



AIM and the Isle of Man - an International Perspective

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Speakers

Donald Stewart – Quoted Companies Alliance

Nick Boon – Isle of Man Finance

Paul Beckett – Mannin Chambers Limited

Robert Kirkham – Baker Tilly Isle of Man LLC

James Convey – Marsh Limited

Kelly Hack – McGrigors LLP



The Quoted
Companies Alliance

Introduction

Donald Stewart
Chairman
The Quoted Companies Alliance (QCA)



The Quoted
Companies Alliance

What do we do?

Influencing change:

- Lobbying directly with the Treasury, HMRC, DBERR and the FSA
- Talking to other regulators such as the Takeover Panel, the London Stock Exchange and the AIM Team, and the FRC
- Communicating directly with the European Commission
- Working with politicians of all parties
- Dealing with the Press



What do we do?

Educating the market:

- Publishing our range of guides
- Holding seminars and regional forums
- Non-executive director forum



The Quoted
Companies Alliance



The Quoted
Companies Alliance

What do we do?

Networking opportunities:

- Annual Dinner
- President's Reception
- Advisers Dinner
- Finance Directors Dinner
- Fund Manager Lunches



The Quoted
Companies Alliance

How do we do it?

- 9 committees and an executive committee
- Active participant in European Issuers - John Pierce is joint-chairman of smaller companies committee
- 6 full time staff and a secondee from KPMG
- Funded by membership subscriptions and sponsorship



Isle of Man International AIM Flotation Jurisdiction of Choice

Nick Boon

Isle of Man Government, Treasury



Isle of Man - Overview

- Crown Dependency (Not part of UK/EU)
- Politically and economically stable
- AAA Standard & Poor's and Moody's Sovereign Rating
- Leading edge communications infrastructure
- Convenient location to London



Isle of Man – Overview Cont.

- Financial services represents approximately 39% of GDP
- Mature and extensive corporate and fund administration sector
- Zero rate of corporate tax
- Personal tax cap of £100K per year



The AIM Story So Far

1,548 companies admitted to trading

332 international/1,216 are domestic (including IOM)

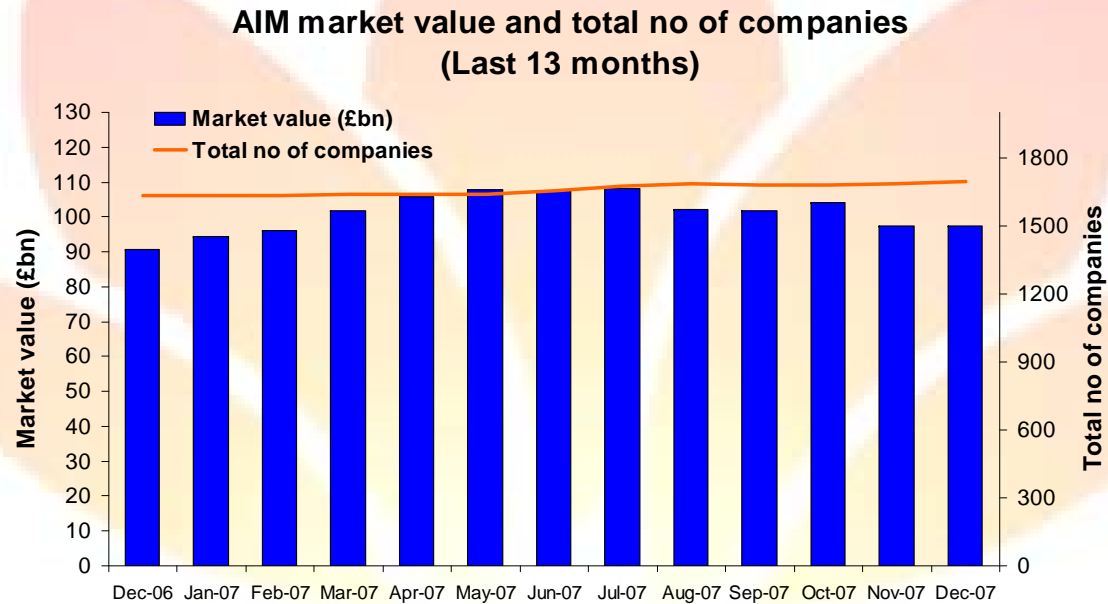
72 approved nominated adviser firms

Total market capitalisation of AIM companies is £45 billion

2.5 % of all AIM traded companies are Isle of Man incorporated



AIM Market Value and Total No of Companies December 2006 to December 2007





Success factors for IOM with AIM

- High quality and certainty of legal, fiscal and regulatory environment
- No fund regulation of closed-ended investment companies
- Public/private sector joint marketing initiatives
- Quality of professional infrastructure
(Lawyers/Administrators/Accountants)
- Value for money (fees etc)



Some Recent Examples of Isle of Man Incorporations

- OPG Power Ventures PLC
- African Medical Investments plc
- Playtech
- Naya Bharat Property Co plc
- Conister Financial Group
- Pangea Diamond Fields plc
- Emerging Metals Ltd
- Charlemagne Capital Ltd



Some Recent Examples of Isle of Man Incorporations Cont.

- Crescent Hydropolis Resorts
- European Convergence Property Co
- Incagold
- European Convergence Development Co
- Webis Holdings plc
- Speymill plc
- Inca gold



What is the IOM AIM Opportunity

International Businesses

- Take advantage of increasing popularity of AIM to raise capital
- International businesses with international shareholder base may benefit from using an offshore vehicle

Closed-ended Investment Companies

- Alternative funds expertise on the Island makes it a good base for closed-ended investment companies
- Not subject to fund regulation



What is the IOM AIM Opportunity Cont.

E-Commerce Businesses

- The Island is keen to attract e-commerce businesses to relocate
- Inward investment incentives available



IOM Key Features

- Zero rate corporate tax
- Personal income tax cap of £100K
- Familiar and simple corporate vehicles
- Closed-ended investment companies not subject to fund regulation
- No regulatory pre-approvals or fees



IOM Key Features Cont.

- Shares can be held through CREST
- Wide-ranging prospectus exemptions
- Need a licensed corporate service provider to act
- CSP is a mature sector with many providers and range of expertise
- Alternative fund administration experience



Professional Services provided to the Company from the Isle of Man

- Tax advisors
- Advocate
- Administrators
- Custodian
- Property Manager
- CSP services (for SPVs)
- Director (main board)



Professional Services provided from the U.K.

- Nominated advisor
- Solicitors
- Placing Agent



The role played by Isle of Man Finance

To carefully position the Isle of Man as a desirable jurisdiction in which to incorporate and administer AIM vehicles by raising awareness via:

- Relationship building with London based AIM lawyers, NOMADs and corporate advisers
- Building profile and awareness of the Isle of Man opportunity at key conferences
- Selling the Isle of Man proposition to international businesses and convincing them of the compelling business case for using the Island



The Quality International AIM Vehicle

- Lawyers increasingly using IOM
- Capacity for new business
- Reputation for quality – key to Institutional Investors
- Speed and flexibility
- Highly cost effective
- Strong skill base/fund expertise

....a growing success story...

and Freedom to Flourish



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An Introduction to Manx Companies

Paul Beckett M.A. (Oxon.)

Advocate Solicitor Notary Public

Mannin Chambers Limited



The Isle of Man Companies Acts

Company law in the Isle of Man is divided into three regimes

- the Companies Acts 1931 to 2004 (and related legislation – The Protected Cell Companies Act 2004)
- the Limited Liability Companies Act 1996
- the Companies Act 2006



Companies Acts 1931 to 2004 Cont.

- All Companies incorporated in the Isle of Man on or after 1st June 1988 under **the Companies Acts 1931 to 2004** have the powers of a natural legal person as do companies incorporated in the Island before that date electing to be governed by the new regime
- The Memorandum and Articles of Association do not need to set out the details of why the company was formed or what its purpose is to be – these remain confidential



Companies Acts 1931 to 2004 Cont.

- Any third party dealing with the company can, in the absence of actual knowledge to the contrary, assume that the company is fully empowered to enter into the transaction in question and is bound by it
- The *ultra vires* rule has therefore not been abolished with regard to *bona fide* third parties. This has not, however, deprived the members of a company from obtaining redress, and any such member is permitted to raise the matter with the company's directors



Companies Act 2006

With effect from 1 November 2006 the Companies Act 2006 came into force. The Act provides for a new Manx corporate vehicle known as the New Model Vehicle (the "NMV") to co-exist with companies under the Companies Acts 1931 to 2004, cellular companies under the Protected Cell Companies Act 2004 and LLCs under the Limited Liability Companies Act 1996; but entirely self-contained and separate from those Acts



Companies Act 2006

The Companies Act 2006 provides for **five** different types of corporate vehicles:

- companies limited by shares
- companies limited by guarantee
- companies limited by share and by guarantee



Companies Act 2006 Cont.

- unlimited companies authorised to issue shares
- unlimited companies without shares

No distinction is made between public and private companies

A company limited by shares may be formed as or converted into a protected cell company (Part VII)



Companies Act 2006 Cont.

- There is no requirement for an authorised share capital
- Shares may be issued with or without par value
- Share capital can be reduced without Court approval (subject to a statutory solvency test)
- Subject to compliance with its memorandum and articles of association, the Act allows an NMV to declare and pay a dividend and to purchase, redeem or otherwise acquire its own shares subject only to meeting the statutory solvency test
- There are therefore no capital maintenance requirements



Companies Act 2006 Cont.

Solvency test: if the company is able to pay its debts as they become due in the course of its business and the value of the company's assets exceeds the value of its liabilities



Companies Act 2006 Cont.

- In addition, notwithstanding any provision to the contrary contained in its memorandum or articles of association and irrespective of corporate benefit or whether it is in its best commercial interests, an NMV has unlimited capacity to carry on or undertake any business or activity
- No corporate act is beyond an NMV's capacity by reason only of the fact that the relevant NMV has purported to restrict its capacity in any way in its memorandum or articles or otherwise
- A person who deals in good faith with an NMV is entitled to assume that the directors of the NMV are acting without limitation, activities or transactions for which it is established



Companies Act 2006 Cont.

- Each NMV must have a Registered Agent in the Isle of Man who must be a holder of a licence under the terms of the Fiduciary Services Acts 2000 to 2005 permitting him so to act
- Corporate Directors are permitted, but currently these are confined to companies holding a Corporate Service Providers licence under the Fiduciary Services Acts 2000 to 2005



Companies Act 2006 Cont.

The Companies Act 2006 introduces a range of new *statutory member protection provisions*:

- remedies for oppressive or unfairly prejudicial conduct (Sections 179, 180)
- right to apply to Court for a restraining compliance order (Section 174)
- right to bring derivative actions (Sections 175 to 178)



Companies Act 2006 Cont.

- right to apply to Court for an order that an investigation be made of the company (Sections 196 to 202)
- representative actions (Section 181)



Companies Act 2006 Cont.

An NMV has in addition the following characteristics:

- no financial assistance prohibitions
- single members permissible
- single director permissible
- electronic / telephonic meetings (both Board and Members') permissible



Companies Act 2006 Cont.

- no Annual General Meeting or Extraordinary General meeting – meetings to be held at such times and in such places as the convener of the meeting considers appropriate
- no ordinary, special or extraordinary resolutions – a simple majority suffices (unless either the Articles of Association or the Act specifically provides otherwise)
- simplified offering document requirements



Companies Act 2006 Cont.

- ability to adopt pre-incorporation contracts
- reduced compulsory registry filings
- no annual general meeting requirement
- minimal accounting requirements
- specific transfer of domicile procedure



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Baker Tilly Isle of Man

Rob Kirkham

Principal

Baker Tilly Isle of Man LLC



Overview

- The Baker Tilly network
- Baker Tilly Isle of Man
- Services in respect of AIM
- Audit considerations
- Taxation



The Baker Tilly Network

- Overview
- Baker Tilly Isle of Man is independent of Baker Tilly in the UK
- Network members work closely together



Baker Tilly Overview

Baker Tilly UK

- 7th largest UK Accountancy Firm
- 260 partners, 2,000 staff, over 30 offices

Baker Tilly International

- Baker Tilly is part of Baker Tilly International, an independent network of 138 member firms in 104 countries worldwide



Baker Tilly Overview Cont.

- 24,000 people
- US\$2.5billion revenue combined revenue
- 8th largest network in the world by combined revenue
- Representation in all major business centres



Baker Tilly AIM Credentials

- Growth Company AIM Accountant of the year for a record 4 times
- Over 250 AIM Transactions, Over 160 AIM clients
- AIM Transactions in over 20 jurisdictions
- Represented on the London Stock Exchange AIM Advisory Group
- Specialists in UK tax benefits legislation
- Authors of the LSE 'Guide to AIM Tax Benefits'



Baker Tilly Isle of Man

- Merger of Baker Tilly Bennett Roy and ECS International
- Leading audit, accountancy and fiduciary service provider
- Services
 - Audit, accountancy and taxation
 - Corporate finance and transaction services
 - Offshore company and trust administration
 - Pension consultancy and administration
 - Yacht and aircraft registration



Baker Tilly Isle of Man – Aim Services

- Reporting accountant
- Audit services
- Corporate Services, including Registered Agent function
- Independence considerations



Isle of Man – Audit Considerations

Baker Tilly Isle of Man is a UK Registered auditor

Companies Act 1931 entities

Companies Act 2006 entities



Isle of Man Taxation

- Most IOM companies are subject to Manx Income Tax at 0%
- Overview of Attribution Regime for Individuals ("ARI")
- No withholding tax on dividends or interest
- No IHT or Capital Taxes
- VAT
- Corporate charge



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AIM Risk Management

Risks and opportunities for companies and advisers

James Convey

Vice President, Financial and Professional Risks, Marsh



Overview

- Exposures
- An innovative solution to mitigate risks
- Benefits for the company and its advisers
- Some 2008 examples
- Impact of the current climate and future opportunities
- Contact details



Exposures





Risk transfer versus risk management

- Distinction between *how* to mitigate exposures
- Insurance market mechanism to transfer certain risks
- Some risks cannot be transferred and need to be managed instead

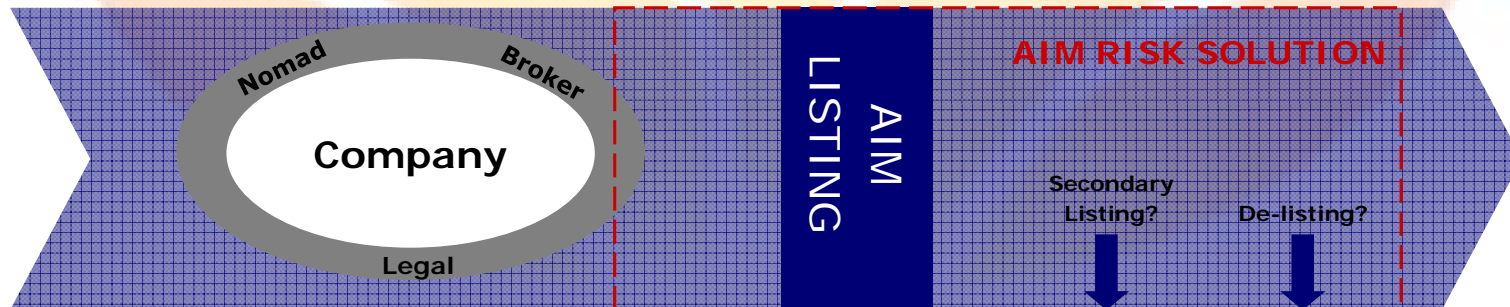
Marsh has established a product that is a blend of risk transfer and risk management

“AIM Risk”



AIM Risk Solution

- Insurance component:
 - AIM specific directors' and officers' (D&O) insurance
 - Public offering of securities insurance (POSI)
- Risk management component:
 - 'Accepted market practice' for corporate governance, internal controls and compliance





AIM Risk Insurance component

What does it cover?

- Protection to the nomad and the lawyer involved in the initial public offering (IPO) or fundraising process from claims that could result from the admission document (at no cost to the adviser)
- Shareholder misrepresentation claims
- Warranty and indemnity claims by nomads and brokers
- Claims against controlling or selling shareholders



AIM Risk Insurance component Cont.

- Defence costs to fight actions alleging wrongful acts
- Cover for non-executive directors and outside directorships
- Any claim alleging misrepresentation in the admission document or any specified placing document or prospectus



AIM Risk Risk management component

- A range of solutions to ensure that clients wishing to list on AIM have robust internal controls and corporate governance and compliance measures in place
- Annual risk review to comply with the QCA guidelines
- Risk identification and assessment
- Development of risk management framework and policies

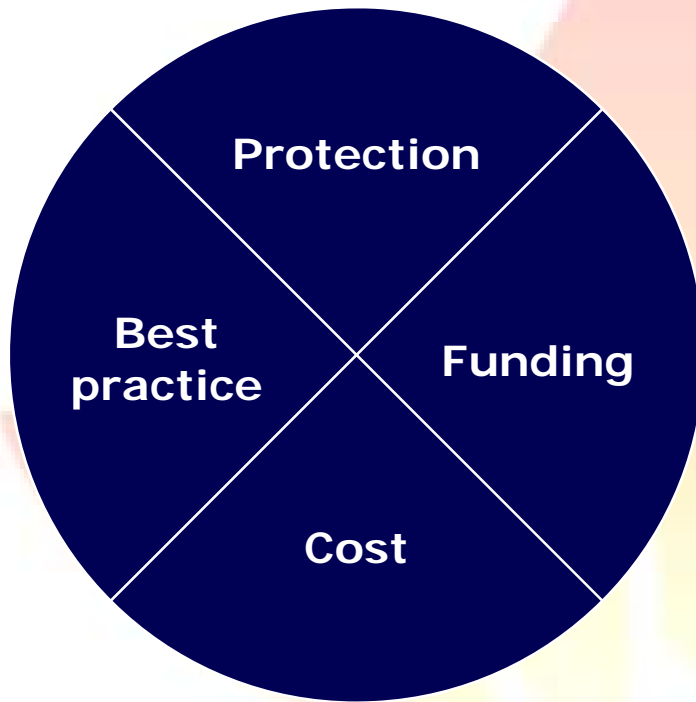


AIM Risk Risk management component Cont.

- Benchmarking of internal controls
- PR fund (Weber Shandwick) to manage reputational risks
- Access to legal 'helpline' (Faegre & Benson)



Benefits



Benefits for both the listing company and its advisers



Some examples from 2008...

	£ Raised	Industry	Indemnity Level (£)	Rating Criteria
Company A	31m	Energy	5,000,000	<ul style="list-style-type: none"> ▪ Limit of Indemnity ▪ Geographical footprint (US exposure) ▪ Company turnover ▪ Company activity / Industry sector ▪ Investment raised / Market capitalisation ▪ Claims history ▪ Board background / experience
Company B	27.5m	Education	10,000,000	
Company C	59.5m	Renewable Energy	15,000,000	
Company D	41m	Resources	20,000,000	



Current climate and future opportunities

Current	Future
<ul style="list-style-type: none">▪ Difficult market conditions and lower volume of transactions▪ Increased scrutiny on transactions▪ More difficult to close transactions▪ Investor confidence critical – impact upon <i>value</i> of transaction▪ Increasing claims – uncertainty, poor price performance, insolvencies, increase in litigation, allegations of negligence, etc.▪ Retroactive cover is available	<ul style="list-style-type: none">▪ An international perspective▪ Geographical activity, e.g. India, Canada, Australia▪ Industry activity, e.g. Utilities and resources, energy, oil and gas▪ Opportunity for Isle of Man



Closing remarks

AIM Risk is a cost effective and efficient way of managing risks, which not only protects the balance sheets of the issuing companies and their respective advisers, but also reflects the perceived best market practice and implements risk management specifics contained in the Combined Code, which in turn facilitates fund raising activity



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Our Experiences with the Isle of Man and 2006 Companies

Kelly Hack

McGrigors LLP



Our Experiences with the Isle of Man and 2006 Companies - General

- No time delays due to international time differences
- No language barriers
- A seamless service
- Sterling currency



Our Experiences with the Isle of Man and 2006 Companies – Private Equity/M&A

- Ease of exit by institutional shareholders, including listing on AIM
- Unlimited capacity to undertake and carry on business activity
- No requirement for a company secretary or a local director (but requirement for a registered agent and a local director will be useful to show the company is “off shore” for tax purposes)
- Unless restricted by the memorandum and articles of association, directors are free to regulate their meetings as they see fit and can meet at such times and in such manner and places (within or outside of the Isle of Man) as so choose



Our Experiences with the Isle of Man and 2006 Companies – Statutory Requirements

- Accounting requirements are less prescriptive (but not less stringent)
- No statutory requirement for a company to have its accounts audited if it chooses not to do so
- Companies are subject to reduced compulsory registry filings (in comparison to the UK)



AIM - How we can help

- Act as advisers to the company or the Nomad
- Pre-IPO restructuring/preparing the company's business for listing:
 - review the constitutional documents of the group companies e.g. for restrictions on direct foreign investment
 - incorporate the AIM company/instruct overseas lawyers to incorporate the AIM company
 - Simplify the share capital of the AIM company e.g. convert any preference shares held by investors into ordinary shares and loan notes into options
 - Move assets around the group/organise shareholdings through conditional subscription agreements and share purchase agreements



AIM - How we can help

- Liaise with the overseas lawyers with regard to the drafting of the legal opinions required on the AIM company and its subsidiaries
- Brief the directors on their duties as directors of an IOM company and the NEDs on their duties as directors of other companies within the group (usually multi-jurisdictional)
- Draft the admission document
- Draft the memorandum and articles of association of the AIM company to ensure that they contain the usual provisions that the Nomad and institutional investors expect to see.



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Questions & Answers