

Morgan Lewis

IPO considerations

Carter Brod & Iain Wright, Morgan Lewis
London Stock Exchange Russia & CIS Conference
Moscow
2 July 2012

Presentation outline

- Legal considerations in GDR IPOs
 - Requirements for a London GDR listing
 - Sector specific considerations
 - Russian law considerations
- Legal considerations in AIM IPOs
 - The role of the Nomad
 - Eligibility requirements
 - Admission document
 - Corporate governance
 - Continuing obligations

Requirements for a London GDR listing

- GDRs eligible for standard Main Market listing only
- Listing requirements
 - 25% free float in respect of the GDRs
 - Minimum market capitalisation £700,000
 - Entire class of GDRs must be listed
 - Audited historical financials for past 3 years plus interims
 - Working capital statement not required
 - GDR listing eligibility letter

Requirements for a London GDR listing

- Continuing obligations
 - UK Corporate Governance Code does not apply
 - Annual accounts, but no requirement for half-yearly or quarterly reporting
 - Annual corporate governance statement
 - Price sensitive information – timely disclosure
- Recent developments regarding GDR block listings

Requirements for a London GDR listing

Prospectus disclosure requirements

- Business overview
- Risk factors
- Operating and financial review
- Management and employees
- Major shareholders
- Related party transactions
- Summary of material contracts
- Information about underlying shares
- Terms and conditions of GDRs
- Terms and conditions of the offering
- Financial statements

Sector specific considerations

- Recommendations of ESMA (formerly CESR) for specialist issuers
 - Mineral companies
 - Property companies
 - Shipping companies
 - Other sectors
- US disclosure rules for Rule 144A offerings

Russian law considerations for GDR IPOs

- Underlying shares must be listed on a Russian stock exchange
- Requirement for permit from FSFM
- “De facto” caps on GDR program size
- Legal caps on GDR program size
- Recent developments: Changes in Russian regulation of DR programs to take effect in 2012 and 2013

AIM IPOs - An IPO like any other

- Preparatory phase
 - Due diligence, governance, accounts restatement (if required), etc.
- Marketing
 - “Prospectus” issued to potential investors, investor roadshow, etc.
- Admission
 - Application
 - Final form “prospectus”

AIM - Exchange-regulated market

- AIM companies are not “listed”
 - Listing Rules do not apply
 - UKLA does not (usually) pre-vet prospectus
- Principal regime established by LSE itself
 - AIM Rules for Companies
 - AIM Rules for Nominated Advisers
 - AIM Notes (resources and investing companies)
- Supervisory role delegated to Nomads
- Wider securities regime still applies*

AIM - The role of the Nomad

- LSE's supervisory role delegated to Nomad
 - LSE-conferred status (sanctions regime)
 - Nomad's principal duty to LSE, not company
 - Detailed obligations in AIM Rules for Nomads
- Nomad declaration
 - Company and securities suitable for admission
 - Compliance with AIM Rules
 - Directors advised of company obligations under AIM Rules
- Ongoing guidance (must have Nomad at all times)

AIM - Limited eligibility requirements

- No specific eligibility criteria
 - No free float
 - No minimum trading record
 - No minimum market capitalisation
- LSE may impose special conditions
- Company and securities must be “suitable for admission to AIM”

AIM - Securities for admission

- Not just shares eligible (e.g. warrants, debt*, DRs*)
- All securities of a class must be admitted
- Must be freely transferable
- Must be capable of electronic settlement (CREST)
- One year lock-in of existing shareholders
 - Required by AIM Rules if less than 2 years trading record
 - Nomad may require restrictions anyway

AIM - The admission document

- Drafts (pathfinder and P-proof) used to market and place securities
- Final form required for application for admission
- Company and directors must take legal responsibility
- Must contain all information reasonably necessary for investors to fully understand, among other things
 - Financial position of the Company
 - Rights attaching to shares
- Other contents requirement specified by “AIM-PD”

AIM - Admission document: AIM PD

- Information on company and business overview
- Risk factors
- Financial information
 - Last 3 years audited accounts (N.B. possible IFRS restatement)
 - Current trading
- Details of securities to be admitted
- Reasons for offer and use of proceeds
- Working capital statement
- Contracts: material, related party
- Information on directors/major shareholders

AIM - Corporate governance

- UK Corporate Governance Code does not apply
- Nomad usually requires compliance as far as appropriate
 - Independent non-executive directors
 - Audit, remuneration and nomination committees
 - Internal controls
- Controlling shareholders
- Shareholder protection rights (e.g. takeovers)
- Code on management share dealing
- Obligation to comply with AIM Rules

AIM - Continuing obligations

- Financial information: accounts (6 months) and half-yearly reports (3 months) (IFRS)
- Significant holdings/dealings (N.B. DTRs)
- Other specified events (e.g. change of directors or Nomad)
- Price sensitive information – timely disclosure
- Transactions
 - Announce substantial transactions (10% test)
 - Shareholder approval for reverse takeover/fundamental change
 - Related party (5% test): directors' fairness statement
- Rule 26 information on website



international presence

Almaty Beijing Boston Brussels Chicago Dallas Frankfurt Harrisburg Houston Irvine
London Los Angeles Miami Moscow New York Palo Alto Paris Philadelphia Pittsburgh
Princeton San Francisco Tokyo Washington Wilmington