

### SCHEDULE 3

Regulation 12(3).

#### PARAGRAPHS INSERTED AS PARAGRAPHS 2 TO 11 OF ARTICLE 50 OF THE UCITS DIRECTIVE

**2.** Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Such secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that UCITS and management companies and depositaries (hereinafter referred to as undertakings contributing towards their business activity) cannot be individually identified, without prejudice to cases covered by criminal law.

Nevertheless, when an UCITS or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in rescue attempts may be divulged in civil or commercial proceedings.

**3.** Paragraph 2 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive or other Directives applicable to UCITS or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

**4.** Member States may conclude cooperation agreements providing for exchanges of information with the competent authorities of third countries only if the information communicated is covered by guarantees of professional secrecy at least equivalent to those provided for in this Article.

**5.** Competent authorities receiving confidential information under paragraphs 2 or 3 may use it only in the course of their duties:

- to check that the conditions governing the taking-up of the business of UCITS or of undertakings contributing towards their business activity are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms,
- to impose sanctions,
- in administrative appeals against decisions by the competent authorities, or
- in court proceedings initiated under Article 51(2).

**6.** Paragraphs 2 and 5 shall not preclude the exchange of information:

- (a) within a member State, where there are two or more competent authorities; or
- (b) within a Member State or between Member States, between competent authorities; and
  - authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings and other financial organisations and the authorities responsible for the supervision of financial markets,
  - bodies involved in the liquidation or bankruptcy of UCITS and other similar procedures and of undertakings contributing towards their business activity,
  - persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings and other financial institutions, in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

7. Notwithstanding paragraphs 2 to 5, Member States may authorise exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or
- the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first sub-paragraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task of overseeing referred to in the first sub-paragraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

8. Notwithstanding paragraphs 2 to 5, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first sub-paragraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first sub-paragraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging information provided for in the first sub-paragraph may be extended to such persons under the conditions stipulated in the second sub-paragraph.

In order to implement the final indent of the second sub-paragraph, the authorities or bodies referred to in the first sub-paragraph shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.

9. This Article shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their tasks, nor shall it prevent such authorities or bodies from communicating

to the competent authorities such information as they may need for the purposes of paragraph 5. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

**10.** This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 2 to 5 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2. Member States shall, however, ensure that information received under paragraph 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

**11.** In addition, notwithstanding the provisions referred to in paragraphs 2 and 5, Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of UCITS and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under paragraphs 3 and 6 may never be disclosed in the circumstances referred to in this paragraph except with the express agreement of the competent authorities which disclosed the information.