

AIM - the market for international companies

12 APRIL 2017

CATEGORY:
ARTICLE

WHAT IS AIM?

The AIM market ('AIM') of the London Stock Exchange plc (the 'Exchange') is targeted at growing international companies. AIM is an ideal public market for growing and entrepreneurial international businesses seeking to expand and raise their global profile.

As at December 2016, there were 982 companies on AIM with an average market capitalisation of £82.3m. 44 companies joined AIM by IPO in 2016 raising on average £16.1m.

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. 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 Nomads 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. For more information on the due diligence process, please see paragraph 7.

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 (both onshore and offshore), reporting accountants, lawyers to the Nomad and broker, public relations advisers, research analysts, 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. For more information on preparing for admission, please see paragraph 6.

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. The 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 company incorporated in an EEA country must publish annual audited accounts prepared in accordance with International Accounting Standards (IAS). Whilst the Exchange prefers all companies to publish their accounts in accordance with IAS, a company incorporated in a non-EEA country may publish annual audited accounts in accordance with IAS, US, Canadian, or Japanese generally accepted

accounting principles (GAAP) or Australian International Financial Reporting Standards. A half yearly report also needs to be prepared.

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 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. The shares of non-UK companies would ordinarily be settled through CREST by using CREST depository interests (issued by CREST ('CREST DIs')), which are to be distinguished from other depository interests such as depository receipts ('DRs'). DRs will only be considered appropriate for admission to AIM where the AIM company is incorporated in a jurisdiction which prohibits, or unduly restricts, the offering or admission of its securities outside of that country.

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.

Increasingly, Nomads have been strict about having in place an orderly market arrangement above and beyond the requirements of the AIM Rules. These would include custodial arrangements for share certificates for the orderly period.

If the company is an investing company, it must, as a condition of its admission, raise a minimum of £6 million in cash via an equity fundraising on, or immediately before, admission.

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 (actual flotation process). 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.

A key factor which may have an impact on the timetable will be how quickly the company's auditors can prepare both a long form and a short form report and how long it would take them to undertake a working capital review in support of the mandatory statement in the admission document regarding the adequacy of working capital for the company's requirements over at least the next 12 months. Any tax clearances which may be required for any pre-impact reorganisations, or where appropriate, any HMRC approval of share incentive schemes may also impact the timetable.

PREPARING FOR ADMISSION

As a first step the management of the company will appoint its advisers.

The company will appoint legal advisers and accountants to act on its behalf in connection with the admission to AIM. The company's lawyers will conduct legal due diligence and advise the company on all legal aspects of its admission to AIM. In the case of a company based overseas, local lawyers rather than UK lawyers would carry out this task, but the UK lawyers will be expected to report in some form to the Nomad on the due diligence report.

The company will appoint a reporting accountant (who may or may not be the company's existing auditor) whose duties will include carrying out detailed financial due diligence (usually including preparation of a long form report) and reviewing and, in some cases, preparing the financial information in the admission document. They will also be required to review and comment on the financial systems and working capital of the company.

Under the AIM Rules all AIM companies must have a Nomad at all times. An AIM company will have to appoint a corporate finance firm, investment bank, accountancy firm or a broker who has been approved by the London Stock Exchange as a Nomad for AIM and who is listed on the London Stock Exchange's most recent register of Nomads. AIM companies must retain a broker at all times (this can be the same entity that is appointed as Nomad). The Nomad will in turn appoint legal advisers to advise on the IPO.

Sometimes, depending on the size and nature of the company being floated, a company may appoint a financial public relations agency to deal with the media, assist with press releases and announcements, presentations to potential investors and other general marketing information.

Finally, registrars will be appointed to deal with applications for shares or, if relevant, CREST DIs or DRs and to coordinate the settlement arrangements for the shares.

Depending on the nature of the business of the company, additional advisers may also need to be appointed (for example, valuers for property companies or technical experts for oil and gas or mining companies).

DUE DILIGENCE PROCESS

Once it has been appointed, the Nomad must satisfy itself (under the Nomad Rules) that the company and its shares are appropriate to be admitted to AIM and advise and guide the company on its responsibilities under the AIM Rules (Rules 14 and 17 and Schedule Two, Nomad Rules).

Unlike the main market, the UK Listing Authority of the Financial Conduct Authority ('UKLA') is not itself involved in considering the company's suitability for listing and the system relies on the Nomad and advisers providing comfort to that effect. In particular, the Nomad has to give a written declaration to the Exchange that, amongst other things, it is satisfied that the company is appropriate for AIM (Nomad Declaration) (Schedule 2, Nomad Rules). To this end, the Nomad will insist that a thorough due diligence exercise is conducted on the company, its management and all the companies in its group with the assistance of its and the company's advisers and ensure all is in order before admission takes place. The lawyers will undertake legal due diligence while the reporting accountants conduct financial due diligence on the company. Much of the information gained from such due diligence exercise will form the basis of the draft admission document.

In order to ensure it will be able to give the Nomad Declaration, the Nomad will conduct its own business due diligence to assess whether the company and its group is suitable for admission to AIM. The nomad will look for a strong management team which has a full range of skills with experienced non-executive directors and a business that is profitable (or will be so within a short timeframe) with a credible business strategy. If there are any problems with the management team or the company's business strategy, these should be addressed well before admission so that there is a period of stability before flotation. Where the company is involved in a specialist area, such as oil, gas or mining, an independent report may need to be commissioned on the company's business or market.

CONSIDERATIONS FOR THE COMPANY SEEKING ADMISSION

Restructuring and where necessary, incorporation of a holding company. Before offering its shares to the public and being admitted to AIM, the company will need to consider with its advisers whether any restructuring is desirable including where necessary, the incorporation of a suitable vehicle to be listed. Thought will also need to be given to the best tax structure.

Amending Articles of Association. Any restrictions on the transfer of shares must be removed before admission. Such restrictions will usually be contained in the articles of association of the company and any agreements with shareholders and the articles must be amended accordingly and the shareholder agreements terminated. In addition, it will need to adopt, in substitution for its existing articles of association, articles that are suitable for a public limited company admitted to AIM.

Pre-admission reorganisation. The company must own all the relevant assets that it is purporting to own before admission takes place. Some of the assets may be held by existing shareholders or in other group companies and the assets may have to be transferred to the company before admission. A thorough due diligence investigation will reveal how the assets are held. Similarly, the company may wish to dispose of an underperforming part of the business before flotation.

The due diligence exercise may reveal existing arrangements and contracts which require consent or provide for termination in the event of a flotation on a recognised investment market such as AIM. If this is the case, the company will have to consider whether the termination of such contracts will have an adverse effect on the business of the company and, if necessary, obtain the required waivers or consents or renegotiate such arrangements or contracts.

The pre-admission tax due diligence may also result in changes to the structure of the group, whether requiring restructuring or ensuring that all intra-group and related party arrangements are on arm's length terms.

Share schemes. The company seeking admission to AIM may consider adopting one or more employee share schemes at the time it is admitted to incentivise employees and to try and retain key members of staff. The company will need to seek advice as to which form of scheme is most appropriate for it.

Board of directors and management team. The Nomad will consider carefully the current management team when it is considering the company's suitability for admission to AIM (for more information, see AR2, Schedule Three – Nominated Adviser Responsibilities, Nomad Rules). It will look for a strong management team with a good range of skills and some experienced non-executive directors who may also be required to interface with the London Stock Exchange and other regulatory authorities in the UK. It may be necessary to appoint new directors before admission, particularly independent non-executive directors, to ensure a balanced board and with a view to complying with corporate governance requirements.

Before admission the directors should be asked to consider their own long-term commitment to the company and the increased duties and obligations that are involved in running a company on AIM. If they are not prepared to commit for several years, it is better for such members of the board to resign before admission, as departures post-admission may have an effect on investor confidence and ultimately on the share price of the company. The existing service contracts of the directors may not be suitable once the company has been admitted to AIM and new contracts will have to be negotiated and agreed. The terms of such service agreements will be disclosed in the admission document that is circulated 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 accountants' 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 accountants' report to be included. Interim accounts (or an accountants' 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. Usually, a company's last three years' historical information will need to be presented using IAS.

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 below.

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. The general principles that apply to a prospectus or admission document is that it must contain all such information as is necessary to enable investors to make an informed assessment of both:

- the assets and liabilities, financial position, profit and losses, and prospects of the company; and
- the rights attaching to the securities.

Such information must be presented in an easy to analyse and comprehensible form.

The directors of the company (as well as the company itself) must take responsibility for the contents of the prospectus or admission document, and must confirm that, having taken all reasonable care to ensure that such is the case, the information it contains is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

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.

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.

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 UK company will have to be approved by 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 is 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; and
- fewer than 150 persons, other than qualified investors, per EEA state (assuming the relevant member has increased the limit from the historic 100 person limit.)

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 €5m.

In practice, many companies will structure their fundraisings in excess of €5m 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.

What are the incentives for investors?

In addition to the fact that stamp duty does not apply to AIM companies, there are a number of potential benefits for both individual and corporate investors who are subject to the UK tax regime and these include:

- Subscription for new shares in qualifying AIM companies may attract reliefs under the Enterprise Investment Scheme ('EIS').
- Investors may obtain 100% relief from inheritance tax for investments in certain AIM companies in some circumstances.
- Investments in venture capital trusts which may invest in AIM companies attract income tax and capital gains tax reliefs.

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 or a substantial disposal.

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. The AIM rules and the Market Abuse Regulation specify a number of matters requiring announcement including directors' dealings, substantial transactions by the company, and changes through whole

percentage points to significant (3%-plus) shareholdings in the company.

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. Accounts must include, inter alia, disclosure of transactions with related parties and each director's remuneration.

The AIM Rules (Rule 26) 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 the annual accounts and any subsequent reports. Other required information includes the company's constitutional documents, details of any other exchanges on which the company has agreed to have any of its securities traded, the number of AIM securities in issue (which must be kept up to date) and details of the company's corporate governance code and whether it is subject to the UK City Code on Takeovers and Mergers or any other such legislation.

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 and the Market Abuse Regulation, 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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