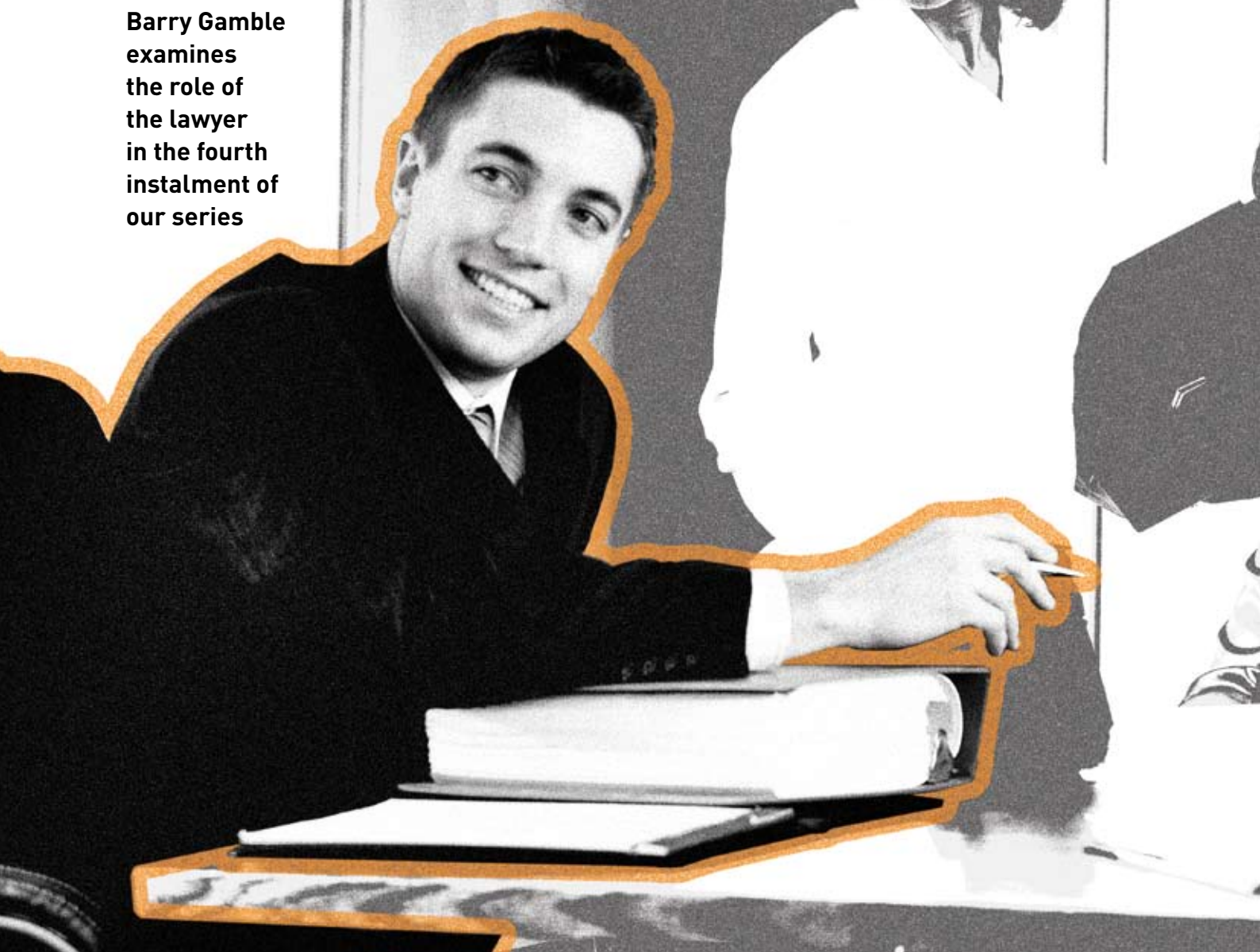


# Maximising the benefit from your AIM advisors

**Barry Gamble  
examines  
the role of  
the lawyer  
in the fourth  
instalment of  
our series**



**T**he provision of legal services across the corporate spectrum varies enormously. At the top end of the FTSE350, we would expect to find the 'Rolls Royce' approach, with legal input led by in-house corporate counsel and a lawyer, either on the board or acting in a full-time company secretarial role, backed up by dedicated service from one or more magic circle

legal practices. Legal input is clearly an important part of overall corporate risk management but for many companies, including the vast majority of those on AIM, legal services can easily start to represent a significant overhead, both in terms of the direct costs incurred and the not inconsiderable time and cost commitment of management interface with the service providers.

Just as with other advisors, good personal relationships with lawyers count. The personal chemistry between the chairman / CEO / finance director and the advising lawyer not only underpins the purely legal input but also provides the basis for a broader sounding board for the senior team. The style and skills set of legal firms varies, so not every practice will fit the need in all cases. Many of



There is an increasing tendency today for lawyers to brief directors formally and regularly on their continuing obligations under AIM rules. All AIM companies must take these responsibilities seriously to avoid the possibility of investigation, penalty or public censure. Max Audley, corporate partner at Olswang and a member of the London Stock Exchange [LSE] AIM Advisory Group, emphasises that “it’s not just a question of complying with the rules but ensuring the credibility of the market. Maintaining trust is in everyone’s interest.” An example of the LSE’s vigilant regulatory enforcement was the imposition of a £75,000 fine and public censure on an AIM quoted oil and gas company. The LSE found that the company had failed to keep the market informed about the lack of progress in developing its two key assets and had also failed to liaise appropriately with its nomad. More recently, the LSE has announced private censures and fines totalling £170,000 on four companies for breaching AIM rules. These breaches included delayed release of price-sensitive information and misleading market statements.

AIM has minimal codification of rules and is described by some as ‘spirit based’, with market practice and protocols setting the tone for the best approach. So the practical experience of the lawyer is a major component of the advice they give to the AIM corporate client – it is not enough just to know the rule book and the relevant law. As a further reinforcement of approach, many nomads are now requiring the establishment of an AIM committee of the board in addition to the audit and remuneration committees. The remit of this new committee is formally to review AIM compliance and best practice, and evidence sign-off by individual directors – an approach intended to protect both the board and its advisors.

As AIM boards are much more likely to come under scrutiny in the future, this is a necessary development. In the recent publication *The Anatomy of AIM* by investment bank Noble, Angus

the larger practices will put themselves forward to handle an AIM IPO – a major transaction with related fees for any practice. However, once the company has been admitted to trade on AIM, it may well fall off the radar of the senior fee earners. Activity may be bolstered by a secondary fundraising or bolt-on acquisition, but by their nature these are likely to be infrequent.

### DIY checklist:

- 1 Explain commercial objectives
- 2 Use a company secretary wherever possible
- 3 Hold a twice-yearly review, and one for any new directors
- 4 Be aware of continuing obligations – set up an AIM committee
- 5 Encourage your lawyer to help you develop good internal processes
- 6 Read and understand the AIM rules and supporting best practice QCA guidelines

Macpherson remarks: “If we had a criticism of AIM, it would be that the lack of activist investors...can delay the process of final exit.” Somebody has been listening, since Richie Clark, head of AIM for lawyers Fox Williams, considers that “board disputes and shareholder activism are becoming more prevalent on AIM.” There could be a number of reasons for this shift; not least might be the level of liquidity which some investment managers’ analysis shows has fallen significantly over the last five years. Also, hedge funds are becoming more active players on AIM and are much more willing to energise shareholders to challenge strategy, board composition or director compensation. The implications for AIM company boards are significant, and are bound to require closer working relationships with both nomad and lawyer.

Choose your AIM lawyers based on their level of dedication to serving your company and the importance they attach to you as a client – lawyers must be equally keen to do the big and small jobs. The input required may not be technical; indeed, one highly experienced lawyer with whom I have worked on a number of assignments has often been quick to say “I don’t think you need a lawyer for this one.” For me, these words mark the emergence of a higher level of trust and a closer working relationship – they recognise that advice has been sought but instead of a new fee account, a wider strategy is acknowledged which will



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deepen the relationship for the future. Such a response might just signal that your lawyer understands the commercial objectives of the business and has empathy with them.

It works best if the external lawyers are prepared to shed any aloofness to put themselves in the directors' shoes and act as trusted associates working with the board. This should involve really thinking about areas of detail – such simple things as presenting papers logically and helping the client to develop appropriate filing systems for legal documents and transaction bibles. Scheduling and preparing directors for documents requiring their attention, avoiding multiple attachments to emails, mailing or delivering by courier bound hard copy documents – all of this is good, practical help but probably the most important aspect is putting the emphasis on plain English rather than gobbledegook.

The role of the finance director is broadening all the time, so having another member of the top team (usually trained as a company secretary or lawyer), as the company secretary taking responsibility for board agendas, papers and minutes and constantly reviewing compliance and best governance practice has the potential for real added value – and this does not always happen with AIM companies.

Lawyers traditionally charge for their work on a time basis but we have started to see the emergence of fixed fees for some work. The reality is, however, that the cost of the legal service depends on the scope and specification of the job, and, particularly in the case of transactions, this only becomes clear as the terms of the deal are clarified and potential problems emerge. If there is cost transparency throughout, the client has the opportunity to control expenses along the way by making sensible judgements as to what the lawyers should spend their time on. An alternative, and often more satisfactory, arrangement to one of capping costs can be an abort / success fee, under which your lawyer takes some risk of failure against the upside for success.

Maximising the benefit from your lawyers starts with developing the necessary judgment as to when legal input is needed and how it can be supported in house. The habits which companies will have developed in the IPO to verify documents and information through good process, recording and authentication can be usefully carried through into other aspects of good practice. This should include ensuring that directors are familiar with the Quoted Companies Alliance guidelines. As an example, the publication *London IPOs – A Practical Guide for International Companies* provides a level of somewhat elementary, but what many would feel necessary, prescriptive advice, such as the overriding

to prioritise any actions required. This review process should be extended to a one-to-one briefing for new directors on appointment, which is always a good opportunity to have a fresh look at compliance and best practice.

Peter Elliott, corporate partner at Charles Russell LLP, comments on the proactive co-operation between the company and its lawyers that will lead to good results: "Some tasks are better done by the company rather than the lawyer, for example, initial due diligence or verification processes. If the client performs his task fully and shares his business objectives, the lawyer is better able to focus on the issues that are really important to the company."

“ It works best if the external lawyers are prepared to shed any aloofness to put themselves in the directors' shoes and act as trusted associates working with the board ”

importance of a balanced board, and the clear statement that the board of the company must, as a minimum, comprise a full-time CEO and suitably qualified CFO, plus at least two suitably qualified non-executive directors. Adam Fenner, corporate partner at Olswang, comments that "it is commercial lunacy for a public company CEO to be part-time."

A good lawyer will be as concerned about keeping clients out of trouble as about clearing up the mess after the event. Good processes and routines are the way to ensure compliance is being achieved and if there are gaps, the transparency of approach should help to ensure early attention to priorities for action.

As with other advisors, regular client / lawyer meetings following a standard agenda say, twice a year, should review all aspects of the business. This should ensure that the company is kept up to date with changes in the law, measures changing legal exposures and is able

There is much to be said for a visible and accountable partner-led service which provides continuity in good times and bad. Through the close relationship which should develop, such a partner has an opportunity to be of real help with the more difficult matters that might arise, such as problems with the nomad / broker or with other directors, pressure from shareholders or takeover panel issues – a few possibilities from a potentially long list. It is often only when these more contentious issues need to be addressed that you will ever really discover just how good a lawyer you have on your side.

*Having built the innovative environmental services business, fountains plc, Barry Gamble is now pursuing a portfolio career and has a number of advisory and non-executive roles. He has wide experience as a speaker, writer, author and broadcaster on finance, investment and business strategy. ■*