Duties, Qualifications and Capabilities of Administrators

1.5.1 The amendments to the Act introduced new requirements for a debt agreement proposal that is to be given to the Official Receiver. At the time the debt agreement proposal is lodged with the Official Receiver, an administrator is required to certify that:

- they have consented to deal with the identified property in the way specified in the proposal;
- 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, they 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

- they have reasonable grounds to believe that all information required to be set out in the debtor's statement of affairs and proposal explanatory statement, has been set out and they have a reasonable basis for believing that the debtor has properly disclosed their affairs to creditors.

1.5.2 A new Division sets out the duties of administrators. An administrator is required to:

- ensure the certification provided to the Official Receiver 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 and the Official Receiver are informed where the debtor defaults in certain circumstances;
- inform the Official Receiver within 5 working days after the end of the agreement;
- handle and properly account for money including paying all money received from debtors under agreements to the credit of a single interest-bearing bank account and keeping such accounts, books and records as are necessary to give a full and correct account of the administration of the debt agreement;
- when required, answer any inquiries about the debt agreement and cooperate with any inquiry or investigation made by the Inspector-General; and
- take their remuneration in accordance with the Act including maintaining 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.

2. Registration

2.1 An individual or company may apply to the Inspector-General to be registered as a debt agreement administrator. Within 60 days of receiving the application, the Inspector-General must decide whether to approve or refuse the application.

2.2 The Inspector-General must approve an application made by an individual if the Inspector-General is satisfied that the applicant passes the *basic eligibility test*, has the ability (including the knowledge) to immediately perform satisfactorily the duties of a debt agreement administrator and has the qualifications and experience (if any) as are prescribed by the regulations.

2.3 If an applicant is a company, the Inspector-General must approve the application on being satisfied that the applicant passes the *basic eligibility test* and has the ability to immediately perform satisfactorily the duties of a debt agreement administrator. It is a condition of a company's registration as an administrator that each individual who takes overall responsibility for managing the company's debt agreement activities must be a registered debt agreement administrator or a registered trustee. Therefore, in practice, an individual who takes overall responsibility for managing the company's debt agreement

activities and who is not a registered trustee, must be registered to act as an administrator so that a company may proceed to registration.

2.4 Who needs to become Registered

2.4.1 After 1 July 2007, if an individual or a company intends to be nominated as administrator in more than five debt agreements they need to be a registered debt agreement administrator under the Act.

2.4.2 It is a condition of the company's registration as an administrator that each individual who takes overall responsibility for managing the company's debt agreement activities must be either a registered administrator or a registered trustee. Therefore, an individual who has *overall management responsibility* for the company's debt agreement activities and who is not a registered trustee will also need to become registered (more information is provided at **Who can Apply**).

2.5 Who does not need to become Registered

2.5.1 A registered trustee who intends to act as an administrator does not need to become registered. As a trustee they are subject to the same duties and obligations as registered administrators. A breach of these duties will provide grounds under section 155H for considering whether to continue registration.

2.5.2 An existing administrator who does not intend to nominate as administrator in debt 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.

2.5.3. After 1 July 2007, an administrator who does not intend to be nominated as administrator in more than five agreements will not need to become registered. However, the Official Receiver must not accept a debt agreement proposal from an unregistered administrator unless the person passes the *basic eligibility test* (more information is provided at **Who can Apply**).

2.5.4 If an unregistered administrator has failed to properly carry out the duties of an administrator, the Inspector-General will be able to declare such a person ineligible, to act as an administrator. The effect of such a declaration is that the person will fail the *basic eligibility test* for 10 years from the date on which it is made.

2.6 Who can Apply

Individuals

2.6.1 Adults can be registered as administrators provided they:

- 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.

2.6.2 An applicant will not pass the *basic eligibility test* if:

- (a) they 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) they have been convicted of an offence involving fraud or dishonesty during the preceding 10 years; or
- (c) they are disqualified, under Part 2D.6 of the *Corporations Act 2001*, from managing a corporation; or
- (d) their registration as a liquidator under the *Corporations Act 2001* had 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, their 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 10 years, their registration as a debt agreement administrator was cancelled because they contravened a condition that applied in relation to that registration or because they failed to properly carry out the duties of an administrator; or
- (g) during the preceding 10 years, a determination was made by the Inspector-General either declaring that they are ineligible or cancelling their 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; or
- (h) during the preceding 10 years their registration was cancelled by order of the court.

A Company

2.6.3 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.

2.6.4 A company will not pass the *basic eligibility test* if:

- (a) during the preceding 10 years, the company was insolvent under external administration; or

- (b) during the preceding 10 years, the company was convicted of an offence involving fraud or dishonesty; or
- (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; or
- (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); or
- (e) during the previous 10 years, the company was previously declared ineligible for failing to perform its duties as an administrator.

2.6.5 It is a condition of a company's registration that each person 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.

2.6.6 *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 the company's key decisions, if they are not registered trustees, each person will need to be registered as an administrator. The Inspector-General will need to be satisfied that each person with *overall management responsibility* for the company's debt agreement activities is a registered administrator and will not merely accept the company's assurance that all such persons have been registered.

Partnerships

2.6.7 If an applicant is in a partnership and the partnership intends to act as an administrator it will be necessary for each partner to be separately registered. Each partner would need then to act in their own name as the administrator of the debt agreement proposal and not in the name of the business or partnership.

2.7 Ability to satisfactorily perform the duties of an administrator

2.7.1 The delegate's decision will focus on determining whether a person has the required level of ability (including knowledge) to properly perform the duties of a debt agreement administrator. The following discussion deals with the level of knowledge and business systems required to be demonstrated by an applicant for registration as a debt agreement

administrator, consistent with the type of duties expected of an administrator. The duties of an administrator have been generally categorised under the following headings.

(a) Duties to ensure certificate is correct and properly administer the agreement

2.7.2 These duties refer to the administrator's certificate which must accompany the debt agreement proposal. At the time the debt agreement proposal is lodged with the Official Receiver, an administrator will have to certify that:

- they have consented to deal with the identified property in the way specified in the proposal;
- the debtor has received 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, they 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
- they have reasonable grounds to believe that all information required to be set out in the debtor's statement of affairs and proposal explanatory statement, has been set out.

2.7.3 In assisting debtors to make informed choices about alternative means of dealing with financial difficulty, the administrator will need to be capable of providing debtors with information about the options available to them, including but not limited to the Act, understand the general bankruptcy concepts relevant to a debtor formulating a debt agreement proposal and completing a statement of affairs that discloses income, property and liabilities. It is expected that an administrator will be able to explain to a debtor what the differences are between the various options and the consequences.

2.7.4 To be capable of doing this, the type of general insolvency and business knowledge expected includes the following matters:

- A basic knowledge of the Act. In particular, an applicant 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 Act; how people become bankrupt; what property a bankrupt could retain; bankrupts' and creditor's rights; income contributions and a general awareness of antecedent transactions.
- A detailed knowledge of debt agreement legislation detailing the duties of an administrator including legislative requirements for a debt agreement administrator to cooperate with the Inspector-General's inquiries and investigations;

- a general knowledge of 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;

2.7.5 To properly certify that they 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, an administrator will be expected to demonstrate the following abilities based on their knowledge and business systems:

- to discern between financial choices and understand money and debt, including how to budget and plan;
- to recognise and competently inform debtors on life events that affect everyday financial decisions, including events in the general economy;
- to determine what budgeting processes are needed to assist the debtor; and
- to determine how they would plan to assist the debtor determine what they can afford to pay. For example does the applicant plan to use supporting systems such as the Australian Bureau of Statistics Expenditure Survey or Household Income and Labour Dynamics in Australia research to assist determine whether the debtor's disclosed expenses are reasonable.

2.7.6 To properly certify that they have reasonable grounds to believe that the debtor has made full and true disclosure of their claims in the proposal and accompanying explanatory statement and statement of affairs, the type of knowledge and business systems which the applicant will be required to demonstrate through the examination process is as follows:

2.7.7 An understanding of what enquiries can be easily made both from the debtor and other resources to be able to certify with assurance to the Official Receiver that they have a reasonable basis for believing that the debtor has properly disclosed their affairs. For example an applicant will be expected to explain what evidence they will require from a debtor concerning income, expenses, liabilities and assets; what simple checks can be undertaken and what evidence they might retain;

2.7.8 During the inspection phase of the assessment, the Inspector-General will examine the systems and controls an administrator has in place in respect to these areas including:

- their budgetary and assessment processes that will enable identification of the debtor's income and likely expenses during the period of the proposed agreement; and
- processes that will ensure they are able to explain to the debtor what their obligations are and the consequences of failing to meet those obligations.

2.7.9 The Inspector-General will examine documented practices and check lists, delegations and, where an applicant is relying on others to assist, how the applicant will properly supervise and train their employees, agents or brokers to properly perform these duties on their behalf.

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

2.7.10 An applicant 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.

2.7.11 Depending on an administrator's business operations they may also need to outline what systems they have in place that will assist them in this regard. For example how do they ensure that creditors are able to contact them during business hours, do they have a complaint handling process in place, how do they know of complaints received by their employees and that the complaints are responded to in a timely manner?

(c) Ensure creditors and the Official Receiver are informed about default

2.7.12 An administrator has a duty to inform creditors when the debtor is in arrears for a period of 3 months. The administrator must also advise the Official Receiver 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.

2.7.13 The payment monitoring and reporting system which will allow an administrator to quickly comply with these duties will be examined.

(d) Taking Fees and Expenses

2.7.14 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 proportionately over the duration of

the agreement. This forms part of the administrator's duty to administer the debtor's property in accordance with the terms of the agreement.

2.7.15 An administrator's systems for recovering remuneration will need to be capable of ensuring that only the correct percentage is taken when due. Systems need to be in place to ensure that general overheads are only recovered through remuneration charged and not treated separately as expenses. Levying of overhead costs to separate 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 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.

2.7.16 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.

2.7.17 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.

2.7.18 Costs not able to be identified to a particular 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.

(e) Handling and properly accounting for money

2.7.19 Money received under the debt agreement is considered to be held in trust for the benefit of the debtor and creditors. In general, an applicant 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 unrepresented and stale cheques, reconcile accounts and interest, monitor when dividends and fees are due and calculate and pay dividends and fees accurately.

2.7.20 Some of the specific elements to be considered are:

- (i) Administrators are required to pay 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".

- (ii) Administrators must only pay into these accounts money received from debtors under debt agreements;
- (iii) Administrators are entitled in their personal capacity to each payment of interest on the accounts, less the bank fees and charges (if any) paid or payable during the period that the interest relates. The interest is subject to the interest charge imposed by the *Bankruptcy (Estate Charges) Act 1997*.
- (iv) Administrators 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;
- (v) When required, administrators must answer any inquiries about the debt agreement and cooperate with any inquiry or investigation made by the Inspector-General;
- (vi) If they are to be remunerated, the administrator 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
- (vii) Administrators must account for interest and bank charges.

2.7.21 The Inspector-General's delegate will assess an applicant's knowledge in these areas and their systems and practices. An applicant will therefore need to maintain appropriate documentation such as a cash book, ledgers for each debt agreement and proper accounting for receipts, (including direct debits) and payments, (including cheques) both in the cash book and in a debtor's ledger, to enable them to determine quickly the amount received, paid out and the balance on hand for each debt agreement, and be able to account for interest.

(f) Inform the Official Receiver within 5 days from the end of the agreement

2.7.22 An applicant will need to demonstrate that they 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 5 working days to the Official Receiver, both for recording on the National Personal Insolvency Index and to provide the certificate of release to the debtor which will evidence the debtor's discharge from their debts.

2.7.23 When notifying the Official Receiver, using the approved form an administrator 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.

2.8 Conditional Registration

2.8.1 The decision of the delegate may be to register an applicant with conditions which may 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 their current business systems and controls suggest they are equipped to deal only with a limited number of administrations.

2.8.2 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.

2.9 Mandatory Qualifications

2.9.1 Mandatory qualifications will apply from 1 July 2009. A person who currently acts as a debt agreement administrator and who does not hold the mandatory qualifications will be able to become registered. However, the administrator will need to obtain the qualifications before 1 July 2009 to maintain that aspect of their registration. If the qualifications are not obtained by 1 July 2009 their registration will cease solely because of the lack of qualifications.

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

3. Cancellation

3.1 An existing registration must be cancelled if the administrator no longer passes the *basic eligibility test*. The Inspector-General may cancel an administrator's registration on other grounds relating to their ability, or failure, to properly carry out the duties of an administrator or having breached a condition of registration.

3.2 A person who is not registered as an administrator may be declared ineligible to act as an administrator for failing to properly carry out the duties as an administrator.

3.3 The following information provides guidelines on matters considered by the Inspector-General in determining whether to cancel a registration of, or declare a person ineligible to act as, an administrator.

3.4 Cancellation of an individual's or company's registration

3.4.1 The *basic eligibility test* continues to apply during the period of registration. The Inspector-General must cancel an individual's registration as a debt agreement administrator if the Inspector-General is satisfied that the individual no longer passes the *basic eligibility test*.

3.4.2 A company must ensure that at all times it has in its employ at least one 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* applies 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 commencement of the involuntary cancellation process.

3.4.3 If a director becomes ineligible, any company of which the person is a director is also ineligible to act as an administrator and the company's registration must be cancelled.

3.5 Grounds for cancellation

3.5.1 The Inspector-General may ask for a written explanation why an individual should continue to act as a debt agreement administrator, if the Inspector-General has reasonable grounds to believe that the individual:

- (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.

3.5.2 The Inspector-General may ask for a written explanation why the company should continue to act as a debt agreement administrator, if the Inspector-General has reasonable grounds to believe that the company:

- (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) has contravened a condition of registration.

3.5.3 Such action may follow the establishment of breaches and deficiencies in practices either during annual inspection, or through the investigation of complaints. The following outlines situations in which the Inspector-General may seek an explanation from the individual or company.

3.5.4 Should the individual with *overall management responsibility* resign from their 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.

3.5.5 An administrator's activity will also be monitored 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.

3.5.6 The failure on the part of a registered trustee, acting as an administrator, to properly carry out the duties of an administrator provides grounds pursuant to section 155H for the Inspector-General to consider whether to continue their registration as a trustee under the Act.

3.6 Ineligibility of an unregistered administrator

3.6.1 An individual or company who is not registered as a debt agreement administrator under the Act may also be asked for a written explanation why they should continue to be eligible to act as a debt agreement administrator, if the Inspector-General has reasonable grounds to believe that they have failed to properly carry out the duties of an administrator in relation to the debt agreement.

3.6.2 If there is no explanation within 28 days of the Inspector-General's request or if there is no satisfactory explanation, the Inspector-General may declare the person ineligible under section 186M. The effect of such a declaration is that the person will fail the *basic eligibility test* for 10 years from the date on which it is made. As from 1 July 2007, the Official Receiver must not accept a debt agreement proposal from a non-registered administrator unless the Official Receiver is satisfied that the person passes the *basic eligibility test*.

3.7 Matters considered by the Inspector-General

3.7.1 When considering whether a registration should be cancelled and in determining whether a person should be declared ineligible, the Inspector-General will consider the following matters:

- (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 of the failure to comply; and
- (iii) an administrator's performance history including whether previous failures to comply with the Act or undertake the duties have been raised.

3.7.2 Usually an administrator will be given opportunity to rectify simple breaches, such as an oversight in reporting to creditors. However if the issue is considered sufficiently serious such as in the case of accounting irregularities, or if the issue has not been rectified within the requested time frame, the Inspector-General may issue a formal notice of the breach of duty 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 delegate upon review of the administrator's response.

3.8 Categories of breaches

3.8.1 More specifically the following system for categorising errors provides a guide to assist the Inspector-General in determining whether to consider the process of declaring a person ineligible to act as an administrator or to cancel their registration.

Category A breaches

3.8.2 Fundamental breaches and lack of controls that are likely to bring into question the integrity of the debt agreement system. This would include but is not limited to defalcation, systemic overcharging, systemic failure to account or maintain proper accounts and records and negligence resulting in losses to creditors or the debtor. This also includes cases where there are repeat category B errors previously identified and not rectified. These matters will generally give rise to legal action, investigation of possible Bankruptcy Act offences, ineligibility or registered trustees and administrators having their registration cancelled or conditions placed on it.

Category B breaches

3.8.3 Serious or systemic breaches that will have a material impact on the administration and require timely action. The administrator or registered trustee would be counselled and timely remedial action expected to be taken. This would include a breach causing material loss to creditors or the debtor. Failure to remedy a category B breach within the specified timeframe will result in it being elevated to category A and the cancellation process will commence.

Category C breaches

3.8.4 One off practice or procedural errors and compliance breaches that are not systemic, occurring through inadvertence rather than through lack of appropriate systems, controls and procedures. This category of breaches is not likely to have a serious effect on individual administrations or creditors, debtors' rights or system integrity but should be brought to the attention of the practitioner and where possible, remedied. Repeats of a previous category C breach will result in the breach being considered to have become systemic and hence are elevated to category B.