



Guide to Listing on AIM

**2011
SECURITIES
LAW FIRM of the YEAR
IN THE UK**

**2010
INTERNATIONAL
AIM LAW FIRM
of the YEAR**

Corporate International magazine

AIM – London’s Alternative Market

AIM is the London Stock Exchange’s international market for smaller, growing companies. Since its launch in 1995, over 3,100 companies have chosen to join AIM and raised in excess of £65 billion. By the end of February 2011, nearly 1,200 companies were trading on AIM with a market capitalisation of over £65 billion, of which 225 were international companies.

AIM’s appeal has been built on a relatively simple and flexible regulatory environment specifically designed for the needs of smaller companies. By listing on AIM, a company gains:

- access to a global market with a wide pool of capital;
- enhanced profile;
- increased status and credibility; and
- currency for and comparatively light rules on acquisitions

Accessible

Unlike most other markets, AIM has a flexible approach that does not stipulate minimum criteria in relation to company size, trading record or number of shares in public hands. All prospective companies must appoint a nominated adviser (‘Nomad’) from an approved register who bears responsibility to the London Stock Exchange for ensuring that all applicants are suitable for admission to AIM and ready to be admitted to a public market.

There is no requirement for a London office or resident directors, although the Nomad will normally require an appropriate mix of executive and non-executive directors for corporate governance purposes. This approach seeks to ensure appropriate quality control of AIM companies whilst making AIM as open as possible to a range of smaller, growing companies.

Simple Admission Process

The AIM rule book is short and simple. To gain admission to AIM companies must in general produce an admission document that includes information about the company’s directors, promoters, business activities and financial position. This admission document is not, however, pre-vetted by the Exchange nor UK regulatory authorities but rather by the Nomad. Where a fund-raising is undertaken at the time of admission, the admission document will also be used for that purpose and the fund-raising is customarily structured as an institutional private placing to avoid any need to prepare a public offer prospectus requiring approval by the UK regulatory authorities. The rules require certain pre-admission filings and generally the process takes around 3 to 4 months to admission.

Once shares are admitted to AIM, trading will commence and the AIM company’s share price will be visible across the Exchange’s information network of 90,000 terminals worldwide. Liquidity in the secondary market is provided by market makers who are member firms of the London Stock Exchange and are obliged to quote a price in your shares. Trading by investors is carried out through the Exchange’s network of member firms.



Over the years, lawyers in Stikeman Elliott London have been involved in numerous listings, financings and other transactions involving AIM, including 19 AIM/Toronto dual listings to date. Jeffrey Keey and Derek Linfield of our London office are highly experienced senior lawyers with significant expertise on AIM and UK issues.

With extensive experience acting both for AIM companies and Nomads/Brokers the firm was recognised as 2011 "Securities Law Firm of the Year" in the UK and "International AIM Law Firm of the Year - 2010" *Corporate International* magazine.

Our lawyers have broad industry and country expertise, with significant experience in Africa and in the mining sector. We were named by Chambers in 2010 as one of the top 10 mining law firms in London.

Drawing on over 40 years of experience in the City, Stikeman Elliott London has long been recognised for its leadership in international corporate transactions, including leveraged buy-outs, take-over bids, share and asset purchases and financing transactions. We have acted on numerous cross-border acquisitions both for Canadian clients and for foreign companies, investment funds and sovereign wealth funds seeking to invest in Canada.

Our London finance team has been recognised for many years as one of the most prominent international advisors in the Eurobond markets. We have also been at the forefront of developing the legal framework for the issuance of Maple Bonds in Canada.

Our London tax and private capital practice is widely recognised as a leading adviser the global private banks. That practice also advises substantial private clients and the governments of smaller financial centres on tax information exchange initiatives and financial regulation.

The Stikeman Elliott London also serves as the firm's gateway for our India, Middle East and Sovereign Wealth Fund practices.

A Fast-Track Route to Joining AIM

AIM has also created a streamlined admission process to make it even easier for international companies who have already been admitted to certain other major markets for at least 18 months to come to AIM. These companies need not produce an admission document but simply need to make a detailed pre-admission announcement. Existing published information can generally be relied upon although the latest annual audited accounts may not be more than nine months out of date (otherwise interim accounts will be required).

This fast-track route is available to companies listed on the following stock exchanges:

- Australian Stock Exchange
- Deutsche Börse
- Euronext
- Johannesburg Stock Exchange
- NASDAQ
- New York Stock Exchange
- Stockholmbörsen
- Swiss Exchange
- Toronto Stock Exchange
- UK Official List (as issued by the UK Listing Authority).

Admission to AIM using the fast-track route does not give the ability to raise funds at the time through a public offer as that would involve the publication and regulatory approval of a prospectus. It does, however, allow institutional private placings which can also take place without the costs of a public offering, although in practice the broker may require the preparation of the equivalent of an admission document for marketing purposes. The fast-track route can take between four to six weeks

Ongoing Obligations

All AIM companies are required to disclose details of their financial performance through scheduled interim and full year results announcements. In addition, the company will be required to make disclosures on an ongoing and timely basis about other developments that might have an impact on the future performance of the company and/or its share price.

In most cases, AIM companies are not, however, required to produce further documentation or to obtain shareholder approval when effecting acquisitions and disposals, thus enabling the company to expand or change direction quickly and cost-effectively. Material transactions merely need to be disclosed and shareholder approval only obtained for reverse takeovers and disposals resulting in a fundamental change of business.

Board members and other employees will, of course, be subject in any event to the disciplines of having shares traded publicly and must be prepared for closer scrutiny of the company and its performance and of key management decisions and actions.

All AIM companies are obliged to maintain a website, on which a broad range of information about the AIM company should be available, free of charge.

Under the AIM rules, dealings in the securities of an AIM company by its directors and relevant employees are prohibited during “closed periods”, that is prior to the announcement of results and other information.

Choosing a Nomad

The choice of Nomad is central to the process. Each AIM company must have a Nomad at all times both before and after admission. In the run up to admission, the Nomad will:

- assess whether the company is appropriate for the market
- explain the AIM rules to the directors and ensure they are aware of their responsibilities and obligations
- co-ordinate the work of other professionals – such as accountants and lawyers who are involved in preparing the company for the market
- help put together the admission document

Thereafter the Nomad will give ongoing advice and guidance on the AIM rules. Nomads are subject to their own detailed rule book, published by the London Stock Exchange.

Choosing a Broker

AIM companies must also have a broker who is a member of the London Stock Exchange. Whilst they may be, and commonly are, part of the same organisation as the Nomad, procedures must be in place to avoid conflicts of interest as they work together on any fundraisings.

In particular, a broker will play an important role in:

- finding prospective investors for the company’s shares
- preparing and accompanying the company on any roadshow to promote its shares to investors
- trading in the secondary market
- providing research on the company.

Other Advisers

The roles of other advisers involved in the listing process include:

Lawyers

- Ensuring that all legal requirements are met both in preparing the company for admission and as regards the information disclosed in the AIM admission document.
- Preparing a ‘legal due diligence’ report
- Assisting in drafting the AIM admission document and ancillary agreements.
- Verifying the accuracy of information included in the AIM admission document.

Independent reporting accountants

- Preparing a ‘long-form’ report on the company, a private document which assists the Nomad and other advisers in assessing whether the company is appropriate for admission to AIM.
- Preparing a ‘short-form’ report on the company’s financial record for inclusion in the AIM admission document.
- Reporting on the company’s working capital requirements.
- Reporting to the directors and the Nomad on the adequacy of the company’s financial systems and controls.

Public relations advisers

- Arranging press coverage on the company in advance of admission.
- Co-ordinating publicity on the day of and after admission to trading on AIM.

Issues

Although an AIM listing is fairly straightforward and all the necessary steps are generally within the control of the company and its advisers there are, however, certain issues that should be addressed and resolved early in the process.

Working Capital. For a company that is following the normal application process, its directors must be able to state in the AIM admission document that the working capital available is sufficient for at least the next 12 months from admission. For a company that qualifies for the fast-track route, the directors of the company must be able to state the negative, namely that they have no reason to believe that the company's working capital will be insufficient for the 12-month period post-admission. The reporting accountants are usually required by the Nomad to produce a working capital report in support of these statements, although the Nomad may sometimes take the view that a full audited working capital report is not required for companies following the fast-track route.

Lock-in Requirement. Where a company's main business activity has not been independent and earning revenues for at least two years, all the company's directors, any shareholders who hold more than 10 per cent of the company's shares and employees holding more than 0.5% must agree not to dispose of any of their interests in the securities for one year from the date of admission. The Nomad may also request a further "orderly market" period and seek to obtain lock-ins from some or all other shareholders.

Financial Statements. The company's accounts (including those set out in the AIM admission document) must be prepared in accordance with either International Accounting Standards, US GAAP, Canadian GAAP, Japanese GAAP or Australian International Financing Reporting Standards with, if the fast-track process is to be followed, a financial year end not more than nine months prior to admission. The fast-track route also requires that the 20-day announcement include a description of any significant change in the financial or trading position of the company since the date to which the last audited accounts were prepared.

Verification Process. The admission document or announcement (in the case of the fast-track route) will usually be subject to a rigorous written verification or due diligence process. Depending on the nature of the disclosure in the admission document and in the company's public record, verification can be a lengthy and time-consuming exercise and its scope and timing should be agreed to fairly early in the process.

Settlement of AIM Securities. Securities to be listed on AIM must be eligible for electronic settlement through CREST. However, CREST is a system that caters primarily for securities of UK companies, so securities of non-UK issuers settle indirectly through international clearing systems, such as DTCC in the US, with whom CREST have arrangements or through the use of a UK depository arrangement. As each clearing system and depository has its own internal rules and requirements, it is advisable to agree the settlement mechanics as soon as possible once it has been decided which route into CREST will be used.

Mining and Oil & Gas Companies. Mining and oil & gas companies must prepare a competent person's report ("CPR") on all their material assets and liabilities, to be reproduced in full and without adjustment in their AIM admission document. The scope of the CPR must be agreed with the Nomad. It is the Nomad adviser's responsibility to ensure that the competent person producing the CPR has the relevant and appropriate qualifications, experience and technical knowledge to professionally and independently appraise the assets and liabilities being reported upon. As the production and finalization of the CPR can require significant time and effort, again this is something to be addressed early in the process.



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