

Krys & Associates (Bermuda) Ltd.

BY ANNABEL COOPER

When you first hear that a firm specialising in insolvency and corporate recovery is setting up in Bermuda, your first reaction might be, “Help – is Bermuda in trouble?”

“Not at all,” says Kenneth Krys, founder and CEO of Krys & Associates. “In our business companies go under and fraud happens in good times and bad. In the long term, Bermuda needs to succeed for our business to succeed.”

Originally established as a Caymanian company, Krys & Associates quickly expanded into the British Virgin Islands (BVI), the Bahamas and then, in 2010, Bermuda.

“In relation to Bermuda, we found that there are not a lot of alternatives for insolvency and corporate recovery services. There is a need for professionals, particularly attorneys, and other financial institutions to have choices for these services. Because of our independence and objectivity, we meet that need,” says Krys.

Currently, KPMG is the major provider of liquidation and insolvency work in Bermuda while a sizeable practice is at PwC. There are also a couple of smaller companies in operation. In comparison, the Cayman Islands and BVI have around 12 such companies operating there.

Assisting Krys with the set-up of their Bermuda office is Brian Patterson. A Bermudian, Patterson is a former lawyer with Appleby and former general counsel at Catlin, and is the president of Krys & Associates (Bermuda) Ltd. Patrick McPhee will be joining as the managing director.

Krys and Associates specialise in offshore work, yet have a network of independent firms they work with in relation to other jurisdictions. This, they believe, sets them apart from other larger firms offering the same services because, explains Krys, “firms with multiple offerings can be conflicted out from many of the potential contracts.”

“If you get a large case such as Madoff,” he continues, “I, the liquidator need to be independent in relation to whom I pursue for assets and what kind of actions I’m willing to take. Because I don’t audit any banks or other financial institutions, I don’t have a problem taking on these large institutions and telling them if they didn’t do their job correctly. If you’ve got audit clients from that same institution, you can’t take that same risk.”

Krys also believes that being a smaller, independent company means they can give clients a more personal service. “Our firm only does this kind of work and our people have a hands-on approach. Because our firm is still relatively small, if you hire Ken Krys to be your liquidator on a particular job, he’s going to know what’s going on with that job on a day-to-day basis. You actually have the guy you hired.”

Much of the work they do is not confined to just one jurisdiction, hence the need for an office in Bermuda to support their operations in the Cayman Islands, BVI and Bahamas. “A lot of our matters are cross-jurisdiction”, says Patterson, “so we may be retained in one jurisdiction but there will be issues that relate to entities based in other jurisdictions.”

“We get a lot of work right now out of Asia,” continues Krys. “This is our big growth area. There are a number of banks there with interests or loans out to various Chinese companies. Those Chinese companies are not repaying their debt so they are asking us to go in, find out if these companies have a viable business and either negotiate with the principals or find new buyers for that particular business so the bank can either get its funds back or some return on its loans.”

How are Asian banks relevant to an offshore firm?

“In the case of a Hong Kong bank lending to a Chinese company, because they know getting enforcement in China is difficult, they set up a special purpose vehicle (SPV) in Bermuda, Cayman or the BVI, and the bank then takes security over the shares of that particular SPV,” explains Krys. “The SPV will hold the shares of the Chinese company, so we get appointed over the SPV and then our job is to exercise control over the shares of the Chinese company. You then start the process of changing the legal authority of that company.” In the case of Krys and Associates, the latter part would be done through an independent firm they have a relationship with in China or Hong Kong.

“A fair number of our jobs are joint appointments whereby one of the team members from Krys and Associates gets appointed jointly with another firm that we have a relationship with and that we know has the integrity and reputation for getting the work done,” says Krys.



Brian Patterson and Kenneth Krys

Impact of the Current Economic Climate

It could safely be assumed that the current global financial upheaval is a positive for a company specialising in insolvency, restructuring and corporate recovery. While business is doing very well for Krys and Associates at the moment, it's not for the obvious reasons you may think – plenty of bankruptcies.

"While one would think that the recession is causing additional work in insolvency, it's actually because people in a recessionary environment have more need for liquidity and become more diligent in regards to understanding their investments," explains Krys.

"The liquidation and corporate restructuring business is not necessarily about being invited to the place where the company has fallen apart and we're supposed to sweep it up," continues Patterson. "We are often asked in by investors to do an orderly dismantling and having a separate company take care of that is fair from everybody's perspective. We act as an independent third party who comes in, finds out what's there and what's not and,

as and when necessary, deal with the court to provide the investors and shareholders with whatever is due to them."

Bermuda Market

Krys and Associates sees Bermuda as a particularly strong market because, explains Patterson, there are very few other companies offering their services and while Bermuda has typically gone the way of the larger firms, they often encounter problems with conflicts of interest. They are already working on a couple of matters locally.

"The biggest piece of work we're involved in at the moment relates to the Madoff matter," says Krys. "The job we have initiates out of BVI but we are pursuing certain claims in Bermuda against parties there who received fictitious profits from Madoff investments."

"You get work from two or three sources," he continues. "The law firms, the Bermuda Monetary Authority in relation to regulatory matters, and sometimes the financial institutions bring you in directly to the extent that they have forensic needs. It is the law firms that provide a significant portion of our op-

portunities though."

Krys and Patterson hope to have a full time staff of four or five within the first year of operation, expanding beyond that when they sign larger contracts. "We've taken space in Chancery Hall that is a little larger than what we need with that expansion in mind," says Patterson.

They are also committed to recruiting and training Bermudian staff, which would include secondments to other offices and firms with whom they have a long-standing relationship. "Our training is firstly on the job and secondly by paying for courses and allowing staff to get training and education in certain jurisdictions where qualifications are provided," confirms Krys.

Krys believes that the current positive trend for his business will continue and he's confident about the product he has to offer the market. "I've got 20 years of experience and we're very proud of what we've been able to accomplish and the type of work that we do. We believe that we can do this same work and offer the same level of service in Bermuda," Krys concludes.