



Listing a mineral resources company in London

Introduction

There are many attractions for a mineral resources company, which includes mining and oil and gas companies, to be listed on either the Official List or AIM. This note highlights some of the key issues that a mineral company needs to consider when contemplating such a listing.

The Official List

Background

The Official List is home to approximately 1,400 companies, and those wishing to join the Main Market can do so either via a premium listing or a standard listing. Some companies seeking a premium listing have business models that make it difficult to comply with normal eligibility requirements in terms of track record and controlling interest; to help these companies, the UK Listing Authority ('UKLA') has created modified rules for 'mineral companies'.

For the purposes of the Listing Rules, a mineral company is a company or group whose principal activity is, or is planned to be, the extraction (which includes mining, quarrying or similar activities and the reworking of mine tailings or waste dumps) of mineral resources (which may or may not include exploration). Mineral resources include (amongst others) metallic and non-metallic ores, mineral oils and natural gases.

Criteria for admission

Before listing on the Official List, a mineral company must satisfy the admission criteria imposed by the UKLA through the Listing Rules, which essentially govern the admission process for the Official List. Although these rules are very detailed and lengthy, it might be useful to give a brief overview of these criteria.

Eligibility requirements that apply to both standard and premium listings

Incorporation – The company must be duly incorporated and operate in conformity with its constitution. Foreign registered companies may also have their securities listed by the UKLA if validly established in accordance with the relevant local law.

Shares – The shares for which listing is sought must be (i) issued in accordance with the relevant national law and the company's own constitution and have any necessary statutory or other consents; (ii) admitted to trading and be freely transferable; and (ii) eligible for electronic settlement.

Prospectus – A prospectus must be approved and published for the shares.

Shares in Public Hands – Once the company's shares are listed, at least 25% of the shares must be in public hands.

Market Capitalisation – The company must have a minimum market capitalisation of £700,000 although this is usually much higher.

Eligibility requirements for a premium listing

Accounts – A company seeking a premium listing must have published or filed audited accounts, covering a 3 year period, such period ending no more than 6 months before the planned flotation and be able to demonstrate an independent trading and revenue earning record covering the same period.

Nature and duration of business – At least 75 per cent. of the business of a company seeking a premium listing must be supported by a 3 year revenue earning record. A company must also have controlled the majority of its assets for the same period and be carrying on an independent business as its main activity.

Working capital – A company seeking a premium listing must be able to show that it has sufficient working capital for its current needs and at least for the next 12 months.

Mineral companies seeking a premium listing are subject to additional eligibility requirements, although they are not required to comply with the 3 year, revenue earning, audited track record requirements noted above.

Process

The Company will need to identify and appoint a suitable sponsor for the listing who takes a key role in the flotation process, advising the company on a wide range of issues. An investment bank or stockbroker usually takes on the role of sponsor, provided they are approved by the UKLA to do so.

The sponsor undertakes a wide range of duties right through the IPO process including assessing the company's general suitability for a listing in the light of its organisational structure and capital requirements, advising on the structure and make-up of the board, the best method of flotation for the company, and the flotation timetable. As the flotation approaches, it will advise on the pricing and underwriting of the shares.

The UKLA has a legal obligation to oversee the listing process, and to ensure that its rules are met. This duty involves the UKLA in reviewing and approving the prospectus or listing particulars. This document, which will be passed to the UKLA by the sponsor, primarily contains information on the company and its business, and must satisfy the UKLA's Listing Rules to ensure that only companies meeting the conditions for listing come to market.

The UKLA will liaise with the company's advisers until the regulatory requirements are met. In parallel to the UKLA's listing process, the Company must apply to the LSE to have its securities admitted to trading on its markets. The LSE has its own set of admission and disclosure standards which sit alongside the UKLA's Listing Rules.

Specific Requirements

The Company needs to satisfy the eligibility criteria for mineral companies under the Listing Rules. This includes having to show that, if it does not hold controlling interests in a majority (by value) of its properties, fields, mines or other assets in which it has invested, it has a reasonable spread of direct interests in mineral resources and has a right to participate actively in their extraction, whether by voting or through other rights which gave it influence in decisions over the timing and method of extraction. For many mineral companies it is important that this test is passed, otherwise they may not be able to satisfy eligibility criteria for a normal (non-mineral) issuer, such as revenue generation.

In March 2011, the European Securities and Markets Authority (the successor body to the Committee of European Securities Regulators ('CESR')) published an update of the CESR recommendations for the consistent implantation of the Prospectus Directive, which contained revised recommendations as to the content requirements of prospectuses issued by mineral companies. These recommendations will be taken into account by the UKLA when approving a company's prospectus or listing particulars.

A summary of the principal changes introduced by the updated CESR recommendations is set out below.

- The definition of 'mineral companies' has been expanded to include companies with 'material mineral projects'. As a result, exploration-only companies are now included in the definition of 'mineral companies'.
- All mineral companies are now required to include a competent person's report ('CPR') in their prospectus. Previously, a CPR was only required for mineral companies without a 3 year trading history. This change brings the CESR recommendations in line with current market practice. The CPR should be dated no more than 6 months from the date of the prospectus.
- The CESR recommendations now include recommended content requirements for CPRs and confirmation that a competent person must possess minimum competency requirements.
- The previous requirement for a forward-looking cashflow projection for mineral companies without a 3 year trading track record has now been removed from the CESR recommendations.

AIM

Background

AIM was established in 1995 by the LSE with the intention of providing a market for smaller companies and avoiding the relatively stringent regulatory and financial hurdles imposed by the Official List. AIM is specially designed to meet the diverse needs of companies from all around the world, with 220 companies incorporated outside the UK now trading on AIM.

Although the formalities and regulation in respect of a company seeking to list on AIM mainly concern procedural matters, there are also specific requirements imposed by the AIM Rules in respect of mining (and oil and gas companies), as discussed below.

Criteria for Admission

Unlike the Main Market, AIM places no restrictions on the size of companies who join the market, nor does it place any demands on their length of operating record or on the percentage of shares held in public hands. This has largely contributed to the market's popularity over the last 15 years or so as its relative flexibility is proving very attractive to prospective applicants. Although there are few entry criteria for a company listing its shares on AIM, perhaps the most significant is the production of an admission document (which complies with the AIM Rules) and the requirement that the shares are freely tradeable. The London Stock Exchange has indicated that if a company's market capitalisation exceeds £500 million, and it could otherwise satisfy the criteria for the Main Market, it will be expected to go to the Main Market rather than AIM.

Process

The Company must appoint a Nominated Adviser ('Nomad'), whose duty to AIM requires it to judge the appropriateness of the Company's admission application and ensure that the company complies with all AIM regulations both during the admission process and whilst it is listed on AIM. A nominated broker must also be appointed whose principal function is to identify potential investors, and bring together buyers

and sellers once the securities have been listed. Unlike the Main Market, the admission document is not reviewed or vetted by the LSE or The UKLA, as this role is delegated to the Nomad. The document must however be drawn up to ensure that it contains all such relevant information as investors would reasonably require for the purpose of making an informed judgement on the profitability and sustainability of the company.

Due to the more relaxed regulatory environment, timetables and deadlines are often more flexible and are usually set by agreement between the Company, the Nomad and the Broker. As a rule of thumb, the process can take anything up to three or four months.

Specific Requirements

The AIM Rules set out specific rules in relation to mineral companies seeking to list their securities on AIM.

■ Competent Person's Report

There is a requirement that companies produce a competent person's report ('CPR') detailing all the material assets and liabilities of the applicant. The report must be produced by a Competent Person who should be professionally qualified, be independent from the applicant and its senior employees, and must have at least 5 years relevant experience in the assessment and evaluation of mining. He must also not be a sole practitioner and not be remunerated by way of a fee linked to the admission or value of the company. The CPR must be reproduced in the admission document in full and without adjustment and must be produced no more than 6 months prior to the date of the admission document.

■ Admission Document Disclosure

Where information contained elsewhere in the admission document is extracted from the CPR, it should be extracted directly and presented in a manner which is not misleading and provides a balanced view of the CPR. The Competent Person must also review the information contained in the admission document and confirm in writing its accuracy.

■ **Material Assets of the Applicant**

A summary of all material contracts should be inserted into the admission document. These material contracts should be deemed to include all material subsisting agreements which relate to the assets and liabilities of the applicant notwithstanding whether such agreements are in the ordinary course of business or were entered into outside of the two years preceding the publication of the admission document.

■ **Legal Opinion**

In relation to due diligence, a formal opinion letter dealing with matters such as jurisdiction, good standing of any subsidiaries and title or validity of assets may be required from an appropriate legal adviser.

■ **Site Visit**

The Nomad will be required to undertake a site visit to inspect the assets as far as it is practicable to do so.

■ **Payments over £10,000**

Finally, the admission document should disclose any payments aggregating over £10,000 made to any government or regulatory authority by the Company with regard to the acquisition of, or the maintenance of, its assets.

■ **Risk factors**

Risk factors should address both the specific and general risk factors affecting the company. Risk factors specific to the Company should be set out ahead of any general risks applicable to the Company within the risk factors section of the admission document.

■ **Lock-ins for new businesses**

Companies who have not been independent and earning revenue for at least two years will need to ensure that all related parties and applicable employees agree not to dispose of any interest in the Company's securities within one year of the date of admission.

Continuing Obligations for both the Official List and AIM

Official List

The UKLA imposes continuing obligations on companies on the Official List in order to ensure firstly the timely disclosure of all relevant information and secondly equal treatment of all shareholders. These obligations are spelt out in the Listing Rules and range from compliance with certain disclosure requirements (via notification to a Regulatory Information Service) to various administrative measures ensuring equality of information provided to all shareholders. Many types of transaction are required to be disclosed to the market and some, such as a major acquisition, may require shareholder approval in advance. There are also special rules for determining the classification of transactions by listed mineral companies.

AIM

AIM companies are also subject to continuing obligations and have to disclose substantial transactions and any developments (outside the public knowledge) which might lead to a substantial movement in share price.

Conclusion

Listing on either the Official List or AIM is undoubtedly a big step for any mineral company which should be given thorough consideration before proceeding. By listing its securities, a company is able to raise capital, its profile and improve management efficiency. AIM in particular, given its relative flexibility and ease of entry is proving to be an increasingly viable option and has given dozens of mineral companies the chance to list their shares on a publicly traded format which is widely recognised as the world's most successful growth market.

This note is a general guide and only provides a brief summary of the position. It is not intended to provide definitive legal advice which should be sought in relation to any particular matter.

For further information please contact Tom Nicholls or your usual LG contact or visit us at www.lg-legal.com