

WORKOUTS

Shadow directorship risk for lenders in informal workout scenarios, by Eric Flaye A Fin, Issue 3, pp. 32–36.

In the wake of the global financial crisis, it has become increasingly common for lenders to pursue 'informal workout' arrangements with distressed borrowers in an attempt to avoid the destruction of value often associated with formal insolvency proceedings. Although shadow directorship risk for lenders has been described as 'almost entirely imaginary' under English law, the same cannot be said for the position of lenders under Australian law. This paper makes some practical suggestions that may assist lenders in mitigating shadow directorship risk when engaging in informal workouts with Australian corporate borrowers.

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