BRIEFING NOTE

November 2013

ROOKS RIDER SOLICITORS

An Introduction to AIM

Introduction

AIM is the London Stock Exchange's market for smaller, growing companies and is the most successful growth market in the world. Since its launch in 1995, over 3000 companies have joined the market and raised over £65billion. AIM benefits from a lower regulatory burden than on the London Stock Exchange's main market, with much lower entry criteria and fewer ongoing obligations. At the same time AIM companies have access to London's pool of capital investors and the ability to issue publicly quoted shares which can be used to fund acquisitions and to attract and motivate management.

In order to join AIM a company must appoint a nominated adviser (nomad) and broker and its shares must be freely transferrable. There are no strict limits in the AIM Rules regarding the size of the company or the percentage of the shares in public hands and there is no requirement for a trading history, as there are on the main market. The role of the nomad is key to the regulation of AIM. The nomad is appointed by and acts as an adviser to the company, will project manage the flotation process and co-ordinate the other advisers. At the same time, when the company joins the market, the nomad has to confirm to the London Stock Exchange that it is appropriate for the market, that it has complied with the AIM Rules and that the company's directors have been properly advised.

Therefore the real barrier to joining the market is finding a nomad willing to act and, if necessary, a broker that can raise the funds, rather than the strict requirements of the AIM Rules. The broker will act on the fundraising, which generally will be done by way of a private placing to institutional investors. The broker will co-ordinate the placing and will arrange the presentations to investors.

Once on the market, a company must retain a nominated adviser at all times. The nomad must be kept informed of the company's business and will advise the company on the application of the AIM Rules. At the same time, there is an ongoing obligation on the nomad to inform the London Stock Exchange if the company ceases to be appropriate for AIM or if it has breached the AIM Rules.

Once on the market there are fewer ongoing obligations to be complied with than on the London Stock Exchange's main market. The company must keep the market informed of any change in the company's financial position, its business, its sphere of activity or the expectation of its performance which may have a substantial affect on its share price. This overriding obligation to announce price sensitive information to the market is the same as on the main market. There is also a list of specific factors that need to be announced as soon as they occur, including a change in the board, any dealings in the company's shares by directors and a change of nominated adviser or broker.

In addition the company must issue a half yearly report within three months of the end of the relevant period and must publish its annual audited accounts within six months of the end of the financial year. These must also be available on the company's website.

The company has to maintain a website containing key information about the company including details of its directors and advisers, its most recent announcements and AIM admission documents, its latest published annual accounts and half-yearly report, its constitutional documents and details of its shares and key shareholders.

One of the attractions of AIM is that shareholder approval is generally not needed for corporate transactions. Shareholder approval is only required for an acquisition if it constitutes a reverse takeover, or for a disposal if it results in a fundamental change in the business of the company.

There are no strict rules regarding corporate governance for AIM companies. The nomad will advise what level of corporate governance is appropriate and will be guided by the views of investors. Whilst AIM companies are not expected to comply with the Combined Code on Corporate Governance in full, they will be expected to comply with the principles of the Code, but there will be some allowance for smaller companies for whom compliance with the detailed provisions of the Combined Code may not be appropriate. At the very least companies will need at least two independent non-executive directors and will need to appoint remuneration and audit committees.

Trends in AIM since 2007

At the end of 2007 there were some 1700 companies on the AIM market, of which 347 were international companies. Since then, as a result of the global economic downturn, the market has seen a sharp decline in the number of new entrants, together with a rise in the number of companies leaving the market. There are currently 1090 companies on the market of which 231 are international companies.

Although there have been fewer new issues, existing companies have continued to raise money on the market, raising some £2.4 billion on secondary issues in 2012 and £1.5 billion during the first there quarters of 2013. The amount raised in secondary issues has exceeded the amount raised on IPO for the last seven years, demonstrating the maturity of the market and that established AIM companies continue to be supported by investors.

With many of the smaller AIM companies having left the market, many feel that the market is now in a stronger position. Future new entrants may find it harder to join the market as advisers focus on quality rather than quantity. The AIM market has always been very dynamic and will be quick to recover as the economy improves.

The London Stock Exchange is continuing its efforts to promote the AIM market internationally and overseas companies will no doubt become an increasingly significant part of the market.

The last updates to the AIM Rules were issued in February 2010 in relation to increased disclosure of directors' remuneration packages and enabled overseas companies to use their websites for certain communications with their shareholders and in June 2011 in relation to open offer timetables.

Indian companies on AIM

As at October 2013, there are 35 India-related companies on AIM. Of these only one is an Indian holding company which has been admitted to AIM. In addition, there are approximately ten Indian companies that are structured with an offshore holding company which is admitted to AIM. This is a common way for overseas companies to join the AIM market. Investors have the security of investing in a company with a familiar structure and legal regime while the shares remain offshore for UK tax purposes. The remainder of the India-focussed companies are investment companies focussed on investing in India.

In 2008 India was one of the leading international issuers on AIM accounting for approximately 18% of all funds raised through new issues. India has weathered the global downturn better than most and this has been reflected in the performance of the quoted Indian companies which have far outperformed both the AIM All-Share and the FTSE 100 indices in 2009 and subsequent years.

The success of the quoted Indian companies, together with the growth of the Indian economy should see more Indian companies joining AIM in the future. The London Stock Exchange has been promoting the benefits of AIM in India and new India-focussed companies will be welcomed by investors.

Experience

The Rooks Rider team has been involved since the early days of AIM. We have acted for new companies on their IPO as well as acting for established AIM companies on secondary issues, takeovers and M&A activity as well as advising AIM companies and directors on their ongoing compliance obligations. We have experience of acting with overseas companies and offshore holding companies.

In addition, we have advised nomads and brokers on IPOs and secondary issues, which give us a better understanding of the market and the flotation process.

Services

Whether you are already on the market, or planning an IPO in the future, we can advise you on the steps necessary to join AIM and on your continuing obligations. If you are planning an IPO in the future we can help you to prepare the company for a flotation; the earlier you start the preparation, the easier the flotation will be. We have contacts at many nomads and brokers and can assist you in putting together the professional team for your float. The first step in preparing a company for market will be a detailed review of the company, its structure, assets and legal agreements. Following this due diligence exercise the company may need to reorganise its group structure, update its key legal agreements and appoint new non-executive directors. It is much easier to take these steps well in advance of the proposed flotation so that the board can then focus on the IPO and any fundraising.

During the flotation process we will advise on the application of the AIM Rules and the drafting of the AIM Admission Document, which every company is required to produce. We will also assist with the process of verification of the document, where every statement in the AIM Admission Document is check and verified to ensure that there are no mistakes and no omissions from the document. We also advise on the terms of the Placing Agreement, which is the contract with the nomad and broker dealing with the fundraising and admission. The nomad and broker will also have agreements for their ongoing roles after floatation.

The directors of the company may need new service contracts or letters of appointment, if this has not already been done and we can prepare the corporate governance documentation. We can also advise on share option and other long term incentive schemes for directors and senior key staff. The directors and key shareholders will also need to undertake not to dispose of their shares in the company for a period following the admission to AIM. For a start up company this is a requirement of the AIM Rules, but regardless of whether that rule applies the nomad and broker will expect the directors to be locked in for at least 12 months after admission and after that to only dispose of any shares through the company's broker in an orderly manner.

Overseas companies will need advice on group structuring and the application of the AIM Rules and the Financial Services and Markets Act as well as an appropriate corporate governance regime. We will work with your local advisers to ensure that the AIM admission process runs smoothly. We can assist with the due diligence process to ensure that it meets the standards expected of the nominated advisers in the UK.

Once on the market we can advise you on the application of the AIM rules as well as other rules and regulations that may apply, whether under the Financial Services and Markets Act, the Companies Act or the Takeover Code.

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We also advise directors, who will need advice on their own individual obligations under the AIM Rules and Companies Act; this often needs to be independent of the advice to the company itself. We advise nomads and brokers on new issues and secondary fundraisings and their ongoing agreements with AIM companies.

Investors in AIM companies may also need advice on structuring an investment, particularly if it is a significant strategic investment.

For further information or to discuss any of the issues raised in this briefing note, please contact a member of the Rooks Rider Solicitors team:

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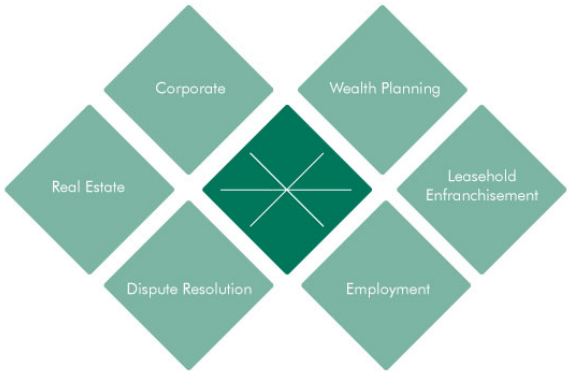

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