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The AIM Admission Process



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Overview/Routemap

- Admission process
- Legal issues to consider before commencing the admission process
- Documentation & Timetable
- Advisory team
- Liabilities
- Listed – What changes?

The Admission Process

- Engagement of advisors
- Due diligence
- Preparation of the prospectus/admission document
- Formal application to be admitted to trading on AIM
- Application supported by prospectus/admission document
- Exchange has delegated responsibility for the admission process to the Nominated Adviser (“NOMAD”)

Key Legal Issues (1)

The goal - you want to attract investors

- Compliance with strict legal and regulatory requirements
- Getting into shape / due diligence
- What does this mean for you?
 - Lots of preparatory work
 - Adequate resources

Key Legal Issues (2)

Due Diligence

- What is it? - An exercise to understand the business and highlight areas where action needs to be taken to make the business suitable for admission to a public equity market – a compliance and risk management exercise with a marketing benefit.
- Information on the company's history, operations, directors, shareholders and stakeholders
- Preparation and completion of questionnaires
- Collation of material

Key Legal Issues (3)

- Identification and quantification of risks
 - Litigation
 - Long term or onerous contracts and commitments
 - Tax, environmental, pensions, regulatory considerations
 - Adequate risk factors

- Ownership of assets
 - Verification of title
 - Key contracts
 - Change of control /poison pills
 - IPR
 - Employment issues
 - Service contracts
 - Incentive schemes

Key Legal Issues (4)

- Constitutional issues
 - Re-registration / share swap (is a UK holding company required?)
 - Memorandum & Articles – possible alterations for, for example, settlement through CREST system
 - Dividend policy
 - Restrictions on the sale of shares
 - Share option arrangements
 - Tax

- Corporate governance
 - Executive and non executive board
 - Independant non-executive directors (NEDs)
 - Remuneration, audit, nomination & disclosure committees

Documentation

Admission document/prospectus

- NOMAD engagement letter
- NOMAD/ Broker agreement(s)
- Placing agreement - NOMAD/Broker will require extensive indemnities and warranties from company and (usually) each director. This will include extensive warranties on the admission document and the company, its business operations and assets
- Accountants reports
- Expert reports (for example specific reports required for natural resources companies)
- Responsibility and comfort letters

Form and Content of Prospectus/Admission Document

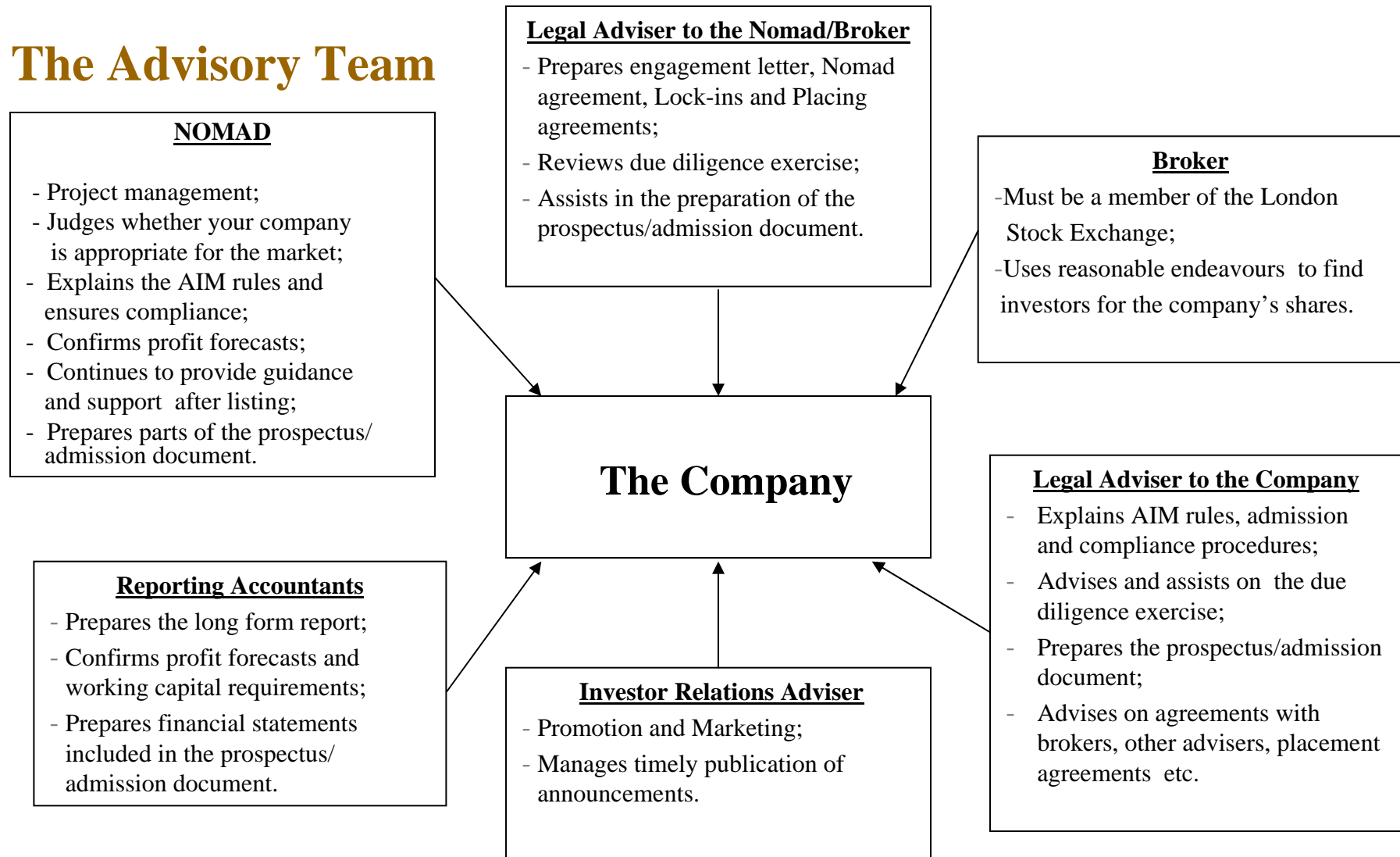
- Information for investors – content is governed by the Prospectus Directive/AIM Rules and Financial Services and Markets Act 2000. The fundamental principle – what would an investor expect to see and what would they need to see to make a sensible judgment as to the value of the company’s shares?
- Accountant’s short form report included
- Accountant’s report on forecasts and working capital statement for 18 months post admission
- Key contract summaries – are there confidentiality obligations which may give rise to liability if details are disclosed in an Prospectus or Admission Document?

Form and Content of Prospectus/Admission Document (2)

Other specific issues to be covered are:

- Dividend policy (and the effect of taxation)
 - Restrictions on the sale of shares
 - Share option arrangements
 - Taxation
-
- Directors' working capital statement ("reasonable belief" of directors that company will pay its debts as they fall due)
 - Directors' and NOMAD's verification of the profit forecast
 - Details of shareholdings/voting rights over 3%

The Advisory Team



Nominated Adviser

Role and responsibilities:

- All AIM traded companies are required to retain a Nominated Adviser (“NOMAD”), approved by the London Stock Exchange and to whom the Exchange has delegated the responsibility for assessing AIM applicants
- Following admission NOMAD ensures that continuing obligations of the company to the Exchange and the company’s shareholders are met

Timetable (1)

Preliminary Preparation

- Retain Advisers
- Nominated adviser; broker; legal team; accountants; PR agency
- Corporate structure
- re-register company as a public company (if a UK limited company);
- shares should be freely transferable and fully paid up;
- review company's share option schemes
- Review of executive service agreements
- Accountants prepare financial report
- Legal team send out due diligence and directors' questionnaires

Timetable (2)

Week 1

- Directors reply to directors' and due diligence questionnaires
- Corporate advisers begin drafting Admission document/Pathfinder Prospectus
- Legal team and accountants perform due diligence exercise

Week 3

- Accountants' financial report and due diligence report circulated around team
- Settlement arrangements must be satisfactory (i.e. CREST compliant registrar appointed)

Timetable (3)

Week 5

- Commence Verification Process

Week 7

- Board meeting to approve service agreements; Pathfinder Prospectus/Admission Document; verification notes and working capital report etc
- Issue Pathfinder Prospectus/Admission Document if offering to institutional investors
- 10 Day Announcement submitted to AIM
- Company adopts share dealing code

Timetable (4)

- **Week 8**
 - Marketing, road shows and other publicity
 - Finalise placing agreement, send out placing letters

- **Week 9**
 - Board meeting to confirm issue price and approve final Prospectus/ Admission Document
 - Admission document filed with Registrar of Companies
 - Payment and clearance of subscription monies for shares
 - 3 Day Application Form submitted to AIM

- **Week 10**
 - Board meeting to approve allotment of shares to investors

The importance of verification

- What are the risks?
 - Statutory criminal liability – s97 FSMA: Misleading statements
 - Fines & UP TO 7 years in jail or both
 - Personal liability to pay compensation
 - S90 FSMA: Liabilities for untrue or misleading statements or omissions
 - Contractual misrepresentation
 - Negligent misstatement
 - Civil fines or public censure – market abuse

Continuing Obligations - Legislation

- Companies Act 1985, 1989 and 2006 (where there is a UK holding company)
 - Stricter for listed companies (and unlisted public companies than for private UK companies)
- Financial Services and Markets Act 2000 (will apply whether or not the listed entity is a UK incorporated company)
 - Disclosure and transparency rules
 - Financial Promotion
 - Market Abuse

Continuing Obligations - Regulation

- AIM Rules
 - Disclosure
 - Need a website (all applicants and AIM companies need a website containing certain information)
- Publication of Annual Audited and Interim Accounts
 - Dealing restrictions
 - Shareholder approvals
- City Code on Takeovers and Mergers – it may not apply depending on how the business listing is structured and how the operations of the business are conducted in future
 - Equality of treatment for all shareholders
 - Mandatory offers (30% threshold)

THE END

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