



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 14

Receivers — retention of company records

Chapter 5 — External administration (Part 5.2)

Issued 16/9/1991

From 5 July 2007, this document may be referred to as Regulatory Guide 14 (RG 14) or Practice Note 14 (PN 14). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 14.1) or their practice note number (e.g. PN 14.1).

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Purpose

RG 14.1 In this guide the ASC sets out its view of how books and accounting records created during the course of a receivership should be dealt with following the termination or completion of the receivership.

Background

RG 14.2 The ASC has received a number of complaints from directors or shareholders from companies formerly in receivership that all the records relating to the receivership have not been handed to the company by the receiver when the receivership is completed. Enquiries by the ASC indicate that the degree to which records are handed over by the receiver varies from practitioner to practitioner and that views differ as to the ownership of some records.

Ownership of records

RG 14.3 Section 9 of the Corporations Law defines both accounting records and books. Material covered by these definitions belong to the company. The issue of ownership of books and records generated by the receiver while it is the manager of the company depends upon the capacity in which the receiver was acting when the documents were brought into existence.

RG 14.4 For example, if there are documents prepared by or on behalf of the receiver, not in pursuance of any duty to prepare them but to enable the receiver to perform such duties or prepare such documents as the receiver is required to perform or prepare, then those documents are the property of the receiver. When a receiver informs the mortgagor regarding the conduct of a receivership, documents created for that purpose are not the property of the company.

RG 14.5 However, a receiver has a duty to manage the affairs of the company and all documents and records created or received pursuant to that duty are the property of the company. This would include ordinary correspondence sent and received by the receiver in the conduct of the affairs of the company.

Disposition of records

RG 14.6 All records which belong to the company should be handed over to the company upon the completion of the receivership and the resultant retirement of the receiver. The receiver can keep copies of these records if so desired.