



# The supervised account regime

1. Where a bankrupt has failed to comply with his or her obligation to pay income contributions to the trustee of his or her bankrupt estate, the trustee by written notification may determine that the supervised account regime applies to the bankrupt.
2. The supervised account regime requires the bankrupt to open a supervised account, which is a financial institution account, into which the bankrupt's income must be deposited, with withdrawals from the account supervised by the trustee.

## **Bankruptcy Act 1966 section 139ZIA – Objectives**

3. The objectives of the supervised account regime are to:
  - a. improve the likelihood that the bankrupt will be able to pay his or her contributions
  - b. ensure that all monetary income received by the bankrupt is deposited into a single account
  - c. enable the trustee to supervise withdrawals from the account.

## **Bankruptcy Act 1966 section 139ZIC – Trustee may determine that the supervised account regime applies to the bankrupt**

4. The trustee of a bankrupt estate may determine that the supervised account regime applies to a bankrupt who is liable to pay an income contribution to his or her estate and either:
  - i. if the trustee permitted the contributions to be paid by instalments, the bankrupt has not paid the whole of an instalment at or before the time when it became payable, or
  - ii. if the trustee required the bankrupt to pay the contribution at a specified time, the bankrupt did not pay the whole amount at or before the time it became payable.
5. The supervised account notice remains in force until:
  - i. the bankruptcy is annulled
  - ii. where the bankrupt is discharged from bankruptcy and no longer has an income contribution liability, the notice ceases to be in force upon discharge
  - iii. where the bankrupt is discharged from bankruptcy and still has an income contribution liability, the notice ceases to be in force when the bankrupt no longer has a liability
  - iv. the notice is revoked by the trustee (although a new notice may be issued at this time)
  - v. the court makes such an order under section 90-15 of the Insolvency Practice Schedule.

## **Bankruptcy Act 1966 section 139ZIE – Bankrupt must open and maintain supervised account**

6. To notify the bankrupt that the trustee has made a supervised account regime determination, the trustee must give notice of this to the bankrupt in the approved form ([Form 20 – Supervised account notice determination](#)).
7. The supervised account notice requires the bankrupt to whom it applies to open an account that contains the following features:
  - a. the account is kept with an authorised deposit-taking institution (“ADI”). An ADI generally means a body corporate regulated by the Australian Prudential Regulation Authority in accordance with the *Banking Act 1959*
  - b. the account must be kept in Australia
  - c. the account must be denominated in Australian currency
  - d. the account must be held solely in the name of the bankrupt
  - e. deposits may be made to, and withdrawals may be made from, the account
  - f. the account must be designed to not have a debit balance
  - g. such other requirements as are specified in the supervised account notice.
8. The supervised account notice must require the bankrupt to inform the ADI when opening the account that the account is a supervised account.
9. The bankrupt must open the supervised account within 10 business days after the notice is given. A longer period is permissible if so specified by the trustee in the notice.
10. The bankrupt must notify the trustee in writing within two business days of opening the account of the details of the account (that is, the name of the ADI concerned, the name in which the account is held, the account number and BSB number).
11. The supervised account notice must require the bankrupt to maintain the account for as long as the supervised account notice is in force.
12. The bankrupt is required to comply with a supervised account notice. Failure to comply is an offence under subsection 139ZIE(6) of the Bankruptcy Act. The penalty for contravention of this subsection is imprisonment for 6 months.

## **Bankruptcy Act 1966 section 139ZIF – Bankrupt’s monetary income to be deposited to supervised account**

13. A bankrupt to whom the supervised account regime applies is required to ensure that all monetary income actually received by him or her after the account is opened is deposited into the account. Income received in the form of cash or cheque must be deposited to the account within five working days of its receipt. In any other case, the income must be deposited upon its receipt.
14. Income that is received as cash that is then used to make a refund is not required to be deposited into the account.
15. A person who fails to comply with the requirements of section 139ZIF is guilty of an offence punishable by imprisonment for 12 months.

## **Bankruptcy Act 1966 section 139ZIG – Trustee to supervise withdrawals from supervised account**

16. There is a prohibition on withdrawals from the account by the bankrupt and on the bankrupt authorising withdrawals from the account. However, there are exceptions to this general prohibition, with withdrawals permitted in the following circumstances:
  - with the written consent of the trustee
  - to pay an income contribution liability or instalment
  - to transfer an amount as required under a new supervised account notice (pursuant to section 139ZIEA; see below at paragraph 22)
  - to make a refund
  - to reverse a credit due to an error or dishonoured cheque
  - to meet the bankrupt's tax obligations
  - to make payments of fees and charges imposed by the ADI in connection with the operation of the account.
17. The trustee may consent to withdrawals from the supervised account by written notice. This consent can be given to any of the following types of withdrawals:
  - a specified withdrawal
  - withdrawals included in a specified class of withdrawals
  - withdrawals up to a daily, weekly, fortnightly or monthly limit ascertained in accordance with the notice.
18. Providing consent to withdrawals from the supervised account allows the trustee to come to an arrangement with the bankrupt that permits for withdrawals from the account to meet the bankrupt's living expenses, while also ensuring that the balance of the account remains sufficient to meet the bankrupt's liability to pay contributions. In addition to consenting to withdrawals to meet living expenses, the trustee may also consent to additional withdrawals to meet unexpected liabilities or where a balance has accumulated in the account that exceeds the amount required to meet the bankrupt's income contribution liability.
19. The trustee is able to vary or revoke consent to withdrawals from the supervised account as the circumstances require. The power to issue a consent notice, vary that consent or revoke that consent may be exercised by the trustee on his or her own initiative or upon application of the bankrupt. If the bankrupt applies to the trustee to exercise this power and the trustee refuses, the trustee must give written notice of that refusal to the bankrupt.
20. A bankrupt who makes an unauthorised withdrawal from the supervised account is guilty of an offence punishable by imprisonment for 12 months
21. Withdrawals from the account to satisfy legislative requirements apply in addition to the withdrawals permitted by section 139ZIG of the Bankruptcy Act, such as those available to trustees under section 139ZL of the Bankruptcy Act and to the Commissioner of Taxation under the *Taxation Administration Act 1953*.

## **Bankruptcy Act 1966 section 139ZIEA – New supervised account**

22. The trustee is able to revoke a supervised account notice, issue a fresh supervised account notice and require the bankrupt to transfer the balance of an existing supervised account to the new

account opened in accordance with the fresh notice. The earlier notice will remain in force until the bankrupt complies with the fresh notice by opening a new supervised account.

23. This power is to allow the trustee to change the account if the trustee considers that the account is no longer suitable for the purposes of this regime – for example, the ADI at which the account is held may change the terms, conditions or fees relating to the account in a way that adversely impacts the amount available to satisfy the bankrupt's income contribution liability.
24. A decision to issue a revocation notice and issue a fresh supervised account notice may be made by the trustee on his or her own initiative. A decision may also be made on application by the bankrupt. If the bankrupt applies to the trustee to exercise this power and the trustee refuses, the trustee must give written notice of that refusal to the bankrupt.
25. Failure to comply with the requirements of a notice issued under section 139ZIEA is an offence punishable by imprisonment for six months.

### ***Bankruptcy Act 1966 section 139ZIH – Constructive income receipt arrangements***

26. A bankrupt to whom the supervised account regime applies is prohibited from entering into, or continuing to participate in, constructive income receipt arrangements.
27. A constructive income receipt arrangement for these purposes is an arrangement where income derived by a bankrupt is not actually received by the bankrupt because it is:
  - a. reinvested, accumulated or capitalised, or
  - b. dealt with on behalf of the bankrupt or as the bankrupt directs.
28. If the bankrupt was participating in a constructive income receipt arrangement immediately before becoming subject to the supervised account regime, the bankrupt is required to cease participating in that arrangement as soon as practicable after becoming subject to the regime.
29. The bankrupt is, however, able to enter into constructive income receipt arrangements, or continue to participate in such arrangements, with the consent of the trustee. The trustee must give written notice of any such consent to the bankrupt and may, by further written notice, vary or revoke that consent.
30. The power to issue a consent notice or to vary or revoke that consent may be exercised by the trustee on his or her own initiative or on application by the bankrupt. If the bankrupt applies to the trustee to exercise this power and the trustee refuses, the trustee must give written notice of that refusal to the bankrupt.
31. A bankrupt who fails to comply with the requirements of section 139ZIH is guilty of an offence punishable by imprisonment for 12 months.

### ***Bankruptcy Act 1966 section 139ZIHA – Non-monetary income receipt arrangements***

32. A bankrupt to whom the supervised account regime applies must not enter into, or continue to participate in, non-monetary income receipt arrangements.
33. For the purposes of section 139ZIHA, a non-monetary income receipt arrangement is an arrangement the effect of which is that income derived by a bankrupt is not received by the bankrupt in monetary form.

34. If the bankrupt was participating in such an arrangement immediately before becoming subject to the supervised account regime, the bankrupt is required to cease participating in that arrangement as soon as practicable after becoming subject to the regime.
35. The bankrupt is, however, able to enter into such arrangements, or continue to participate in such arrangements, with the consent of the trustee. The trustee is required to give written notice of any such consent to the bankrupt and may, by further written notice, vary or revoke that consent.
36. The power to issue a consent notice or to vary or revoke that consent may be exercised by the trustee on his or her own initiative or on application by the bankrupt. If the bankrupt applies to the trustee to exercise this power and the trustee refuses, the trustee must give written notice of that refusal to the bankrupt.
37. A bankrupt who fails to comply with the requirements of section 139IHA is guilty of an offence punishable by imprisonment for 12 months.

### **Bankruptcy Act 1966 section 139ZII – Cash income**

38. A bankrupt subject to the supervised account regime is prohibited from receiving income in the form of cash.
39. The bankrupt is, however, able to receive income in the form of cash with the consent of the trustee. The trustee is required to give written notice of any such consent to the bankrupt and may, by further written notice, vary or revoke that consent.
40. The power to issue a consent notice or to vary or revoke that consent may be exercised by the trustee on his or her own initiative or on application by the bankrupt. If the bankrupt applies to the trustee to exercise this power and the trustee refuses, the trustee must give written notice of that refusal to the bankrupt.
41. A bankrupt who fails to comply with the requirements of section 139ZII is be guilty of an offence punishable by imprisonment for 12 months.

### **Bankruptcy Act 1966 section 139ZIIA – Keeping of books**

42. Section 277A of the Bankruptcy Act places certain obligations on a bankrupt in relation to the keeping of books to describe income that he or she derives during the period of bankruptcy. Failure to comply with these requirements is an offence punishable by imprisonment for 6 months.
43. Section 5 of the Bankruptcy Act defines “books” as follows:  
*“books’ includes any account, deed, paper, writing or document and any record of information however compiled, recorded or stored, whether in writing, on microfilm, by electronic process or otherwise.”*
44. Section 139ZIIA modifies the offence contained in section 277A of the Bankruptcy Act (keeping of books in respect of period of bankruptcy) in relation to a discharged bankrupt who is subject to the supervised account regime, with the bankrupt required to keep the books until the supervised account regime ceases to apply to the bankrupt (instead of there being a requirement to keep the books until discharge, as section 277A requires of a bankrupt who is not subject to the supervised account regime).

## **Bankruptcy Act 1966 sections 139ZIJ to 139ZIN – Injunctions**

45. The trustee is able to apply to the court for certain injunctions to ensure that a bankrupt who is subject to the supervised account regime complies with his or her obligations under that regime.
46. The injunctions provided for in the Bankruptcy Act are:
  - to restrain the bankrupt from conduct in contravention of the supervised account regime provisions (a restraining injunction)
  - to compel the bankrupt to do something required under the supervised account regime provisions (a performance injunction)
  - an interim injunction for either of the above purposes.
47. The court may also discharge or vary an injunction.
48. The powers of the court under these provisions are in addition to, and not instead of, any other powers of the court, whether conferred by the Bankruptcy Act or otherwise.

## **Bankruptcy Act 1966 sections 139ZIO to 139ZIT – Review of trustee's decision**

49. Sections 139ZIO to 139ZIT of the Bankruptcy Act provide for the review of certain decisions of the trustee in relation to the supervised account regime.
50. What is a “reviewable decision” is defined in section 139ZIB of the Bankruptcy Act and includes the following decisions of the trustee:
  - making a determination under section 139ZIC that the supervised account regime applies to a bankrupt
  - refusing to revoke such a determination (section 139ZID)
  - specifying or refusing to specify a period in a supervised account notice or specifying requirements in a supervised account notice (for the purposes of subparagraph 139ZIE(1)(a)(ii))
  - specifying other requirements in the supervised account notice under subparagraph 139ZIE(1)(a)(ix)
  - refusing to exercise the powers under s139ZIEA(1), which relates to setting up a new (fresh) supervised account when the bankrupt is already a bankrupt to whom the supervised account regime applies
  - refusing to give, revoking, varying or refusing to vary a consent in relation to:
    - withdrawals from the supervised account (subsection 139ZIG(3))
    - constructive income receipt arrangements (subsection 139ZIH(5))
    - non-monetary income receipt arrangements (subsection 139ZIHA(5))
    - cash income (subsection 139ZII(3)).
51. These reviewable decisions are subject to review by the Inspector-General in Bankruptcy, either at the Inspector-General's own initiative (paragraph 139ZIO(1)(a)) or at the request of the bankrupt for reasons that appear to the Inspector-General to be sufficient to justify doing so (paragraph 139ZIO(1)(b)).
52. The Inspector-General must also review a decision on request of the Commonwealth Ombudsman, except where the court is exercising powers under section 45-1, 90-5, 90-10 or 90-15 of the Insolvency Practice Schedule (Bankruptcy) in relation to the decision (subsection 139ZIO(2A)).



53. A request by the bankrupt to the Inspector-General for a review must be made not later than 60 days after the trustee's decision first came to the notice of the bankrupt. The request for review must be accompanied by any relevant documents provided by the trustee and any other documents on which the bankrupt wishes to rely to support the review request.
54. Within 60 days of receiving the review request for review, the Inspector-General must determine whether to review the decision and, if so, complete the review.
55. For the purposes of the review, the Inspector-General may seek further information from the bankrupt or the trustee, either orally or in writing.
56. The Inspector-General has the power on review to:
  - confirm the trustee's decision
  - vary the trustee's decision
  - set the trustee's decision aside, or
  - set the trustee's decision aside and substitute a new decision.
57. If, within 60 days of receiving a request from a bankrupt to review a reviewable decision of the trustee, the Inspector-General has not given written notice of the decision on the request, the Inspector-General is taken to have reviewed the trustee's decision and confirmed it.
58. If the Inspector-General reviews a decision or refuses a bankrupt's request for a review, the Inspector-General must advise the bankrupt and the trustee in writing, setting out the decision and giving the reasons for the decision. The notice of the decision must also advise the bankrupt and/or trustee that, if he or she is dissatisfied with the decision, he or she may request a review of the decision by the Administrative Appeals Tribunal (subject to the *Administrative Appeals Tribunal Act 1975*).
59. Pursuant to subsection 29(1) of the *Administrative Appeals Tribunal Act 1975*, an application to the Administrative Appeals Tribunal for a review of the Inspector-General's decision must:
  - be made in writing
  - set out a statement of reasons for the application, and
  - be made within 28 days of the date on which the bankrupt receives the decision letter.
60. The "Application for Review of Decision (Individual)" form is available on the Administrative Appeals Tribunal website.