

# A guide for US issuers floating on AIM



## **The London Stock Exchange is known to have the most diverse investor base of any major global exchange and is used by more international issuers than any other stock exchange, including by many US companies.**

In recent years, there has been a significant increase in the number of US companies listing on the LSE. In the five-year period from 2017 to 2021, 46 companies from the United States listed in London, with a combined market capitalisation of approximately US\$43 billion and raising approximately US\$8 billion upon listing.

Of particular note have been US healthcare companies that have used the market to great effect to raise money from public investors where that route would not have been open in the United States. Within the technology sector, US fintech and gaming companies in particular have used the AIM market to achieve a public listing, and 2021 saw the record for the largest US-based company ever to IPO on AIM broken twice by US gaming companies (first TinyBuild, then Devolver Digital).

With the LSE's junior market, the Alternative Investment Market (AIM), companies have the ability to access public markets earlier than in other jurisdictions, including in the US. The

UK's AIM market was deliberately set up by the London Stock Exchange to sit alongside and complement its main market (which houses the FTSE 100 and larger stocks) to provide growth companies and investors with the opportunity to achieve outsized returns and propel their growth.

This guide sets out the main areas US issuers should consider when planning for an AIM IPO:

- Starting out.
- Group structure.
- Corporate issues and capital structure.
- Marketing.
- Admission document or prospectus.
- US regulatory considerations – Regulation S, Category 3.
- Tax issues.
- Tax incentives – Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCT).
- Accounting and financial reporting.
- Corporate governance and management considerations.

## Advantages of an AIM listing

**The key advantages of floating on AIM, compared to listing on the main market or in the US, include:**

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the opportunity for small and medium sized, growth-oriented companies to thrive on an international public market

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access to a diverse, high quality and leading institutional investor base, and long-term growth capital

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no minimum free float (ie no minimum number of shares to be held in public hands)

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the ability to retain strategic and operational control of the business

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a cost effective and simple admission process

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a balanced regulatory framework

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financial statements that need only be filed on a half yearly basis, rather than quarterly (as in the US)

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a less litigious legal environment.

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## Starting out

**There are established procedures and resources available to help companies navigate the well-trodden path to an AIM flotation.**

An important starting point is to meet with financial advisors who are well placed to take the company on as a client. Each AIM-quoted company is required by the AIM Rules for Companies (AIM Rules) to appoint and, following the IPO, retain a nominated advisor (Nomad) and broker. Frequently, but not always, the Nomad and broker are the same entity. Nomads can offer early insight into whether a company is ready for the public markets.

Once a Nomad has been chosen, it will work with the company to gain a deep understanding of its strategy and the market options available. It will spend time with management and carry out due diligence before taking on the company as its client.

Once the Nomad engagement commences, the Nomad and company will work together to develop the equity story and ensure the message to investors is refined.

Often, before the detailed work commences, the Nomad will arrange 'early look' investor meetings with institutions to gain invaluable insight on the levels of interest among UK investors. It will ascertain whether it is the right time for that company to market its shares or whether there are areas of the business that need fine-tuning before launching into the full transaction timetable.

# Appropriate group structure

**US companies looking to float on AIM should also start thinking about the appropriate group structure.**

AIM is a very flexible market as it allows US companies to list stock directly, and increasingly this is the option companies are proceeding with.

Equally, companies sometimes choose to restructure so as to insert a UK or offshore company as the holding company (also known as a 'topco') prior to going public.

The table below further explains the options available to companies considering structuring.

	US Topco	UK Topco	Offshore Topco
Company law	Requirement to amend the constitutional documents, including to mirror certain provisions of the Takeover Code, and to include UK style pre-emption rights.	No specific amendments required.	May require amendments, depending on jurisdiction.
Takeover code	Would not directly apply (however certain provisions of the Takeover Code are usually mirrored in the company's constitution).	Automatically applies.	May apply, depending on jurisdiction.

	US Topco	UK Topco	Offshore Topco
<b>Depository interests</b>	It is not possible to submit US stock directly into CREST (the UK's clearing system) therefore depository interests are required.	Not required.	Not normally required, depending on jurisdiction.
<b>Marketing</b>	There are no specific regulatory restrictions to issuing US stock directly; however this is less familiar to some investors.	UK institutions are generally more familiar with investing in UK corporates, and therefore understand their legal protections better.	This route is often used in funds; and can be less familiar to investors.
<b>US securities laws</b>	Subject to US Regulation S, Category 3, meaning that sales of shares are restricted.	If considered a foreign private issuer (which depends on the location of shareholders, directors, management and assets), the same US trading restrictions may not apply.	If considered a foreign private issuer, the same US trading restrictions may not apply.
<b>Tax incentives – EIS/VCT</b>	EIS/VCT could be applicable, thereby extending the potential investor pool. A permanent UK establishment is required in order to fulfil eligibility criteria.		
<b>Accounts</b>	Can report in US GAAP.	Must report in IFRS.	Can report in either IFRS or US GAAP, depending on the jurisdiction.

## Corporate issues and capital structure

**An AIM IPO will require the ‘flattening’ of a company’s share structure – that is, generally ensuring that there are no different classes of shares with different voting or economic rights.**

If a company is considering an AIM IPO, it will need to check its share capital structure, including where applicable its investment documents, to understand what happens on an IPO. The company may need to speak to its existing investors to explore the possibility of converting different classes of shares into common stock or ordinary shares.

UK investors will expect certain protections, including pre-emption rights on issue and protections in case of a takeover. These protections are afforded automatically when a UK topco is used. As a result, tailor-made provisions will likely need to be incorporated into the company’s constitutional documents, if a US or other topco is used. Taylor Wessing has worked on several precedent examples of this being done in practice.



**An AIM IPO will require the ‘flattening’ of a company’s share structure.**

## Marketing

**The company's Nomad and broker will work with the company to develop its marketing message, including highlighting the company's strengths and its strategy for tapping into the market. Overseas issuers will need to be prepared to respond to questions about why a flotation in London has been selected to fund the company in its next phase of growth.**

There are many reasons companies look to the UK to float, including the possibility of going public earlier than in other jurisdictions (especially the US), as the AIM market is specifically designed to support small and medium growth companies. Other reasons for listing in London may include establishing a base for international expansion, gaining access to a different investor base to traditional VCs, and/or providing a liquidity route for existing investors.

As noted above, it's likely the company will have contact with a small number of institutions before the listing process formally begins. As the process evolves, there will be further opportunities to meet more

investors, and the Nomad and broker will likely conduct and publish an independent research report on the company. The availability of early look meetings, ongoing investor dialogue and research reports differs from market practice in the US and can help to de-risk the process.

It's generally accepted that it's easier to market issuers to UK investors if there is a closer connection to or sentiment towards the UK, as UK investors tend to be intuitively more comfortable with investing in UK company shares.

That said, there are plenty of examples of US companies successfully listing their shares without inserting a UK (or other) topco. For example, Taylor Wessing advised Boku Inc., a US issuer, on its successful AIM IPO, and several other US companies have listed directly. Therefore, it is up to a US issuer, depending on the market sentiment at the time, whether it wants to put in place a UK topco so that it appears less 'US-centric'.

## Admission document or prospectus

### **A company seeking admission to AIM will also need to consider the documents that will be required before listing.**

Under the AIM Rules, the starting position is that any company applying to be listed on AIM must produce an admission document containing the information set out in Schedule Two to the AIM Rules.

An admission document will include, among other things, the following items:

- Details of the company, including its history, its current business, key business and market trends, current and trading prospects, an overview of its corporate governance, and reasons for seeking an AIM admission.
- Three years' historical financial information, or such period that the company has been operating, if shorter.
- Details of the company's officers and its professional advisors.
- The expected timetable of admission.

- If applicable, statistics relating to the placing, including the company's share capital and anticipated market capitalisation.

Rule 3 of the AIM Rules requires AIM applicants to take reasonable care to ensure that all information is accurate (to the best knowledge of the company), and that no important information is omitted.

A prospectus (in place of an admission document) is required in two distinct situations:

1. Where a company's transferable securities will be offered to the public in the UK, unless an exemption applies.
2. Where a company is seeking the admission of transferable securities to trading on a regulated market in the UK.

As AIM is not a regulated market, a prospectus will only be required in connection with an admission to AIM if there is also an offer of securities to the public, and this offer is not covered by an exemption.

There are several exemptions that companies may rely on, including:

- an exemption for offers directed at or made to qualified investors (ie institutions only)
- offers directed at or made to fewer than 150 persons (other than qualified investors) in the UK
- offers where the total consideration of the offer is no more than €8 million.

The contents requirements of a prospectus are more onerous than those of an admission document and a prospectus must be formally approved by the Financial Conduct Authority (FCA) in the UK. Importantly, if a prospectus is required in connection with an admission to AIM, this prospectus can serve as the admission document, provided it includes the information set out in Schedule Two of the AIM Rules (paragraphs (c) to (l)).

In practice, AIM IPOs often do not involve the publication of a prospectus, as the parties tend to rely on the exemptions described above by carrying out a placing to institutional investors.

The company's legal advisors and/or the Nomad will check that the admission document complies with the AIM Rules before the document is made public. It will be important that the directors, and the company's legal advisors, undertake a thorough verification process to ensure all statements in it are all true and accurate, in order to avoid criminal and/or civil liability.

Once the admission document (or prospectus) is verified by checking each statement (or at least each material statement) on a line by line basis using formal notes and back-up materials, it is then signed off by the directors. Following publication, the document must be publicly accessible, at no charge, on a website maintained by the company.

## US regulatory considerations – Regulation S, Category 3

**The US securities rules are relevant to all securities offerings on the UK markets (whether or not the issuer entity is a US company). The starting point on any offering of securities is that all offerings of securities should be registered with the SEC, unless otherwise exempt. Regulation S provides an exemption for 'offshore' transactions (that is, offers of securities outside of the US), and there must not be any directed selling efforts within the US.**

Regulation S provides an exemption for non-US issuers executing an IPO outside of the US and can run alongside other available exemptions enabling certain US investors to participate in such offerings.

However this position becomes complex when a US company is looking to conduct an IPO overseas.

There are three categories of 'issuer' under Regulation S (categories 1, 2 and 3), each of which impose additional requirements in order to qualify for the exemption.

The premise is that the stronger the link to the US, the more steps will be needed to ensure there is no inappropriate flowback of securities into the US after they have been placed in an offshore transaction.

US issuers are commonly classified as Category 3 issuers (with the most onerous requirements), though it may be possible to fall out of that category in the event that an overseas holding company is used and if the company is classified as a 'foreign private issuer'. US issuing entities will always be in category 3.

A foreign private issuer is an entity incorporated or organised under the laws of a jurisdiction outside of the US, unless the following two conditions apply:

1. More than 50% of its outstanding voting securities are directly or indirectly owned by US residents.

2. Any of the following is applicable:

- A majority of its executive officers are US citizens or residents.
- A majority of its directors are US citizens or residents.
- More than 50% of its assets are situated in the US.
- Its business is generally administered in the US.

Those selling restrictions are now included electronically in the clearing system, which has reduced the risk of liquidity and price differentials and has simplified the process for US issuers carrying out offerings on AIM.

If Category 3 applies to an issuer, there is a distribution compliance period of up to 12 months following the IPO. During this time, there can be no sales of the IPO securities into the US. The securities sold in the IPO must also contain prominent legends that provide that they are not able to be sold to anyone within the US.



**Regulation S provides  
an exemption for  
'offshore' transactions.**



## Tax issues

**A key area for consideration in relation to any pre-IPO group reorganisation will relate to tax, both for the reorganisation itself and to ensure tax efficiencies within the group post-IPO.**

Importantly, due to US 'anti-inversion' rules, if a UK or offshore company is inserted as a new topco, it may be subject to tax in both the US and in the country of its incorporation or residence (ie the UK or the offshore jurisdiction). Further, as the US-UK double tax treaty is not clear on this issue, this could result in the holding company being liable to tax and subject to filings in both jurisdictions.

Additionally, dividends to investors from a non-US topco could be subject to US withholding tax as if they had been declared by a US company.

If a new topco is incorporated into the group structure, it will be important to ensure no tax leakage occurs, nor any adverse tax consequences arise from the company's existing stockholders looking to swap their US stock interests for shares in the new topco. This will require ensuring no transfer taxes or tax reliefs are used, and no capital gains are indirectly or inadvertently triggered. Although this area can be complex, these issues can be managed with specific advice geared towards the company.

Lastly, it will be important to consider the structuring of the company itself from an operational perspective. This can include its strategic growth and the jurisdictions it wants to expand into, as well as which corporate group structure will be best suited to achieve that.

## Tax incentives

### Enterprise investment scheme and venture capital trusts incentives

**It will be important for an issuer to consider whether it qualifies for investment under the UK's Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCT). These are tax incentive schemes for individuals and funds that invest in earlier stage, higher risk companies. These can include AIM-quoted companies and, as such, if the issuer is eligible to qualify for EIS or VCT status it widens its potential investor pool. Qualifying companies can receive up to £5 million (or £10 million for 'knowledge-intensive companies') each year from EIS or VCT investors.**

Further, there is a three-year holding period for EIS investors, and a five-year holding period for VCT investors, before they can dispose of their stock/shares, in order to qualify for reliefs. As such, this qualification as an EIS or VCT company often results in a more stable shareholder base and a longer-term outlook of investors. It is therefore important for US companies looking to list on the AIM market to understand early on

whether or not they could qualify for EIS or VCT investment.

There are several tests for qualifying, which are set out below. However, the fundamental requirement is that the company has a permanent establishment in the UK (or will have at the time of issuing the shares, and for at least three years after).

There are two strands to the test for permanent establishment (only one needs to be met in order to qualify):

1. There must be at least one person (aside from an independent contractor) who is authorised, and regularly exercises the authority, to enter into binding and substantive agreements for the company, relating to its trade; or
2. The company has a fixed place of business in the UK (of which the activities conducted there must be more than preparatory in nature); and the operations must be regularly carried out from the UK. Simply having a UK subsidiary will not satisfy this test.

HMRC offers support and guidance on these issues. EIS and VCT reliefs are areas of particular scrutiny for HMRC, and it is recommended to seek legal and tax advice respectively at the outset, as EIS and VCT investors will often not invest unless the company has first received formal advanced assurance from HMRC, or an opinion from an appropriately recognised tax advisor, indicating that it is eligible for EIS and VCT investment. HMRC advance assurance can take several weeks or months to obtain, so an application will need to be submitted at an early stage if a company thinks it may qualify and if it is seeking investment from UK EIS or VCT investors.

It may prove easier for companies to qualify for the EIS or VCT treatment in terms of the permanent establishment test if they restructure to insert a UK holding company. However, these decisions will all depend on the strategy and goals of the company.



**The fundamental requirement is that the company has a permanent establishment in the UK.**

## EIS and VCT eligibility tests

**The tests for qualifying for the EIS and VCT include:**

### Shares

Shares must be paid in cash and must be non-redeemable ordinary shares that do not carry present or future preferential rights to any assets on a winding up or to preferential dividends. This will normally be satisfied in most cases, as it is not normally possible to list shares in the UK with differing voting rights and, as noted above, the AIM Rules require a simple share structure.

### Age of shares

Shares must be issued within seven years of the first commercial sale by the company; or within 10 years if the company is considered 'knowledge-intensive' (described below). This condition is less restrictive if the company enters a new geographical market or launches a new product, provided that the investment is equivalent to at least 50% of the company's average turnover for the last five years prior to the investment.

### Gross assets

The value of the group's gross assets cannot exceed £15 million immediately before the issue of shares, or £16 million immediately after the issue of shares.

### Employees

The group and/or the company must have fewer than 250 full-time employees. That number is increased to 500 full-time employees for knowledge-intensive companies.

### Control and independence

The company must not be under the control of another company (50.1% test) and must not have control of any other company aside from a qualifying subsidiary.

### Annual limit

Subject to the lifetime limit (see below), the company can raise up to £5 million, or £10 million for knowledge-intensive companies, in every rolling 12-month period under risk capital schemes, which includes the EIS and VCT.

### **Lifetime limit**

The company cannot raise more than £12 million under the UK's risk capital schemes; £20 million if the company is considered knowledge-intensive.

### **Purpose**

Any money raised (which may be raised within the UK or overseas) must be for promoting growth and development of the company's business.

### **Trading requirement**

The business of the entire group must not include a substantial amount of excluded activities.

### **Spending of money**

The money raised for its qualifying business must be used within two years of the date of the issue of the shares.

### **Financial health**

The company must not be facing financial difficulties.

### **Unquoted status**

The shares of the company must not be listed, and there must be no plan for them to become listed. Note that an AIM quotation does not count for the purpose of this test.



## Definition of 'knowledge-intensive' company

**A company will be deemed 'knowledge-intensive' if it meets an 'operating costs condition' and either the 'innovation condition' or the 'skilled employee condition', at the time of the share issue.**

The operating costs conditions require that:

- in at least one of the three preceding years, at least 15% of operating costs consisted of research and development expenditure. Operating costs can include expenses recorded in accounts or income statements; and
- in each of the three preceding years, at least 10% of operating costs consisted of research and development expenditure.

The innovation condition requires the issuing company to have created or to be creating intellectual property at the time the shares are issued, and it must be reasonable to assume that within ten years of the share issue the intellectual property (exploitation and use) will form the majority of the issuing company's business, or group's business. Importantly, the majority of the value of the

intellectual property must have been created by the company, and they must have the right to exploit it.

The skilled employee condition requires that at least 20% of the employees have a relevant higher education qualification of a Master's degree or above which is necessary for their role, and such employees are engaged directly in the research and development which the issuing company (or a qualifying subsidiary) is involved in. This condition must be met at the date of issue, and must follow for three years following the date of the share issue.

Issuing companies should be aware of the anti-avoidance rule introduced in April 2018, requiring issuing companies to evidence the investment represents a 'risk to capital'. The purpose of this rule is to exclude any improper arrangements being used for capital tax reliefs.

The company will need to prove that the issuing company has intentions to grow and develop its trade long-term, and there is a significant risk of capital loss which may exceed the net return for investors.

## Accounting and financial reporting

**Companies seeking an AIM listing will need to present audited historical financial information and records for the last three years (or the period they have been operating, if shorter).**

It is possible for US issuers to report using US GAAP. That said, this is not mandatory, and sometimes IAS is used if it is felt that this would be optimal from a marketing perspective. IAS reporting is required if a UK topco is used.

As part of the pre-IPO process, companies will need to appoint a firm of accountants to carry out the financial due diligence on the issuing company and prepare reports to be addressed to the Nomad, as well as some that are reproduced publicly in the admission document.

Further accounting workstreams will also be involved, including working capital projections, a financial position prospects and procedures report, and an analysis of the financial position as at the last reported annual or interim accounting period. These documents will need to be prepared and then reviewed by the reporting accountants.

Similarly to setting up the management and corporate governance (see opposite), preparing historic accounts and applying the correct financial procedures can take time, therefore it is advisable to start early.

Following a successful AIM IPO, only half-yearly and annual reporting is required.



**Only half-yearly and annual reporting is required.**

## Corporate governance and management considerations

**AIM companies often follow the Quoted Companies Alliance (QCA) Corporate Governance Code, which requires that the board consists of a well-functioning, balanced team led by a chair.**

The chair of the board is usually a non-executive director and in the UK context has a separate role to the CEO. Investors will want to make sure that one individual is not dominating the business.

Once listed, the board will be required to have at least two independent non-executive directors. In order to establish independence, past employment or business relations, participation in the company's options or pension scheme, or tenure over nine years, would be taken into consideration. If a candidate meets any of these factors, it is unlikely that person will be considered independent.

The company will then also establish committees for audit, remuneration and director nomination.

In practice, investors will expect at least one or two directors to be UK residents, although this is not a strict requirement. They will also expect at least one of the directors to have previously held office on an AIM company board. It is also common for the CFO to hold a board seat.

Finding a non-executive chairman and non-executive directors can often be a long process and should be commenced as soon as possible. Nomads and advisors can often be a good starting point to help find candidates.

**The chair of the board is usually a non-executive director and in the UK context has a separate role to the CEO.**

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