

# The Human(e) Side of Corporate Insolvency: Protecting Workers and Employees in Asian Economies

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Corporate insolvency laws should go beyond the paradigm of neoclassical economics, which treats workers merely as factors of production.

In the bustling economies of Asia, where skyscrapers rise and fall like the tides of fortune, there is a hidden story unfolding behind the gleaming facades of corporate success. It is a tale of human resilience in the face of financial turmoil, of workers caught in the crossfire of corporate collapse, and of legal systems striving to balance economic efficiency with social justice. As businesses navigate the treacherous waters of insolvency, the fate of countless employees hangs in the balance. Their stories, often overshadowed by financial figures and legal jargon, reveal the true human cost of corporate failure. But amidst this uncertainty, a new narrative is emerging – one that recognizes the vital role of workers in the corporate ecosystem and seeks to protect their interests in times of crisis.

Corporate insolvency is often viewed through a financial lens, focusing on creditors, assets, and debt restructuring. However, my recent [working paper](#) sheds light on a crucial yet often overlooked aspect of corporate failure: the impact on workers and employees. In *“The Social Dynamics of Corporate Insolvency Law and Workers/Employees of Distressed Companies: Comparing Select Asian Jurisdictions,”* the research compares and examines how corporate insolvency laws in five Asian economies – Hong Kong, India, Singapore, Thailand, and Vietnam – address the rights and interests of workers and employees caught in the turmoil of corporate distress.

The research comes at a critical time. The recent rise of modern states and market-driven economies in Asia has been accompanied by a modernization of insolvency laws. These updated frameworks emphasize improved inclusivity, time-bound resolution of corporate distress, and a growing focus on viable rescue, social welfare, and preservation of human capital. This shift recognizes that the collapse of a corporate entity can have substantial and wide-ranging effects on the lives and livelihoods of many people associated with it.

At the heart of the analysis is the notion that corporate insolvency laws should go beyond the paradigm of neoclassical economics, which treats workers merely as factors of production. Instead, the research argues for a more holistic approach that considers the human and social dynamics of corporate insolvency. This perspective aligns with the growing emphasis on stakeholder capitalism and the recognition that businesses have responsibilities beyond shareholder value maximization.

One of the key findings of the research is the varying degrees to which different Asian jurisdictions recognize workers as creditors in insolvency proceedings. In India, for example, the Insolvency and Bankruptcy Code, 2016 (IBC) classifies workers and employees as “operational creditors,” empowering them to initiate insolvency proceedings against their employer. This recognition of workers’ claims as a form of operational debt is a significant step towards protecting their interests in times of corporate distress.

Similarly, in Vietnam and Singapore, employees are granted the status of creditors and can petition for the commencement of insolvency proceedings. These jurisdictions also allow for employee representation in creditors’ committees, giving workers a voice in key decision-making processes during insolvency resolution.

The research also highlights the importance of distinguishing between different types of employee claims. These are categorized as “service claims” (such as unpaid wages and salaries) and “welfare claims” (including provident fund, pension, and gratuity). The treatment of these claims varies across jurisdictions, with some offering greater protection than others. In India, for instance, the IBC provides for a “waterfall” mechanism that prioritizes the payment of workers’ dues in the event of liquidation. Workmen’s dues for the preceding 24 months from the liquidation commencement date are given a second priority ranking alongside secured creditors. This approach recognizes the vulnerable position of workers and aims to ensure they are not left empty-handed when a company fails. Hong Kong takes a different approach, utilizing a Protection of Wages on Insolvency Fund to provide ex gratia payments to employees of insolvent companies. This system aims to provide quick relief to workers without waiting for the completion of often lengthy insolvency proceedings.

One of the most intriguing aspects of the research is the exploration of the changing nature of directors’ duties in the context of corporate distress. It argues for an expansion of the “creditor duty” concept to include workers and employees as creditors of a distressed company. This novel interpretation recognizes the shift in workers’ legal status that occurs when a company becomes insolvent, potentially offering them greater protection.

The research also delves into the challenge of balancing corporate rescue with employment protection. It examines various mechanisms used in Asian jurisdictions to preserve jobs during insolvency proceedings, such as the sale of businesses as going concerns. In India, for example, there is a growing trend of continuing the business of insolvent companies as going concerns, even in liquidation, to preserve value and protect employment.

Perhaps one of the most valuable contributions of this work is the emphasis on the need for better data collection and analysis in insolvency proceedings. While financial outcomes are well documented, there is a lack of data on the human impact of corporate insolvencies. How many jobs are saved or lost? What happens to employees' wages and benefits? These are critical questions that often go unanswered.

The research concludes with a powerful analogy, comparing workers and employees of distressed companies to "shape memory alloys" in material science. Just as these alloys can recover their original shape after deformation, workers often demonstrate remarkable resilience in the face of corporate distress. They "remember" their pre-insolvency dedication and commitment, potentially playing a crucial role in the company's turnaround.

This work serves as a timely reminder that behind the financial figures and legal proceedings of corporate insolvency are real people whose lives and livelihoods hang in the balance. The comparative analysis of Asian insolvency regimes offers valuable insights for policymakers, practitioners, and scholars alike. As economies continue to evolve and face new challenges, ensuring that insolvency laws adequately protect workers and employees while facilitating an efficient corporate rescue will remain a critical balancing act.

Ultimately, this research underscores the need for a more holistic approach to corporate insolvency – one that recognizes the value of human capital and the social implications of business failure. By shedding light on the social dynamics of insolvency law, this work contributes to a more nuanced and humane understanding of corporate distress and recovery in the Asian context.

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*The ECGI does not, consistent with its constitutional purpose, have a view or opinion. If you wish to respond to this article, you can submit a blog article or 'letter to the editor' by [clicking here](#).*

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