As investors anxiously await further deflation in the United States, the beat-down U.K. markets are already seeing plentiful opportunistic investments by Americans and other foreign players. "The U.K. market continues to reprice at a much faster clip than any other country we watch," says Jacques Gordon, global head of strategy with LaSalle Investment Management in Chicago. The London-based Investment Property Databank estimates that U.K. income-property values have already fallen well over 40 percent since peaking in mid-2007. London-based Cordea Savills is projecting the devaluation will bottom out at about 50 percent below peak levels sometime late this year. That is a signal to many investors that it is time to pounce. "The bidding on U.K. assets is growing, and the volume of distressed deals coming to market is also growing," Gordon observes. Those bids are coming from far and away. To wit, a new opportunity fund—London-based Mountgrange Investment Management that closed in May—attracted 30-some investors from the U.K., continental Europe, the United States, Canada, the Middle East, and Australia.

The roster of Americans jumping into the competition continues to grow. Gordon's colleagues at LaSalle are targeting well over $600 million in equity for the adviser's second U.K.-centric fund. Other well-known Yankee outfits taking steps to step up U.K. investment activities include Rockpoint Group, AREA Property Partners, Blackstone Group, Westbrook Partners, Lone Star Funds, Apollo Global Management, Och-Ziff Capital, and others.

As for other developed western economies, Gordon also sees Spain and Italy as ripe for repricing over the near term. Across the globe, LaSalle is likewise keeping close tabs on Australia and South Korea in addition to Japan. But Japan, which is a more challenging market for offshore newcomers to crack, is not likely to see quite the dramatic asset repricing already taking hold in the U.K., explains Doug Herzbrun, global head of research at international adviser CB Richard Ellis Investors in Los Angeles. But that does not mean that the likes of Lone Star and others are not actively pursuing opportunistic property investments in the Land of the Rising Sun. For instance, Secured Capital Japan, launched by current and former partners in the New York–headquartered real estate investment banker now known as Eastdil Secured, is in the process of closing its fourth Japanese opportunity fund—with the equity target this time at $750 million.

E&Y's Roth thinks that crunched credit markets in Japan could pose some near-term investment opportunities for offshore players to negotiate controlling interests in some of Japan's real estate investment trusts, or J-REITs. Indeed, Lone Star and others are pursuing that very strategy. Following up on Los Angeles–based Oaktree Capital Management's opportunistic investments into struggling J-REITs, Lone Star just beat out Oaktree and others bidding for rights to recapitalize the New City Residence Investment Corp. REIT, which filed for bankruptcy this past October.

In the United States, Lone Star ranks among many other prominent firms raising capital to be deployed into distress-related investments over the coming year or two. The firm is targeting $10 billion in equity for its distressed real estate fund, and New York private equity giant Blackstone Group already has some $12 billion of equity available for investment in real estate.

Herzbrun is expecting domestic trading activity to "ramp up significantly" in coming months as lenders and debt-strapped owners opt to shed properties and related assets at prices investors will find attractive. Activity has been slow to date, what with the ongoing bid-ask gap and uncertainty about federal financial bailout programs' role in financing acquisitions of distressed assets. Gordon doubts that activity levels will surge meaningfully until at least next year and, like Herzbrun, stresses that the changing rules and other complications will compel interested offshore players to partner with expert domestic asset managers.

Herzbrun expects that some offshore capital will return to U.S. property markets as investors resolve issues in their own backyards. Middle Eastern players will likely be back in short order, Norwegians seem well positioned to pounce, and Chinese groups could add to the fray relatively soon, but Europeans generally will not become major competitors until they deal with problems in their homelands. **UL**

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Disposing of Distressed Real Estate

JAMES A. CHATZ,
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In today's economic downturn there are possible tax advantages for builders and developers through the use of an assignment for the benefit of creditors (ABC), another means of arranging for the disposition of a troubled entity's assets.

FOR MANY REAL ESTATE developers and homebuilders, an assignment for the benefit of creditors (ABC), because of the potential tax advantages to be garnered, might well be the most recommended course of action during these difficult economic times. Since builders and developers may well benefit from the distinct tax advantage available through the ABC process, as compared to other alternatives such as bankruptcy or, worse, foreclosure, more than a little thought ought to go into weighing these differing solutions when hard times are encountered.

Basically, through the employment of an ABC, builders and developers may be able to make use of their current corporate tax loss carrybacks now, instead of waiting for another disposition of their property, such as through sale or foreclosure. Moreover, the so-called stimulus bill recently signed into law would expand the ability of some entities to use loss carrybacks from the current two-year limitation to a full five years. For qualifying builders and developers, this means that current losses could be used to offset income that was earned in the recent heady days of a stronger economy, when real property sales and related values were at or near their peak.

In an ABC, the company (or assignor) executes an agreement to transfer all of its property to a neutral third party (the assignee) who is, by definition, independent and disinterested, and willing to undertake the role of acting as a fiduciary for all of the business's creditors. The assignment itself is accomplished by way of a written contract and has the effect of deeding and conveying all of the assets of the company to the neutral third-party fiduciary who serves as assignee. The assignee's obligation thereafter is to liquidate in a timely manner all of the assets so received for the benefit of the company's creditors, and to pay over the proceeds derived from this liquidation to the various classes of creditors in accordance with the priorities dictated by law in these matters. Once an ABC is undertaken, the creditors of the business may then look only to the assignee, and the assets that were conveyed to him or her, for satisfaction of any obligations they may have arising from their business relationships with the company.

Because assignments are governed by state law, there is a good deal of variance from state to state regarding the specifics of the assignment. In some states, for example, an ABC is a court-supervised procedure, while in others the assignee administers the assignment estate within the bounds of the state's laws but without judicial oversight.

Unlike what occurs in a bankruptcy, there is no discharge of the company's debts in an ABC, but as Geoff Berman points out in *General Assignments for the Benefit of Creditors: A Practical Guide*, his handbook on ABCs, that is the practical effect. He writes, "A general assignment 'stops' creditors from pursuing the debtor (i.e., the company) through collection lawsuits" and "when the various individual aspects of state laws are brought into effect upon the making and acceptance of the general assignment, the practical effect is that creditor actions become ineffective."

What are the pros and cons of an ABC? The good news is that ABCs are customarily much faster, far more efficient, and certainly less expensive than a bankruptcy proceeding. Moreover, they often avoid the difficult impact on related businesses that foreclosures may often have. Most companies wisely choose to assign the assets to an experienced professional for whom managing the assignment is a normal part of his or her business. Absent disinterestedness, creditors could suspect either potential wrongdoing or illicit motives, with the result that they could force the company into involuntary bankruptcy as well as possibly bringing suit against the company and its management.

On the other hand, it is absolutely true that an assignment will never be the appropriate vehicle if what the company's owners and management are looking to do is to restructure the business and continue its operations into the future. An assignment fully divests the company, on an irrevocable basis, of all of its ownership interests in its assets, including the proceeds derived from their liquidation. Therefore, if reorganization of the enterprise is truly the goal, then a Chapter 11 reorganization or, if the parties are amenable, a private workout or composition arrangement would be a far better choice.

Developers and builders may be able to preserve, via the vehicle of an ABC, their ability to carry back losses on real property they part with in conjunction with the conveyance of assets in an assignment. Tax losses may be recognized when real property is deemed "abandoned" as that term is defined for tax purposes, and that an ABC can certainly be the appropriate vehicle and means to effectuate such an abandonment. An abandonment requires that the property's owner express an intent to abandon the property as well as perform some affirmative act that evidences the intent to abandon and relinquish all rights in the property, including any residual benefits.

In an ABC, the intent and relinquishment requirements can be managed through the language of the assignment itself, as an ABC is based on a written contract. The affirmative act comes upon the execution of the assignment when the assignee takes possession and control of all of the assets, including any real estate. Therefore, loss on the property may be recognized when the assignment takes place and without regard to when the assignee ultimately actually sells or otherwise disposes of the property.

With respect to any effort that allows a property owner to quickly access the benefit of any loss carryback provisions, not only does an ABC minimize the delays in the resolution of a property's disposition, as can be encountered in other alternative proceedings like bankruptcy or foreclosure, but it may even be better, from a timing standpoint, than what can happen when one tries to wait out the hoped-for straight sale of a property. It is the rapid disposition of the property, for tax purposes, that can be achieved through the execution of an assignment that can make all the difference for developers and builders who are trying to realize value from otherwise troubled assets.

This explanation only scratches the surface of assignments for the benefit of creditors and why the use of an ABC might be the right choice for either real estate developers or homebuilders burdened with property they are unable to unload. Anyone considering this course of action should learn more about the ins and outs of the ABC process before proceeding. **UL**

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