



AIM Companies

Corporate transactions and the AIM Rules for Companies

A quick reference guide for directors

Introduction

If you are considering:

- the sale of a business;
- the purchase of a company; or
- a fundraising;

then this quick reference guide will help you to understand what is involved and what you need to do to satisfy the requirements of the AIM Rules for Companies. We have also included a section which covers some frequently asked questions.

If you would like any further information on the transactions covered by this guide then please speak to your usual contact at Burges Salmon or:

Dominic Davis on +44 (0) 117 902 7196 email: dominic.davis@burges-salmon.com

Chris Godfrey on +44 (0) 117 939 2219 email: chris.godfrey@burges-salmon.com

Nick Graves on +44 (0) 117 939 2200 email: nick.graves@burges-salmon.com

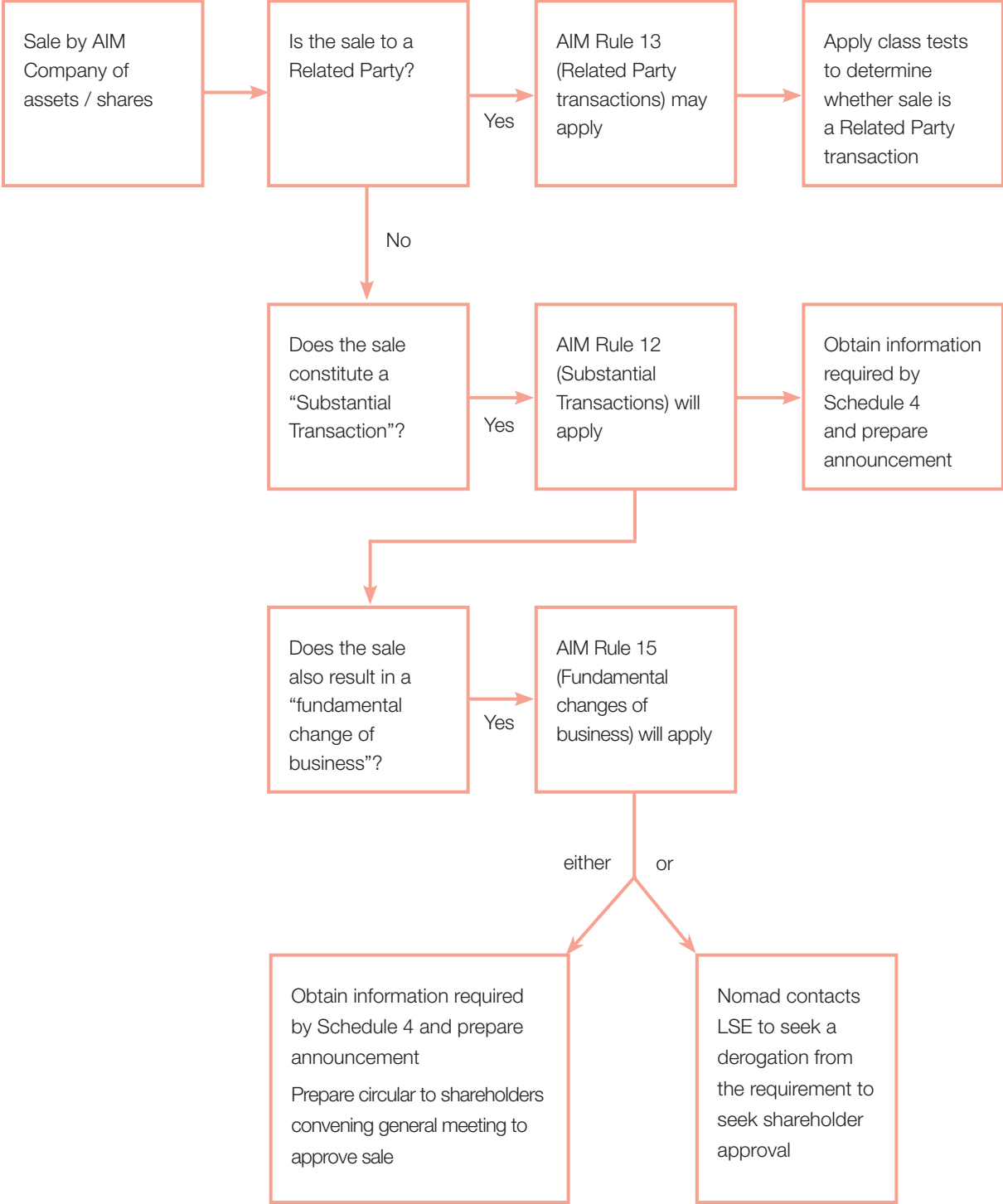
Mark Shepherd on +44 (0) 117 902 6624 email: mark.shepherd@burges-salmon.com

Richard Spink on +44 (0) 117 939 2218 email: richard.spink@burges-salmon.com

Camilla Usher-Clark on +44 (0) 117 902 6672 email: camilla.usher-clark@burges-salmon.com

Rupert Weston on +44 (0) 117 939 2228 email: rupert.weston@burges-salmon.com

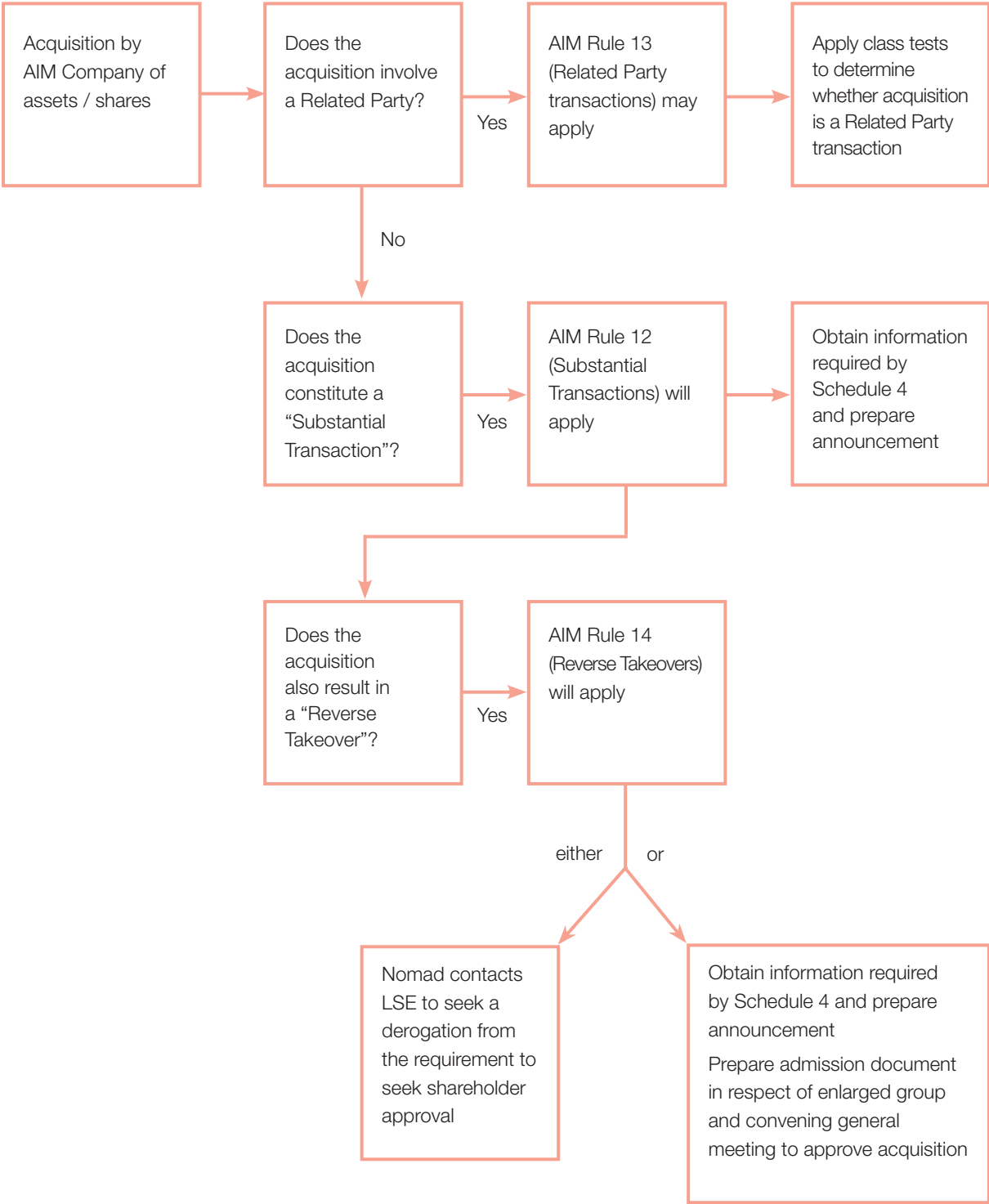
If you are about to sell a business what do you need to do to comply with the AIM Rules for Companies?



AIM Company selling assets/shares

Sale	AIM Rules for Companies	Key requirements
Sale to a Related Party – typically a director of the AIM Company or a substantial shareholder in the AIM Company.	AIM Rule 13 – which applies to any transaction whatsoever with a related party which exceeds 5% in any of the class tests.	<ul style="list-style-type: none"> ■ Announcement complying with Schedule 4 of the AIM Rules, disclosing the name of the related party and the nature and extent of their interest in the sale and a statement that the directors consider, having consulted with the company’s nomad, that the terms of the transaction are “fair and reasonable”.
Sale which is a Substantial Transaction.	AIM Rule 12 – which applies to any transaction which exceeds 10% in any of the class tests.	<ul style="list-style-type: none"> ■ Announcement complying with Schedule 4 of the AIM Rules.
Sale which results in a "fundamental change of business".	AIM Rule 15 – any disposal which exceeds 75% in any of the class tests is deemed to be a disposal resulting in a "fundamental change of business".	<ul style="list-style-type: none"> ■ Announcement complying with Schedule 4 of the AIM Rules. ■ Disposal requires shareholder approval and circular must be published containing details of the disposal and any proposed change in business. ■ The announcement and circular must set out the company’s investing policy if the transaction will result in the sale of all or substantially all of the company’s trading business, activities or assets. Shareholders must also approve that policy. ■ The company must then make an acquisition which constitutes a reverse takeover under AIM Rule 14 or otherwise implement the investing policy within 12 months of completion.

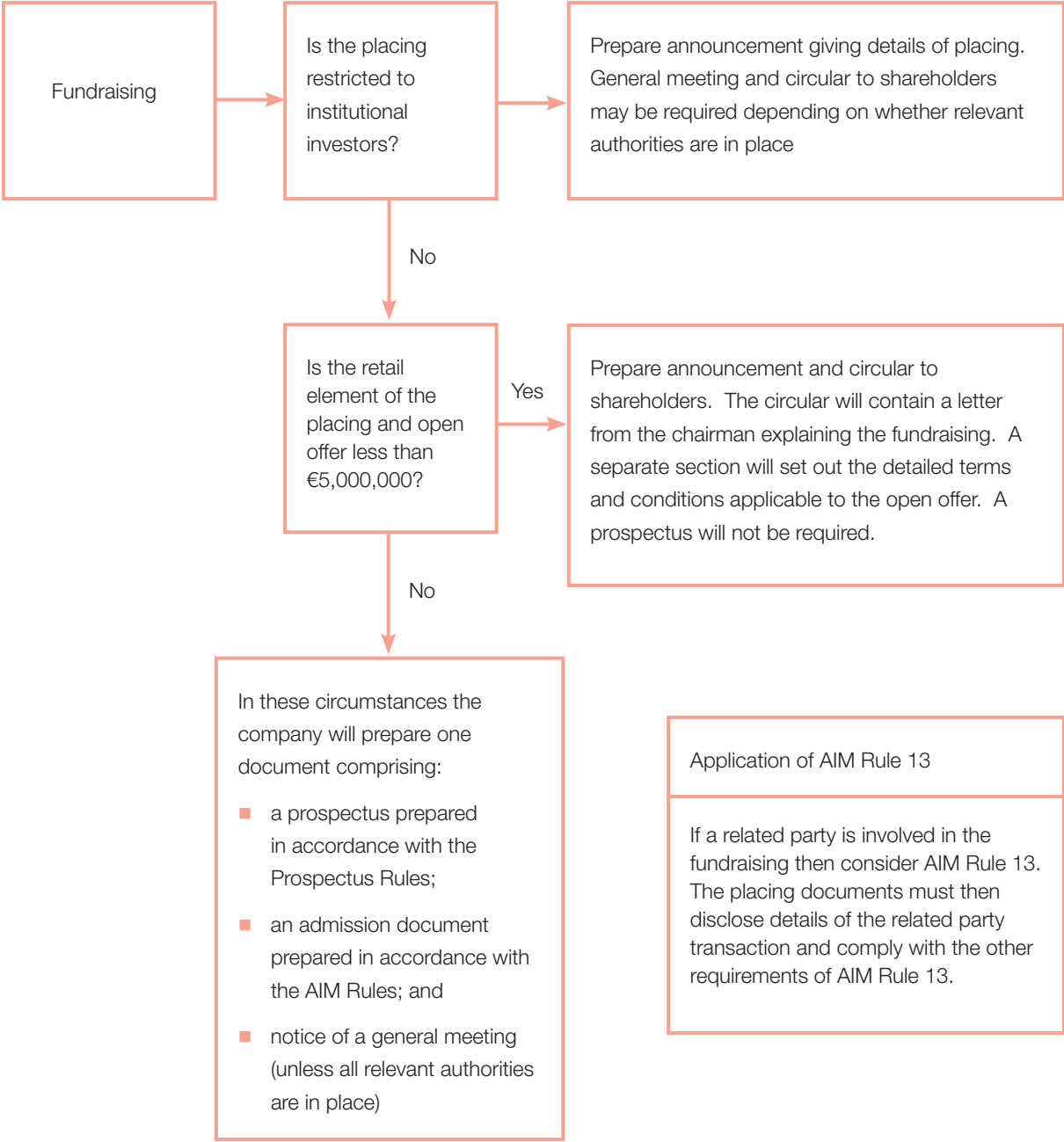
If you are about to purchase a business what do you need to do to comply with the AIM Rules for Companies?



AIM Company purchasing assets/shares

Acquisitions	AIM Rules for Companies	Key requirements
Purchase from a Related Party – typically a director of the AIM Company or a substantial shareholder in the AIM Company.	AIM Rule 13 – which applies to any transaction whatsoever with a related party which exceeds 5% in any of the class tests.	<ul style="list-style-type: none"> ■ Announcement complying with Schedule 4 of the AIM Rules, disclosing the name of the related party and the nature and extent of their interest in the purchase and a statement that the directors consider, having consulted with the company’s nomad, that the terms of the transaction are “fair and reasonable”.
Purchase which is a Substantial Transaction.	AIM Rule 12 – which applies to any transaction which exceeds 10% in any of the class tests.	<ul style="list-style-type: none"> ■ Announcement complying with Schedule 4 of the AIM Rules.
Purchase which is a Reverse Takeover.	<p>AIM Rule 14 applies to any acquisition by an AIM Company which:</p> <ul style="list-style-type: none"> ■ exceeds 100% in any of the class tests; ■ results in a fundamental change in its business, board or voting control; or ■ (for an investing company) is a material departure from its investing policy. 	<ul style="list-style-type: none"> ■ Announcement complying with Schedule 4 of the AIM Rules. ■ Purchase requires shareholder approval. ■ Admission document must be published covering the enlarged group. ■ Shares in the AIM Company will be suspended following the announcement that a reverse takeover has been agreed or is in contemplation until the company has published an admission document in respect of the enlarged entity. However the LSE will not suspend an AIM Company if the target is on the Main Market or is another AIM Company. ■ If shareholder approval is given trading in shares of the AIM Company will be cancelled. The enlarged group can apply for admission in advance of the general meeting so that its shares are admitted on the day after the general meeting which approves the reverse takeover.

Fundraising - What do you need to do?



Fundraising: Secondary Share Issues	AIM Rules for Companies	Key requirements
Placing with institutions	AIM Rules 13, 17 and 29	<ul style="list-style-type: none"> ■ Announcement ■ Circular to shareholders if general meeting required
Placing and Open Offer	AIM Rules 13, 17, 24, 25, 27, 28, and 29	<ul style="list-style-type: none"> ■ Announcement ■ Circular to shareholders ■ Application form sent to shareholders ■ Prospectus may be required
Open Offer	AIM Rules 13, 17, 24, 25, 27, 28, and 29	<ul style="list-style-type: none"> ■ Announcement ■ Circular to shareholders ■ Application form sent to shareholders ■ Prospectus may be required
Rights Issue	AIM Rules 13, 17, 24, 25, 27, 28, and 29	<ul style="list-style-type: none"> ■ Announcement ■ Prospectus (probably incorporating a notice of general meeting) ■ Provisional Allotment Letter

FAQs

Question	Answer
<p>A large shareholder is about to lend funds to the company. Do we need to consider AIM Rule 13 (Related Party transactions)?</p>	<p>Yes assuming that the shareholder is a substantial shareholder (holding 10% or more of the company's shares) and therefore is a related party.</p> <p>In 2008 the LSE took enforcement action against Subsea Resources Plc (an AIM company) in just this situation. The LSE explained that <i>"For each of the related party loans... SubSea failed to consider whether AIM Rule 13 applied to the transactions on an individual basis. Furthermore, SubSea failed to assess whether the related party transactions should be aggregated under AIM Rule 16 to determine whether AIM Rule 13 would apply on an aggregated basis. These related party loans would have breached the relevant class tests on an individual and/or aggregated basis. Therefore, as related party transactions under AIM Rule 13, the loans should have been announced by SubSea without delay, disclosing the information required by that Rule. However, SubSea only disclosed the appropriate Rule 13 information in its announcement on 18 December 2006 (some 2 to 6 months after the loans were made)."</i></p>
<p>Can we amend or caveat the wording of any "fair and reasonable" statement required under AIM Rule 13?</p>	<p>No. <i>"The wording of the fair and reasonable statement as stated in Rule 13 should not be amended or caveated in any way, in either the same sentence or in surrounding paragraphs... The rule contains the specific wording that must be used, to provide a consistent mechanism by which a transaction is assessed in lieu of shareholder approval."</i> (Source: Inside AIM (Issue 3))</p>
<p>All of our directors are participating in a fundraising. Do we need to think about AIM Rule 13 (Related Party transactions)?</p>	<p>Yes. The LSE considered this question in Inside AIM (Issue 1 - Aggregation of Directors' participation in a Related Party transaction) and explained that: <i>"Where more than one director participates in the same transaction with an AIM company, for example in a share placing, it may be appropriate to aggregate their participation when calculating the class tests to assess whether AIM Rule 13 applies. This treatment reflects the fact that the directors may be able, or viewed to be able, to act in concert when setting the terms of the transaction. As a result, it may be more likely that the provisions of AIM Rule 13, including the need for a 'fair and reasonable' statement, apply."</i></p>

Question	Answer
<p>Does AIM Rule 14 also apply to fundraisings?</p>	<p>No. <i>“AIM Rule 14 is only applicable if there is an acquisition; it will not be relevant when only a significant fundraising is taking place.”</i> (Source: Inside AIM (Issue 1))</p>
<p>Do the AIM Rules for Companies cover share buy-backs and tender offers?</p>	<p>No. <i>“The AIM Rules do not deal specifically with tender offers, i.e. there is no requirement for one to be completed if the AIM company is purchasing more than 15% of its own securities. However, should an AIM company decide to complete a tender offer, we support the market practice of completing such an offer in accordance with the Listing Rule requirements.”</i> (Source: Inside AIM (Issue 1))</p> <p><i>“Similarly the AIM Rules do not specifically refer to share buy-backs, with the exception that an AIM company cannot purchase its own securities during a close period (AIM Rule 21). As in the case of tender offers, we consider that in most circumstances compliance with the requirements of the Listing Rules, in particular Listing Rule 12.4.1, would represent best practice.”</i> (Source: Inside AIM (Issue 1))</p> <p>AIM Rules 13, 17 and 21 should also be considered.</p>

Notes

Further information

If you would like any further information on AIM please speak to your usual contact at Burges Salmon or:



Dominic Davis
Partner

+44 (0) 117 902 7196
dominic.davis@burges-salmon.com



Chris Godfrey
Partner

+44 (0) 117 939 2219
chris.godfrey@burges-salmon.com



Nick Graves
Partner

+44 (0) 117 939 2200
nick.graves@burges-salmon.com



Mark Shepherd
Partner

+44 (0) 117 902 6624
mark.shepherd@burges-salmon.com



Richard Spink
Partner

+44 (0) 117 939 2218
richard.spink@burges-salmon.com



Camilla Usher-Clark
Partner

+44 (0) 117 902 6672
camilla.usher-clark@burges-salmon.com



Rupert Weston
Partner

+44 (0) 117 939 2228
rupert.weston@burges-salmon.com

www.burges-salmon.com

One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400

Chancery Exchange, 10 Furnival Street, London EC4A 1AB Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266

This document gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is regulated by the Solicitors Regulation Authority.

A list of members, all of which are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.