



Joining AIM

A field guide for applicants to
AIM, a market of the London Stock Exchange

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Introduction

AIM, a market of the London Stock Exchange, is the world's premier market for smaller fast growing companies. The number of companies trading on AIM as at August 2006 was 1,560 and the total amount of money raised on AIM from August 2005 to the end of July 2006 was £14.4 billion.

DLA Piper is one of the leading legal advisers to AIM companies. The purpose of this guide is to provide an overview of the flotation process and to deal with some of the questions most frequently asked by companies contemplating admission to AIM.

If you have any queries about this guide, or for further information generally, please call our national switchboard: +44 (0) 8700 111 111

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A general overview of AIM

- Regulated by the London Stock Exchange, providing a more flexible regulatory environment
- No minimum revenue requirement
- No minimum amount of shares to be in public hands
- In most cases, no prior shareholder approval required for transactions
- Admission documents not pre-vetted by Exchange or UKLA but by nominated adviser
- Nominated adviser required at all times

Source: www.londonstockexchange.com/AIM

1. What is the process for admission to trading on AIM?

- Publication of either a prospectus or an admission document. A prospectus is required where a company is offering shares to the public under the Financial Services and Markets Act 2000 ("**FSMA**"), unless either the value of the shares being offered is less than €2.5 million in which case a prospectus will not be required or the offer falls within a specific exemption. For example, a prospectus will be required for a placing where the purchasing shareholders do not fall within an exemption in the FSMA. An admission document is used where a company is either simply applying for its existing share capital to be traded on AIM or is also offering shares pursuant to a placing but such offer does not constitute an offer to the public under the FSMA.
- There is no requirement to obtain approval of an admission document by the London Stock Exchange plc ("**the Exchange**") prior to publication. In contrast, if a prospectus is required it must be approved by the Financial Services Authority ("**FSA**") before it is published. In each case, the company's nominated adviser ("**NOMAD**") must confirm to the Exchange the suitability of a company and its securities to be admitted to AIM.
- The AIM rules determine the contents of an AIM admission document and the FSA Prospectus Rules determine the contents of a prospectus. Although many of their requirements are similar, the FSA Prospectus Rules generally require more information to be included in a prospectus.
- At least 10 days before the expected date of admission to AIM, the company must provide the Exchange with the information specified in Schedule 1 to the AIM rules (this includes details of the number and type of shares, significant shareholders, directors and proposed directors and the names and addresses of the NOMAD and the nominated broker).

- The prospectus/admission document must be published at least three days before admission and the applicant must pay the AIM fees (an admission fee of £4,340*, together with an annual fee of £4,340* pro rata) and submit an electronic copy of the document to the Exchange together with a completed application form, the NOMAD's declaration and a letter from the company's broker confirming its appointment.
- Where shares are being offered to the public, copies of the prospectus (once it has been approved by the FSA) must be made available to the public at a UK address, or electronically on the company's website, from the time the offer of shares to which the prospectus relates is first made until the offer closes. The prospectus must also be filed with the FSA before it is published.
- There is no requirement to file an admission document, but it must be available publicly, free of charge, for at least one month from the admission of the applicant's securities to AIM.
- Admission to AIM only becomes effective when the Exchange issues a dealing notice to that effect.

Is an IPO right for this company?

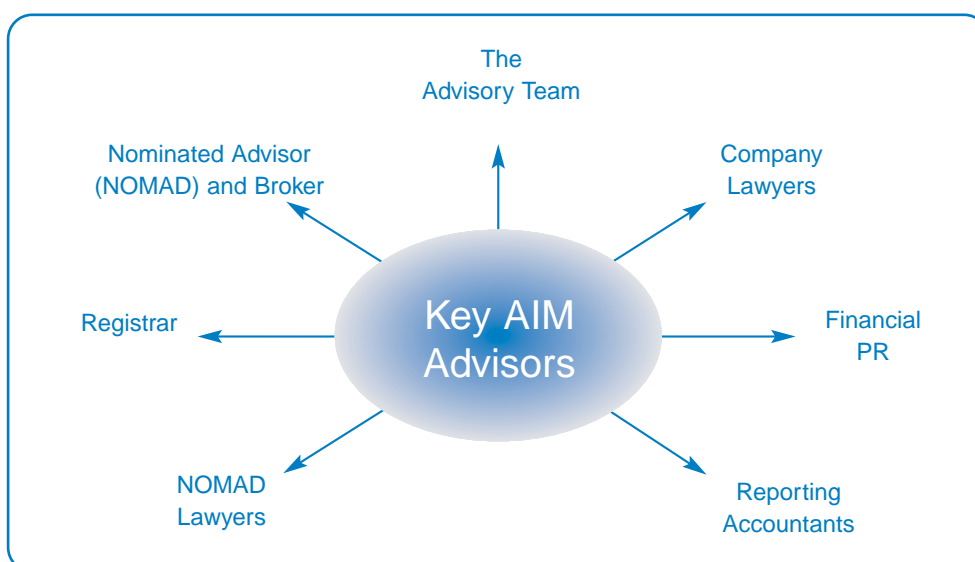


*as at April 2006

2. How long will it take for the shares to be admitted to trading on AIM?

- The actual flotation process will generally take three to four months from instruction of advisers to admission. However, in practice, the interval between the decision of the board to seek admission to AIM and admission itself is often a great deal longer than this, since thought must be given to matters such as group structure, corporate governance and financial controls and the putting in place of appropriate share-based incentive schemes for the employees of the company. Assuming that these matters are satisfactorily dealt with, the timetable for the flotation itself will vary depending upon matters such as whether any new or existing shares are to be offered in connection with the flotation, the offering structure (eg placing, public offer or both), whether the offer is to be underwritten, whether the offer is to be extended to international investors and the extent of any pre-impact capital reorganisation which is required.
- The timetable for the flotation will generally be longer if a prospectus (as opposed to an admission document) is required. This is largely because the prospectus must be vetted and approved by the FSA prior to it being published.
- A key factor is how much work auditors are required to carry out in order to prepare a long form report and a short form report and to undertake a working capital review in support of the mandatory statement in the prospectus/admission document regarding the adequacy of working capital for the company's current requirements.
- Any tax clearances which may be required for any pre-impact reorganisations or any Inland Revenue approval of share-based incentive schemes may also affect the timetable.

3. What other advisers will I need to appoint and how much will the transaction cost?



- **Nominated Adviser** - The NOMAD plays a key role in bringing the company to AIM and in guiding and advising it on both admission itself and its ongoing obligations after admission. It is the company's key point of contact with the Exchange and most of its roles and responsibilities are set out in the AIM rules.

An AIM company must retain the services of a NOMAD at all times. The reason for this is that AIM companies are perceived as being less experienced than Main Market companies and, therefore, are more likely to need advice and expertise. If a company terminates the service of its NOMAD it must notify the market immediately, whereupon the company's shares will be suspended and the company will have one month to appoint a new NOMAD. Failure to appoint a new NOMAD within one month will result in cancellation of the AIM company's shares.

- **Reporting Accountants** - They are distinct from the company's auditors and their principal function is to review the company's financial results and reporting processes and report to the NOMAD on any areas of concern, primarily by way of a long form report which will also include a detailed review of the business and assets of the company.
- **Solicitors to the company** - They will advise on the legal aspects of preparing the company for admission to AIM including any pre-impact capital reorganisation, the re-registration of the company as a plc, the amendment to or replacement of the company's constitutional documents, the putting in place of any proposed share-based incentive schemes, the terms of directors' service agreements, the duties and responsibilities of the directors and general compliance issues, the terms of any placing and/or underwriting agreement and the preparation of verification notes and ancillary documents. Additionally, the company's solicitors will undertake a legal review covering agreed matters such as regulatory compliance, the terms of the company's principal agreements, any litigation, employment contracts and such other matters as may be required by the NOMAD for the purposes of satisfying itself of the appropriateness of the company for admission to AIM.
- **Financial PR Consultants** - They will be engaged to generate positive press interest and publicity and monitor the content and wording of any public statements.
- **Nominated Broker** - The broker "warms up" the market for the issue of the company's shares and is ultimately responsible for selling those shares to the chosen market, which will generally comprise institutional investors. After the flotation the broker will work with the company to seek to ensure there is a proper market in the company's shares. An AIM company must retain the services of a nominated broker at all times.

The usual cost for engaging the above advisers on a flotation, is, in aggregate, £500,000-£900,000. As a rough guide, a company can expect to pay 10 per cent. of any money raised in fees.

The typical* cost for appointing a NOMAD to advise on admission to AIM is usually calculated as a percentage of any new money raised, typically between 3 and 5 per cent. of the value of the issue, depending on the nature of the obligations assumed by the NOMAD (and inclusive of sub-underwriting commissions). Additionally a corporate finance fee is generally charged. This may be in the region of £75,000 to £300,000. Approximately £25,000 to £35,000 is charged on an annual basis for a NOMAD's continued services.

*Based on average legal fees of more than 45 AIM admissions since 2004

4. Does the AIM company have to be a certain type of company incorporated in a specific jurisdiction?

- If the company seeking admission to AIM is a UK company it must be a public limited company in order to be able to offer its shares to the public.
- Overseas companies can have their shares traded on AIM. There are approximately 280 foreign companies whose shares are presently traded on AIM. The overseas company must be equivalent in its country of incorporation to a UK public company so that it can offer its securities to the public. There may be local legal and regulatory requirements which overseas companies will need to satisfy before they can proceed to an admission to AIM. In certain jurisdictions such requirements can be onerous. Local advice should be taken at an early stage in order to identify their implications for the flotation timetable.
- An expedited admission route is available for companies whose shares are already traded on certain designated markets, which means that such applicants do not have to prepare an admission document. The quoted applicant must, at least 20 days before the expected date of admission to AIM, provide the Exchange with the information specified in schedule 1 to the AIM rules. Such quoted applicant must have had its securities traded upon an AIM designated market for at least 18 months prior to applying to have those securities admitted to AIM if it wishes to take advantage of the expedited admission route. However, the expedited admission route does not exempt a company which is offering shares to the public from having to prepare a prospectus.

5. Must the AIM company have a particular capital structure?

- It is normal for an AIM company to have one class of ordinary shares. It is also possible (but less usual) to have other classes of shares or debt securities.
- The shares must be freely transferable and eligible for electronic settlement e.g. through CREST. However, there is no prohibition on shareholders entering into agreements which restrict their freedom to transfer shares held by them. Shares of overseas companies cannot be settled directly through CREST. However, depository interest programmes exist in order to enable shareholders of such companies to hold securities which can be settled electronically.
- In order to do business, the nominal value of a UK plc's share capital must not be less than £50,000 and not less than 25 per cent. of the nominal value of the shares allotted and the whole of any premium must be paid up. This is a UK company law requirement, so if the company being floated is a non-UK entity, the position will be governed by applicable local law.
- All of the shares of a particular class must be admitted to trading on AIM.

6. Is there any requirement that the shares of the key management must be subject to restrictions on sale for a period of time after trading commences?

- Yes - where the main activity of a company applying for admission to trading on AIM is a business which has not been independent and earning revenue for at least two years, it must ensure that all "related parties" agree not to dispose of any interest in the company's shares for one year from the date of admission.
- "related parties" in this context means (i) any director of the company or any of its subsidiary, sister or parent undertakings, or (ii) any substantial shareholder who holds directly or indirectly 10 per cent. or more of any class of shares to be admitted to AIM, or (iii) applicable employees who are employees of the company, its subsidiary or parent undertakings who, together with their family, have a holding or interest directly or indirectly in 0.5 per cent. or more of a class of shares to be admitted to AIM.
- Although not a regulatory requirement, the NOMAD will usually wish to impose restrictions on the transfer of shares in the company by directors and major shareholders for a period of time after admission in order to avoid the possibility of a large number of shares being made available for sale soon after admission which could distort the market in the company's shares. A NOMAD will particularly want such restrictions if it is underwriting the issue of shares and has to take up shares in the issue which it will then want to sell in small numbers into the market as and when it can. Such undertakings are typically for a period of between 12 and 24 months.

7. What potential liabilities will the directors be exposed to in connection with the proposed admission to trading on AIM?

- When the application for admission to trading on AIM is made in conjunction with an offer of the company's shares to the public, a prospectus is required. This means that under section 87A of the FSMA the prospectus must contain all information necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company and the rights attaching to the securities. In the event that the prospectus is false or misleading, the directors, the company and any other persons (such as the NOMAD or other professional advisers) responsible for the prospectus are liable to pay compensation to any person who has acquired the shares to which the prospectus relates and who has suffered loss in respect of them as a result of any untrue or misleading statement in, or any omission from, the prospectus.
- Where an admission document is published under the AIM rules the company seeking admission must ensure that the admission document contains all information which it reasonably considers necessary to enable investors to form a full understanding of (i) the assets and liabilities, financial position, profits and losses and prospects of the company, (ii) the rights attaching to the securities and (iii) any other matter contained in the admission document.
- Liability may arise under the FSMA for false or misleading statements, under the Theft Act, in tort for fraudulent misrepresentation or negligent misstatement or for breach of contract if either an admission document or a prospectus is published.
- If a company is issuing shares as part of the flotation, the directors will incur liability under the placing or underwriting agreement as they will be expected to give warranties (subject to customary limitations in terms of time and amount) to the NOMAD relating to the prospectus/admission document and the company's business generally.

8. Are there any rules governing the composition of the board of directors of the AIM company?

Whilst the provisions of the Combined Code ("**Code**") do not apply to companies trading on AIM, it is considered best practice to adhere to its provisions which include the following:

- there should be a clear division of responsibilities at the head of a company between the running of the board and the executive responsibility for the running of the company's business. The roles of the chairman and chief executive should not be exercised by the same individual;
- there should be a balance on the board between executives and non-executives (at least two of whom should be independent), the intention being that no small group of individuals or one individual can dominate the board's decision taking;
- the board should not be so large as to be unwieldy;
- the board should be of sufficient size that the balance of skills and experience is appropriate for the business of the company;
- salaries should be sufficient to attract, retain and motivate directors of the quality necessary to run the company. The Code recommends that directors' salaries should be structured in a way that rewards are linked to corporate and individual performance; and
- directors' service contracts should be terminable on no longer than 12 months notice. They should also provide for the director to leave the board of the company if that director materially breaches or causes the company materially to breach the AIM rules. Directors should not be rewarded with a huge payoff if they leave due to failure to deliver.

Whilst not a requirement, it is considered best practice for an AIM company to include a director's remuneration report in its annual report and accounts (containing details of each individual director's benefits and salary) and to have prior discussions with its institutional shareholders before any significant changes to directors' remuneration are made.

In 2005 the Quoted Companies Alliance published Corporate Governance Guidelines for AIM Companies. Although these guidelines have no formal regulatory status they do represent a consensus view of the AIM advisory community and in large part reflect the key provisions of the Code highlighted above.

9. What ongoing reporting requirements and continuing obligations will be required of both the AIM company and its directors?

In addition to always having a NOMAD and a nominated broker, the company must keep the market informed of the progress of its business and other relevant matters by announcing without delay:

- any new developments not in the public arena which relate to a change in its financial condition, sphere of activity or business performance which if made public would be likely to lead to a substantial movement in the company's share price;
- any dealings by directors in its shares;
- any changes to its significant shareholders;
- the resignation, dismissal or appointment of any director;
- any decision to declare a dividend;
- any material change between actual performance and any publicly announced forecasts;
- changes to its accounting reference date and registered office;
- reasons for the dismissal or appointment of its NOMAD or nominated broker;
- reasons for the application for admission or cancellation of the trading of its securities on AIM;
- substantial transactions i.e. where class tests exceed 10 per cent. related party transactions i.e. where class tests exceed five per cent. and reverse takeovers or fundamental disposals where shareholder approval is also required.

In addition, an AIM company must:

- prepare and publish a half yearly report within three months after the relevant half year period;
- prepare and publish audited annual accounts within six months of the financial period to which they relate; and
- ensure that directors and employees who hold 0.5 per cent. of the company's shares do not deal in the company's shares within close periods (i.e. the two months preceding (i) the publication of the company's annual results or (ii) the announcement of its half yearly results).

The company is subject to a general disclosure obligation which means that the Exchange may require a company to provide it with such information, in such form and within such limit as the Exchange considers appropriate and also to publish such information.

10. What are the advantages of seeking admission to AIM?

Admission to AIM or the Main Market provides a public market for the company's shares. This confers a number of benefits to the company and its shareholders including facilitating capital raising through new issues, providing holders of share-based incentives with a market on which to trade their shares and providing greater flexibility in making acquisitions, since shares which have liquidity can be offered as consideration instead of, or in addition to, cash. Features of AIM include:

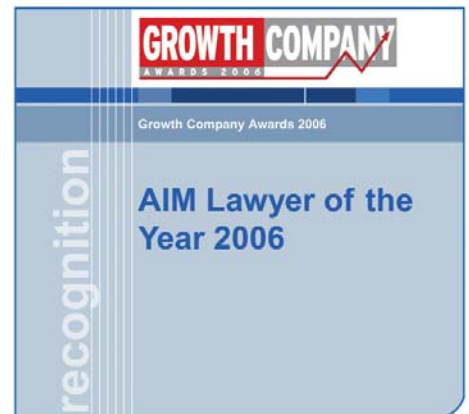
- fewer barriers to entry and ongoing compliance requirements are less burdensome;
- no minimum market capitalisation needed;
- suitable for companies seeking growth and new capital which have little or no trading record;
- prior shareholder approval for transactions is only required if the ratios exceed 100 per cent. in any of the class tests (i.e. a reverse takeover or a fundamental disposal), as compared to the 25 per cent. threshold for an official list company;
- AIM shares are treated as "unquoted" for tax purposes and, accordingly, certain tax incentives are offered to investors in companies which meet the relevant qualifying conditions including, in the case of individuals, enterprise investment relief and reinvestment relief. These reliefs, which are not available to Main Market companies may result in the deferral and even elimination of tax on investments made. Individuals investing through venture capital trusts may also enjoy similar reliefs; and
- there is no requirement to have a minimum number of shares in public hands. It should be noted, however, that a small "free float" is one factor which can give rise to reduced liquidity in a company's shares.



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