

AIM - The market for growing Kazakh 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.

Currently there are over 500 AIM companies with the majority of their operations outside the UK in over 100 countries. This strong international representation reflects the fact that AIM is an ideal public market for growing and entrepreneurial international businesses seeking to expand and raise their global profile. 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.

Since AIM was launched it has had over 3,000 admissions. In the first half of 2011, there were 50 new admissions raising a total of £417.02 million.

Currently, a total of 9 companies with operations in Kazakhstan are listed on AIM, with a combined market capitalisation of almost £420 million.

Why go to AIM?

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

- provide access to capital for growth
- create a market for their shares
- obtain an objective market value
- enhance status with customers and suppliers
- encourage employee commitment
- increase a company's ability to make acquisitions
- create a heightened public profile

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 (\$580,000 – \$740,000). 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 (a '**Nomad**'). We would be happy to recommend Nomads to you and you can find a list of the Exchange's approved Nomads on their website [here](#).

One of the duties of the Nomad 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 advisors have been complied with. The Nomad 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 Nomads will also act as broker). Other advisers who will be involved in an AIM admission are lawyers to the company, reporting accountants, lawyers to the Nomad, 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 Nomad. Nomad tends 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, although, practically, investors may be more willing to

invest in a company with a proven track record.

Once admitted to AIM, a Kazakh company, as a non- EEA company, must publish annual audited accounts prepared in accordance with international financial reporting standards ('IFRS') or US, Australian, Canadian or Japanese generally accepted accounting principles (GAAP). 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. As regards shares in Kazakh companies, it is common for depository interests representing interests in the underlying shares to be created, which are held by a UK registrar such as Computershare Investor Services or Capita IRG Trustees acting 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.

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 Nomad 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.

In most cases, a Kazakh company's last three years' audited financial statements must be presented and prepared under IFRS.

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 Nomad will therefore 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.

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.

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 UK listing authority of the Financial Services Authority ('UKLA').

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 UKLA. For a Kazakh company raising money in London, the UK will generally be the Home State unless the Kazakh company has offered shares to investors in other EU jurisdictions previously or already has its shares admitted to an EEA regulated market.

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 Kazakh company will have to be approved by 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 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 150 persons, other than qualified investors, per EEA state. (Please note that this exemption was increased to 150 persons from 100 persons on 31 July 2011. In member states that have yet not implemented this change, the limit will remain 100 persons.)

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 (\$3.6m).

In practice, many companies will structure their fundraisings so that they are made only to qualified investors and/or fewer than 150 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 (\$62m);
- an annual net turnover exceeding €50m (\$72m).

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 shares portfolio exceeds €0.5m (\$0.72m);
- 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 Nomad 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 Nomad may require the company to follow corporate governance best practice. At the very least, a Nomad 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.

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