

Cayman insolvencies at 3,000 feet

In early February Krys & Associates hosted a panel discussion titled *Cayman Insolvencies at 3,000 feet – A Bird's Eye View at the Grand Cayman Beach Suites*. Invitations were extended to attendees of the American Banking Institute Conference, which was held in Grand Cayman in early February. The majority of attendees at the event were US bankers or attorneys who specialise in US Bankruptcy Law. The aim of the session was to provide an overview of the options available to stakeholders of companies in financial distress under Cayman Law, with emphasis on the differences between Cayman and US insolvency law and practice, writes Timothy Le Cornu, senior manager of Krys & Associates.

The event was moderated by Kenneth Krys, managing director of Krys & Associates. The panel included Alex Horsbrugh-Porter, a senior associate at Ritch & Conolly (Cayman); John Goodchild, a partner with Morgan Lewis Bockius in Philadelphia, and Margot MacInnis, a director of Krys & Associates.

Krys stated: "The session was directed to providing a basic understanding of the Cayman insolvency scene as compared to the US. Those in attendance came away from the session with a fuller understanding of our environment, the practical approach to insolvency in the Cayman Islands and the differences between the two regulatory environments."

Horsbrugh-Porter discussed the various types of insolvency proce-

dures available under Cayman law, which included compulsory, voluntary and provisional liquidations as well as Schemes of Arrangements. He also provided an overview of the Companies Amendment Law 2007 and the Company Winding-up Rules, which took effect from 1 March, 2009.

He introduced the participants to several of the key changes adopted by the Companies Amendment Law. A new provision at section 104 (3) of the Companies Amendment Law allows a company to petition the Court for a provisional winding-up order on an ex-parte basis if it is, or is likely to become, unable to pay its debts and it intends to present a compromise to its creditors. In making a provisional winding-up order the Court may grant the company certain



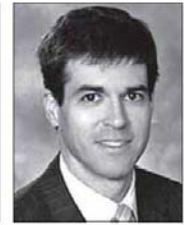
Kenneth Krys



Margot MacInnis



Tim Le Cornu



John Goodchild

relief such as a stay of proceedings while it works toward a compromise.

He also noted for the first time, insolvency practitioners' minimum qualifications are set out, along with the regulation and oversight of insolvency practitioners and their professional fees in the liquidation.

Horsbrugh-Porter highlighted alternative orders by the Court if a winding-up petition is presented on 'just and equitable grounds'. This new provision will allow for an alternative to winding-up in situations where there may be a dispute between contributories, providing an avenue currently used under section 996 of the Companies Act 2006 in the UK but until now unavailable in Cayman.

MacInnis explored the role of the Cayman Islands Monetary Authority, in regulating the financial industry,

the practical steps a liquidator takes after appointment, and establishing a liquidation committee. She explained one of the liquidator's primary responsibilities in the first days after appointment is to secure the assets of the company. Given the nature of Cayman companies operating in international financial markets, this involves the identification and seizing of assets in other jurisdictions. As a result Cayman insolvency practitioners are among the most experienced in the world in cross border insolvencies.

MacInnis said: "the nature of liquidation appointments mean that Cayman liquidators are often working closely with legal, administrative and accounting professionals in on-shore jurisdictions. They must develop a good understanding of the laws and practical hurdles of cross border engagements, particularly in achieving recognition of the liquidator's status in those jurisdictions, which will assist in securing the assets of the company."

Goodchild provided a fascinating overview of the Liquidation Committee's responsibilities, highlighting the differences in each jurisdiction. Under Cayman law, an LC is required to be appointed to every estate. The liquidator is required to report to the LC all matters that appear to the liquidator to be of concern to the committee, or matters that the LC has advised the liquidator are of concern to it. The LC may consult with the liquidator and is responsible for approving the liquidator's professional fees and disbursements. Conversely, in the US the LC's role is far more hands on, and it is directly involved in the decision making process in winding-up the company under Chapter 7 of the Bankruptcy Code, or the restructure of the company under Chapter 11.

Many of the LC's appointed to Cayman entities have a large number of US representatives, and more often than not they are US bankruptcy attorneys. The presence of these members on the LC can lead

to misunderstandings of the relative roles of the liquidator and the committee. Goodchild noted in his experience this sometimes led to spirited debate on issues, but that the objectives of the liquidator and the LC are generally the same. From a practical perspective Goodchild said "Cayman Islands insolvencies operate much like liquidating Chapter 11 cases operate in the United States."

A lively debated question and answer session ensued, with participants highlighting the similarities and differences between the liquidation process in the US and the Cayman Islands. The topic proved both relevant and timely in the current economic climate and will assist in furthering the understanding of Cayman insolvency practice in the US legal and banking fraternity.

One participant summed up his experience as follows, "Thanks again for hosting the bird's eye view seminar. I learned much about Cayman bankruptcy law and was very impressed by your team."