THE CLOCK IS TICKING

Aggrieved investors still have time to sue

■ **David Huggins**
Analysis

In 2009 and 2010, a number of agribusiness schemes collapsed, the most well known of these being Great Southern, Timbercorp, Willmott Forests and the Rewards Group.

Investors almost always borrowed to invest. That means they have been left to pay back, in some cases, very big loans.

Some investors have joined class actions to recover losses or get out of their loans. These actions have either been a complete failure or will only compensate investors for a very small part of their loss.

The problem with class actions is that they only focus on issues that apply to every person who invested in a scheme rather than making a claim based on the particular circumstances of each investor. These circumstances fall into three broad groups.

- The investment was not appropriate. These schemes had a very high level of risk derived from multiple sources. For this reason alone they were not an appropriate investment for most investors. In these circumstances, some investors may have a claim against their adviser on the basis that they should never have been told to invest in these schemes.
- The investor received an inadequate statement of advice from the adviser. Usually this involves an SoA that did not properly set out how these schemes worked, particularly the risks associated with them. Alternatively, some investors didn't receive an SoA at all or they received one after they had made the investment. Investors who fall within this group may be able to make a claim against their adviser on the basis that if their adviser had provided them with a properly drafted SoA at the correct time they would not have made the investment.
- The adviser arranged the finance to make an agribusiness investment. When the adviser did this they were acting as the agent of the lender and the lender is therefore responsible for the adviser's actions. If the adviser didn't comply with the law, the lender may not be able to enforce the loan.

These loans were sometimes transferred by the original lender to a bank. Whether or not the loan has been transferred doesn't make any difference. If the loan should not have been entered, a bank taking on that loan will not be able to enforce it.

Investors have held off making claims because they hoped to recover losses through a class action or hoped the lenders would release them from their loans. Sadly, this has proved to be a false hope.

The class actions have not succeeded and lenders are insisting on being repaid in full with interest.

So investors need to consider whether they have a claim against their adviser and whether they can argue that their loans are not enforceable.

The right to make a claim will end six years after the scheme went into administration.

Depending on the scheme, the time in which to make a claim for compensation or to challenge the enforceability of a loan will start running out from April.

■ David Huggins is a lawyer who specialises in resolving disputes about poor financial advice