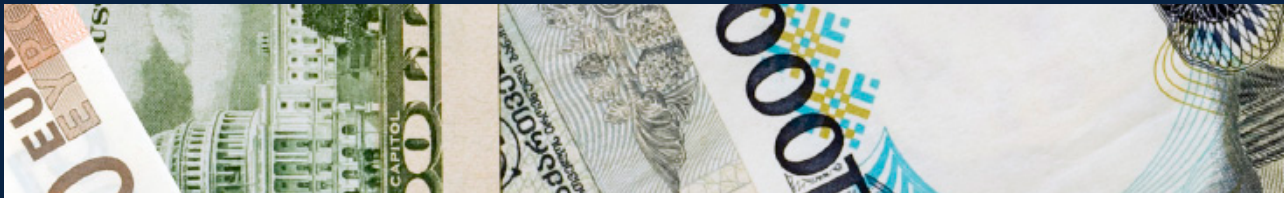




A GUIDE TO RAISING FINANCE

KEY UK BASED EQUITY FUND RAISING OPTIONS FOR NON-UK BASED RESOURCE COMPANIES



The UK equity capital markets remain an attractive option for non-UK based resource companies to raise capital.

Following the financial difficulties in recent years, there is a general perception that there is less finance available or that traditional lenders are less willing to provide it. This has been particularly noticeable for companies involved in extractive industries, where access to debt finance has traditionally only been available for a company with assets in production (a situation made more difficult now), with a noticeable bottleneck for early stage resources companies looking for much needed finance to develop projects. Listing on a UK capital market remains a very efficient way of raising capital.

There are a number of different listing options available to a company, which have varying degrees of regulatory requirements. The following guide explores the range of UK equity fundraising options, with an analysis of their regulation and standing.

Where do we start?

The first consideration is obviously whether the UK is an appropriate market?

Aspects that will dictate such decisions can include:

- Whether the sector the company operates in benefits from being on the market. That is to say, is there appropriate analysis associated with the markets? Is it liquid? Is there an active pool of knowledgeable investors?
- How onerous is the process?
- Can the company's structure and culture survive a listing?

For some business sectors, there is an acknowledgement that certain markets and locations offer a better fit. Whilst each market and location can make claims that it serves the sector best, it is widely understood that

the leading locations for equity fundraisings in the resource sector are the UK, Canada and Australia.

In considering the capital markets to float on, a company must take into account its trading history, financial standing, business strategy and the regulatory requirements of each capital market. We examine below the main capital markets in the UK and compare briefly the main characteristics and differences between them.

The Official List

The Official List, maintained by the UK's Financial Services Authority (FSA), is divided into two listing segments: "*Premium*" and "*Standard*".

In order to gain a *Premium Listing*, a company will need to comply with the listing requirements over and above those imposed by European Union (EU) legislation and standards set by the FSA and its Listing Rules (LR). Premium Listing ensures lower cost of capital and access



to a broader range of investors by virtue of those higher standards and is only available to equity shares issued by commercial trading companies.

In order to gain a *Standard Listing*, a company must comply with the obligations under EU legislation. The overall compliance requirements are not as burdensome as for Premium Listing, in terms of preparation for listing and on an ongoing basis.

In particular, companies must consider the following points:

1. Only equity shares can be included in a Premium Listing.
2. Other types of security can only have a Standard Listing, including depository receipts and other fixed-income securities.

A Premium Listing offers the potential to be included in the FTSE UK series of indices, which includes the FTSE 100. Access to these indices is the key benefit of achieving a Premium Listing.

The FSA establishes the criteria for acceptance for admission to the Official List. The rules have their basis in EU Directives, and the following are the applicable rules:

1. **Listing Rules (LRs):** conditions a company must comply with in order for its securities to be applicable for admission to the Official List. Additional requirements may apply if a company wishes to obtain a Premium Listing for its shares.
2. **Prospectus Rules (PRs):** these rules require an applicant company to publish a prospectus if it intends for its shares to be admitted to a regulated market or offered for sale to the public.
3. **Disclosure Rules and Transparency Rules (DTRs):** these implement the EU Market Abuse Directive and the EU Transparency Directive and detail the continuing requirements which must be followed in relation to securities admitted to a regulated market.

In order to be listed in the UK, a company must apply to the FSA, which has the responsibility of monitoring and regulating the UK financial services sector. The company's application will be to join the Official List, but in addition it

can apply to join the Main Market of the LSE or the PLUS-listed market, which is operated by PLUS Markets.

[An Official List Premium Listing?](#)

This requires the issuer to meet the UK's highest listing standards, which exceed the EU Directives' standard. There are three categories:

- Equity shares issued by commercial companies.
- Equity shares issued by closed-ended investment funds.
- Equity shares issued by open-ended investment companies.

[An Official List Standard Listing?](#)

This requires the issuer to meet certain minimum EU standards for listing.

[Main differences between Standard and Premium Listing](#)

In both a Premium Listing and a Standard Listing of equity shares the following must be complied with:

1. An obligation to disclose inside information, and to maintain an insider list.
2. A requirement to provide updated information on an annual basis.
3. The general duty to issue a prospectus in respect of future issues of shares.
4. The obligation to prepare an annual report and accounts, along with half yearly reports and interim management statements.
5. Individuals who have managerial responsibilities must disclose certain transactions.

Provisions specific to a Premium Listing include:

1. The requirement for a three-year trading record.
2. The obligation to have a sponsor.



3. Compliance with the UK Corporate Governance Code, or an explanation in respect of non-compliance.
4. A mandatory requirement to offer pre-emption rights on new issues.

Exchange-regulated markets

These offer an alternative to the Official List, and in this case, instead of being listed, a company's securities are quoted. The main benefit to this option is that a company does not need to comply with the more onerous requirements of full listing. AIM (the UK's junior market) is an example of an exchange-regulated market.

PLUS-quoted is an exchange-regulated market also operated by PLUS Markets.

Admission to AIM

AIM maintains itself as one of the world's leading junior markets and unlike many of its competitors, its entry requirements and regulatory regime are less onerous.

What factors influence the company's decision?

Company profile

A listing or admission on a recognised exchange undoubtedly raises the profile of a company and may give it more credibility.

Business sector

If a number of other companies in the same business sector are listed, this may suggest that there will be a market for shares of the issuer. If the company does not have a long trading history, or will find it difficult to comply with the regulatory requirement of a Premium Listing, AIM may offer a suitable alternative. Moreover, different markets may price the company's risk profile differently.

Entry requirements

Regulation

A company which is able to demonstrate that it has the capacity and resources to comply with the regulatory requirements will give confidence to prospective investors.

1. **Accounting requirements:** Where a company wishes to join a regulated market, the financial information that it is required to produce in its prospectus and its periodic financial information will have to comply with International Financial Reporting Standards (IFRS) as adopted by the EU.
2. **Proposed investors:** Some markets, such as the LSE's Standard Listing of Global Depository Receipts (GDRs) on the LSE's Professional Securities Market (PSM) are aimed at institutional investors only and may therefore restrict the extent of possible investors. Listing on the Main Market or AIM will reach a wider base of possible investors.

Listing shares or depository receipts

Depository receipts (DRs) can be listed and traded on a market independently from the company's regular securities and are certificates that represent ownership of a certain number of a company's securities, such as shares. They can be admitted to the Standard Listing segment of the Main Market, the PSM, AIM and PLUS Markets.

Whilst the regime has a softer regulatory position, this may be attractive to companies from less well-established markets and less well-regulated locations. DRs are usually quoted and can pay dividends.

Listings on the main market

Admission Criteria

The requirements of the admission criteria are set out in chapter 2 of *LR* and include:

1. Requirement that the company must be incorporated under the laws of its jurisdiction and be compliant with its constitution.
2. The shares must be admitted to trading on a regulated market. This would include the Main Market and its shares must be freely transferable and free from any liens or restrictions on the right of transfer.
3. Its shares must conform with the law of its jurisdiction and be properly authorised.



4. The market capitalisation must be at least seven hundred thousand pounds sterling (£700,000).
5. The whole class of the shares must be listed.

As noted above, any company with shares admitted to trading with a Premium Listing on the Main Market of the LSE is potentially eligible to be included on the FTSE UK Index Series (including the FTSE 100 index). This may bring greater liquidity as certain funds will only be permitted to trade for such companies in the relevant index.

Public participation

At least 25% of shares must be distributed to the public in one or more EEA states by the time of admission. This will not include shares held by:

- Directors and their connected persons.
- Persons with board appointment rights or those holding an interest of 5% or more do not count as shares in public hands.
- Trustees of the company's share plans or pension scheme.

Prospectuses

The company will need to publish a prospectus which is approved by the FSA. Where the company's *home state* is in a different EEA State the prospectus will be approved by that state's competent authority. This can allow that prospectus to be "passport" into the UK, subject to the production of a certificate of approval from the home state.

The historic financial information must be prepared in accordance with IFRS and will need to cover the last three financial years. For companies incorporated outside the EU, the accounts must be prepared in accordance with IFRS (or with that country's national accounting standards), provided that these have been accepted as equivalent to IFRS.

If the financial statements have not been prepared in accordance with IFRS (or the country's national standard has not been accepted as equivalent to IFRS),

the accounts will need to be restated. The European Securities and Markets Authority (ESMA) will assess the laws and regulations of certain countries and publish a list of additional information that will need to be included in the prospectus. This will enable a prospectus to be produced under legislation from a non-EEA country, which can be approved by the relevant competent authority of the issuer's home state.

There is a specific requirement for investment and resource (mineral) companies to provide an expert report as part of the prospectus. The expert report may be prepared in accordance with acceptable reporting codes, with the FSA providing a list of professional bodies acceptable to it for the purposes of preparing the report. The FSA expects the report to be dated no more than six months prior to the date of the prospectus, particularly in the case of a flotation.

“For companies incorporated outside the EU, the accounts must be prepared in accordance with IFRS (or with that country's national accounting standards), provided that these have been accepted as equivalent to IFRS.”



Additional requirements for Premium Listing

The requirements of the admission criteria for a Premium Listing are set out in chapter 6 of the LR and include:

Accounts	<p>The company's accounts must:</p> <ol style="list-style-type: none"> 1. Cover at least three years. 2. Be the latest accounts for a period ended not more than six months before the date of the prospectus. 3. Consist of consolidated accounts for the applicant and all its subsidiary undertakings. 4. Have been independently audited in accordance with the auditing standards applicable in an EEA State or an equivalent standard and reported on by the auditors without modification. <p>The company's auditors will need to be independent and provide written confirmation that they comply with independence guidelines issued by their national accountancy and auditing bodies.</p>
Working capital	<p>Broadly speaking the company must show, without qualification or exception, that it (and its subsidiaries) have sufficient working capital available for the group's requirements for the next 12 months from the date the prospectus is published.</p>
Trading record	<p>The applicant company must provide a historic revenue statement of its last three years' accounts in respect of at least 75% of its business, establish that it controls the majority of its assets and has done so for the last three years, and is carrying on an independent business as its main activity.</p>
Pre-emption rights	<p>The company's constitution will need to include pre-emption rights in favour of shareholders, which are equivalent to the UK pre-emption rules. The company must offer shareholders pre-emption rights on issues of equity securities for cash, unless it has their consent for these to be disapplied.</p>
Electronic settlement	<p>The shares to be issued must be eligible for electronic settlement through a system such as CREST. In practice, this will require either making use of the Crest Depository Investments facility or a separate depository interest structure, such as the versions run by Computershare.</p>
Sponsor required	<p>A company with, or applying for Premium Listing of equity shares, must have a <i>sponsor</i> who will be engaged to advise and assist the company on the listing process and on certain subsequent occasions after the listing of its shares.</p>



Disclosure and Transparency Rules

The Disclosure and Transparency Rules (DTR) cover companies admitted to the Main Market and companies admitted to AIM and PLUS Market. The following obligations apply to Premium and Standard Listing, and AIM where specifically stated:

Disclosure of inside information (DTR 2)	<p>Inside information is information that is likely to have a significant effect on the price of the company's financial instruments. The company will be subject to chapter 2 of the DTR (DTR 2) and has to disclose and control the circulation of inside information, and to notify an <i>RIS</i> as soon as possible of any <i>inside information</i> which directly concerns the company. Broadly speaking, the company must also publish such information on its website by the following business day.</p>
Periodic financial information (DTR 4)	<p>If the UK is the company's <i>home state</i>, it will have to comply with chapter 4 of the DTR (DTR 4) and produce:</p> <ol style="list-style-type: none"> 1. An annual financial report including audited financial statements, a management report and responsibility statements by the relevant responsible persons at the company, a half yearly financial report covering the first six months of the financial year, including a condensed set of financial statements, an interim management report and responsibility statements. 2. An interim management statement in a fixed period during the first six months and second six months of the financial year. If the company reports quarterly this will satisfy these requirements. 3. Where a company has depositary receipts admitted to listing, it will have to comply only with the requirements for an annual financial report. <p>Companies incorporated in Switzerland, the US or Canada do not have to comply with certain provisions of DTR 4, as the FSA has accepted that the requirements in these countries are equivalent to the DTR requirements. The FSA maintains a list of such countries and their exemptions.</p> <p>The company must also file an <i>annual information update</i> with the FSA that includes all regulated information that the company has published or made available to the public within and outside the EEA over the preceding 12 months. The update must be filed within 20 working days of the date on which the issuer files its annual accounts with the FSA.</p>
Notification of shareholdings (DTR 5)	<p>If the UK is the company's <i>home state</i>, the company will be subject to chapter 5 of the DTR (DTR 5). DTR 5 relates to the acquisition or disposal of major shareholdings and voting rights and requires major holders to notify the company when their holding or deemed holding reaches a certain size. DTR 5 also imposes certain requirements on companies including the requirements for monthly notifications to the market with details of issued share capital.</p> <p>For non-UK companies, the notification thresholds and time limits for notification are less onerous. Companies incorporated in the USA, Japan, Israel or Switzerland are deemed to have a regime equivalent to that set out in DTR 5 and are therefore exempt from DTR 5.</p> <p>AIM companies which have their principal place of business in the UK have to comply with the requirements of DTR 5 in respect of significant shareholder notification, in addition to the significant disclosure obligation under Rule 17 of the AIM Rule. DTR 5 places an obligation on the company to notify as soon as possible and by no later than the end of the third trading day and to make the information public.</p>
Access to information (DTR 6)	<p>Under DTR 6.1 there are information requirements for companies whose <i>home state</i> is the UK, which obligates the company to treat all shareholders equally when providing information. In addition, a company must notify the FSA and the relevant market when it wants to amend its constitution.</p>
Corporate governance requirements (DTR 7)	<p>Companies with either a Standard or a Premium Listing have to comply with certain corporate governance disclosure requirements which are set out in DTR 7. Companies with a Premium Listing are subject to a more onerous regime and all listed companies must include a corporate governance statement in their directors' report, explaining the corporate governance code to which it is subject or which it has voluntarily decided to apply. The company must also describe its internal control and risk management arrangements.</p>
Admission and disclosure standards	<p>A company with securities admitted to any of the LSE's markets (except AIM) has to comply with the LSE's <i>Admission and Disclosure Standards</i>. In addition to the requirements in the Listing Rules and the DTR these contain requirements on disclosure of information and communications with the LSE.</p>
Further issue of shares - rights issues	<p>A company with a Standard or a Premium Listing will need to have approved and publish a prospectus, not just if it wishes to offer its shares to the public in the UK, but also if it proposes to issue shares which will result in its issued share capital increasing by 10 per cent or more in any rolling 12 month period. This latter obligation does not apply to companies listed on AIM.</p>



What else is required for companies with a Premium Listing?

Listing Principles (LR 7)

A company with a *Premium Listing* must adhere to the Listing Principles in LR 7. Whilst unique to the UK's markets, these are intended to ensure that companies pay due regard to the role they play in maintaining market confidence and in ensuring fair and orderly markets. They are deliberately widely drafted in order to help fulfil this objective and it is the principle, rather than the rule, that applies in this case. They are also intended to assist companies in identifying their obligations and responsibilities under the Listing Rules and the DTRs.

Continuing obligations including corporate governance requirements (LR 9 and DTR 7)

A company that has a Premium Listing of equity shares must comply with LR 9, relating to its continuing obligations once it is admitted to the Official List. These include:

1. The company must adopt a share dealing code which restricts share dealings by directors and certain senior executives.
2. The company must notify changes in its capital structure and also changes to the board.
3. LR 9 also contains certain requirements on financial information to be published by companies which are in addition to the requirements in DTR 4. One example is if a listed company publishes any unaudited financial information in a *class 1 circular* or a prospectus or any profit forecast or profit estimate, it will have to republish the same information when it next announces financial information and reports against actual performance for the relevant period.

Pre-emption Rights/Right of First Refusal

An overseas company with a Premium Listing, which proposes to issue equity securities for cash or to sell treasury shares that are equity shares for cash, must first offer these to existing shareholders in proportion to their shareholdings unless shareholders agree otherwise. This is in contrast to Standard Listing and listing on AIM where,

unless there is specific provision in the constitutional documents of the company, there are no specific requirements relating to pre-emption rights.

Significant Transactions (LR 10)

Under the Listing Rules, a company with a Premium Listing has to notify shareholders of certain transactions and give them the opportunity to vote on the more significant of these. LR 10 applies to "significant transactions" and sets out the different types of transactions and how and when shareholders should be notified. There are also rules regulating transactions with a *related party*, such as directors and significant shareholders, and in certain circumstances these are required to be approved by independent shareholders.

Welcome to AIM

Admission criteria

The *AIM Rules for Companies* (AIM Rules) set out the procedure to be followed by a company wishing to join AIM. An important difference is that every company must be "appropriate" for the market. This is determined by the company's *nominated adviser* (Nomad), a further unique aspect of AIM.

The company's Nomad will carry out significant obligations on behalf of the market throughout the admission process and thereafter.

A company applying to AIM must:

1. Appoint and retain a Nomad at all times (*Rule 1, AIM Rules*). The Nomad has a dual function, comprising a responsibility to the LSE in assessing the appropriateness of a company for AIM (as noted above), as well as advising and guiding the company on its responsibilities under the AIM Rules.
2. Appoint and retain a broker at all times (*Rule 35, AIM Rules*). The broker and the Nomad may be different arms of the same firm, and must be a securities house that is a member of the LSE.
3. Have shares which are transferable without restriction and eligible for electronic settlement (*Rules 32 and 36, AIM Rules*).



4. Admit all, and not some only, of the shares in the particular class to be admitted (*Rule 33, AIM Rules*).
5. Prepare an offering document (either a prospectus, if its shares are being offered to the public, or an admission document (*Rule 3, AIM Rules*) if they are not).
6. If the company's business has not been independent and revenue-earning for at least two years, the directors of the company, or any group company, and the substantial shareholders (anyone holding an interest, directly or indirectly in 10% or more of the class of security to be admitted, or 10% or more of the voting rights relating to the company) or any applicable employees must enter into a one-year lock up from the date of admission of the securities (*Rule 7, AIM Rules*).

Similar to the prospectus requirements for a resource (mineral) company seeking Main Market admission, Part One of the Mining, Oil and Gas Note provides that a competent person's report (CPR) must be included in the admission document of a resource company and sets out various requirements for the scope and contents of the CPR. It is the Nomad's responsibility to ensure that the competent person (CP) producing the CPR fulfils all the relevant requirements and that the work performed by the CP will be subject to an internal review. The guidance contains detailed provisions as to the contents of the CPR and certain minimum requirements.

The key differences in the admission requirements between the Main Market and AIM can be summarised as follows:

1. Public participation - Main Market, 25% in public hands, no requirement on AIM.
2. Minimum market capitalisation of £700,000 Main Market, no minimum on AIM.
3. AIM companies do not need to demonstrate a minimum trading requirement.
4. Main Market listings will have their prospectus commented on by the FSA.

AIM designated market route

This is a fast-track admission route available for companies with shares that have already been listed, for at least 18 months, on the top tier or main board of the Australian Securities Exchange, Deutsche Borse Group, Johannesburg Stock Exchange, NASDAQ, NYSE, NYSE Euronext, NASDAQ OMX Stockholm, the Swiss Exchange, the TMX Group or the UKLA Official List.

Continuing obligations

The continuing obligations for an AIM company are similar to, but less onerous, than those of a company admitted to the Main Market.

In addition, as AIM is not a regulated market, certain provisions imposed by EU law do not apply to companies admitted to AIM. A key difference is that an AIM company must maintain a website which makes available, free of charge, certain information in accordance with Rule 26 of the AIM Rules. In particular, overseas companies should note that they are required to have a statement on the website explaining that the rights of shareholders might be different from the rights of shareholders in a UK incorporated company. The company must also make available on the site specified detailed information on the company and its advisers, including its latest annual report, circulars sent to shareholders within the last 12 months and current constitutional documents.

Financial reporting obligations

AIM companies must produce half-yearly reports, including at least a balance sheet, an income statement, a cash flow statement and comparative figures for the corresponding period in the preceding financial year.

Corporate Governance

AIM companies are not subject to the UK Corporate Governance Code (or the UK's Combined Code) but there are non-binding guidelines on corporate governance applicable to AIM companies. These are:

1. Guidelines issued by the Quoted Companies Alliance.



2. The Corporate Governance Policy and Voting Guidelines for AIM Companies published by the National Association of Pensions Funds (NAPF).

Corporate transactions

The rules on disclosure of corporate transactions are not as onerous as those for Main Market companies. However:

1. An AIM company must notify an RIS without delay, as soon as the terms of a substantial transaction are agreed - that is one that exceeds 10% in any of the specified class tests (*Rule 12, AIM Rules*).
2. An AIM company must also notify an RIS without delay of a transaction with a related party that exceeds 5% in any of the same class tests (*Rule 13, AIM Rules*).

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3. An AIM company will have to obtain shareholder approval before it:

- Enters into a transaction that amounts to a reverse takeover - that is an acquisition (or series of acquisitions in a 12 month period) that exceeds 100% in any of the class tests or results in a fundamental change of business, board or voting control (*Rule 14, AIM Rules*).
- Makes any disposal which, when aggregated with any disposals in the previous 12 months, exceeds 75% in any of the class tests (*Rule 15, AIM Rules*).



A quick guide to UK listing options

Requirement	Premium Listing (Main Board)	Standard Listing (Main Board)	AIM
Documentation	Prospectus	Prospectus	Prospectus or Admission Document
Revenue Record	Three years required	N/A	N/A
Transferability of shares	Must be freely transferable	Must be freely transferable	AIM securities must be freely transferable (save where exception applies)
Minimum market cap	£700,000	£700,000	N/A
Control of assets	Requires control of a majority of assets	N/A	N/A
Sponsor	Yes	No	Nominated Adviser (Nomad) required
Inclusion in FTSE indices	Yes	No	No
Public float	25% of shares in public hands	25% of shares in public hands	N/A
Mineral Experts Report/ Competent Persons Report	Specialist mineral expert report required as part of prospectus	Specialist mineral expert report required as part of prospectus	Competent Person's Report required as part of admission
Disclosure obligations	Ongoing disclosure obligation with respect to shareholders, financial performance and standing, significant transactions, related party transactions and other price sensitive information	Ongoing disclosure obligation with respect to shareholders, financial performance and standing, significant transactions, related party transactions and other price sensitive information	AIM company must retain a Regulatory Information Service for the purposes of ongoing disclosure
Compliance with the Model Code in the UK Listing Rules	Model Code applies	N/A	No specific clearance procedure
Working capital statement	Unqualified	N/A	Qualified
Compliance with Listing Principles	Yes	No	No
Corporate governance	Compliance with UK Code on Corporate Governance or explanation needed	Do not have to comply with the UK Code on Corporate Governance but generally the Disclosure and Transparency Rules (DTR 7)	Not subject to Combined Code. There are non-binding guidelines on corporate governance which AIM companies traditionally will follow including: <ul style="list-style-type: none"> Guidelines issued by the Quoted Companies Alliance. The Corporate Governance Policy and Voting Guidelines for AIM Companies published by the National Association of Pensions Funds (NAPF).
Class tests	Yes	Yes	Yes
Pre-emption rights	Required	Only as required by relevant company law	No specific requirement
Cancellation	75% shareholder approval required	No shareholder approval required	75% shareholder approval required

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