The loans were the real scandal

Keep your wits about you if investing in an agribusiness scheme, warns **David Huggins**

Inappropriate: Scheme scenario.

In recent years a substantial part of my work has concerned agribusiness schemes.

These were schemes where clients bought units in a trust that was involved in an agricultural business such as growing almonds or producing wine. They were marketed to clients by financial planning firms on the basis that it was possible to get a large upfront tax deduction and then, in the future, make a substantial profit when whatever was produced was sold.

Many of the schemes had a loan associated with them so clients borrowed the entire amount they invested. The idea was the return from the scheme would be enough to pay back the loan plus interest and make a profit.

There were so many things wrong with these schemes and the advice that was provided about them that I hardly know where to start. But the most striking feature was they paid very high commissions to the financial planners who sold them.

Other investments usually paid 2 to 3 per cent commission but most agricultural schemes paid 10 per cent commission.

Commission payments were meant to be for the advice financial planners provided. So why were financial planners being paid about four times more for advice about agribusiness schemes that other investments when the work done for each type of investment was the same?

It would be like me charging one client my usual fee and another four times as much for the same work.

The answer is these high commissions were an inducement for financial planners to advise their clients to enter a plainly very high risk investment that was suitable for very few investors.

It should have been obvious to any competent financial planner that for many reasons there was a very significant chance that a scheme would produce income at level that was far less than that predicted.

The high rates of commission were an inducement and up-front compensation for taking the risk that clients would be dissatisfied with the advice.

When these schemes failed, or didn't perform as expected, the real evil became apparent. This was the fact that many clients borrowed to invest in them, which magnified the otherwise very high level of risk associated with these schemes.

The outcome of this borrowing is that despite the scheme failing or substantially underperforming, clients still have to pay back that debt with interest. What is even more surprising is that in some cases these debts have been on-sold to third parties in the business of recovering debts with respect to failed schemes.

These events are a scandal.

The full extent of this scandal is now being understood as the lenders involved take action to recover their loans.

Agribusiness schemes, despite the fact they were clearly high-risk investments, have been sold to people who never should have invested in them.

For reasons that have not been explained, the people doing the advising thought it appropriate to accept remuneration at about four times the usual rate to provide that advice.

The obvious risks associated with these schemes were grossly magnified when clients borrowed to invest in them. Apart from a very select group of investors — very high-income earners who could accept the risk associated with these schemes — they were unsuitable for the vast majority of clients.

If you invested in these schemes and borrowed to invest, you need to think very carefully about whether the advice you received was appropriate.

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