Photo: GLENN HUNT

Call to police finance sharks

Duncan Hughes

Failed property financing deals involving debentures and managed investment schemes have played a big part in investors losing up to $15 billion since the global financial crisis, according to Niall Coburn, lawyer, regulatory adviser and corporate investigator.

The estimate, based on 15 collapses over the past five years, is believed to be conservative, as receivers and regulators are still reviewing the failed companies and assessing losses.

The Australian Securities and Investments Commission has launched new rules to toughen auditing and trustee oversight of the types of investments, fund arrangements and reporting to investors.

But Mr Coburn, FTI Consulting managing director, warned the rules would need to be rigorously policed to ensure compliance if they were to have any lasting impact.

"There is no point in sending a chicken to deal with a shark, as the outcome is predictable," he said.

"They have got to get tough on this corporate misconduct as they are dealing with sharp operators. The regulators need to expose operators."

Directors and auditors should be personally liable if a scheme over $50 million fails, he said.

The recent collapses of three financial advisory firms highlight the loopholes and the vulnerability for investors who can be exploited by unscrupulous operators just as improving equity and property markets boost demand for investments.

ASIC recently withdrew the licence of AAA Financial Intelligence and AAA shares, a Sydney-based network of about 186 authorised representatives, for "comprehensive and repeated" breaches.

One of the failed group's schemes encouraged investors to set up self-managed superannuation schemes for funnelling cash into property development deals for double-digit returns.

SMSFs, also known as do-it-yourself super schemes, have more than $400 billion in funds under management and are a key target for schemes that can provide high-yield returns.

Investor Alison Cook, a former ballerina with no investing experience, lost two-thirds of her $650,000 compensation payment following a car crash that left her in a wheelchair. A AAA adviser invested her funds in a high-risk, unregistered Asian Pacific Property Fund intended for sophisticated wholesale investors. Its assets were four vacant lots of land in Hervey Bay, 290 kilometres north of Brisbane.

Neil Kendall, managing director of Financial Rescue, an advisory and advocacy group, is seeking compensation. He said missing documentation was frustrating efforts to track what happened to the money.

Investigators into last year's collapse of Wickham Securities are looking into claims it offered property developers loans at interest rates of 20 per cent-plus, offering to turn around deals within 48 hours. Funds came from depositors.

Cancellation of an advice licence is a double blow for aggrieved investors because it also cancels out professional indemnity, cutting off another potential compensation avenue.

"Claimants have the status of creditors, which means there is a low probability of a successful claim," Mr Kendall said.

Mr Coburn said the collapsed companies offered schemes that had a different purpose but shared weak prudential or capital adequacy requirements.

"In most cases these investment schemes depended upon the value of assets that were bought in the pre-GFC era at inflated prices," he said.

"The collapse in the property and land prices turned many of these schemes into Ponzi scenarios, where more investors were enticed to invest with the reality they would never see their money again."

A common weakness that proposed laws are intended to address is the auditors' checks and balances, which could have identified impaired assets, or revalued the portfolio's main assets.

"Financial statements have looked respectable until the last two years, when the reality of valuations began to bite," Mr Coburn said.

ASIC has proposed new rules that will require minimum capital and liquidity requirements for debenture issuers, tougher disclosure to investors and clarification of the powers and duties of debenture trustees.

FBA 050

FIN REVIEW : 21/2/2013