



# Supervised Accounts Guidance

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*Disclosure: This is **guidance only** and is intended to provide a list of general considerations for a trustee when considering or requiring the creation of a supervised account. It is not an exhaustive list.*

*Following this guideline is not a guarantee that if the bankrupt applies to the Inspector-General for a review of a trustee's decision, the Inspector-General will not vary or set aside a trustee decision. Each administration will need to be considered on its own merits.*

## Introduction

The supervised account regime is designed to assist a trustee with collecting income contributions, typically where the bankrupt is self-employed and has failed to meet their obligations, and where other collection methods have been exhausted.

A bankrupt who receives a written notice from the trustee must open a supervised bank account. The bankrupt's income must then be deposited into that account with any withdrawals supervised by the trustee.

### Forms and guidance:

- [Form 20 – Supervised account notice determination](#)
- [Attachment to Form 20 – The supervised account regime](#)
- [Form 21 – Supervised account notice](#)
- [Form 22 – Revocation of supervised account notice](#)
- [Official Trustee Practice Statement 1 – Income Contributions](#)

## Determining whether the supervised account regime applies to a bankrupt

	Commentary
Is the bankrupt liable to pay a contribution under an assessment or a reassessment?	Liability of a bankrupt to pay contribution, or change in liability of bankrupt can be found at <a href="#">Section 139P(1)</a> , <a href="#">Section 139Q</a> <a href="#">[s139ZIC(2)(a)]</a>
Has the bankrupt defaulted?	When considering whether a bankrupt has missed a payment, consider section <a href="#">139ZIC(2)(b)</a> : <ol style="list-style-type: none"> <li>i. if the trustee permitted the contributions to be paid by instalments, has the bankrupt not paid the whole of an instalment at or before the time when it became payable? or</li> <li>ii. if the trustee required the bankrupt to pay the contribution at a specified time, has the bankrupt not paid the whole amount at or before the time it became payable?</li> </ol> <a href="#">[s139ZIC(2)(b)]</a>
Has the trustee considered all viable options before going to a supervised account regime?	Has the trustee attempted to contact the bankrupt and arrange a repayment schedule? Has the trustee considered a section 139ZL notice? Is a notice of objection to discharge required under ground 149D(1)(f)?

## Setting up a supervised account

*Where the trustee decides to require the bankrupt to create a supervised account*

	Commentary
Prepare the supervised account notice determination	A trustee must prepare and send the bankrupt the approved form: <a href="#">Form 20 – Supervised account notice determination</a> <a href="#">[ss139ZIC(3), 139ZIC(4)]</a>
Notify the bankrupt in writing that they must set up a supervised account	To make a determination that the supervised account regime applies, the trustee must give written notification to the bankrupt, <u>accompanied by</u> : <ul style="list-style-type: none"> <li>• Completed approved form: <a href="#">Form 20 – Supervised account notice determination</a></li> <li>• Supervised account notice: <a href="#">Form 21 – Supervised account notice</a></li> <li>• A statement setting out the effect of sections 139ZIE and 139ZIT (See section 139ZIC(4)(b)(ii))</li> </ul> <p>The bankrupt will be required to open a supervised account within 10 business days after notice is given (unless a longer period is specified in the notice)</p>

	Commentary
	<p><a href="#">[ss139ZIC, 139ZIE]</a></p> <p>If the bankrupt fails to comply with the supervised account notice, consider possible offence referral</p> <p><a href="#">[s139ZIE(6)]</a></p>
<p>Check that the supervised account complies with the Act</p>	<p>Check that:</p> <ul style="list-style-type: none"> <li>• the account is kept with an ADI</li> <li>• the account is kept in <u>Australia</u></li> <li>• the account is denominated in <u>Australian</u> currency</li> <li>• the account is held solely in the name of the <u>bankrupt</u></li> <li>• deposits may be made to, and <u>withdrawals</u> may be made from, the account</li> <li>• the account is designed not to have a debit balance</li> <li>• such other requirements (if any) as are specified in the notice</li> </ul> <p><a href="#">[s139ZIE(1)(a)]</a></p>
<p>Ensure the bankrupt understands what is required of them to open the account</p>	<p>Ensure:</p> <ul style="list-style-type: none"> <li>• that the bankrupt had informed the ADI that the account is a supervised account</li> <li>• that the bankrupt knows that the account must be maintained so long as the supervised account notice is in force</li> </ul> <p><a href="#">[s139ZIE(1)(a)]</a></p> <p>Once the supervised account is opened:</p> <ul style="list-style-type: none"> <li>• the bankrupt must give written notice to the trustee within 2 business days with the following information:</li> <li>• the name of the ADI</li> <li>• the name in which the account is held</li> <li>• the account number</li> <li>• the BSB number</li> </ul> <p><a href="#">[s139ZIE(5)]</a></p> <p>Failure to comply with a supervised account notice, or if the bankrupt fails to inform the trustee of the opening of the supervised account, consider possible offence referral</p> <p><a href="#">[s139ZIE(6)]</a></p>
<p>Notify the bankrupt about what is required of them</p>	<p><i>Income to be deposited into supervised account</i></p> <p>Income has to be deposited within 5 working days of receipt if by cash or cheque, or upon its receipt if by any other form <a href="#">[s139ZIF]</a></p> <p>Failure to comply with depositing funds into supervised account, consider possible offence referral <a href="#">[s139ZIF(4)]</a></p> <p><i>In relation to withdrawals</i></p> <p>Once account is open, make sure bankrupt fully understands that withdrawals from this account can only be made under certain circumstances <a href="#">[s139ZIG(2)]</a>.</p>

	Commentary
	<p>Ensure the bankrupt knows that the trustee can consent to withdrawals being made, once written notice is provided by the bankrupt <a href="#">[s139ZIG(3)]</a></p> <p>If the bankrupt makes a withdrawal which is in contravention of section 139ZIG, consider possible offence referral <a href="#">[s139ZIE(6)]</a></p> <p><i>Cash</i></p> <p>Bankrupt cannot receive income in cash <a href="#">[s139ZII]</a>. Can be received with written consent of trustee, either on the trustee's own initiative or on bankrupt's request <a href="#">[s139ZII(5)]</a>. If refused, trustee must give decision in writing <a href="#">[ss139ZII(3), 139ZII(4)]</a></p> <p>If the bankrupt received income in form of cash, in contravention of section 139ZII, consider possible offence referral <a href="#">[s139ZII(7)]</a></p> <p><i>Constructive income receipt arrangements</i></p> <p>A bankrupt is prohibited from entering, or continuing to participate in, a constructive income receipt arrangement i.e. where income is not received because it is reinvested, accumulated, capitalised, or dealt with in a way the bankrupt directs <a href="#">[s139ZIH]</a>. Can be entered or participated in with written consent of trustee, either on trustee's own initiative or on bankrupt's request <a href="#">[ss139ZIH(5), 139ZIH(7)]</a>. If refused, trustee must give decision in writing <a href="#">[s139IH(8)]</a></p> <p>If the bankrupt is subject to either section 139ZIH(1) or 139ZIH(3) of the Act, and their conduct breaches the requirements, consider possible offence referral <a href="#">[s139ZIH(9)]</a></p> <p><i>Non-monetary income receipt arrangements</i></p> <p>A bankrupt is prohibited from entering, or continuing to participate in, an arrangement where income derived by a bankrupt is not received in monetary form <a href="#">[s139ZIHA]</a>. Can be entered or participated in with written consent of trustee, either on trustee's own initiative or on bankrupt's request <a href="#">[ss139ZIHA(6), 139ZIHA(7)]</a>.</p> <p>If the bankrupt is subject to either section 139ZIHA(1) or 139ZIHA(3) of the Act, and their conduct breaches the requirements, consider possible offence referral <a href="#">[s139ZIHA(9)]</a></p> <p><i>Keeping books</i></p> <p>Bankrupt must keep books until supervised account regime ends <a href="#">[ss139ZIIA, 277A]</a></p>
<p>Where bankrupt is not complying with obligations under supervised account regime</p>	<p>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 their obligations under that regime <a href="#">[ss 139ZIJ, 139ZIK, 139ZIL, 139ZIM, 139ZIN]</a></p> <p>The injunctions provided are:</p> <ul style="list-style-type: none"> <li>• to restrain the bankrupt from conduct in contravention of the supervised account regime provisions (a restraining injunction)</li> <li>• to compel the bankrupt to do something required under the supervised account regime provisions (a performance injunction)</li> <li>• an interim injunction for either of the above purposes.</li> </ul>

	Commentary
How long the supervised account notice will remain in force	<p>The supervised account notice remains in force until:</p> <ul style="list-style-type: none"> <li>• the bankruptcy is annulled</li> <li>• where the bankrupt is discharged from bankruptcy and no longer has an income contribution liability, the notice ceases to be in force upon discharge</li> <li>• 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</li> <li>• the notice is revoked by the trustee (although a new notice may be issued at this time)</li> <li>• the court makes such an order under <a href="#">section 90-15 of the Insolvency Practice Schedule</a></li> </ul>

## Setting up a new supervised account

*Where the current supervised account is no longer suitable for the purposes of the regime, and a new one is required*

	Commentary
Has the bankrupt asked for the trustee to revoke the old notice?	If initiated by the bankrupt, and the trustee refuses, the trustee's refusal must be in writing <a href="#">[s139ZIEA]</a>
Has the trustee agreed to a new supervised account?	<p>If initiated by the trustee, or the trustee agrees to the bankrupt's request, the trustee can, at the same time:</p> <ul style="list-style-type: none"> <li>• revoke the supervised account determination - completed approved form: <a href="#">Form 22 – Revocation of Supervised Account Notice</a></li> <li>• issue a fresh supervised account notice – complete supervised account notice: <a href="#">Form 21 – Supervised account notice</a></li> <li>• require the bankrupt to transfer the balance of the existing supervised account to the new account in accordance with the fresh notice</li> </ul> <p>The earlier notice will remain in force until compliance with the fresh notice is completed.</p> <p><a href="#">[s139ZIEA]</a></p> <p>If the bankrupt fails to comply with the supervised account notice, consider possible offence referral <a href="#">[s139ZIEA(6)]</a></p>

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## Revoking a supervised account

*Where the trustee or bankrupt decides to revoke the supervised account*

	Commentary
Has the bankrupt asked for the trustee to revoke the supervised account notice determination?	If initiated by the bankrupt, and the trustee refuses, it must be in writing <a href="#">[s139ZID(1)]</a>
Has the trustee decided to revoke the supervised account notice determination on their own initiative?	If initiated by the trustee, or the trustee agrees to the bankrupt's request, the trustee can only revoke the supervised account determination if they are satisfied, having regard to: <ul style="list-style-type: none"><li>• past payment record of the bankrupt</li><li>• any other relevant matters</li><li>• that the bankrupt will pay current or future contributions or instalments of contributed at or before the time when they become payable</li></ul> <a href="#">[s139ZID(2)]</a>
If the trustee has decided to revoke the supervised account notice determination, prepare the revocation form and notify bankrupt in writing	To revoke the determination that the supervised account regime applies, the trustee must give written notification to the bankrupt, <u>accompanied with:</u> <a href="#">Form 22 – Revocation of Supervised Account Notice</a>