



issue 40
December/
january 2008

AIM&PLUS

deal monitor

deals, costs and commissions in the AIM and PLUS markets

Updated regularly at www.dealmonitor.co.uk

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WHAT DOES LONDON EXPECT?**

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INTERNATIONAL COMPANIES ON AIM WHAT DOES LONDON EXPECT?

The London School of Economics' recent research heralded AIM as the world's leading stock market for young, growing companies. In addition, unlike its competitors, AIM has also demonstrated the ability to attract a large number of international companies to its market. There have been over 400 international admissions on AIM since 1995. There are currently over 300 international companies listed on AIM, the vast majority having joined since 2002.



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The attractions for a foreign issuer of a London listing on such a fast-growing exchange are clear. However, a prospective international issuer must bear in mind that, in return for access to its market, liquidity and capital, the London institutional investor community ordinarily expects international companies to meet the key corporate governance requirements associated with a UK company coming to market. In certain jurisdictions, compliance with these demands can require a good deal of planning and time. The most common of these issues are as follows:

Pre-emption rights

Pre-emption is a right of first refusal for existing shareholders over issues of new shares. An issuer will usually restrict this right. However, AIM listed companies typically follow (or at least have regard to) the annual and three-year rolling guidelines set out by the National Association of Pension Funds (NAPF) or the Association of British Insurers (ABI) to prevent an issuer disapplying the right too extensively. International companies need to consider what steps may be required to ensure investors have adequate pre-emptive control over future shares issues.

Mandatory offers

UK listed companies are generally governed by the takeover code which, broadly, dictates that a person acting alone or in concert acquiring 30% of the voting rights in the company is required to make a mandatory cash offer for the balance of the issued share capital. This rule applies to AIM companies registered in the UK, the Isle of Man, or the Channel Islands but, importantly, it does not apply to companies whose central place of management and control is outside the UK.

International companies must consider whether to incorporate equivalent mandatory offer provisions to ensure investors get a similar level of protection. Market practice suggests most companies do indeed include some protection in this area.

Restriction on frustrating action

In certain jurisdictions, it is common for the boards of companies who believe themselves likely to be subject to an unwelcome takeover bid to employ a "poison pill" tactic to frustrate the bidder's takeover efforts, such as creating share rights which entrench their own control of the company by ensuring that they are issued with new shares for every share acquired by the bidder.

The use of such a tactic by a UK listed company without prior shareholder approval can amount to a breach of the takeover code. International companies not bound by the takeover code must decide whether protections equivalent to those set out in the takeover code are put in place before admission.



Settlement issues

The ability to hold and trade shares electronically is an important issue for a prospective foreign issuer to consider early on in the float process. Shares in most foreign companies are unable to be admitted directly into CREST. International companies will commonly need to set up a depository interest arrangement pursuant to which a UK security (the depository interest) is traded electronically in London; the depository holding the underlying foreign shares on behalf of the beneficial holders. Setting up the depository interest arrangements can take time (and may require detailed discussion as to how a trust operates in those jurisdictions that do not recognise such trust arrangements).

Advisers should also be aware that in certain jurisdictions (for example, Germany), the usual placing arrangements (under which an issuer allots shares direct to institutional placees conditional upon Admission) cannot work; shares need to be subscribed for by the investment bank itself (against cash payment of a percentage of nominal value) and then sold on to the institutions.

Combined Code

It is important, early on in the AIM admission process, to ensure that prospective international issuers which may not be familiar with the principles set out in the combined code or the corporate governance guidelines for AIM companies issued by the Quoted Companies Alliance, consider what changes may be required in order to meet the standards expected by investors in London. This may result in the company deciding to make any number of changes including: separating the roles of chairman and CEO; appointing independent directors to the board to ensure that there is a balance to the board composition; creating board committees to carry out specific delegated functions such as audit, remuneration and nomination committees and putting

procedures in place to ensure that directors are required to submit themselves for re-election by the shareholders at regular intervals.

Powers of shareholders to call meetings

International companies hoping to be admitted to AIM should also be aware of the powers of shareholders of a UK plc to requisition meetings. Under the Companies Act 2006, shareholders controlling 10% of the voting rights of the company have a right to require the directors to call a general meeting of shareholders to discuss and vote on resolutions proposed by those shareholders. Institutional investors in particular may see this ability as an important tool to limit the powers of the directors and ensure that the company is acting in their best interests. Other jurisdictions may have higher or lower thresholds in place, or may indeed be silent as to the powers of shareholders to call meetings, preferring the individual companies to implement such measures in their own articles, and careful consideration is required as to whether or not such powers should be afforded to the shareholders before any admission to AIM.

In summary, there is no definitive right or wrong answer as to whether an international company seeking admission to AIM should address any or all of the issues discussed above to satisfy the expectations of investors in London. Undoubtedly a balance must be found, but how closely an international company decides to follow UK requirements depends on several things; the country of incorporation; the market sector in which it operates; and the sensitivity of the potential investors. The key is for the company to work with its nominated adviser and lawyers to find the most effective and beneficial solution to achieve the goals it set for itself in admitting its shares to trade on AIM.

Sean Geraghty is a partner, and Chris Burniston is an associate, in the corporate and securities department at Dechert LLP. Dechert has acted for a large number of UK and non-UK companies coming to AIM, including the first German company to float on AIM, SQS Software Quality Systems, and Jumpit ASA, AIM's first Norwegian company.

AIM market statistics

Total companies	1693
UK	1348
International	345
Market Capitalisation	£91.3 bn

Funds raised since launch	£56.2 bn
Funds raised year to date	£326.5 bn

Total turnover since launch

Total Value	£239.3 bn
Number of Bargains	17.5 m
Number of Shares Traded	700.1 bn

Total Turnover year to date

Total Value	£5.4 bn
Number of Bargains	0.4 m
Number of Shares	11.4 bn

Source: London Stock Exchange

PLUS market statistics

No of companies traded on PLUS	7503
No of companies quoted on PLUS	218
Total combined market cap	£2.3 bn

Latest Trading Figures

	Year to date
Number of Bargains	860.184
Value Traded	£5,674.2 m
Shares Traded	6,922.6 m

Source: Plus Markets Group

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