**Discussion Paper: Key concepts of the AIFMD and types of AIFM**

**British Land’s response**

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To: [www.esma.europa.eu](http://www.esma.europa.eu) ‘Your input – Consultations’

British Land Company PLC is one of Europe’s largest listed companies with properties of circa £10.3 billion at 31 December 2011. We own and develop commercial real estate in the UK and Europe.

We welcome the opportunity to respond to the discussion paper and in particular welcome ESMA’s proposal to issue guidance and clarification of the scope of the AIFMD, and in particular which vehicles are not AIFs or are exempt from AIFMD.

**Question 2. Do you see merit in clarifying the terms ‘insurance contract’ and ‘joint venture’? If yes, please provide suggestions.**

We would welcome clarification of the term ‘joint venture’ to be excluded from AIFMD as we operate joint ventures, where we partner with other UK companies, tenants and overseas entities. Our interests are principally in 12 joint ventures (where we partner with one or two other investors) and these entities own £7.6 billion of office and retail investment and development properties.

We have joint ventures with a number of different partners including tenants (generally supermarkets), other UK property companies and overseas investors. Each joint venture is a separate entity, controlled by a board carrying equal representation from each partner. The entities are able to raise finance on the strength of their assets with no recourse to the partners. The enterprise is shared by the partners, over an agreed lifetime for the venture.

The common theme for all joint ventures is that there is a contractual right for all partners to participate in the major strategic decisions relating to the venture including acquisition or disposal of assets, decisions to incur capital expenditure and make capital distributions.

This compares with the funds in which we have an interest which include a Luxembourg based close ended Fonds Commun de Placement (FCP) and two Jersey based closed-ended property unit trusts. In the case of each of these there are a number of other investors who are likely to change over the lifetime of the fund and decisions in respect of the fund will be taken by a management board generally advised by British Land which acts as property advisor to the funds and receives performance and management fees. We anticipate that the FCP will be an AIF and the third country provisions of AIFMD will apply to the Jersey unit trusts.

We therefore suggest that any clarification of the term ‘joint venture’ focuses on the joint participation in significant decisions by all partners.

**Question 3. Do you see merit in elaborating further on the characteristics of holding companies, based on the definition provided by Article 4(1)(o) of the AIFMD? If yes please provide suggestions.**

The current definition of holding company is sensible and focusing on listed entities is reasonable as these will already be subject to regulation and disclosure requirements. We consider that corporate entities which are already subject to regulation should not be AIF but agree the classification of holding company should not be able to be used as a loophole to prevent falling under the Directive.

**Question 5. Do you agree with the orientations set out above on the content of the criteria extracted from the definition of AIF?**

We agree with the proposed criteria to identify an AIF. From our perspective, the defined investment policy is particularly useful in distinguishing between a fund which is an AIF and another entity which is not an AIF. By way of illustration, the FCP referred to above and which will be an AIF was formed to hold a specific class of asset (European Retail Parks) with a fixed term, although investors were able to vote to extend this. In contrast, British Land is a listed entity founded in 1856 with a business strategy which is determined by, and can be changed at the discretion of, the Board.

I am happy to discuss any matters with you and can be reached on 0207 467 2912.

Regards

Charles Middleton

Senior Corporate Tax Executive