

The Isle of Man is the premier jurisdiction for Offshore Vehicles listed on AIM How Simcocks can assist

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The Alternative Investment Market (AIM)

AIM is the London Stock Exchange's international market for smaller growing companies, ranging from young, venture capital-backed start-ups to well-established, mature businesses seeking to expand.

The Exchange's objective in setting up AIM was to offer smaller companies (in the UK and abroad and from any sector) the opportunity to access London's capital markets via market with a pragmatic and appropriate approach to regulation.

Since its launch in 1995, more than 3,000 companies have joined AIM – raising billions of pounds in the process, both through initial public offerings (IPOs) and further capital raisings. Many companies have subsequently transferred to the Exchange's Main Market.

Many of the companies listed are offshore vehicles and the Isle of Man is the leading provider of these vehicles.

Listing on AIM

A listing on AIM involves the following participants and service providers:

● The Company

AIM is suitable for smaller companies from any sector and from any country. The company is likely to be advised by UK solicitors and reporting accountants and by financial public relations and investor relations consultants. Where the company is incorporated offshore (for example, in the Isle of Man) lawyers in the jurisdiction of incorporation will also be employed.

● The Registrar

Shares are usually in uncertificated form and title is transferred by means of an instruction issued in accordance with the rules of the CREST system. For this purpose, a registrar/CREST service provider is appointed.

● The Nominated Adviser

Every company joining AIM must appoint a Nominated Adviser (known as a Nomad), which must be approved by the Exchange. The role of the Nomad includes

pre-vetting of the company, assisting it through the listing process and the provision of advice and assistance post listing to ensure that the company complies with its ongoing obligations. The Nomad will appoint its own legal advisers.

- **The Broker**

The broker is responsible for facilitating and promoting trading in the company's shares on the market. In many cases, the broker is the same firm as the Nomad. The Broker may also appoint its own legal advisers.

- **The Investor**

Investors range from City institutions to small investors.

- **The Exchange's AIM Team**

The Exchange has a specialist AIM team dedicated to providing advice, information and support for all AIM participants.

Isle of Man Companies as AIM Listing Vehicles

In recent years there has been considerable growth in the number of listings based on an Isle of Man incorporated company vehicle. Indeed, it appears the Isle of Man is the offshore jurisdiction of choice for AIM listings, particularly for Eastern European, Indian, Russian and Chinese businesses.

Why use an Isle of Man Company?

The Jurisdiction

- The Isle of Man is a sophisticated and well-regulated international finance centre. It holds a AAA credit rating from Moodys and AA+ by Standard & Poor.
- The Isle of Man is a self-governing Dependency of the British Crown. It is geographically part of the British Isles but is not part of the UK or the EU.
- Follows London time, which puts it in a convenient time zone and is English speaking.
- Is within easy striking distance of the major cities in the UK. In most cases it is possible to travel to the Island, attend meetings there and return the same day.
- The Isle of Man has a well-established and well-regulated infrastructure for the provision of corporate administration services.

Law

- The Isle of Man is a common law jurisdiction and its company law is based on UK principles. Accordingly, City bankers and lawyers will find Isle of Man companies, documentation, practices and procedures familiar. In particular, the procedures for company borrowing and the registration of charges are similar to those prevailing in the UK.

Tax

- An Isle of Man company listed on AIM should not be subject to UK tax as long as it is managed and controlled outside the UK. Needless to say, UK tax advice should be obtained in this respect.
- With effect from 6 April 2006, the Isle of Man introduced a standard zero per cent rate of income tax/corporation tax for companies (except in relation to certain profits arising from banking, or from land and property **in the Isle of Man**). Under this regime, the Isle of Man continues as a tax neutral jurisdiction facilitating efficient international tax planning; however, the “ring-fencing” of international and local tax bases associated with tax exempt regimes has been eliminated in compliance with current international requirements in relation to tax competition.
- There is no capital gains tax in the Isle of Man.
- No stamp duty is payable on the transfer of shares.
- The Isle of Man is subject to the same VAT regime as the UK.

Regulation

- Closed-ended investment companies are not regarded as regulated entities for the purposes of Isle of Man financial services regulation and, in particular, collective investment fund (mutual fund) regulation.
- No prior Isle of Man regulatory approval is required to list an Isle of Man company on AIM.

Isle of Man Companies

Isle of Man Companies suitable for listing on AIM can be incorporated under two separate pieces of legislation:

- The Companies Acts 1931 – 2004 (the “1931 Act”); and
- The Companies Act 2006 (the “2006 Act”; a company incorporated under this Act is sometimes referred to as a “New Manx Vehicle” or “NMV”).

Since the enactment of the 2006 Act, a number of listings have used companies incorporated under this Act and it is expected that this trend will continue.

Advantages of the 2006 Act include the following:

- In general, companies incorporated under the 2006 Act are simple, flexible and easy to administer.
- The 2006 Act does not make the traditional distinction between public companies (plc) and private companies (Limited). Any company may offer its securities to the public. However, the name of any company may include the words “Public Limited Company” or “public limited company” or the abbreviations “PLC” or “plc”. Indeed, there is the further option to use the words “Limited” or “Corporation” or “Incorporated” or the abbreviations “Ltd” or “Corp” or “Inc”.
- The directors are required to ensure any prospectus (called an “offering document”) issued in relation to the company (i) contains all material information that investors would reasonably expect to be included in order to enable them to make an informed decision and of which the directors were aware at the time of issue of the offering document, or of which they would have been aware had they made such enquiries as

would have been reasonable in all the circumstances; and (ii) sets out such information fairly and accurately.

- The traditional concept of capital maintenance has been dispensed with. A 2006 Company may make a distribution (whether dividend or share buy back) or provide financial assistance or undertake other share capital reorganisations, provided a simple solvency test is met.
- Companies incorporated under the 1931 Act remain available for use as listing vehicles in a suitable case, for example where there has been a previous listing under this Act and the promoters wish to replicate the same structure.

It is possible to establish an Isle of Man company (whether a 1931 Act Company or a 2006 Act Company) on a same-day basis. If necessary, a company can be formed with standard articles of association (or even taken “off the shelf”) and suitable articles adopted later, prior to the listing.

Simcocks can prepare articles which meet the requirements of the AIM rules. The articles can have incorporated therein provisions (such as pre-emption and notification of interests in shares) which are not mandated by either the 1931 Act or the 2006 Act, thus ensuring that the company not only complies with the AIM rules but has the “look and feel” of a UK company.

Please also note that it is possible with the consent of the Isle of Man Department of Economic Development to re-domicile or migrate companies originally incorporated elsewhere to the Isle of Man (subject to suitable reciprocal legislation being in place in the overseas jurisdiction). In this respect, Isle of Man legislation exists for both 1931 Act companies and 2006 Act companies. Jurisdictions which allow migration out include Jersey, the British Virgin Islands and many civil law European countries. Migration is deemed not to create a new legal entity, or to prejudice or affect the continuity of the company which was formerly a company incorporated elsewhere and becomes an Isle of Man company.

It is not necessary for the prospectus/admission document to be submitted to any regulatory authority for prior approval in the Isle of Man. Accordingly, there is no question of the timetable to listing being delayed by approval in the Isle of Man having to be obtained.

As a corollary, the company may undertake a preliminary marketing of its shares on the basis of a pathfinder prospectus (with the usual “red herring” language appearing on its face) without any Isle of Man implications.

Isle of Man companies listed on AIM can use the CREST system to hold and transfer their shares and other securities in electronic or paperless form. The articles will provide for shares to be in uncertificated form and for title to be transferred by means of an instruction issued in accordance with the rules of the CREST system. An investor applying for shares may elect to receive them in uncertificated form if such investor is a system member (as defined in the Uncertified Securities Regulations 2005 (applicable to 1931 Companies) / Uncertified Securities Regulations 2006 (applicable to 2006 Companies) in relation to CREST.

Why Use Simcocks?

Simcocks is a leading Isle of Man law practice. Our Investment Funds and Capital Markets team has an international background and provides a wide range of services.

Our experience in this field means we can give clients the expert and responsive service they need to enable matters to be concluded swiftly and effectively.

We offer a competitive service with all fee earners encouraged to take a realistic and commercial approach to addressing the needs of clients to ensure we add tangible value.

In a typical listing, we act in conjunction with the English legal advisers to the company and provide advice and assistance on all Isle of Man aspects of the transaction. Among other matters, we will draft or review and amend the Memorandum and Articles of the company; review the admission document to ensure compliance with Isle of Man law; review other documentation; and provide an Isle of Man legal opinion.

Post listing, we continue to act as required, including in relation to further fund raisings.

Contact Us:

Simcocks Advocates can advise on all aspects of using Offshore Vehicles listed on AIM. For further information please contact Alex Spencer or Kevin O'Loughlin by telephone on +44 1624 690300 or by email at aspencer@simcocks.com or koloughlin@simcocks.com

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