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| **MINISTERS’ DEPUTIES** | CM Documents | **[CM(2020)51](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM(2020)51)** | 6 March 2020[[1]](#footnote-1) |

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| **1373rd meeting, 8 April 2020**11 Programme, Budget and Administration**11.2 Pension Reserve Fund of the Council of Europe**b. Intermediate review of the investment strategy - legal structure of infrastructure funds**Item to be considered by the GR-PBA at its meeting on 24 March 2020** |

## BACKGROUND

1. At its meeting on 25 March 2019, the Management Board of the Pension Reserve Fund (PRF) of the Council of Europe decided to implement the PRF infrastructure allocation (5% of portfolio) through a Special Portfolio Solution (SPS) with the following characteristics:
* the investment universe should be limited to brownfield projects in OECD[[2]](#footnote-2) countries, which are the less risky;
* the fund manager should be a peer, i.e. an international organisation or another pension fund and hold a significant investment in the fund, in order to allow the best alignment of interests with the Council of Europe;
* the fund should come with moderate fees to improve the net return;
* the fund should ideally be open-ended, as the due diligence time the Council of Europe may need to invest in a fund with these characteristics may be too long to be able to meet the usual subscription deadlines of closed-ended funds;
* the fund should ideally be evergreen, i.e. with an unlimited investment horizon as the investment is planned for the long term.
1. The Board decided to invest in the fund IFM Global Infrastructure (UK), L.P.[[3]](#footnote-3) (‘IFM fund’). This was the only fund meeting all the SPS criteria. This option did not entail any selection and advisory fees and could be implemented relatively quickly. In addition, the PRF would be able to benefit from the experience already gained by the Secretariat with this fund for another pension fund under its administration.

## LEGAL STRUCTURE OF THE IFM FUND

1. The PRF would invest in IFM Global Infrastructure (UK), L.P., a Limited Partnership governed by the laws of England and Wales. In turn, IFM Global Infrastructure (UK), L.P. is a feeder fund investing all its assets in the master fund, IFM Global Infrastructure Fund, a Unit Trust governed by the laws of the Cayman Islands. It is the master fund that ultimately makes investments in infrastructure assets and companies located principally in Europe and the Americas. The manager of both funds (the “Operator”) is IFM Investors Pty Ltd, an Australian-incorporated investment management firm, owned by 27 profit-to-members Australian pension funds (see detailed list in Annex 1).
2. IFM explained that the fund is structured as a master–feeders. There are a number of feeder funds domiciled in various jurisdictions which allows for capital to be pooled from a global investor base. The master fund is domiciled in the Cayman Islands for the following reasons:
* to ensure tax neutrality, i.e. to not impose an additional tax layer.

 Portfolio companies pay taxes on operating income in source countries. These companies can then make distributions e.g. dividends, interest payments, to the master fund, and these distributions flow through to the ultimate investors in the feeder funds. There is generally no tax on income (e.g. dividends/interest) in the Cayman Islands and so the income received from portfolio companies would not be subject to an additional layer of tax at the master fund level. The master fund will in turn pass on the dividend/interest income received to the feeder funds. The UK feeder funds are structured as UK limited partnerships which are treated as transparent for UK tax purposes, i.e. the partnership is not itself subject to tax and instead the final investors in the UK feeder funds would be liable to tax on their share of the partnership’s profits in their resident country, unless they are tax exempt. The point is not imposing an additional tax on dividends or interest payments that is not otherwise payable, not avoiding or deferring taxes;

* the Cayman Islands is a common jurisdiction for funds management due to its familiarity with investors, with a strong rule of law, financial regulation regime, and tax neutrality;
* the Cayman Islands Monetary Authority (CIMA) that regulates the IFM fund is a mature financial regulatory body;
* the Cayman Islands have signed up to transparency measures for the exchange of information (Foreign Account Tax Compliance Act (FATCA[[4]](#footnote-4)) and Common Reporting Standard (CRS[[5]](#footnote-5))).
1. The Board notes that many other infrastructure funds have this same structure due to its efficiency.
2. One of the questions that the Board analysed when selecting the IFM fund was the composition and characteristics of the other co-investors. The admission criteria and procedures described below by IFM seem to guarantee the high quality of such co-investors and the alignment of interests.
3. Investors in the IFM Global Infrastructure fund are admitted as Limited Partners via Limited Partnerships in the investor’s local region. Investors from the EMEA region, for example, may invest through one (or more) of the five UK-domiciled Limited Partnerships, which in turn invest in the Master Trust.[[6]](#footnote-6) The fund’s investor base is 100% institutional and primarily comprises pension fund capital (>90%).[[7]](#footnote-7)  Capital from other investor types may be subject to approval by IFM’s internal Suitability Committee.  IFM is highly selective of the types of capital they are prepared to accept. Investors must be well-capitalised, like-minded and long-term. Subscription documents containing questions relating to these qualifications are furnished to prospective investors, who should complete them and return them to the Operator. The Operator reserves the right to reject subscriptions with absolute discretion. The Partnership Agreement also provides that a Partner may not assign its Interest (except by operation of law), nor substitute another person as a Partner, without the prior consent of the Operator, which may be withheld for any reason. The foregoing restrictions on transferability and withdrawal must be regarded as substantial. Each purchaser of an Interest will be required to represent that the Interest is being acquired for its own account, for investment and not with intent to resell or distribute.
4. As part of the Operator’s responsibility for the prevention of money laundering under applicable laws, the Operator may require a detailed verification of a prospective Limited Partner’s identity and the source of such prospective Limited Partner’s funds for investment. In the event of delay or failure by a prospective Limited Partner to produce any such information required for verification purposes, the Operator may refuse to admit the Limited Partner to the Partnership. As a result, the Operator may from time to time request (outside of the subscription process), and the Limited Partners will be obligated to provide to the Operator upon such request, additional information as may be required for the Operator and the Partnership to satisfy their respective obligations under these and other laws that may be adopted in the future. In addition, the General Partner and the Operator may from time to time be obligated to file reports with regulatory authorities in various jurisdictions with regard to, among other things, the identity of the Limited Partners and suspicious activities involving the Interests.
5. In the event it is determined that any Limited Partner, or any direct or indirect owner of any Limited Partner, is a person identified in any of these laws as a prohibited person, or is otherwise engaged in activities of the type prohibited under these laws, the Operator may be obligated, among other actions to be taken, to withhold distributions of any funds otherwise owing to such Limited Partner or to cause such Limited Partner’s Interests to be cancelled or otherwise redeemed.
6. The Partnership may refuse to accept a subscription from a subscriber or compel the withdrawal from the Partnership of a Limited Partner who fails to provide any information requested by the Partnership pursuant to the UK Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, the UK Proceeds of Crime Act 2002 or the UK Counter-Terrorism Act 2008 or to any other applicable anti-money laundering regulations of any jurisdiction (“Anti-Money Laundering Regulations”).
7. The Partnership may suspend the withdrawal rights of any Limited Partner if the Operator reasonably deems it necessary to do so in order to comply with the Anti-Money Laundering Regulations, or if so ordered or requested by a competent or other court or regulatory authority. Under Anti-Money Laundering Regulations, the Partnership may also be required to report investors’ transactions with the Partnership and to disclose the identity of Limited Partners to governmental authorities.

## ANALYSIS OF THE ELIGIBILITY OF THE IFM FUND FOR THE PRF: COMPLIANCE WITH THE SRI INVESTMENT POLICY AND REPUTATIONAL RISK

1. To assess the eligibility of the IFM fund, the Board analysed whether the investment of the PRF in the IFM fund could be:
2. against the extra-financial or Socially Responsible Investment (SRI) policy of the Fund;
3. potentially harmful for the reputation of the Council of Europe, i.e. generate negative publicity, public perception or other uncontrollable events;

due to the IFM fund’s legal structure that allows efficiency in the treatment of taxes on dividends and interest payments from investments, and/or because the Cayman Islands may be perceived as a jurisdiction non-compliant with international standards on transparency and exchange of information for tax purposes and anti-money laundering.

1. Given the difficulty of concluding on both questions, the Board decided to consult the Committee of Ministers as the owner of the PRF and responsible for the investment policy and reputational risk for the Council of Europe.
2. If the answer to any or both of the two questions is positive, the investment in the IFM fund will not be made in which case the Board will have to look for an alternative solution for implementing the infrastructure allocation. Given the lack of other infrastructure funds meeting the SPS criteria, as well as the complexity and novelty of infrastructure investments, the Board would have to rely on the services of a specialised advisor. This advisor would be asked to discern opportunities in the market (i.e. find funds available for investment), to evaluate them, to do the extensive and complex due diligence within the potentially limited time frame linked to investment window opportunities, and to follow up on the investments. This is estimated to increase the level of fees by 0.5%-1%, and would require more administration work as well as more time for the implementation.

cOMPLIANCE WITH THE Council of Europe’s SRI POLICY

1. The current SRI policy of the Council of Europe does not make any reference to preventing investments in funds and fund structures that allow efficiency in the treatment of taxes on dividends and interest payments from investments. Therefore, on this point, the investment in the IFM fund is considered compliant with the investment policy of the PRF.
2. As regards the fund’s domicile in jurisdictions that may be perceived as non-compliant with international standards on transparency and exchange of information for tax purposes and anti-money laundering, Article 18 of the Council of Europe’s SRI policy states that*: “The Council of Europe has shown its concern regarding the fight against money laundering, corruption, and cybercrime. While respecting the Civil Law Convention on Corruption (1999), the Criminal Law Convention on Corruption (1999), the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime (1990), the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005), and the Convention on Cybercrime (2001), the Council of Europe will use general SRI criteria from asset managers”.* The IFM Fund, even if not labelled as a SRI, actually applies SRI criteria in the selection and management of the investments. IFM does not apply any specific criteria with regard to the domicile of the funds within its legal structure.
3. Without any further guidance on the implementation of Article 18, the Board decided to examine whether the Cayman Islands could be considered a valid jurisdiction for the PRF’s investments. The exam is based on the standards and assessment by three reputed international and multilateral organisations on the subject of money laundering, terrorist financing, tax transparency and the exchange of information (in which the transparency and exchange of information are also considered as preventing money laundering) and their most recent evaluation of the Cayman Islands. A summary of this analysis is presented hereafter.

### Organisation for Economic Co-Operation and Development

1. The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes has [158 members](http://www.oecd.org/tax/transparency/about-the-global-forum/members/) on equal footing and is the premier international body for ensuring the implementation of the internationally agreed standards on transparency and exchange of information in the tax area. Through an in-depth [peer review process](https://www.oecd.org/tax/transparency/exchange-of-information-on-request/#d.en.368658), the Global Forum monitors that its members fully implement the standard on transparency and exchange of information they have committed to implement. It also works on establishing a level playing field, even among countries that have not joined the Global Forum.

The Cayman Islands appear on the list of jurisdictions considered by this Forum as “largely compliant”[[8]](#footnote-8) with the international standard on transparency and exchange of information on request (EOIR). “Largely compliant”[[9]](#footnote-9) means that: “*the standard is implemented to a large extent but some improvements are needed. The deficiencies identified are material but have limited impact on EOIR”.* The qualification of largely compliant is actually based on ten factors, detailed hereafter with their respective rating for the Cayman Islands:

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| **OECD Global Forum on Transparency and Exchange of Information for Tax Purposes****Cayman Islands Assessment** |
| Ownership Information | Largely Compliant |
| Accounting Records | Largely Compliant |
| Bank Information | Compliant |
| Access Powers | Largely Compliant |
| Rights and Safeguards | Compliant |
| EOI instruments | Compliant |
| Network of Agreements | Compliant |
| Confidentiality | Compliant |
| Rights and Safeguards  | Compliant |
| Timely EOI | Largely Compliant[[10]](#footnote-10) |

### European Union

1. The European Union (EU) is working on improving good tax governance on a global level. It is doing this in order to maximise efforts against tax fraud, evasion and avoidance. The EU seeks to achieve this objective by encouraging positive change through co-operation. For that, they publish the EU list of non-co-operative jurisdictions for tax purposes, a list that includes non-EU countries or territories that failed to make sufficient commitments in response to EU concerns.
2. Separately from the list, a state of play document[[11]](#footnote-11) features the jurisdictions that responded in a sufficient manner and/or needed to take effective action so as not to be listed in the future. In the review of March 2019 (updated list was published in November 2019), the Cayman Islands were included[[12]](#footnote-12) within the “*jurisdictions, which committed to addressing the concerns relating to economic substance in the area of collective investment funds, have engaged in a positive dialogue with the Group and have remained cooperative, and were granted until end 2019 to adapt their legislation*”. This deadline may be reviewed depending on the technical guidance to be agreed by the Group and ongoing dialogue with the jurisdictions concerned.
3. On 18 February 2020, the Cayman Islands were moved to the list of non-co-operative jurisdictions for tax purposes[[13]](#footnote-13) as the jurisdiction “*does not have appropriate measures in place relating to economic substance in the area of collective investment vehicles.”[[14]](#footnote-14)*

### Financial Action Task Force

1. The Financial Action Task Force (FATF) is a global standard-setting body for anti-money laundering and combatting the financing of terrorism (AML/CFT). In order to protect the international financial system from money laundering and financing of terrorism (ML/FT) risks and to encourage greater compliance with the AML/CFT standards, the FATF identifies jurisdictions that have strategic deficiencies and works with them to address those deficiencies that pose a risk to the international financial system.
2. The [Caribbean Financial Action Task Force (CFATF)](https://cfatf-gafic.org/) completed in 2019 its assessment of the Cayman Islands' anti-money laundering and counter-terrorist system. The assessment is a comprehensive review of the effectiveness of the Cayman Islands' measures to combat money laundering and terrorist financing and its level of compliance with the FATF Recommendations.
3. For full transparency, the Board presents hereafter the whole set of ratings provided by the report. They are divided into “Technical Ratings” and “Effectiveness Ratings”.
4. Technical Ratings look at whether a country has met all the technical requirements of the 40 FATF Recommendations in its laws, regulations and other legal instruments to combat money laundering, and the financing of terrorism and proliferation.

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| **FATF – Technical Ratings** |
| **Cayman Islands Assessment** |
| **AML/AML/CFT POLICIES AND CO-ORDINATION**  |
| 1.  Assessing risks & applying a risk-based approach | Partially Compliant  |
| 2.   National co-operation and co-ordination | Partially Compliant  |
| **MONEY LAUNDERING AND CONFISCATION**  |  |
| 3.   Money laundering offence | Compliant  |
| 4.   Confiscation and provisional measures | Largely Compliant  |
| **TERRORIST FINANCING AND FINANCING OF PROLIFERATION** |  |
| 5.   Terrorist financing offence | Compliant  |
| 6.   Targeted financial sanctions related to terrorism & terrorist financing | Largely Compliant  |
| 7.   Targeted financial sanctions related to proliferation | Largely Compliant  |
| 8.   Non-profit organisations | Largely Compliant |
| **PREVENTIVE MEASURES**  |  |
| 9.   Financial institution secrecy laws | Compliant  |
| *Customer due diligence and record keeping*  |  |
| 10.   Customer due diligence | Largely Compliant  |
| 11.   Record keeping | Compliant  |
| *Additional measures for specific customers and activities*  |  |
| 12.   Politically exposed persons | Compliant  |
| 13.   Correspondent banking | Compliant  |
| 14.   Money or value transfer services | Largely Compliant  |
| 15.   New technologies | Largely Compliant  |
| 16.   Wire transfers | Largely Compliant |
| *Reliance, Controls and Financial Groups* |  |
| 17.   Reliance on third parties | Largely Compliant  |
| 18.   Internal controls and foreign branches and subsidiaries | Compliant  |
| 19.   Higher-risk countries | Partially Compliant  |
| *Reporting of suspicious transactions*  |  |
| 20.   Reporting of suspicious transactions | Compliant  |
| 21.   Tipping-off and confidentiality | Largely Compliant  |
| *Designated non-financial Businesses and Professions (DNFBPs)*  |  |
| 22.   DNFBPs: Customer due diligence | Partially Compliant  |
| 23.   DNFBPs: Other measures | Partially Compliant |
| **TRANSPARENCY & BENEFICIAL OWNERSHIP OF LEGAL PERSONS & ARRANGEMENTS**  |  |
| 24.   Transparency and beneficial ownership of legal persons | Partially Compliant  |
| 25.   Transparency and beneficial ownership of legal arrangements | Partially Compliant  |
| **POWERS & RESPONSIBILITIES OF COMPETENT AUTHORITIES & OTHER INSTITUTIONAL MEASURES**  |
| *Regulation and Supervision*  |  |
| 26.   Regulation and supervision of financial institutions | Partially Compliant  |
| 27.   Powers of supervisors | Compliant  |
| 28.   Regulation and supervision of DNFBPs | Partially Compliant  |
| *Operational and Law Enforcement*  |  |
| 29.   Financial intelligence units | Partially Compliant  |
| 30.   Responsibilities of law enforcement and investigative authorities  | Largely Compliant  |
| 31.   Powers of law enforcement and investigative authorities | Largely Compliant  |
| 32.   Cash couriers | Partially Compliant |
|  |  |

Source: FATF

1. The graph below summarises the Technical Ratings.

Graph 1: FATF Technical Ratings



Source: FATF

1. Effectiveness Ratings reflect the extent to which a country's measures are effective. The assessment is conducted based on 11 immediate outcomes, which represent key goals that an effective AML/CFT system should achieve.

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| **FATF – Technical Ratings** |
| **Cayman Islands Assessment** |
| 1. ML and TF risks are understood and, where appropriate, actions co-ordinated domestically to combat ML and TF  | Moderate  |
| 2. International co-operation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets | Moderate  |
| 3. Supervisors appropriately supervise, monitor and regulate financial institutions and designated non-financial businesses and professions (DNFBPs) for compliance with AML/CFT requirements commensurate with their risks  | Low  |
| 4. Financial institutions and DNFBPs adequately apply AML/CFT preventive measures commensurate with their risks, and report suspicious transactions  | Low |
| 5. Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments | Moderate  |
| 6. Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations | Low  |
| 7. Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions  | Low  |
| 8. Proceeds and instrumentalities of crime are confiscated  | Moderate |
| 9. Terrorist financing offences and activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate and dissuasive sanctions | Low  |
| 10. Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the non-profit sector  | Moderate  |
| 11. Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant United Nations Security Council Resolutions | Moderate |

Source: FATF

1. The graph below summarises the Effectiveness Ratings.

Graph 2: FATF Effectiveness Ratings



Source: FATF

### Conclusion - Summary of the External Assessments

1. The assessments on transparency and co-operation for tax purposes and the fight against money laundering from the OECD, the EU and the FATF seem to acknowledge, to a greater or smaller extent, that the Cayman Islands comply with some standards, but that improvements are needed.

## REPUTATIONAL RISK

1. This chapter analyses the possible reputational risk for the Council of Europe arising from the PRF’s investment in funds with a legal structure that allows efficiency in the treatment of taxes on dividends and interest payments and/or that are domiciled in the Cayman Islands.
2. Reputation risk in this context would mean that the investment in the IFM fund could be potentially harmful for the reputation of the Council of Europe, i.e. generate negative publicity, public perception or other uncontrollable events.
3. The Board considered this risk very difficult to gauge as there are no pre-defined standards for assessment and therefore suggested to have it assessed by the Organisation as it is very much linked to its values.
4. The Management Board so far asked for the opinion of the Council of Europe’s Ethics Officer and Head of the Action against Crime Department, and from the Council of Europe’s Directorate of Legal Advice and Public International Law (DLAPIL).

### Statement FROM the Council of Europe’s Ethics Officer and Head of the Action against Crime Department

1. *“According to the latest mutual evaluation report on the Cayman Islands by the Caribbean Financial Action Task Force (CFATF) of March 2019,[[15]](#footnote-15) the country’s overall ratings are rather poor (all eleven Immediate Outcomes (IOs) to measure effectiveness were rated as either ‘low’ or ‘moderate’, which are considered as failing-rates). The country thus fulfils the entry criteria of the International Country Risk Guide (ICRG) process of the FATF. The ICRG process is the one which is used by the FATF to continually identify and review jurisdictions with strategic AML/CFT deficiencies that present a risk to the international financial system and to closely monitor their progress. IO.3 (supervision) and IO.4 (preventive measures) are even rated as ‘low’, which appears to have been affected to a large extent by the very weak Designated Non-Financial Businesses and Professions (DNFBP) sector. IO.5 (legal persons) is rated ‘moderate’. On technical compliance, it is noteworthy that FATF Recommendations 24 and 25 on transparency and beneficial ownership of legal persons and arrangements are rated only as ‘partially compliant’. The report stresses that ‘As a major international financial centre, the Cayman Islands is confronted with inherent ML/TF risks, threats and associated vulnerabilities emanating from domestic and foreign criminal activities (e.g. tax evasion, fraud, drug trafficking).’  More specifically, the report notes that as an international financial centre that predominantly serves a non-resident clientele, there have been instances of foreign persons who have sought to evade taxes in their countries and utilised the Cayman Islands’ financial system to launder the proceeds of such crime. Further, as a major financial centre within the Western Hemisphere, it is recognised that drug traffickers also utilised the Cayman Islands’ financial system to launder the proceeds of crime.* ***With that in mind, I wonder whether investing in a firm that channels its investments through its parent company incorporated in the Cayman Islands is an appropriate course of action for the Council of Europe.******I also wonder whether the reputational risk for the Council of Europe is not too high. It is of course for member States to decide the extent of the risk, including reputational risk, they wish to take.****”*

### Statement FROM DLAPIL

1. The opinion from DLAPIL reads as follows: *“Article 18 of the Council of Europe’s Socially Responsible Investments Policy stipulates that: ‘The Council of Europe has also shown its concern regarding the fight against money laundering, corruption, and cybercrime. While respecting the Civil Law Convention on Corruption (1999), the Criminal Law Convention on Corruption (1999), the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime (1990), the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005), and the Convention on Cybercrime (2001), the Council of Europe will use general SRI criteria (from asset managers).*

*The aforementioned conventions are binding for the Parties to them, but not for the Council of Europe. However, given that they are Council of Europe conventions it is implied that the Council of Europe should refrain from any actions that would be contrary to the spirit of those conventions. Hence the Council of Europe should refrain from any actions that could be interpreted as contributing either directly or indirectly to actions or omissions that the conventions intend to prevent. Against this background it could be concluded that the Council of Europe should not invest in jurisdictions that may not respect the underlying principles of those conventions.*

*It is impossible for DLAPIL to analyse whether the Cayman Islands comply with those underlying principles but in light of the existing doubts there is already a reputational risk for the Council of Europe. The Ethics Officer’s opinion and the elements he provided only add to those doubts and confirm the existence of a reputational risk.”*

## CONCLUSION

1. The Board’s conclusions from the above analysis on the **compliance of the IFM fund with regard to the extra-financial SRI investment policy of the PRF** are the following:
* the legal structure of the IFM fund, which allows efficiency in the treatment of taxes on dividends and interests from investments, seems compliant with the current SRI policy of PRF;
* the presence in the legal structure of the IFM fund of a Cayman-Islands-domiciled fund would be non-compliant with article 18 of the PRF’s SRI policy if such jurisdiction is considered as not providing enough transparency and guarantees to avoid tax evasion, opacity and money laundering. Three assessments have been taken into account and all seem to acknowledge, to a greater or smaller extent, that the Cayman Islands comply with some standards, but that improvements are needed.
1. The Board also concluded that there might be a **reputational risk** coming from the fact that the fund’s legal structure that allows efficiency in the treatment of taxes on dividends and interests from investments and/or includes a fund domiciled in the Cayman Islands.
2. As both the compliance with the SRI (extra-financial) policy and the reputational risk are very much linked to the values of the Organisation, **the Board considered that it was necessary to consult with the Committee of Ministers on these matters**.
3. The table below depicts a decision matrix. If any of cells B, C or D are filled with YES, the IFM fund will be considered non-eligible.

|  |  |  |
| --- | --- | --- |
|  | **Legal structure allowing tax efficiency** | **Legal structure containing a Cayman Islands fund** |
| Against current SRI policy | 1. NO
 | 1. To be decided by the Committee of Ministers (Management Board presents three external assessments for reference)
 |
| Harmful for the Council of Europe’s reputation | 1. To be decided by the Committee of Ministers (Management Board presents two Council of Europe staff assessments for reference)
 | 1. To be decided by the Committee of Ministers (Management Board presents two Council of Europe staff assessments for reference)
 |

1. The Board notes that, if the investment in the IFM fund is not possible because it is considered non-compliant with the SRI policy of the PRF and/or entailing a too important reputational risk, another fund would need to be selected in order to implement the infrastructure allocation. This process would be time consuming and more expensive.

## ACTION

1. The Management Board of the PRF invites the Committee of Ministers, in accordance with the provisions of Resolution [Res(2006)1](https://search.coe.int/cm/Pages/result_details.aspx?Reference=Res(2006)1" \o "Resolution on the Statute of the Pension Reserve Fund of the Council of Europe (Adopted by the Committee of Ministers on 1 February 2006 at the 954th meeting of the Ministers' Deputies)) on the Statute of the Pension Reserve Fund:
* to take note of the information presented in this document;
* to decide whether the investment of the PRF in the IFM Global Infrastructure (UK), L.P. can be considered compliant with the SRI policy of the PRF and/or represents no reputational risk, due to its legal structure:
* allowing tax efficiency;

and/or[[16]](#footnote-16)

* including a fund domiciled in the Cayman Islands.

**ANNEX 1 – LIST OF IFM INVESTORS PTY LTD’S SHAREHOLDERS (AS AT NOVEMBER 2019)**

|  |
| --- |
| **Industry Super Holdings Pty Ltd – equity owners** |
| AustralianSuper | 19.95% |
| Cbus | 18.04% |
| HESTA | 17.81% |
| HOSTPLUS | 10.61% |
| MTAA Super | 4.68% |
| First Super | 3.70% |
| CareSuper | 3.59% |
| Media Super | 3.29% |
| Vision Super | 2.90% |
| Sunsuper | 1.87% |
| UniSuper | 1.71% |
| Maritime Super | 1.70% |
| LUCRF | 1.61% |
| TWUSUPER | 1.51% |
| Statewide Super | 1.26% |
| AUSfund | 0.99% |
| Energy Super | 0.96% |
| Mine Super | 0.89% |
| Catholic Super | 0.86% |
| Tasplan | 0.49% |
| BUSSQ | 0.36% |
| WA Super | 0.35% |
| Rei Super | 0.33% |
| NGS Super | 0.30% |
| Australian Catholic Super & Retirement Fund | 0.09% |
| Intrust Super | 0.08% |
| Mercy Super | 0.07% |

Source: IFM

1. This document has been classified restricted until examination by the Committee of Ministers. [↑](#footnote-ref-1)
2. Organisation for Economic Cooperation and Development. [↑](#footnote-ref-2)
3. Subject to the positive due diligence from the Council of Europe. [↑](#footnote-ref-3)
4. Introduced by the United States Department of Treasury and the US Internal Revenue Service (IRS), the purpose of FATCA is to encourage better tax compliance by preventing US Persons from using foreign banks and other financial organisations in order to avoid US taxation on their income and assets. [↑](#footnote-ref-4)
5. The Common Reporting Standard (CRS), introduced by the Organisation for Economic Co-operation and Development (OECD), is an information-gathering and reporting requirement for Financial Institutions in participating countries. Similar to FATCA, its aim is to help fight tax evasion and to protect the integrity of participating countries’ tax systems. [↑](#footnote-ref-5)
6. To preserve confidentiality, IFM is unable to provide details of Limited Partners without the Limited Partners’ express prior consent. Limited Partners who have given this consent are: Australian Catholic Superannuation, CBUS (Australian Industry Super Fund for the building, construction and allied industries), HESTA (Australian industry superannuation fund for workers in health and community service sectors) and the Local Authorities Superannuation Fund. [↑](#footnote-ref-6)
7. US persons are not eligible investors. [↑](#footnote-ref-7)
8. See [https://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/](https://protect2.fireeye.com/url?k=062e4eec-5a350764-062e652f-002590f45c88-a44f4e797a489a4b&q=1&u=https%3A%2F%2Feur02.safelinks.protection.outlook.com%2F%3Furl%3Dhttps%253A%252F%252Fprotect2.fireeye.com%252Furl%253Fk%253Df6512f2f-aa4a66a7-f65104ec-002590f45c88-f9f5553ca32b77f9%2526q%253D1%2526u%253Dhttps%25253A%25252F%25252Feur02.safelinks.protection.outlook.com%25252F%25253Furl%25253Dhttps%2525253A%2525252F%2525252Fwww.oecd.org%2525252Ftax%2525252Ftransparency%2525252Fexchange-of-information-on-request%2525252Fratings%2525252F%252526data%25253D02%2525257C01%2525257CLeticia.ANDRES-SANCHEZ%25252540oecd.org%2525257C01b325b6edb8447f4bac08d73de6d676%2525257Cac41c7d41f61460db0f4fc925a2b471c%2525257C0%2525257C1%2525257C637045933964118490%252526sdata%25253D0dL503NLIZCd9mh3Uo%2525252BgYAlC4lw3jZbT0zG4q%2525252FfJWs0%2525253D%252526reserved%25253D0%26data%3D02%257C01%257CLeticia.ANDRES-SANCHEZ%2540oecd.org%257Cd4633b0e04254441e20108d73e892927%257Cac41c7d41f61460db0f4fc925a2b471c%257C0%257C0%257C637046631151584016%26sdata%3De33cVu4YRWJmdIusqEHORqDuhPuVb5sl4y%252Fmxf7mKNA%253D%26reserved%3D0) for the list of jurisdictions qualified as Largely Compliant. [↑](#footnote-ref-8)
9. The overall rating levels are, by decreasing order: Compliant, Largely Compliant, Provisionally Largely Compliant, Partially Compliant, and Non-Compliant. [↑](#footnote-ref-9)
10. Source: OECD, <https://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/details-ratings-second-round-EOIR-peer-reviews.pdf> [↑](#footnote-ref-10)
11. <https://www.consilium.europa.eu/media/38450/st07441-en19-eu-list-oop.pdf> [↑](#footnote-ref-11)
12. Together with the Bahamas and British Virgin Islands. [↑](#footnote-ref-12)
13. <https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_list_update_18_02_2020_en.pdf> [↑](#footnote-ref-13)
14. <https://www.consilium.europa.eu/media/42596/st06129-en20.pdf> [↑](#footnote-ref-14)
15. <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/CFATF-Cayman-Islands-Mutual-Evaluation.pdf> [↑](#footnote-ref-15)
16. The reason for the non-compliance (tax efficiency and / or the Cayman Islands domicile) should be specified for future reference. [↑](#footnote-ref-16)