# Investing in agribusiness schemes?

Independent guide for investors about agribusiness schemes

This guide is for you, whether you're an experienced investor or just starting out.

ASIC
Australian Securities & Investments Commission

## About ASIC

The Australian Securities and Investments Commission (ASIC) regulates financial advice and financial products (including credit). Our website for consumers and investors, MoneySmart at www.moneysmart.gov.au, offers you free and independent tips and safety checks about the financial products and services we regulate. Visit www.moneysmart.gov.au or phone ASIC's Infoline on 1300 300 630.

## How can this booklet help you?

Read this booklet together with the Product Disclosure Statement (PDS) and any other disclosure documents for the investment.

Remember:

- The return offered is not the only way to assess an investment: make sure you understand the risks.
- The information in this booklet is general in nature. To work out a detailed strategy that meets your individual needs, consider seeking professional advice from a licensed financial adviser.

Visit www.moneysmart.gov.au for more independent information about what to watch out for when investing.

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# Key tips from ASIC about investing

1. Anything you put your money into should meet your goals and suit you.
2. No one can guarantee the performance of any investment. You might lose some or all of your money if something goes wrong.
3. The rate of return offered is not the only way to assess how risky an investment is.
4. 'High return means high risk' is a familiar rule of thumb. However, some investments, even if they seem to offer relatively modest returns, can be extremely risky.
5. Take your time and do your research before deciding what to invest in. Visit ASIC's website for investors, MoneySmart at www.moneysmart.gov.au, for more information.
6. You are taking a big risk if you put all your money into one investment. Spreading your money between different investment types ('diversification') reduces the risk of losing everything.
7. Consider seeking professional advice from a licensed financial adviser.

# Know what the investment is

## What is an agribusiness managed investment scheme?

An agribusiness managed investment scheme ('agribusiness scheme') uses your money to invest in primary production activities, such as livestock, farming, horticultural crops or forestry projects.

An agribusiness scheme can be categorised as:

- forestry (for example, pine trees or blue gums), or
- non-forestry (for example, horticultural crops, beef cattle or aquaculture).

A company (the 'responsible entity') is appointed to run the agribusiness scheme on behalf of investors. As an investor, you rely on the responsible entity to manage the scheme.

## How do agribusiness schemes work?

In most cases, when you invest in an agribusiness scheme, you acquire a right to derive profits from the produce of the agribusiness scheme (for example, a right to a share in the profits derived from the olives harvested in an olive plantation scheme).

You usually pay an upfront fee and may also pay annual fees. These fees cover the costs of running the scheme and may include payments to advisers or people who promote the scheme.

Your returns may be paid:

- as a *single lump sum* (for example, if the investment is in trees to be sold for timber), or
- in *instalments* after a number of years (for example, if the investment is in an olive plantation).

Tax is usually payable on your returns when you receive them.

## How is investing in agribusiness schemes different?

Agribusiness investments are different from other types of investments:

- Your investment may not entitle you to any physical assets, such as the land or planted trees. This means that if the responsible entity becomes insolvent, or if the agribusiness scheme fails before the produce can be harvested or sold, your investment may not have any value.
- When you invest in an agribusiness scheme, you may have to enter into a number of legally binding contracts with the responsible entity and related service providers.

  For example, in an olive plantation scheme, contracts will be entered into with service providers to purchase the olive trees, to manage and tend the plantation, and to harvest the olives. Investors usually provide a power of attorney to the responsible entity to enter into these contracts on their behalf.
- An agribusiness scheme may be a very long-term investment, with no returns for up to 20 years. This makes it hard to predict the returns.
- Agribusiness schemes are generally not listed on a stock exchange, such as the Australian Securities Exchange (ASX). This means that it is almost impossible to on-sell or exit your investment. You must be prepared to keep your investment until maturity.

## Tax benefits

Agribusiness schemes are often designed to deliver tax benefits to investors. These tax benefits are then promoted as a key advantage of the scheme.

Management fees may be tax deductible. If the responsible entity has obtained a product ruling from the Australian Taxation Office (ATO), this gives you greater certainty about any promoted tax benefits.

However, the product ruling only applies while the scheme complies with the terms of the ruling. If the scheme ceases to comply at any stage, the ATO could disallow your tax deductions and you would then have to pay the unpaid tax amounts to the ATO.

Investors are also sometimes encouraged to borrow money to invest in an agribusiness scheme. In some cases, the loan fees and interest are tax deductible. However, you should seek professional advice on any tax issues.

> ***Remember***
>
> A good investment is one that delivers you a real investment return, not just tax deductions.



# Do your research

Before you invest in an agribusiness scheme, it's important to understand its features and risks. The responsible entity of a registered agribusiness scheme must give you a Product Disclosure Statement (PDS).

## Why is the PDS important?

The PDS tells you how the agribusiness scheme works and you should read it in full. Under the law, the PDS must include enough detail for you to compare similar financial products so you can make an informed decision.

Concentrate on the sections in the PDS that:

- explain the key features and risks of the investment
- tell you about the fees you will pay
- give you information about certain indicators (PDSs issued or still in use from 1 August 2012 should provide 'benchmark' and 'disclosure principle' information), which can help you to assess the risks of the agribusiness scheme (see pages 14–25), and
- set out the key terms of any contracts you are authorising the responsible entity to enter into on your behalf.

You should find the information relating to the benchmarks and disclosure principles in the first few pages of the PDS. The responsible entity must also tell you if there are significant changes to the information in the PDS (this is called 'ongoing disclosure'). Check the scheme's website and/or look for regular updates in the mail.

You do not need to make a decision based on the PDS alone. Do your own research about the people involved, the agribusiness produce and its location.

## What are 'investment ratings'?

An 'investment rating' is an opinion by a research house or research company about the likely performance of an investment, or its relative performance compared to other similar investments. This is different from a 'credit rating', which is an opinion about a company's ability to pay all its debts on time and in full.

An investment rating is only one factor to consider when deciding whether or not to invest in an agribusiness scheme. And not all investment ratings are the same:

- Some research houses rate investments with stars (the more stars the stronger the recommendation) and some use words like 'recommended'.
- The way the ratings are calculated varies. Some research houses only assess investments using publicly available information about the investment (such as price and returns), while others do more in-depth research (for example, speaking directly to the investment managers).
- Many research houses receive payments from the responsible entity promoting the investment being rated.
- If you don't understand how the rating was calculated or how to use it, contact the relevant research house or discuss it with your financial adviser.
- Only use ratings from companies that hold an Australian financial services licence.

## Do you need advice?

Take your time and think things over before you invest. Make sure you do your own research to ensure that you know the risks involved, what exactly happens to your money and whether the investment is really right for you.

ASIC's booklet *Getting advice* can help you understand personal financial advice and what questions to ask your adviser. Phone ASIC on 1300 300 630 or go to www.moneysmart.gov.au to get a copy. If you are thinking about investing in an agribusiness scheme, or if your financial or tax adviser has recommended such a scheme, make sure you find out the answers to the questions on pages 10–11 of this booklet.

The PDS and ongoing disclosure should tell you about the agribusiness scheme, what will be done with your money, and the terms of the investment.

A PDS does not have to be lodged with ASIC before it can be used to raise money from investors. ASIC does not check or endorse the underlying investment in a PDS in any way.

## Questions you should ask

How does this product fit into your financial plan and how will it help you achieve what you want?

What commission is the adviser getting for recommending this product?

What are the main risks associated with this type of investment?

How is your money being used? What percentage goes towards the planting, management and harvesting of the crop? What percentage goes towards the administration and marketing of the scheme, and towards profits for the responsible entity?

Has the ATO issued a product ruling about the tax deductions available from this investment?

What is the financial position of the responsible entity? For example, does it rely on finding new investors each year to fund its operation, or does it have another form of finance?

What is the track record of the responsible entity for similar projects?

What does the relevant state or territory's government agriculture department say about growing the type of crops, or owning the type of animal, in the region specified for investment?

Can you sell or leave your investment before the end of its term?

What do you own during and at the end of the investment period?

# Assess the risks

The return offered on an investment is not the only way to assess how risky it is. ASIC has developed 5 benchmarks and 5 disclosure principles for agribusiness schemes to help you assess the key risks.

The responsible entity should tell you in the PDS if the scheme meets each benchmark and disclose the information outlined in the disclosure principles. If a benchmark is not met or the information is not disclosed, the responsible entity should explain why not, so you can decide whether you're comfortable with the explanation.

The responsible entity should also update you about any significant changes to the scheme's performance against the benchmarks or disclosure principles over time (through ongoing disclosure).

***Remember***

The benchmarks and disclosure principles are not a guarantee that an agribusiness scheme will perform well.

Even if the scheme meets all the benchmarks and discloses the information outlined in the disclosure principles, you could still lose some or all of your money if things go wrong. The benchmarks and disclosure principles are simply designed to help you understand the risks and decide whether or not to invest your money.

Take your time and think things over before you invest. Get professional advice if you're unsure what to do.

Here's how you can use ASIC's benchmarks and disclosure principles to assess some of the risks in agribusiness schemes:

Look for information relating to each benchmark and disclosure principle in the PDS and ongoing disclosure documents.

▼

Check if the agribusiness scheme meets the benchmark and discloses the relevant information.

▼

If a benchmark is not met or the information is not disclosed, does the responsible entity explain why not and how it deals with this risk in another way?

▼

Are you satisfied with how it deals with this risk?

▼

If not, are you willing to risk your money in this agribusiness scheme?

# ASIC's 5 benchmarks and 5 disclosure principles for agribusiness schemes

The PDS for an agribusiness scheme should disclose whether or not the scheme meets each benchmark. The responsible entity should also disclose particular information about itself and the scheme as outlined in the disclosure principles.

# Benchmark 1. Fee structures

### Will the fees (annual or upfront) cover the scheme's expenses? Are fees held separately and used only for the scheme's operation?

To meet this benchmark, the fees charged by the responsible entity (annually or upfront) should be sufficient to cover the expected costs of running the agribusiness scheme. Fees should be based on the actual costs of operating the scheme and only be available for operating the scheme that you have invested in.

After fees have been received by the responsible entity, they should be held separately from its own assets and from those of any other agribusiness scheme that it operates, and in trust, where an upfront fee model is used.

### *What's at stake for you?*

The responsible entity has obligations to run and manage the agribusiness scheme for the life of the scheme, which could be up to 20 years.

If you only contribute an upfront fee, and the responsible entity spends all of the fees early or experiences financial difficulties, there may not be enough money to cover the costs of running the scheme in the long term.

If the responsible entity operates more than one agribusiness scheme, the fees paid to operate one scheme could be mixed with its other income. These funds could then be used to pay the expenses of another scheme, or the expenses of the responsible entity itself, leaving insufficient money to cover the costs of running the scheme in which you have invested.

# Benchmark 2. Responsible entity or related party ownership of interests in the agribusiness scheme

### Will the responsible entity or a related company own less than 5% of the interests in the scheme?

To meet this benchmark, the responsible entity, or any related company, should own less than 5% of the interests in the agribusiness scheme.

### *What's at stake for you?*

If the responsible entity (or a related company) owns a large interest in the agribusiness scheme and gets into financial difficulty, it may be unable to meet its share of the ongoing fees needed to cover the costs of running the scheme.

As a result, this shortfall would need to be paid by the remaining investors, or the responsible entity's interests would need to be sold to new investors. However, on-selling an agribusiness scheme investment is very difficult because there is no active secondary market for these investments.

# Benchmark 3. Annual reporting to investors

### Will the responsible entity provide you with relevant information at least annually?

To meet this benchmark, the responsible entity should provide relevant scheme-specific information to you at least once a year.

Examples of relevant information include:

- the cash position and annual expenses of the scheme
- how the scheme is performing relative to expectations
- current prices and conditions in the market for the agricultural produce of the scheme
- an update on the financial position of the responsible entity (including any financial position risks), and
- the impact of any regulatory changes on the scheme (for example, the impact of any carbon-reduction initiatives).

***What's at stake for you?***

By providing this information, the responsible entity will help you keep up-to-date with your investment.

If the agribusiness scheme does not meet this benchmark, you may find it hard to know what is going on with the investment. You may want to think twice about investing in a scheme that will not provide you with regular information.

# Benchmark 4. Experts

### Do experts engaged by the responsible entity hold and maintain relevant qualifications, and are they independent?

To meet this benchmark, the responsible entity should only engage independent experts to provide professional or expert opinions that may be relied on by investors.

In addition, the qualifications and accreditations of experts should be disclosed to investors.

If a number of experts' opinions have been obtained, a summary of all their opinions should be disclosed to investors.

***What's at stake for you?***

Independent and qualified experts are more likely to give an unbiased opinion on matters relating to the agribusiness scheme.

You need to understand the independence and qualifications of experts who provide opinions about the scheme so you know how much you can rely on such opinions.

# Benchmark 5. Appointing and monitoring service providers

### If the responsible entity appoints service providers to help manage the scheme, are they properly approved and monitored?

To meet this benchmark, the responsible entity should only engage key service providers necessary for the operation of the scheme if the agreement with the service provider is:

- approved by the board in compliance with a documented policy
- disclosed to investors (either in the PDS or in ongoing disclosure documents)
- reviewed at least annually against set performance requirements, and
- subject to certification by the board that the agreements are on an arm's length basis.

### *What's at stake for you?*

A responsible entity may engage external service providers to perform tasks for the agribusiness scheme. For example, the responsible entity may engage another party to look after the scheme's farm management and harvesting activities. Service providers are often related to the responsible entity.

The terms of any agreements with service providers may have a significant impact on the viability of the scheme and the ultimate return you receive.

Find out what factors the responsible entity considers before appointing a service provider. Are they capable of actually providing the services?

There should be a process to ensure that all service providers are appointed on terms that are in the best interests of investors.



# Disclosure Principle 1. Investor financing arrangements

### What are the terms of any investor financing arrangements and how and when must loans be repaid?

The responsible entity or a related party may offer to lend you money to finance your investment in the agribusiness scheme.

In these circumstances, the responsible entity should clearly and prominently disclose:

- details of who is providing the finance
- any amounts paid to the the responsible entity or related party for arranging this finance for you
- that the investor should obtain and read the finance agreement before entering into the agreement, and
- unless the proposed finance is 'non-recourse', that the investor will remain liable to repay the amount borrowed if the scheme fails.

### *What's at stake for you?*

If you borrow to finance your investment in the agribusiness scheme, you should be told if the responsible entity is paid a fee, as well as the terms and conditions of the loan.

This is important because, if the scheme fails or delivers a lower profit than expected, you may still owe the amount you borrowed and have to keep paying it back.

# Disclosure Principle 2. Track record of the responsible entity

### Does the responsible entity operate any other agribusiness schemes, and have the returns been positive?

The responsible entity should disclose the experience and resources it has available to operate the agribusiness scheme, including:

- the number of agribusiness schemes it operates
- the types of agribusiness schemes it operates
- the length of time it has been operating each scheme, and
- whether any of these schemes have produced positive returns for investors.

### *What's at stake for you?*

To make an informed decision, you need information about the performance of agribusiness schemes operated by the responsible entity. If most or all of the previous schemes have failed to deliver positive returns for investors, you might want to think twice before you invest.

If a responsible entity has not run an agribusiness scheme before, you may want to do extra research to make sure that it has sufficient qualifications and experience to manage this type of investment.

# Disclosure Principle 3. Responsible entity's financial position

### What are the responsible entity's financial arrangements?

The responsible entity should disclose a summary of its financial position and whether it:

- relies on funding from external or related parties to perform the functions and obligations relating to the agribusiness scheme
- has entered into guarantees or indemnities with external or related parties, or
- is a member of a tax consolidation group (a group of companies treated as one entity for income tax purposes).

It should also disclose the measures it has in place to address any risks arising out of these arrangements that may affect its financial position and its ability to meet its obligations to investors.

### *What's at stake for you?*

It's important for you to understand the responsible entity's financial situation when deciding whether or not to invest.

The responsible entity should have enough financial resources to be a 'going concern' in its own right. This means the responsible entity should not have to rely on others to meet its ongoing financial obligations.

If the responsible entity relies heavily on external borrowing to fund its operations, or if it has provided guarantees to other parties which may be called upon if those parties cannot meet their obligations, the risks for investors are increased.

# Disclosure Principle 4. Land, licences and water

## What arrangements are in place to secure the resources necessary for the operation of the scheme, and what are the associated risks?

The responsible entity should disclose how it secures the rights of access or tenure to land, licences and water needed to operate the agribusiness scheme.

It should also disclose any risks associated with these arrangements.

***What's at stake for you?***

You need to know if the land and other infrastructure required to operate the agribusiness scheme are owned by other parties and what risks are associated with these arrangements.

If the responsible entity fails to adequately secure the resources needed to operate the scheme, this could result in additional costs to you (for example, costs incurred in sourcing additional water) or, in some cases, failure of the scheme.

# Disclosure Principle 5. Replacement of the responsible entity

## What happens if the scheme's responsible entity is replaced or fails?

The responsible entity should disclose whether, if it fails or is otherwise replaced, any incoming responsible entity would be able to access the resources needed to operate the agribusiness scheme.

It should also disclose other arrangements that may affect the ability of an incoming responsible entity to operate the scheme.

***What's at stake for you?***

You need to know about any arrangements that may affect the appointment of a replacement responsible entity.

In some agribusiness schemes, a new responsible entity would not be able to access the infrastructure or funds to operate the scheme. This would make it difficult for the scheme to continue. A replacement responsible entity may also ask you to pay additional fees.

You need to take these extra risks into account before deciding whether or not to invest.

# Think about your own situation and needs

## Does the investment meet your goals?

Whenever you invest your money, it is important to have a financial goal in mind, and a strategy for meeting that goal. For example, your goal may be looking for a secure income for your retirement.

Think about getting professional advice from a licensed financial adviser to help you develop a suitable investment strategy according to the level of risk you're comfortable with. Then measure all investments against that strategy.

## Is it important to you to protect your capital?

Be careful about words like 'safe' and 'guaranteed' in advertisements. They might imply that an investment is secure, when in reality it is not.

Certain financial institutions like banks, building societies or credit unions are specially regulated by the Australian Prudential Regulation Authority (APRA) to make sure that, under all reasonable circumstances, they can meet their financial promises to you.

This type of regulation, called 'prudential regulation', protects you, for example, if you put your money in a term deposit with one of these institutions.

## Have you spread your investments to manage risk?

Most people have heard the saying, 'Don't put all your eggs in one basket'. When it comes to investing your money, a good way of managing risk is to spread your money between different investment types, such as cash, fixed interest, property and shares. The spread will depend on your financial goals and how much risk you're comfortable with. These different investment types are known as 'asset classes'.

Spreading your investments to manage risk is called 'diversification'. Just investing in agribusiness schemes is not diversification.

By spreading your money both across different asset classes and between different investments within the same asset class, you reduce the risk of losing everything. By putting only a proportion of your total funds into any one type of investment, you won't lose everything if one investment produces poor results or fails completely.

## What returns are you being offered?

'High return means high risk' is a familiar rule of thumb. However, as with all rules, there are exceptions. Some investments that appear to offer relatively modest returns can be extremely risky. That's why it's important to think about more than just the return when deciding whether to invest in something.

When comparing rates of return, make sure you compare 'apples' with 'apples' (that is, similar investments).

## Can you get your money back early?

Generally, you will not be able to redeem your investment in an agribusiness scheme before the end of the investment term.

If you need flexibility, think about investing in other financial products that allow you to withdraw your money.

### Do you know how risky the investment is?

Agribusiness schemes are riskier than term deposits offered by banks, building societies and credit unions. You are investing in an agribusiness scheme, not depositing your money with a financial institution that is prudentially regulated in Australia.

Ask yourself if the return you are being offered is high enough to compensate you for the risk you are taking by putting your money in this investment.

### Can you accept the risks?

The main risks with an agribusiness scheme are that the scheme fails or the responsible entity is not able to meet its commitments for the full term of the scheme.

If you don't understand the risks of this investment or you're not comfortable taking any risks with your money, look at other financial products instead. Get professional financial advice if you're not sure about an investment decision.

### Do you know what you're investing in?

Check what the agribusiness scheme plans to do with your money. This information should be clearly set out in the PDS, but keep asking questions until you really understand.

Knowing what your money will be used for can help you assess the risks and decide whether you are comfortable with this investment.



## Misleading advertising? Hard sell?

Have you come across an advertisement for a financial product that you think is misleading?

Or have you been pressured by a salesperson to make a decision when you didn't have enough information, or weren't sure that the product was right for you?

- Phone ASIC on 1300 300 630 to tell us about it. You can lodge a formal complaint at www.moneysmart.gov.au.
- For strategies to help you resist pressure selling, so you don't end up investing in a financial product that doesn't suit your needs go to www.moneysmart.gov.au.
- For more information on what to look out for in general investing, go to www.moneysmart.gov.au.

# ASIC's benchmarks and disclosure principles can help you

The following benchmarks and disclosure principles are designed to help you:

- understand the risks, and
- decide whether to invest your money.

***Remember***

- The benchmarks and disclosure principles are not a guarantee that an agribusiness scheme will perform well.
- Even if an agribusiness scheme meets all the benchmarks and discloses the information outlined in the disclosure principles, you could still lose some or all of your money if things go wrong.
- Any investment should meet your goals and suit you.
- ASIC does not endorse specific investments.

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