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& spens LLP



A guide to
London's
AIM market

very smart people...

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What is AIM?

AIM was set up in 1995 by the London Stock Exchange ("LSE") as an international market for smaller, growing companies seeking new capital for growth and expansion.

It has become the most successful growth market in the world, combining an excellent international reputation with a comparatively flexible regulatory regime.

As at the end of October 2005, 2,099 companies had been admitted to AIM since its launch, of which 244 were non-UK companies, raising more than £12.2bn or an average of £5.8m each. On 31 October 2005, there were 1,332 companies on the market, 196 of them being non-UK companies from a variety of jurisdictions including Australia, Canada, Germany, Ireland, Israel and the USA with an average market capitalisation of approximately £33m. Companies on AIM cover a variety of business sectors including financial services, media and entertainment, mining, oil and gas, pharmaceuticals and biotechnology, real estate, support services and technology.

Who can join?

AIM is open to companies from any business sector and anywhere in the world provided that they meet certain minimum requirements (set out below).

There are no minimum criteria as to company size or track record.

Companies on AIM, in all cycles of growth, range from young, venture-capital backed businesses to more established ones looking for further expansion. It is the market of choice in the UK for companies with a market capitalisation of up to £100m and beyond.

This makes it an ideal market for start-up companies, family companies and non-UK companies looking to broaden their investor base, particularly where they do not wish the expense and increased regulation associated with the main market of the LSE or other international stock markets.

In most cases, AIM companies are not required to produce further documents when effecting acquisitions and disposals. AIM is therefore particularly attractive for companies planning to grow by acquisition.

Why choose AIM?

An AIM quotation provides all the benefits of flotation on a high profile international market in London, such as:

- ready access to long-term investment capital, both at the time of the flotation and in later issues
- the creation of an external market in the company's shares and an objective market value for the company
- the ability to take advantage of acquisition opportunities by using shares as consideration
- the potential to encourage employees in the long term through share incentive schemes
- higher public profile
- greater credibility vis-à-vis customers and suppliers.

What makes AIM particularly attractive is that AIM's regulatory environment is specifically designed for smaller, growing companies. It is therefore, for example, significantly less regulated than the main market of the LSE, as the following table highlights:

Main market	AIM
<ul style="list-style-type: none"> • minimum of 25 per cent of shares must be held by the public • normally 3 year trading record required • minimum market capitalisation of £700,000 • shareholder approval required prior to significant acquisitions and disposals • sponsor needed for some transactions 	<ul style="list-style-type: none"> • no minimum number of shares to be held by the public • no minimum trading record required • no minimum market capitalisation • shareholder approval only required for certain major acquisitions or disposals • nomad required at all times

In addition, the LSE itself does not itself vet or approve any applicants to AIM or any of the documentation required for the flotation process, although, as referred to below, the Financial Services Authority may in certain circumstances be required to vet the company's AIM admission document.

The more flexible regulatory environment is characteristic throughout: from the entry criteria and straightforward admission process through to the AIM rules which companies must comply with after their admission to the market (known as "admission").

Are there any drawbacks?

While the AIM rules strike a reasonable balance between providing flexibility to the company and protection to the investor, there are a number of issues which still need to be borne in mind:

- increased discipline will be required by the board and employees – they must be prepared for closer scrutiny of the company and its performance and, of course, increased time spent on management
- directors will face increased accountability towards outside shareholders – this means greater responsibilities and restrictions
- greater openness will be required from the board as the company is required to make disclosures of its financial position and business activities
- following admission, the company will need to maintain good investor relations – this is a continuous process of keeping investors aware of the company's development and future activities
- the company will become susceptible to market conditions and it may find the price and liquidity of its shares are affected by factors outside its control
- the costs involved in achieving admission, raising capital and maintaining an AIM quotation may outweigh the benefits – they should not be underestimated.

Joining AIM may not therefore be suitable for every company.

Is the company suitable for AIM?

In addition to satisfying the regulatory hurdles to joining AIM, the company must be attractive to investors. Whether or not the company will be a viable investment opportunity will depend on a variety of factors including:

- a viable and realistic business plan – does the company have identifiable products or services which provide a clear market opportunity? Is the business model clearly defined and easily understood? Does the company have demonstrable growth potential? If it is profitable, does it have a clearly defined and achievable route to profitability?
- a track record as a sound, well-managed business – this is not an absolute requirement, for example, in sectors such as technology and biotech
- a strong management team with key roles occupied by people with suitable qualifications and depth of experience
- transparency of ownership and accounting – investors will be concerned over a lack of clarity over ownership and control of the company. Companies should also have strong financial controls and established systems of management reporting
- corporate governance – although the Combined Code on corporate governance is not applicable to AIM companies, investors will expect to see that its principal provisions are applied in the company where appropriate
- timing and market sentiment – factors beyond the control of the company such as changes in the economic environment or shifts in market sentiment may affect the company's valuation or even its ability to float.

Generally, a company should have an initial market capitalisation of at least £10m if it is to be a viable prospect for joining the market.

What are the key requirements for admission?

Nomad

AIM companies must retain a nominated adviser (usually known as the "nomad") at all times. The nomad is normally a firm of specialist corporate finance advisers whose initial task is to advise on the suitability of the company for AIM and then to ensure that the company complies with the AIM rules following admission.

While the nomad is engaged by the company and acts as the link between the company and the LSE, its duties are owed first and foremost to the LSE, principally to confirm to the LSE that the company is appropriate to join AIM.

Broker

Similarly, AIM companies must retain an AIM broker at all times. The broker is a securities house, responsible principally for dealings in the company's shares (which must be carried out on an orderly market basis). Often the same firm acts as both nomad and broker.

Shares

The company must be able to offer securities to the public and all securities in the class must be admitted to AIM. In addition, all of its shares must be freely transferable and eligible for electronic settlement. This usually requires some minor restructuring before admission.

Admission document

Prior to admission, every company must produce an admission document which will be made available to all prospective investors. This sets out such detailed information on the company, its activities, future plans, directors' details and interests in the company and historical financial information for the last 3 years (or less if the company does not have a full 3 year trading history) as is necessary for a prospective investor to be able 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 its shares.

Following the implementation of the EU Prospectus Directive into UK law, the company may be required to prepare its admission document to prospectus standards. This will involve the inclusion of additional detail on the company, its business and management and the shares being offered. The admission document will also need to be vetted and approved as a prospectus by the Financial Services Authority acting as the UK Listing Authority ("UKLA") before admission.

A prospectus is only required if the total consideration payable for the securities being offered as part of any fundraising on admission is greater than €2.5m and the offer is made to more than 100 people, excluding "qualified investors". The term "qualified investors" includes organisations which are authorised or regulated to operate in the financial markets. Given that the vast majority of fundraisings on admission are structured as private placings to institutional and other qualified investors, it is likely that most companies seeking admission will not be required to produce a prospectus. However, an advantage of producing a prospectus is that, once approved by the UKLA, it can be used to market the company's securities throughout the EEA (and thereby to

access capital in places like Paris or Frankfurt) without the need for further documentation.

Other documents

There are certain other documents which must be prepared in order to produce the admission document, in particular:

- a working capital report confirming that the company has sufficient working capital for at least the 12 months following admission
- an accountant's financial due diligence report ('long form report') on the company prepared for the nomad and the directors, to assist the nomad in understanding the company and its business and assessing its suitability for AIM
- a legal due diligence report on the company prepared for the nomad and the directors.

The extent of the accounting and legal due diligence will depend on the nature and history of the company's business.

Lock-in

In certain circumstances, where a company has been recently incorporated and has not traded in the two years prior to admission, the directors, substantial shareholders (i.e. those holding more than 10% of the voting shares) and their respective families and certain employees will need to be "locked-in" for one year following admission. During that period, they will not be entitled to dispose of their shares in the company.

What advisers are necessary for an admission?

An AIM admission team usually consists of several different types of adviser, of which the nomad is clearly first and foremost. Other advisers will normally include a broker (if separate from the nomad), lawyers to the company (including international counsel where relevant), lawyers to the nomad and broker, auditors and reporting accountants, financial PR consultants, share registrars, printers and independent experts (for example, an expert geologist in the case of an oil & gas company).

How does the admission procedure work?

The admission procedure differs depending upon whether or not the company is already traded on a relevant international market.

The standard admission procedure

As noted above, a company wishing to be admitted to AIM will need to produce an admission document. Prior to this, an extensive legal and financial due diligence exercise will be carried out on the company and the various legal and accounting reports prepared, as thought necessary by the nomad.

A series of drafting meetings will then take place in order to draft the admission document and review any problem areas. Once the document is in its final stages, the verification process begins (as described below).

If the company wishes to raise funds at the same time as it joins AIM, a process of marketing begins after approval of the final draft admission document (known as the "pathfinder"). During the marketing process, the company makes presentations to potential investors, whom the company hopes will commit to buying shares at admission (otherwise referred to as the shares being "placed"). This way, the company knows in advance of admission the amount it will be able to raise.

Once there is sufficient take-up of shares in the placing, a pre-admission announcement is made to the LSE 10 business days before the admission date. Three business days prior to admission, the admission document is published and the main admission announcement is made.

The "fast-track" procedure for quoted companies

This is a much more straightforward procedure and is available to companies already quoted for at least 18 months on certain designated major international stock markets, e.g. Australian Stock Exchange, Deutsche Börse, Euronext, Toronto Stock Exchange, NYSE and NASDAQ.

The main advantage of this procedure is that there is no need to produce an admission document (which can be a time-consuming and lengthy process). Instead, the company produces a more detailed version of the pre-admission announcement.

This announcement is made 20 business days before admission rather than 10 days. The company then files its annual report and accounts with the LSE three business days prior to admission.

The fast-track procedure is not, however, available if the company wishes to raise funds at the same time as it joins the market in a manner which requires the preparation of a prospectus.

Who is responsible for the admission document and what are the potential liabilities?

The potential liabilities for any inaccuracies in the admission document are severe (there are both civil and criminal sanctions) and therefore the greatest care must be taken.

In order to minimise the risk of inaccuracies, an extensive verification process will take place in which the company's lawyers record, by means of written questions and answers from the directors, the evidence supporting the various statements made in the admission document.

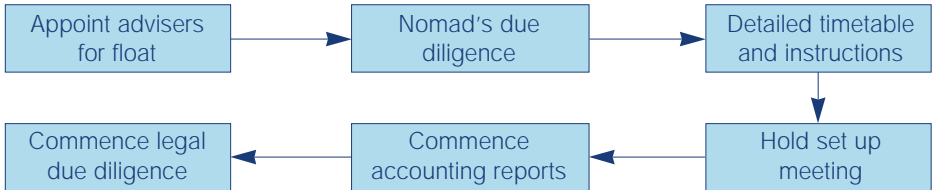
Since the admission document is the responsibility of the company and the directors, the directors will usually sign a statement confirming their acceptance of responsibility and their understanding of their potential liabilities.

What sort of timescale and costs are involved in the whole process?

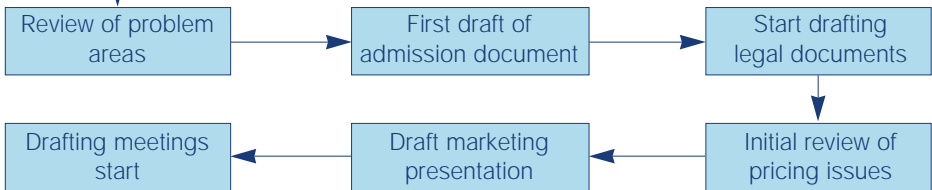
An AIM admission normally takes around 12 to 24 weeks, although the time involved will depend upon whether the company is properly structured and organised for an AIM float, the speed and efficiency at which the information for the admission document can be produced, the depth of due diligence required and the ease of verification.

A typical timetable will may like this:

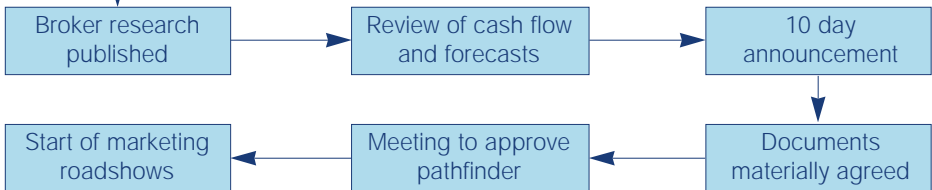
12 – 24 weeks before admission



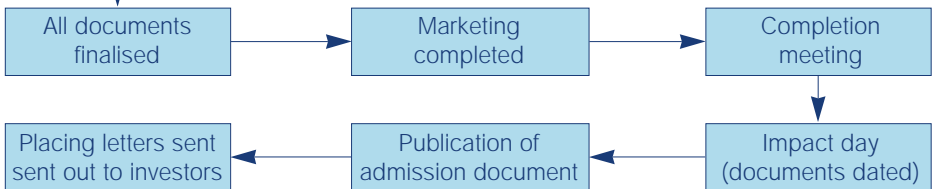
6 – 12 weeks before admission



1 – 6 weeks before admission



1 week before admission



The costs of admission consist of the fees of each of the professional advisers involved (whose fees will vary, depending upon the level of work involved) and, of course, the LSE's fees. In addition, if a prospectus is required, there will need to be a consultation process with the UKLA well in advance of admission and this may also have an impact on costs and timing.

As a rough guide, the fees which you would expect to pay for a standard AIM admission currently range between £300,000 and £400,000 (excl. VAT). In addition, commissions will be payable on funds raised which may range from 3 – 6 per cent.

What are the company's continuing obligations after admission?

Once it has been admitted to AIM, the main obligations on a company include:

- to retain a nomad and broker at all times
- to announce immediately any matters which may affect the share price, changes in the performance of the company's business or forecasts or changes in the board or their shareholdings
- to ensure its directors and relevant employees do not deal in its shares during a close period
- to obtain shareholder approval prior to any "reverse takeover" (i.e. a transaction where any of the ratios relating to defined class tests exceed 100 per cent. or which may result in a fundamental change in business, board or voting control) or any disposal resulting in a fundamental change in the company's business (i.e. a transaction where any of the class test ratios exceed 75 per cent.)
- to notify certain specified information for related party transactions (where any percentage ratio in any of the class tests exceeds 5 per cent.) and for substantial transactions where any percentage ratios of the class tests is 10 per cent. or more
- to prepare an admission document to prospectus standards and approved by the UKLA prior to making any offer of its securities exceeding €2.5 million in value to more than 100 non-qualified investors, for example, as part of a rights issue or open offer to existing shareholders or a paper based takeover offer for another company

- to ensure that its securities are eligible for electronic settlement
- to file half-yearly reports and annual financial statements prepared in accordance with UK or US GAAP or International Accounting Standards.

What can Maclay Murray & Spens do for your company?

Achieving a flotation

The work involved in achieving a successful admission to AIM should not be underestimated. Ensuring the company is properly structured and organised for the AIM float and preparing the documentation to support a flotation takes a considerable amount of management time which can potentially impact on the running of the business.

We will help you manage the flotation process effectively and efficiently without unnecessary stress. The services we can provide include the following:

- undertaking any necessary pre-flotation re-structuring of the company
- briefing the directors on their responsibilities for the contents of the admission document
- advice on remuneration packages and terms of service in light of the latest corporate governance best practice
- establishing share option schemes to incentivise management and key employees
- due diligence on the company to formalise existing arrangements, negotiate new arrangements, resolve any problems and to prepare suitable disclosure for the admission document
- drafting and verifying the statements made in the admission document to minimise the potential liability of the directors
- negotiating the form of the placing agreement and the warranties and indemnities to be given by the company and its directors to the nomad.

Continuing support

Post-flotation we can assist the company in relation to mergers and acquisitions, further fundraisings, ongoing disclosure and other regulatory requirements, and procedures for ensuring share dealings by directors and key employees are conducted in accordance with the appropriate regulatory requirements and best practice.

The closer scrutiny of the company and its directors and business can often come as a shock to management after a flotation.

We can work with you and your other advisers to guide you through the uncertainty of the first few months of flotation while you adjust to the greater exposure and openness that a public quotation entails.

Further information

If you are considering joining AIM, or wish to find out more information, any member of our team will be more than happy to talk to you. We are rated among the top legal practices serving AIM companies and, using our extensive contacts, we will also be able to help you find and choose an appropriate team of advisers, including nomads, brokers and accountants.

Please contact:

- Jonathan Brooks
Tel: +44 (0) 20 7002 8518
e-mail: jonathan.brooks@mms.co.uk
- David Cooke
Tel: +44 (0) 20 7002 8520
e-mail: david.cooke@mms.co.uk
- Joanna Higton
Tel: +44 (0) 20 7002 8531
e-mail: joanna.higton@mms.co.uk
- Michael Livingston
Tel: +44 (0) 131 479 2834
e-mail: michael.livingston@mms.co.uk

www.mms.co.uk

ABERDEEN

66 Queens Road Aberdeen AB15 4YE
Tel 01224 356 130 Fax 01224 356 131

EDINBURGH

3 Glenfinlas Street Edinburgh EH3 6AQ
Tel 0131 226 5196 Fax 0131 226 3174

GLASGOW

151 St Vincent Street Glasgow G2 5NJ
Tel 0141 248 5011 Fax 0141 248 5819

LONDON

One London Wall London EC2Y 5AB
Tel 020 7002 8500 Fax 020 7002 8501

BRUSSELS

Scotland House, Rond-Point Schuman 6
B-1040 Brussels, Belgium
Tel 00322 282 8415 Fax 00322 282 8418

Email lawyer@mms.co.uk Website www.mms.co.uk

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IMPORTANT

We hope you find the contents of this guide interesting and informative, although you will appreciate that the contents are for general information only. Whilst we believe that the contents are true and accurate at 1 November 2005 and that they reflect UK law, we can give no assurances regarding the accuracy, currency or applicability of any of the contents in relation to specific situations or particular circumstances. As such, the contents should not be relied upon. Please contact us if you have any further queries.

mms

maclay murray
& spens LLP

ABERDEEN

66 Queens Road Aberdeen AB15 4YE
Tel 01224 356 130 Fax 01224 356 131

EDINBURGH

3 Glenfinlas Street Edinburgh EH3 6AQ
Tel 0131 226 5196 Fax 0131 226 3174

GLASGOW

151 St Vincent Street Glasgow G2 5NJ
Tel 0141 248 5011 Fax 0141 248 5819

LONDON

One London Wall London EC2Y 5AB
Tel 020 7002 8500 Fax 020 7002 8501

BRUSSELS

Scotland House, Rond-Point Schuman 6
B-1040 Brussels, Belgium
Tel 00322 282 8415 Fax 00322 282 8418

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