

# Bird & Bird & Capital Markets Group: PLC Update

*April 2018*

## *Final Changes to AIM Rules published by London Stock Exchange*

Following the consultation process that the London Stock Exchange ("LSE") conducted on some proposed changes to the AIM Rules for Companies and the AIM Rules for Nominated Advisers (details of which were included in our previous PLC update, which can be found [here](#), the LSE published AIM Notice 50 on 8 March 2018 containing its feedback on the consultation and the final changes that have been made to the AIM Rules.

The resulting changes to the AIM Rules are as follows:

### **Formalisation of early notification process for Nominated Advisers**

AIM Rule 2 and Schedule Three to the AIM Rules for Nominated Advisers have been amended so that nominated advisers must now submit an early notification to the LSE. The precise timing of the notification is left down to the nominated adviser, although this must be prior to the submission of the information required by Schedule One of the AIM Rules for Companies (which must take place at least 10 business days before the expected date of Admission)

An early notification form to be used by applicants is available on the LSE's website. This form sets out key information on the company and its proposed Admission.

Where information required to be included in an early notification is not yet available, the form may state this fact and the nominated adviser will then need to update the LSE as and when the information becomes available. However, nominated advisers should consider the timing of the submission of the form, if information is not available, so as to ensure that the LSE has adequate time to discuss all matters which may be relevant when the LSE considers the application for Admission and that there are no matters which may be detrimental to the orderly operation, reputation and/or integrity of AIM. Likewise, any material new information which arises following the submission of the early notification must also be notified to the LSE as a matter of course.

The LSE has made it clear that there may be a delay where an early notification form is submitted that does not allow adequate time for discussion. The LSE have also stated that when it considers the information provided during the early notification process then this will be run in a similar manner to the current process for the consideration of the Schedule One form.

## Appropriateness for Admission - guidance on LSE's powers under AIM Rule 9

Nominated advisers will be expected to have early discussions with the LSE where the circumstances of the applicant could affect its appropriateness for AIM and this ties into the new early notification requirement referred to above.

The assessment of the appropriateness of a company to be admitted to AIM remains the primary responsibility of the nominated adviser under the AIM Rules for Nominated Advisers. However, the Exchange retains ultimate discretion under AIM Rule 9 to refuse or impose conditions for an application for admission, should issues that are identified during the admission process remain unaddressed.

While this discretion is used rarely in practice, the LSE has made some amendments to AIM Rule 9 in order to emphasise the LSE's discretion to refuse admission. Some changes have also been made to Schedule Three of the AIM Rules for Nominated Advisers in order to set out a non-exhaustive list of matters that could affect the appropriateness of the company seeking admission to AIM, which include:

- questions as to the good character, skills, experience or previous history of a director, key manager, senior executive, consultant or major shareholder;
- the rationale for seeking admission is unclear;
- formal criticism of the applicant and/or any of its directors by legal, regulatory or governmental bodies;
- denial of admission to trading on another platform or exchange;
- a vague or ill-defined business model or business operations;
- concerns regarding a company's corporate structure or business model being appropriate for a public market; and
- if the applicant holds a material part of its assets or business operations through a risky contractual arrangement with the owner of the assets or operations rather than by owning them itself or through a subsidiary.

These factors either on their own or when combined with other factors may make an applicant not appropriate for admission to AIM.

## Corporate Governance Requirements

AIM companies will soon need to provide details on their website of the 'recognised corporate governance code' that the company has decided to apply, how it complies with that code and where it departs from it, an explanation of the reasons for doing so.

The information should be reviewed annually and the date it was last reviewed should be included under AIM Rule 26. The LSE anticipates that, in most cases, this will be done at the same time as the AIM Company prepares its Annual Report and Accounts.

The LSE elected not to define a 'recognised corporate governance code', preferring AIM companies to have a range of options to suit their stage of development, sector and size. Suitable codes for adoption will include the UK Corporate Governance Code (which is currently undergoing a period of revision, in relation to which, please see our article here for further information [here](#)) and the QCA Corporate Governance Code for Small and Mid-Size Quoted Companies. Overseas AIM companies will need to consider whether a standard in their home jurisdiction will be suitable for adoption.

The LSE has also noted that a principles based approach to corporate governance should be followed, so AIM companies should give a meaningful explanation of their practices against the principles of the code, rather than simply identifying areas of non-compliance.

Implementation of the new corporate governance requirements will apply from 28 September 2018. All new applicants to AIM are now required to state which recognised corporate governance code they intend to follow, although they will have until 28 September to fully comply with the new requirements under AIM Rule 26.

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