

AIM for International Companies



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1. Introduction – AIM in 2009

The AIM market (“AIM”) of the London Stock Exchange plc (the “LSE”) was established in 1995 as the LSE’s secondary market targeted at growing companies. Over its 14 years of operation, AIM has become the market of choice for such companies and there are now approximately 1,365 quoted on AIM, with a market capitalisation of £51,702.5m¹. Of these 264 are international.

Like all financial markets, AIM has seen a dip in performance and a decrease in market activity as a result of the worldwide recession. However, market activity has begun to recover during the course of 2009 and led by fundraisings from well established businesses (Max Property plc conducting a £200m placing) and secondary issues (Omega Insurance plc raising £130m), the sum of funds raised on AIM is exceeding that raised in 2008 on a month by month basis.

In addition, international companies listed on AIM are beginning to thrive. AIM-listed companies with significant operations in China are outperforming both the FTSE 100 and the AIM ALL-SHARE indices in 2009, according to Grant Thornton LLP². In addition, in June 2009, Grant Thornton LLP³ reported that the India Watch Index of AIM-listed or LSE main market listed companies with significant operations in India had risen by 76% over the course of the year. This has been followed in early September by India Energy plc achieving the first AIM listing of an Indian company since 2007.

2. Why go on to AIM?

We set out below some of the key reasons for international companies to go on to AIM:

- an AIM listing will provide international companies with relatively simple and inexpensive access to the UK capital market, viewed as one of the largest pools of capital in the world, to provide capital for growth or to reduce debt;
- a floatation will create a market for a company’s shares;
- a floatation provides an objective market value for the listed company’s business, which is useful to the company in (for example) gaining access to affordable debt;
- the publicity which follows a floatation will make existing and potential customers, suppliers and investors more aware of the company’s business, and will increase the company’s profile in the UK and worldwide;
- a floatation will increase a company’s ability to make acquisitions, by virtue not only of providing additional capital, but also by permitting the company to more easily offer shares as consideration; and

¹ Aim market statistics for August 2009, published at www.londonstockexchange.com/aim

² Grant Thornton LLP International Emerging Markets Blog, published at: <http://grant-thornton.co.uk/thinking/emergingmarkets/index.php>.

³ Grant Thornton LLP International Emerging Markets Blog, published at: <http://grant-thornton.co.uk/thinking/emergingmarkets/index.php>.

- a public market in the company's shares may encourage employee participation in the ownership of the company through employee share schemes.

3. Can your company obtain a listing on AIM?

AIM has since its inception profited from having less stringent entry criteria than many other markets, with no requirements regarding minimum market capitalisation, trading record or shareholders. The regulatory regime which governs the AIM market is provided by the AIM rules for companies ("AIM Rules"). These relatively simple and clear rules, drafted in plain English, provide details of the entry requirements and continuing obligations of companies seeking a listing on AIM ("Applicants"). Set out below is a synopsis of the market entry requirements set out in the AIM Rules.

3.1 The Nomad and the Broker

The primary feature of the AIM Rules is that they require an Applicant to appoint and retain a Nominated Advisor (a "Nomad") prior to obtaining a listing. The Nomad, normally a broking house or other financial service provider with market experience, will be required to declare to AIM whether an Applicant is suitable for listing and will accordingly assess its suitability rigorously prior to listing. Much of an Applicant's work prior to listing will involve providing satisfaction to the Nomad that it is suitable and ready for listing.

We would be happy to recommend a NOMAD to you and you can find a list of the LSE's approved NOMADs at <http://www.londonstockexchange.com>.

The Applicant must also appoint a reporting accountant and a broker approved by AIM to assist with the trading of its shares post admission; often the appointed Nomad will fulfil this latter role as well although separate broking house are sometimes appointed.

3.2 Management and Corporate Governance

In considering whether an Applicant is suitable for listing on AIM, the NOMAD will consider the current board of directors carefully. A strong management team with a good and appropriate range of skills will be essential. In addition, the NOMAD will look to check that the board of directors is balanced with a suitable mix of non-executive directors, and is compliant at least in all material respects with the Quoted Companies Alliance Guidelines⁴ on corporate governance.

3.3 Share Capital, Accounting and Trading

Prior to obtaining a listing, an Applicant must ensure it has sufficient freely transferable shares to offer to the public to list and that these shares can be traded and settled electronically. All shares of the class to be listed must be issuable and admitted to trading on floatation.

The Applicant must publish accounts that conform with International Accounting Standards, or if it is a non-EEA incorporated company, it can instead publish accounts that conform with Canadian GAAP, Australian International Financial Reporting Standards, US GAAP or Japanese GAAP.

While there is no requirement for an Applicant to have a trading record prior to an AIM admission, where an Applicant's main activity is a business which has not been

⁴ Corporate Governance Guidelines for AIM Companies, February 2007, available at www.quotedcompaniesalliance.com.

independent and revenue earning for at least 2 years, it must ensure that all related parties (broadly, directors, substantial shareholders and those connected with them) and applicable employees holding 0.5% or more of the Applicant's AIM shares are restricted from disposing of any interest in their shares for one year from admission to trading.

3.4 Admission Document

An Applicant will need to produce a prospectus style document called an admission document (the "Admission Document"), the contents and form of which are required to comply with the AIM Rules, unless a prospectus (a "Prospectus") which complies with the Prospectus Regulations 2005 (which implemented the Prospectus Directive 2003/71/EC) is required to be issued due to the nature of the application for admission.

A Prospectus will be required if the Applicant proposes, on listing, to offer shares to the public and the offer does not fall within any of the following exemptions:

- the total consideration for the offer of shares is less than £2.5million;
- the offer is addressed only to certain qualified investors (as defined by the Financial Services Authority) or to less than 100 other persons per state within the EEA.

A Prospectus will be required to include significant details about the Applicant (more than an Admission Document) and will be required to be approved by the Applicant's Home State (as defined by the Prospectus Regulations 2005).

In practice, many Applicants will structure their fundraisings so that they are made to fall within the above exemptions, so as to avoid the need for a Prospectus and the accompanying need for Home State approval. However, an Admission Document will still be required.

The AIM Rules require that an Admission Document includes:

- detailed information on the Applicant and its activities, its directors and management, together with detailed historical financial information (unless the Applicant is a start up company, in which case only the prepared accounts will be required);
- all information reasonably necessary to enable investors to make an informed assessment of the:
 - assets and liabilities, financial position, profit and loss and prospects of the Applicant; and
 - the rights attached to its shares; and
- a statement by the Applicant that it has sufficient working capital for the next 12 months following admission.

4. Admission Process

4.1 Due Diligence

Prior to the drafting of the Admission Document, the Nomad will undertake a thorough due diligence exercise on the Applicant, its management and all the companies with its

group, to ensure all is in order (both from a commercial and legal perspective) prior to admission taking place. In addition, lawyers acting for the broker appointed by the Applicant will also conduct a due diligence exercise, with a view to assessing the risks in relation to investing in the applicant and formulating the warranties that will appear in the Placing Agreement (as defined below) if funds are being raised. The Applicant will with the assistance of its legal advisors and its accountant, need to liaise with legal advisors appointed by the Nomad and the appointed broker during this process; and will assist the Applicant in dealing with any issues that arise as a result of the due diligence carried out.

4.2 Preparing the Admission Document

As stated above, the Admission Document will need to be drafted and finalised prior to any listing. The first draft of the Admission Document will usually be produced by the Nomad, who will commence drafting when it has completed sufficient due diligence work to do so. Once the document is at a relatively advanced stage, the Applicant's legal advisors will conduct the "verification process", which is the process by which each statement in the Admission Document is checked and verified for accuracy. The verification process is carried out to ensure the accuracy of the Admission Document, as any inaccuracy in the Admission Document may lead (amongst other things) to a breach of the Financial Services and Markets Act 2000 ("FSMA"), subsequent to which the directors of the Applicant may face personal liability.

4.3 Marketing

If an Applicant is looking to raise funds on a listing, it will look to market its shares to investors prior to floatation. This process will involve the production of an investment presentation (the "Presentation"), which will be 'roadshowed' to potential investors prior to floatation. The Presentation will also need to be verified in the same manner as the Admission Document, to ensure its accuracy.

4.4 Other Documentation

In addition to the Admission Document, numerous other ancillary legal agreements will need to be produced prior to a listing. These will include the engagement letter between the Nomad and the Applicant and (where funds are being raised) the placing agreement between the broker and the Applicant (the "Placing Agreement"). The Placing Agreement will provide for the broker's agreement to use its reasonable endeavours to find places for the Applicant's Shares and its agreement to take such shares that it cannot find places for. The Applicant will in turn give warranties to the broker as to the accuracy of the Admission Document and will indemnify the broker from any liabilities it may incur arising out of admission.

4.5 How long will it take and what will it cost

The total fees and costs on an AIM admission will depend on the nature of the Applicant and its business. The more complex the nature of the Applicant, the more involved and expensive the due diligence process will become, which will inevitably lead to more costs.

The base level for admission costs would normally be in the region of £150,000 - £250,000 (not including any applicable brokers fees (in respect of a placing)).

The admission process should take approximately 12 weeks from the appointment of advisors to admission. However, this is dependant on the Applicant preparing for admission prior to commencing the process by ensuring its business is well organised, it

has an appropriate and suitably skilled management team in place and an excellent business plan to present to investors.

An international Applicant will be able to obtain an admission for a reduced cost and in a reduced timeframe if it is able to take part in the AIM Designated Markets Route, as set out below.

5. AIM Designated Markets Route: the Fast Track route to AIM

The AIM Rules allow a fast track admission procedure for Applicants quoted on any of the following overseas markets or the LSE main market:

- Australian Stock Exchange;
- Euronext;
- Deutsche Borse;
- Johannesburg Stock Exchange;
- Nasdaq;
- New York Stock Exchange;
- Stockholmborsen;
- Swiss Exchange; and
- Toronto Stock Exchange.

Applicants whose shares are and have been listed on one of the above markets (the “Designated Markets”) for at least 18 months (a “Fast Track Applicant”) may obtain a listing on AIM relatively cheaply, by virtue of a simpler and quicker admission process provided by the AIM Rules, the AIM Designated Markets Route.

Brief details of the AIM Designated Markets Route are set out below:

- A Fast Track Applicant is not required to produce an Admission Document when it applies for admission to AIM. Instead, it must publish information in the form of a press announcement which complies with content requirements set out in the AIM Rules, which can be briefly summarised as requiring the Fast Track Applicant to include in the press announcement:
 - all information that would be required to go into an Admission Document and which is not yet in the public domain; and
 - certain additional information involving its recent financial history and its strategy following admission.
- The Fast Track Applicant will have to carefully ensure that all the information that would have appeared in its Admission Document is available to the public, either through the press announcement or elsewhere.
- The Fast Track Applicant will as usual have to appoint a Nomad, who will as usual have an obligation to confirm that the Fast Track Applicant is suitable for AIM and will therefore conduct legal and financial due diligence.
- The directors of the Fast Track Applicant will as usual be personally liable for any inaccuracies in the above press announcement and according verification will have to be carried out.
- The Fast Track Applicant will be required to make a declaration that it has sufficient working capital for the 12 months following admission, although this

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declaration is likely to be drafted in less onerous terms than that which is normally required.

Fast Track Applicants must complete the above press announcements at least 20 days prior to the expected date for admission and it is likely that it will take between 5 to 8 weeks from initial instruction of advisors to admission, depending on the readiness of the Fast Track Applicant for admission.

It should be noted however that if the Fast Track Applicant intends to offer shares to the public and does not fall into one of the exemptions provided by the Prospectus Regulations 2005, it will need to publish a Prospectus in the normal way.

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Need to know more?

Ask us. Joelson Wilson has considerable experience of the AIM market and has been involved in AIM market work since 2000. Its experienced team of lawyers undertake a wide range of corporate and commercial transactions for private limited companies and listed clients in both the UK and overseas, please contact:

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