

AIM - the market for acquisitive Greek companies

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What is AIM?

The AIM market (*AIM*) of the London Stock Exchange plc (the *Exchange*) is targeted at growing international companies. In 2007, 284 companies joined AIM, 182 of which were IPOs and a total of £6.5 billion was raised in new issues. There are now approximately 1,700 companies (including more than 350 international companies) whose shares are traded on AIM.

AIM has also, in recent years, been targeting overseas companies. In particular, a fast track application process was introduced to enable companies with existing listings on certain overseas stock exchanges to join AIM without having to issue a prospectus style admission document.

Why go to AIM?

The reasons AIM companies give for joining AIM are to:-

provide access to capital for growth

encourage employee commitment

create a market for their shares

increase the company's ability to make acquisitions

obtain an objective market value

create a heightened public profile

enhance status with customers and suppliers

How much does an AIM listing cost and what advisers does an AIM listed company need to appoint?

The total average fees on an AIM admission depend on the nature of the company coming to the market, which affects the nature and level of due diligence needed. The base level for admission costs would normally be in the region of £350,000 - £450,000 (€450,000 - €600,000). On top of these fees, the company will need to pay the broker's fees for raising funds (unless the AIM listing is by way of an introduction), which may be in the region of 4 - 6% of funds raised.

The key adviser that a company needs when seeking an AIM listing is a nominated adviser. We would be happy to recommend nominated advisers to you and you can find a list of the Exchange's approved nominated advisers on their website at www.londonstockexchange.com/.

One of the duties of the nominated adviser is to confirm to the Exchange that the company is appropriate to be listed on AIM and that the requirements of the AIM rules for companies and nominated advisers have been complied with. The nominated adviser will carry out due diligence on the company and its directors to assess whether or not they would like to sponsor the company and to ascertain whether the company

is suitable for an AIM listing.

A company will also need to retain a broker (although many nominated advisers will also be able to act as broker). Other advisers who will be involved in an AIM admission are lawyers to the company, reporting accountants, lawyers to the nominated adviser, public relations advisers, printers and registrars who will administer the register of members. We can give a company an indication of likely costs levels, which in part depend on the nature of its business.

Can your company float on AIM?

The directors of the company need to have confidence in the company's business plan. The directors also need to be able to sell the company's strategy and prospects to the nominated adviser. Nominated advisers tend to see 'management' as the central ingredient in any float. The process of flotation requires a substantial investment of time and therefore the board needs to be prepared for the distraction from the company's day-to-day business that it causes.

There is no requirement for a company to have a trading record prior to an AIM admission. Once admitted to AIM, a Greek company must publish annual audited accounts prepared in accordance with international financial reporting standards (IFRS). A half yearly report also needs to be prepared although this does not need to be audited.

A company's AIM shares must be freely transferable (subject to limited exceptions). The company's shares will need to be eligible for electronic settlement and the main electronic system in the UK is CREST, operated by Euroclear UK & Ireland Limited. CREST is a central securities depository (CSD) that operates an electronic settlement system allowing UK (and Irish) shares to be held, transferred and settled between CREST members in dematerialised (or paperless) form, that is without the need to use share certificates or written instruments of transfer. Foreign companies will often create depository interests representing interests in the underlying shares, which are held by a UK registrar such as Computershare Investor Services or Capita IRG Trustees who will act as the depository.

Where a company's main activity is a business which has not been independent and earning revenue for at least two years, it must ensure that all related parties (including directors, their associates and shareholders who hold 10% or more of the company) and applicable employees (those who either alone or with members of their family hold 0.5% or more of the company) must agree not to dispose of any interest in their shares in the company for a period of one year from the date of admission to AIM.

How long does an AIM admission take?

The whole process from the appointment of advisers through to admission would normally take at least 12 weeks and often longer. Most companies start planning an AIM float several months in advance. In particular, a company will need to devote time to finalising its business plan and, unless the company is a start up, building up a good track record of financial performance which will make it attractive to investors.

AIM PD vs PD

A company seeking admission will have to produce either an 'AIM-PD' admission document or a more detailed European Prospectus Directive (PD) style prospectus. The criteria for deciding which of these documents is required are set out in this note.

If a company is making a public offer and no exemptions apply (see below for commentary on this), it will need to publish a prospectus in accordance with the PD requirements. If an exemption applies or no public offer is being made, a company seeking an AIM listing can publish an AIM-PD admission document.

AIM-PD omits some of the requirements of the PD. For instance, an AIM-PD document does not need to include an operating and financial review, details of borrowing requirements and capital resources or an indebtedness statement.

Admission document

A company seeking to be admitted to AIM will need to produce a prospectus style document called an admission document. The AIM rules set out the requirements for the contents of an admission document and these include most of the matters which would need to be disclosed in a prospectus. A company may either include its last three years' audited accounts in the admission document or an auditor's report on the company's state of affairs and profit and loss for the last three years. In the case of a start up no audited accounts or accountants report will be required and in the case of a recently formed company, only those accounts which it has prepared need to be included or reported on i.e. there is no minimum 3 year trading requirement for an AIM listing. A nominated adviser will often require an auditor's report to be included. Interim accounts (or an auditor's report on the interim period) may need to be included where more than 9 months has elapsed since the end of the last financial year. Any such interim accounts would need to cover a period of at least 6 months.

An important point to note is that the last two years' audited historical information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements. So, for example, if a Greek company will be using IFRS in its next published accounts, the last two years' information must also be presented under IFRS. If, therefore, the Greek company has not converted to IFRS in anticipation of a listing on AIM, this will result in that company having to re-state information previously prepared under Greek accounting principles under IFRS for the purposes of the listing. If, for instance, the company was planning to list following the publication of its accounts for the 12 months ending 31 December 2008, the suggested presentation format would be as follows:

Year 2008 under IFRS (restated)	Year 2007 under IFRS (restated)	Year 2007 under previous GAAP (as previously published)	Year 2006 under previous GAAP (as previously published)
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The AIM rules require a statement by a company's directors to be included in the admission document which confirms that the company has sufficient working capital for a period of at least 12 months from the admission date. The company's nominated adviser will therefore invariably require a working capital report to be prepared by the company in conjunction with its auditors.

On the application for admission to AIM, the company will be required to repeat the working capital sufficiency statement and also provide a number of other representations to the Exchange. These will include confirmation that the company has satisfactory reporting procedures in place to enable the directors to make judgments as to the financial position and prospects of the company.

The directors of the company will be personally responsible for the contents of the admission document and a detailed verification exercise will need to be carried out to ensure the accuracy of the document.

If a PD prospectus has to be published, which authority will approve it?

In order to work out which authority will approve a prospectus, you need to know a company's 'Home State'. Please note that an AIM-PD admission document does not need to be approved by the UKLA or the Hellenic Capital Market Commission (**HCMC*).

The Home State of an EEA company is the country in which it has its registered office. If a company has its registered office in the UK, the competent authority is the listing authority of the Financial Services Authority (**UKLA*).

If a company has a Greek registered office, the competent authority is HCMC, which will therefore approve any prospectus issued by a company whose Home State is Greece, even if the listing is to take place in the UK only. The PD also envisages that a Home State authority may transfer competency for the approval of a prospectus to another EEA state's authority.

Why are companies and advisers keen to avoid issuing a PD prospectus?

The main reason is to avoid the need for approval. PD prospectuses issued by a Greek company will have to be approved by HCMC or if HCMC transfers the approval of the prospectus to the UK (see below), the UKLA. The UKLA requires 20 business days to approve documents relating to an AIM admission, or 10 business days for a subsequent capital raising. No approval is required for an AIM-PD admission document, which is instead signed off by the company's advisers.

Dealing with the UKLA or HCMC together with the requirement for more information to be included in a PD prospectus are likely to add to costs and affect the timetable for a listing.

How do you avoid the need for a PD prospectus on admission to AIM?

Where possible companies will restrict their offer to:-

- professional (or "qualified") investors;
- fewer than 100 persons, other than qualified investors, per EEA state.

These are the two main exemptions that companies are likely to rely upon.

Another exemption, that will not, however, be relevant to most companies, is that a PD prospectus is not required where the total consideration for the offer is less than €2.5m.

In practice, many companies will structure their fundraisings so that they are made only to qualified investors and/or fewer than 100 persons per EEA state, and so avoid the need to produce a full PD prospectus.

Who qualify as 'qualified investors'?

Qualified investors include authorised financial and credit institutions, investment firms, pension funds, insurance companies and unauthorised investment firms.

Large companies also qualify as qualified investors, so long as they satisfy at least two of the following criteria:

- average number of employees during the financial year in excess of 250;
- a total balance sheet exceeding €43m;
- an annual net turnover exceeding €50m.

Smaller companies and individuals can also qualify as qualified investors, so long as they meet certain criteria and apply to have their name kept on the register of qualified investors maintained by the FSA, or by authorities in other member states.

Smaller companies qualify to be on the register if they do not meet two of the three criteria for larger companies set out above and they have a UK registered office.

Individuals qualify to be on the register if they meet at least two of the following three criteria:

- their securities portfolio exceeds €0.5m;
- they work or have worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment;
- they have carried out transactions of a significant size on securities markets at an average frequency of at least 10 per quarter over the previous four quarters.

In summary, companies who do not wish to issue a PD prospectus should ascertain whether they can raise sufficient funds by encouraging investors to register as qualified investors or to participate through investment entities prior to any public offer being made.

What are the continuing obligations?

The continuing obligations for AIM companies are generally less stringent than those for fully listed companies. For acquisitive companies, AIM has the advantage of not requiring a circular to be produced and shareholder approval obtained except where the transaction to be undertaken is a reverse takeover.

An AIM company is obliged to notify a regulatory information service without delay of any new developments which are not public knowledge concerning a change in its financial condition, sphere of activity, the performance of its business or its expectation of its performance which, if made public, would be likely to lead to a substantial movement in the price of its shares.

AIM companies must send their annual accounts to shareholders within six months of the financial year end and also announce half yearly results within three months of the end of the relevant six month period.

The AIM Rules further require that AIM companies maintain an easily accessible website, with up-to-date management and financial information on the company. This would include details of its business, directors and major shareholders, a copy of the admission document or prospectus, and copies of documents recently sent to shareholders, such as accounts.

Directors will not be able to deal in the AIM company's shares when they have information which might affect the company's share price or in the two months period leading up to the company's announcement of results.

Quite apart from the requirements of the AIM rules, the company's nominated adviser may also impose additional restrictions on the company in order to make it more attractive to investors. An example is the common requirement for directors and substantial shareholders to be restricted from selling their shares for a period after admission. In addition, the nominated adviser may require the company to follow corporate governance best practice. At the very least, a nominated adviser is likely to insist upon the appointment of non-executive directors (assuming none are already in place).

If an AIM company does not comply with the AIM rules, the Exchange may suspend trading in the company's shares and ultimately may seek to cancel the company's AIM admission.

Does the AIM PD admission document or PD prospectus need to be in English?

An AIM-PD admission document must be prepared in English. In order to assess in which language(s) a PD prospectus must be prepared, it is necessary to look at both the 'Home State' of the company being listed and the place(s) where the admission and/or offer will be made.

Greek home state

If a company with a Greek registered office is seeking to be admitted to AIM and:

(a) An offer is made or admission to trading is sought only in the UK, the prospectus would need to be drawn up (at the option of the issuer, offeror or person asking for admission) either in English, as this is the language accepted by the UKLA as the competent authority, or in a language customary in the sphere of international finance.

For the purposes of scrutiny by HCMC, as the competent authority of the Home State, the prospectus can be drawn up either in Greek, being the language accepted by HCMC, or in a language customary in the sphere of international finance.

(b) An offer is made or admission to trading is sought in both in the UK and Greece, the prospectus would need to be drawn up in Greek, as the language accepted by HCMC, and also be made available (at the option of the issuer, offeror or person asking for admission) in English, as the language accepted by the UKLA, or in a language customary in the sphere of international finance.

UK home state

If the Greek group reorganises so that it has a UK holding company, and:

(a) An offer is made or admission to trading is sought only in the UK, the prospectus must be drawn up in English.

(b) An offer is made or admission to trading is sought in one or more EEA states, including the UK, the prospectus must again be prepared in English, and made available (at the option of the issuer, offeror or person asking for admission) in either a language accepted by the competent authorities in the other states or a language customary in the sphere of international finance.

© An offer is made or admission to trading is sought in one or more EEA states, excluding the UK, the prospectus would have to be prepared (at the option of the issuer, offeror or person asking for admission) either in a language accepted by the competent authorities in those states or a language customary in the sphere of international finance.

It is assumed that the expression, 'a language customary in the sphere of international finance', can be taken to include English.


In addition, a summary of the prospectus must be translated into English if: an offer is made in the UK; or, a prospectus has been approved by the competent authority of another EEA state and the prospectus contains a summary; or, the prospectus is not prepared in English.

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