

THE PROTECTION OF EMPLOYMENT CLAIMS IN CORPORATE BANKRUPTCY: A COMPARATIVE ANALYSIS OF MYANMAR'S APPROACH TO THE EMPLOYEE WELFARE FUND AND INTERNATIONAL PRACTICES

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ABSTRACT

This research examines the protection of employee claims in corporate insolvency under Myanmar law. Although the Myanmar Insolvency Law 2020 grants statutory priority to certain employment-related claims, that protection remains largely dependent on the availability of assets in the insolvent estate. In asset-deficient insolvencies, particularly those involving small and medium-sized enterprises, employees may remain unpaid despite formal legal recognition, exposing the structural limits of a priority-based model within a creditor-oriented insolvency framework. Using doctrinal and comparative analysis, this research argues that insolvency law alone cannot provide adequate protection for employee entitlements. By examining international models such as wage guarantee funds and employee welfare mechanisms operating outside the insolvency estate, the study identifies structural weaknesses in Myanmar's current framework and proposes reform aimed at delivering more effective, timely, and socially responsive protection for employees in cases of employer insolvency.

Keywords: Corporate Insolvency, Employee Claims, Myanmar Insolvency Law 2020, Statutory Priority, Wage Protection, Asset-Deficient Insolvency, Wage Guarantee Schemes, Social Protection

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INTRODUCTION

Corporate insolvency represents both a financially and commercially relevant event and a socially important one since, as an example, it negatively impacts employees who can lose wages, pensions, and termination payments and uncertain entitlements. Employees normally lack flexibility to adapt to income loss quickly or find new jobs immediately. Employee protection in insolvency often occurs based upon how well they are able to receive the distribution of the insolvent company's assets versus receiving protection through a social protection system. Employee protection in insolvency cases is typically dealt with by mechanisms contained within the framework of insolvency laws as opposed to separate labor protection systems. Most legal systems allow insolvency law to address employee protection via mechanisms within the collective treatment of creditor claims. In such frameworks, employee protection is most commonly achieved via statutory preference rules providing preferential treatment of unpaid wages and other employment related claims. Statutory preferences are used to strike a balance between commercially oriented goals and some level of social protection consideration.

Insolvency proceedings deal with all unsecured creditors on an equal basis, according to the *pari passu* rule. By statute, however, employees have a statutory preference in terms of their right to payment before unsecured creditors. A major flaw with statutory preference is that there is no guarantee that such claims will be paid if the insolvent estate lacks sufficient assets to satisfy them. For example, in cases involving insolvent SMEs, due to the lack of sufficient assets, employees may not be able to collect on their claims even though their claims were formally recognized in the bankruptcy proceeding. Therefore, the effectiveness of employee protection under insolvency law continues to be based on the existence of sufficient assets in the insolvent estate and does not offer any guarantees of employee protection when they need it most. Many countries therefore supplement insolvency-based employee protection mechanisms with external mechanisms that operate outside of the insolvent estate. Such mechanisms ensure that employees receive compensation for losses regardless of what amount of money exists in the insolvent estate. Thus, they acknowledge that the insolvency risk faced by employees cannot be resolved solely through the distribution of assets. Countries reliant on insolvency law therefore still bear a disproportionate burden of insolvency risk for employees.

In Myanmar, protection of employee claims during employer insolvency is limited not only by the insolvency law, but also by various institutional and legal impediments. The recent Myanmar Insolvency Law 2020 has implemented modernized corporate insolvency and restructuring processes intended to improve creditor confidence and enable orderly administration. However, the new law maintains a creditor-orientated focus on asset liquidation and collective treatment of creditor claims. Although employees are identified as a distinct category of claimant under the new law, their claims are treated almost exclusively as monetary obligations rather than as social claims that require autonomous protection.

Myanmar has a labour welfare system outside of insolvency legislation. Mechanisms exist within the country's existing welfare framework, particularly under the Social Security Law 2012, which provides general welfare assistance to employees. However, such mechanisms do not provide specific protection for unpaid wages or employment-related claims arising from employer insolvency. Consequently, employees must primarily seek recovery through the insolvent estate, and where the estate is asset-deficient, employees may receive little or no compensation for their lost entitlements.

For the purposes of this study, the term "Employee Welfare Fund" (EWF) is used broadly to describe institutional mechanisms that provide financial protection to employees outside the insolvency estate. The study does not suggest that Myanmar currently operates a dedicated insolvency-related Employee Welfare Fund. Rather, the concept serves as a comparative

starting point for evaluating alternative approaches to employee protection. Through comparative analysis, the study distinguishes between traditional Employee Welfare Fund models and Wage Guarantee Fund (WGF) systems and assesses their relative effectiveness in addressing wage losses arising from employer insolvency.

Additionally, informal employment relationships, minimal social security coverage and poor enforcement of labor regulations further limit employees' ability to recover entitlements from insolvent estates. Against this backdrop, this dissertation explores the protection afforded employees in corporate insolvency through a comparative analysis of Myanmar's regulatory environment and selected models from around the world. It posits that Myanmar's reliance on statutory priorities in insolvency law is inadequate in cases of insufficient estate assets and that employer insolvency constitutes both a commercial problem and a matter of social welfare.

LITERATURE REVIEW

The concern for protecting the claims of employees in the context of corporate insolvency is becoming increasingly relevant within the legal community due to the conflict of interest between commercial insolvency policy and the pursuit of social welfare goals. Most existing research compares and contrasts the respective priorities of creditor and employee interests; it is these interests that have traditionally relied on the continuation of employment.

Insolvency theory has generally developed based on the *pari passu* principle which ensures that all creditors of the same classification will be treated equally when distributing the assets of an insolvent corporation. Roy Goode, and Vanessa Finch state that the *pari passu* principle achieves three fundamental purposes in relation to insolvency proceedings. Those purposes include ensuring fairness in insolvency distributions, achieving predictability in insolvency proceedings, and promoting orderly collective insolvency proceedings. There are, however, numerous scholars who critique the application of strict creditor parity as being inadequate to acknowledge the disparate economic circumstances of various classifications of creditors. A primary distinction between commercial creditors and employees is that employees do not assume insolvency risk voluntarily. Additionally, employees are highly dependent on receiving wages for their continued existence.

Thomas H. Jackson's "creditor's bargain" theory views insolvency law as a method for collectively collecting debts that maximizes value for creditors. Critics of the creditor's bargain theory argue that it ignores other types of stakeholders beyond creditors. For instance, Federico Mucciarelli states that employee claims have unique characteristics that distinguish them from ordinary commercial debts. Similarly, Cynthia Estlund, and Aditi Bagchi stress that employees lack the power to negotiate insolvency risks; employees lack access to sufficient financial information regarding the solvency of their employer; and employees are unable to reduce their exposure to potential insolvency risks via diversification of those risks relative to secured creditors or institutional lenders.

Literature also references the fact that employees act as involuntary or non-adjusting creditors. Jackson and Casey explain that employees continue working without the ability to significantly modify the terms of insolvency risk or protect themselves through security arrangements related to unpaid wages. Unlike banks or vendors, employees do not have opportunities to disperse their potential liability for the bankruptcy of an entity amongst multiple contractually based obligations. Therefore, employees bear the majority of the insolvency-related business failure risk associated with an insolvent entity that is least able to mitigate this risk.

Research further addresses issues concerning statutory preference systems. Many authors, including Gerard McCormack and Paul Secunda, assert that although priority rights exist for wage claims in a number of jurisdictions, priority rights do not effectively operate to distribute

benefits in cases involving asset deficient insolvencies. In reality, secured creditors and administrative costs typically exhaust available assets prior to employees receiving payment. Small and medium sized enterprises experiencing insolvency typically contain few if any assets; thus, employees can possess statutory rights to claim payments yet experience virtually no possibility of recovering losses.

Thus, the increasing amount of literature has come to support the notion that mechanisms exist to protect workers' interests outside of the assets of an insolvent employer. Strong support for the need for wage protection institutions as a complementary component to insolvency law exists in International Labor Organization (ILO)-sponsored literature. ILO Convention No. 173 recognizes that employee rights to unpaid wages cannot rely solely on the assets contained within an insolvent employer's estate and encourages member states to create institutional methods for the payment of employment entitlements prior to liquidating the insolvent estate.

Two primary types of employee protections have been established in the literature; these include Employee Welfare Fund (EWF) and Wage Guarantee Fund (WGF) systems. Both forms of employee protections aim to mitigate the financial implications resulting from employer insolvency; however, each form has distinct goals, legal structures and levels of employee protection.

Employee Welfare Funds (EWF), typically described as a welfare-based approach, provide direct financial assistance to economically distressed employees. Scholars such as Arturo Bronstein and Gordon Johnson identify welfare-based approaches as a type of social protection which can provide support following business closure or job loss. EWF-type funds often rely on government financing, administrative discretion or broader welfare objectives. Therefore, while they may provide immediate relief, EWF-type funds do not establish a legally enforceable claim for employee wage compensation.

On the other hand, Wage Guarantee Funds (WGF) are structured to directly address the loss of employment income resulting from insolvency. Authors Paul Secunda, Janis Sarra and Federico Mucciarelli argue that WGF systems provide an enhanced method for protecting employee claims due to the use of pre-insolvency advance funding, collective risk sharing and statutory entitlement. In general, employers make contributions to a WGF prior to becoming insolvent thereby allowing employees to collect wage compensation regardless of the solvency status of the insolvent estate. Upon payment of wage compensation, the WGF acquires subrogation rights and may pursue recovery against the former employer or insolvent estate.

As comparative studies continue to grow in favor of WGF mechanisms versus traditional welfare-based systems, several reasons for this preference exist. The most substantial benefit of WGF systems is that employee protections become removed from both governmental discretionary action and the financial position of the insolvent employer. As a result, employees can receive timely compensation pursuant to a recognized legal right instead of receiving uncertain welfare assistance.

Literature at regional and global levels also emphasize the significance of coordinating institutional structures when establishing wage protection schemes. The European Union Directive 2008/94/EC obligates member states to establish guarantee institutions capable of meeting employee claims independent of the assets available within the insolvent employer. Successful examples of administratively-coordinated wage protection schemes combining early-intervention measures with efficient claims processes are provided by South Korea's Wage Claim Guarantee System and Hong Kong's Protection of Wages on Insolvency Fund. These comparative models collectively indicate that successful employee protection involves more than granting statutory priority within an insolvency process. Instead, successful programs require combinations of advanced funding mechanisms, specialized administrative

institutions, prompt payment procedures and statutory recovery rights. The literature thus increasingly supports WGF-type arrangements as representing a more stable and reliable means for addressing the social risks created by employer insolvency.

Despite growing interest among scholars for developing employee protective mechanisms under Myanmar's insolvency framework, very little scholarly work has focused on employee protection under Myanmar's current insolvency framework. Most existing commentaries on Myanmar's Insolvency Law 2020 focus exclusively on corporate rescue techniques, restructuring strategies and creditor confidence instead of focusing on employee protective mechanisms. Although the current legal framework establishes preferential status for certain employee claims, no specific wage guarantee institution has been developed to pay wage compensation independent of the insolvent estate. Additionally, while the Social Security Law 2012 provides many social welfare protections, it serves neither as a wage guarantee system nor protects employees experiencing losses related to employer insolvency.

This study highlights a lack of discussion in the literature regarding how Myanmar's current insolvency regime interacts with its social security framework to achieve employee welfare objectives. Current scholarship has not fully examined whether structural limitations inherent in asset deficient insolvency situations can be addressed through institutional frameworks acting beyond the insolvent employer's estate. Additionally, current scholarship has not effectively analyzed whether a WGF-model would be compatible with Myanmar's labor market characteristics including high rates of informal employment, limited administrative capabilities and inadequate enforcement mechanisms.

The study will add to the existing body of knowledge in two ways. First, the study will be an application of doctrinal insolvency theory that incorporates a comparison of institutions; second, it will include comparative examination of international wage protection systems in addition to developing recommendations for a legal and institutional framework for Myanmar capable of better protecting employees during corporate insolvency. The study will also allow for an assessment as to whether one type of model (Employee Welfare Fund or Wage Guarantee Fund) provides greater protection than the other for employees who are affected by their employers' bankruptcy.

RESEARCH METHODOLOGY

In order to address the issues raised in relation to employee entitlements in the event of employer insolvency, this study will adopt both a qualitative doctrinal legal research methodology and comparative legal analysis methodologies.

Qualitative legal research methods involve systematic interpretation and analysis of legal norms, concepts, definitions, rules, regulations and other legal phenomena. The aim of the qualitative legal research conducted in this study is to evaluate the way in which employee entitlements are dealt with by statute in Myanmar law. In particular, the study will examine how the Statutory Priority Rules, Creditor Hierarchy Mechanisms and the Procedural Requirements relating to Employees Recovery operate in practice in relation to employee entitlements.

The Conceptual Framework used in this study evaluates the theoretical bases upon which Insolvency Law operates, including the principles of distributive justice and social welfare protection. Key Concepts examined include the *Pari Passu* Principle, Equality of Creditors, Involuntary Creditors, Distributive Justice and Social Welfare Protection. The study will analyze the ways in which traditional creditor-oriented insolvency principles may conflict with the social and economic vulnerabilities of employees. Through the use of Conceptual Analysis, the research will consider whether there are grounds for treating Employee Entitlements as being distinct from Ordinary Commercial Debts.

Comparative Legal Analysis forms another significant element of this study's methodology. The Study will compare Myanmar's legal framework for dealing with Employee Entitlements in Employer Insolvency with those adopted by selected countries and regions that have implemented stronger protections for Employees in such situations. The countries/regions selected for comparison are the European Union, Hong Kong and South Korea. International Standards will also be considered via reference to ILO Convention No. 173 and EU Directive 2008/94/EC.

These jurisdictions were selected for comparison due to their differing institutional approaches towards Wage Protection. For example:

- (a) The European Union Model has a focus on Mandatory Guarantee Institutions and Social Protection Standards,
 - (b) Hong Kong's Protection of Wages on Insolvency Fund represents an Institutionally Based Compensation Framework that operates independently of the Insolvency Estate.
 - (c) South Korea's Wage Claim Guarantee System represents an Advanced Insurance-Based Model incorporating Early Intervention Mechanisms and Administrative Coordination.
- In addition, the comparative analysis evaluates the distinction between welfare-based employee protection mechanisms and wage guarantee fund systems. The study uses the concept of an Employee Welfare Fund (EWF) broadly to describe welfare-oriented mechanisms that provide financial assistance to employees outside the insolvency estate, while Wage Guarantee Funds (WGFs) refer to entitlement-based schemes specifically designed to compensate employees for wage losses arising from employer insolvency. The comparison seeks to identify the strengths and limitations of each approach and assess their suitability for Myanmar's legal and institutional environment.

The Comparative Analysis will consider the following Key Elements:

- Legal Basis for Wage Protection;
- Funding Mechanisms;
- Institutional Structure;
- Scope of Employee Entitlements Covered;
- Accessibility of Procedures;
- Timing of Payment;
- Subrogation and Recovery Rights;
- Co-ordination with Insolvency Proceedings.

This comparative analysis is intended to do nothing less than borrow foreign legal systems whole-cloth and apply them as they are to Myanmar. Rather, the aim is to assess what legal ideas or organizational strategies can be adjusted to suit the social, legal and economic environments in which businesses and laborers function in Myanmar.

Secondary legal materials were used as the primary source of information. Materials used included statutory laws, international conventions, articles written in academic journals, books, law reform commission reports, government documents, reports issued by the International Labor Organization (ILO), and other comparative policy studies. In addition to this, relevant scholarly commentary on insolvency theory; labor protection; employee benefit mechanisms; and wage guarantee schemes was examined.

A qualitative methodological approach was used as opposed to a quantitative or empirical one. No statistical analysis was conducted nor were any field surveys done. Instead of examining whether or not legal frameworks have been effective through statistical analysis, the results of a qualitative assessment of the effectiveness of the current legal framework based on a combination of doctrinal analysis, institutional analysis, and comparative reasoning will be provided. A qualitative approach is most appropriate for this type of research since its objective is to identify structural shortcomings with respect to how the protection of

employees is offered under Myanmar's current regulatory system and offer normative advice for future legislative reform as opposed to empirically measuring what has occurred.

Based upon the findings generated from both the comparative and doctrinal analyses of the various approaches to employee protection during corporate insolvency found internationally, this study offers an Employee Insolvency Protection Fund (EIPF) model that could potentially be applied to Myanmar. While drawing upon successful international models of wage protection, this proposed EIPF model takes into consideration both the institutional arrangements and the level of economic development present in Myanmar.

The two major limitations associated with this study are: first, due to lack of sufficient data regarding corporate insolvency activity in Myanmar, the study relied heavily upon comparative and doctrinal analysis instead of using numerous cases of actual events to support its arguments. Secondly, many of the successful international models studied operate under much more well-developed administrative and financial infrastructures than those presently operating in Myanmar. As such, care must be taken to consider the practical realities of implementing suggested reforms when making recommendations for improvement with regard to the regulation of employer insolvency in Myanmar.

In spite of these limitations, the methodologies employed provide a viable analytical structure for identifying areas where improvements could be made in protecting employees who become unemployed as a result of their employer becoming insolvent, as well as providing a means by which potential improvements can be assessed.

RESEARCH RESULTS

Myanmar's current insolvency laws do not sufficiently protect employee interests. Employees are protected by statute under Myanmar's Insolvency Laws. However, there are several obstacles which limit the practical application of their entitlements. These include institutional, structural and procedural barriers.

Statutory entitlement to employee claims under Myanmar's Insolvency Laws only apply if there are sufficient assets available in the insolvent estate. Under Myanmar's Insolvency Laws, employee claims take priority over other creditor claims. Additionally, some sections of the Insolvency Laws grant super-priority rights to secured creditors' assets. However, all such entitlements only extend to the distribution of the insolvent estate. Therefore, when an insolvent estate has no assets to distribute, employees often go without receiving paid-in full amounts owed to them, despite having legitimate claims against the insolvent company.

These problems are much worse when the insolvent entity is a SME (small and medium-sized enterprise), where the majority of assets in the insolvent estate will typically be consumed by secured creditors' claims and administration costs prior to employees receiving unpaid wages or termination payments. As such, priority given to employees via statute generally serves as a formal legal entitlement and not an effective means of guaranteeing payment. Employees face additional obstacles beyond those associated with asset availability. Employees are required to actively participate in complex and lengthy insolvency administrations, which involve submitting proofs of debt, documenting debts, and interacting with the administrator. Employees are generally less knowledgeable about the law, and therefore have fewer bargaining powers, and/or have limited ability to hire professionals who assist in navigating the process. Furthermore, the lack of streamlined processes for making interim payments to employees hampers their ability to obtain financial support at times when it is needed most.

A final barrier identified in this research relates to the institutional separation of social welfare protection from insolvency law in Myanmar. The Social Security Law 2012 (SSL) grants various social welfare benefits to employees, although it does not serve as a wage guarantee mechanism for employers facing insolvency. The Social Security Board (SSB) has powerful collection rights regarding outstanding employer contributions, including super-priority

status. However, employees do not have direct recourse to collect outstanding wages from the SSB. Thus, this creates a significant institutional gap in protecting employees.

Although Myanmar does not maintain a dedicated employee welfare fund for insolvency-related wage protection, it does possess broader labour welfare institutions operating outside insolvency law, particularly under the Social Security Law 2012. These institutions provide an important reference point for understanding how employee protection is currently structured beyond the insolvency estate. However, the benefits administered through the social security framework are not specifically designed to compensate employees for unpaid wages arising from employer insolvency. Consequently, while Myanmar possesses welfare-oriented mechanisms that support employees in certain circumstances, these mechanisms do not function as insolvency-specific wage protection schemes. This distinction is important because it highlights the difference between general employee welfare protection and wage-guarantee systems specifically intended to address insolvency-related losses.

In addition to creating a significant institutional gap in protecting employees, Myanmar's current framework also shifts the burden of insolvency risk from employers and government to employees. Employers utilize collateral agreements to secure creditor claims, while governments ensure repayment of social security contributions through statutory priority. Employees are left relying on uncertain distributions of assets from insolvent companies, where they are economically vulnerable and powerless to prevent insolvency risk.

Comparative analysis indicates that many countries have successfully overcome similar structural weaknesses using independent wage protection mechanisms outside the scope of insolvent estates. International labour standards embodied in ILO Convention No. 173 and EU Directive 2008/94/EC recognise that insolvency law alone cannot offer adequate protection for workers. The European Union model requires Member States to establish guarantee institutions capable of satisfying outstanding employee claims when employers become insolvent. Although Member States retain flexibility regarding institutional design and funding arrangements, these institutions operate independently from the employer's assets and provide timely compensation for unpaid employee entitlements. The EU approach therefore treats wage protection as a matter of social protection rather than merely a question of creditor ranking within insolvency proceedings.

The comparative analysis indicates that wage-guarantee systems provide a higher degree of protection for employees than reliance on statutory priority rights alone. An excellent illustration of this is Hong Kong's Protection of Wages on Insolvency Fund (PWIF) which provides for an ex-ante funding mechanism prior to insolvency via a levy on business registration certificates. In the event of insolvency, eligible employees can submit a claim for reimbursement of unpaid wages, wages in lieu of notice and severance pay from the Fund; such claims need not wait for liquidation proceedings to be completed. As the Fund operates independently from the insolvent estate, it allows for faster processing of claims compared to insolvency distributions. Upon payment of compensation, the Fund will have acquired subrogated rights and may seek recovery from the employer's estate instead of the employee. Thus, this design shifts the insolvency risk away from individual workers and onto a dedicated entity while providing opportunities for recovery.

South Korea's Wage Claim Guarantee System (WCGS) extends this idea further by using collective funding structures and linking them into labor administration structures. South Korea provides its workers with a method of receiving replacement pay from an administrative process in advance of an often lengthy and time-consuming insolvency proceeding concluding. Additionally, South Korea implemented early intervention processes that were established to expedite wage recovery and lessen the financial burden on employees negatively impacted. As was noted in the context of the Hong Kong Model, once compensation is provided, the entity or organization providing compensation receives

recovery rights against the employer. Therefore, the WCGS uses three methods of employee protection including collective risk sharing, timely access to compensation via specialized entities and statutory recovery rights for sustainable financing.

A comparative analysis of all jurisdictions discussed above demonstrates several common institutional characteristics regarding wage protection. First, all jurisdictions rely on pre-existing collective funding mechanisms as opposed to recovering wage claims solely based on assets remaining in the estate at the time of an employer's insolvency. Second, each jurisdiction utilizes specialized institutions for administering wage claims which enable quicker payment alternatives to the traditional formal insolvency process. Finally, each jurisdiction grants statutory subrogation rights to the institutions providing compensation enabling those institutions to recover the amount(s) they have paid while ensuring long-term financial viability. These institutional characteristics will assist in developing the proposed Myanmar Employee Insolvency Protection Fund (MEIPF), and will illustrate a manner in which employee protection can be enhanced without eliminating any fundamental insolvency principles.

A comparative assessment reveals a clear distinction between welfare-based employee protection mechanisms and wage-guarantee systems. Within the context of this study, Employee Welfare Funds (EWFs) refer broadly to welfare-oriented mechanisms that provide financial assistance to employees outside the insolvency estate, whereas Wage Guarantee Funds (WGFs) are specifically designed to compensate employees for wage losses arising from employer insolvency. Although both approaches seek to alleviate financial hardship experienced by employees, they differ significantly in their objectives, funding structures, and legal foundations.

Mechanisms of employee welfare are essentially implemented as social assistance programs. Social assistance programs provide basic needs support to employees who experience some form of economic hardship. The extent of benefits received by an employee after an employer becomes insolvent can vary depending on the availability of funds, administrative decision making, and other factors unrelated to an employers' inability to pay. As such, employees do not know whether they will recover monies owed to them related to their employment.

On the other hand, wage guarantee systems are created specifically to protect the risk associated with employer insolvency. Typically, these systems are financed prior to insolvency either through mandatory employer payments or through joint financing mechanisms. Employees have legally enforceable rights under these systems for payment when an employer has become insolvent. A comparison of wage-guarantee programs within the EU, Hong Kong and South Korea demonstrate that wage-guarantee programs provide employees with higher levels of confidence and timeliness in recovering wages owed to employees as a result of an employer becoming insolvent compared to those provided by welfare-based systems.

Lastly, comparative findings suggest that Myanmar would benefit from establishing an Employee Insolvency Protection Fund (EIPF) operating independently of the insolvent estate while maintaining coordination with insolvency proceedings through statutory subrogation rights. Rather than functioning as a discretionary welfare programme, the proposed EIPF would incorporate key features observed in the wage-guarantee systems examined in the comparative jurisdictions. These features include mandatory employer contributions, statutory integration with the Insolvency Law 2020, streamlined employee claims procedures, and institutional cooperation with the Social Security Board. Such a mechanism would transform employee protection from an entitlement dependent upon the availability of insolvent estate assets into a more predictable and socially responsive system capable of providing compensation even in asset-deficient insolvencies.

Ultimately, research results clearly indicate that Myanmar's present regulatory structure is inadequate for safeguarding employee claims in asset deficient insolvent situations. Research thus concludes that both legislative and institutional reforms are necessary to transform employee protection from an entitlement subject to conditionality to one that is both legally binding and socially responsive.

DISCUSSION & CONCLUSION

This study demonstrates that protecting employee claims in corporate insolvency through insolvency law alone is not feasible. Though Myanmar's insolvency law of 2020 grants statutory priority to certain employee claims, the practical value of such protection remains fundamentally limited by the availability of assets within the insolvent estate. In many cases, especially when involving asset deficient businesses, employees continue to bear substantial economic loss despite legal recognition.

The discussion throughout this study reveals a deeper structural tension within insolvency law. Traditional insolvency systems are primarily designated to maximize the distribution of insolvent estate assets and preserve creditor equality. These objectives reflect commercial and economic priorities rather than broader social welfare concerns. Employees however occupy a fundamentally different position from ordinary commercial creditors. Their claims result from labour already performed rather than voluntary capital investment or negotiated credit risk. Employees also lack bargaining power, financial information and the ability to diversify insolvency risks.

Therefore, this study supports the argument that employees should not be treated merely as ordinary unsecured creditors within a creditor-oriented insolvency framework. The formal equality reflected in the *par passu* principle fails to address the unequal realities facing employees during corporate collapse. Though statutory priority partially recognizes employee vulnerability it does not eliminate the underlying reliance on remaining insolvency assets; therefore, priority rights alone will not guarantee meaningful recovery.

The comparative analysis further demonstrates that international legal developments are ever more recognizing the limitations of purely insolvency-based protection. International standards such as ILO Convention No. 173 and EU directive 2008/94/EC reflect a broader shift toward treating unpaid wages as matters of social protection rather than mere commercial debt allocation. Many jurisdictions have therefore established institutional mechanisms capable of operating independently of the insolvent estate.

The study's comparison between welfare-based employee protection mechanisms and Wage Guarantee Fund (WGF) systems highlights an important theoretical distinction. Welfare-oriented mechanisms generally provide financial assistance as part of broader social protection frameworks and are not specifically designed to compensate employees for wage losses arising from employer insolvency. Although such mechanisms may provide limited support following insolvency, the scope and availability of assistance often depend upon existing welfare arrangements and available resources.

In contrast, WGF systems operate through collective risk-sharing and ex-ante funding mechanisms. These systems recognize that employer insolvency creates predictable social risks which should be distributed collectively rather than transferred entirely upon individual employees. By guaranteeing timely payment regardless of remaining insolvent estate assets, WGF systems provide stronger legal certainty, greater social protection and more fair and just allocation of insolvency risk.

The findings suggest that Myanmar's current legal framework remains institutionally fragmented. Insolvency law and social security law operate separately with limited coordination. Although the Social Security Board possesses strong statutory recovery rights and administrative powers, employees cannot obtain direct compensation for unpaid wages

when employers become insolvent. This institutional disconnect illustrates how the existing framework provides protection for institutional claims while leaving employee wage losses largely dependent upon insolvency distributions.

Accordingly, the research concludes that Myanmar needs a separate employee insolvency protection mechanism that operates alongside insolvency proceedings. The proposed Employee Insolvency Protection Fund (EIPF) represents a possible model for reform. Although described as a protection fund, the proposed mechanism is conceptually closer to an insolvency wage-guarantee system than a traditional employee welfare programme because its primary purpose is to compensate employees for wage losses arising from employer insolvency through a dedicated and legally enforceable compensation framework,

The proposed Employee Insolvency Protection Fund (EIPF) is intended to combine mandatory employer contributions; streamlined claim filing processes; institutional cooperation with the Social Security Board; and statutory subrogation rights to enable the Fund to recoup payment from the insolvent estate when warranted. This type of framework allows for employees to receive timely compensation; maintains the group nature of insolvency proceedings; and provides consistency with currently established insolvency laws. Implementation challenges however exist. The large number of employees working in Myanmar's informal labor market; limited administrative capabilities; lack of strong enforcement mechanisms; and ongoing issues with employer compliance create significant barriers to implementing a wage guarantee system. These obstacles do not prevent the establishment of the proposed EIPF, but rather underscore the need to develop a system that fits into the existing legal, institutional and economic framework of Myanmar.

Thus, a stepwise implementation plan would be the most suitable option. In the first phase, coverage under the proposed EIPF would be restricted to employers who are registered with the Social Security Board and who operate exclusively in the formal economy. The registration process; payrolls; contribution data bases and other administrative processes already in place could be used to decrease implementation costs and administrative burdens. With increasing institutional capacity and formalization of the labor force, the reach of the proposed EIPF could then expand accordingly.

Additional administrative hurdles could be reduced by coordinating efforts between government agencies that relate to this issue. The proposed EIPF should function collaboratively with the Social Security Board, the Ministry of Labor, and insolvency practitioners. Payroll records; contribution databases; and labor administration systems could help verify claims made by employees; monitor contributions made by employers; and reduce administrative costs. Through such collaboration, employee protection would be enhanced at no additional cost using existing government assets. Similarly, potential problems associated with weak enforcement and employer noncompliance could be alleviated through integrating the proposed EIPF into social security, tax, and commercial registry programs. Improved inter-agency communication, increased access to information, and greater regulatory cooperation between relevant authorities would enhance detection of avoidance of contribution obligations and reinforce compliance. Moreover, entitlement to compensation for employees under the proposed EIPF should not depend on whether their employers are compliant with all contribution requirements. Compensation should continue to be available for employees if their employers fail to fulfill all obligations related to the proposed EIPF thereby protecting workers against circumstances outside their control which may deny them compensation.

Legislatively, implementation of the proposed EIPF could initially occur through a specialized regulatory framework supplemented by targeted changes to the Insolvency Law 2020 and the Social Security Law 2012. This strategy would immediately establish a statutory foundation for employee insolvency protection and permit incremental development of supporting

institutional capacities. Once sufficient experience and administrative capacity have been developed, a more inclusive legislative structure could be created.

Ultimately, it is essential that any future initiative to reform employee insolvency protection policies achieve a satisfactory level of compromise between ambitions for providing employee protection and what is practically achievable given current institutional limitations. To be successful, implementation will require interagency coordination, transparency and slow but steady institutional growth. Nevertheless, this study has demonstrated that insolvency-related wage protection can be implemented via carefully drafted legislation and progressively developing institutional frameworks. Therefore, the proposed EIPF presents a viable path for enhancing employee protection in Myanmar without undermining core goals of bankruptcy law.

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