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SAFEGUARDING EMPLOYEES IN MALAYSIAN CORPORATE INSOLVENCY: INSTITUTIONAL INFORMANT PERSPECTIVES

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Abstract: *The Companies Act 2016 introduced corporate rescue mechanisms that moved Malaysian insolvency law beyond a predominantly liquidation-centred framework. The Companies (Amendment) Act 2024 subsequently widened the potential availability of these procedures. Nevertheless, employee protection remains uncertain when rescue fails and winding up follows. Effective recovery may still depend on the nature of secured claims, statutory priority and the assets available for distribution. This article examines how institutional and practitioner informants understand the gap between legal priority and real protection for employees in Malaysian corporate insolvency. The study uses a qualitative socio-legal design based on semi-structured interviews with four institutional informants from the Malaysia Department of Insolvency, Industrial Court, Malaysian Trades Union Congress and Social Security Organisation. The interviews were analysed through a structured six-phase thematic process and interpreted using organisational justice, legal positivism and interpretivism. The findings reveal a persistent gap between statutory recognition and effective employee protection, driven by asset scarcity, the treatment of secured claims, procedural barriers, limited compensation and restricted institutional discretion. The article argues that employee protection in insolvency cannot be secured by statutory priority alone. A more human-centred insolvency framework requires clearer employee communication, stronger institutional coordination, practical access to compensation mechanisms, and serious consideration of wage-guarantee-style protection such as expansion of the current Employment Insurance System. The contribution lies in translating informant-based evidence into policy and practice reform recommendations for a fairer insolvency system.*

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Keywords: *corporate insolvency; employee protection; corporate rescue; winding up*

Introduction

Corporate rescue is often presented as a more progressive response to corporate distress because it seeks to preserve business value, jobs and commercial continuity. In Malaysia, the Companies Act 2016 introduced corporate voluntary arrangements and judicial management alongside winding up, while subsequent amendments widened the potential availability of both rescue mechanisms (*Companies (Amendment) Act 2024 (Act A1701)*, 2024). The shift matters because insolvency is not merely a private dispute between a debtor company and creditors. It also determines whether employees receive wages, compensation and practical support after the collapse of their employer.

The difficulty is that corporate rescue does not always rescue employees (Araújo et al., 2023). Where rescue mechanisms are unavailable, unsuccessful or overtaken by liquidation, employees are brought back into a distribution structure shaped by asset availability, the treatment of secured claims and procedural complexity. Employees may be legally recognised as preferential creditors, yet this recognition does not necessarily produce timely or sufficient compensation. The central policy problem is therefore not whether the law mentions employees, but whether the insolvency framework provides meaningful protection when employees become involuntary risk bearers in corporate failure (Graham et al., 2023).

This article addresses that problem through a qualitative socio-legal analysis of four informant interviews. The informants represent four institutional standpoints that directly intersect with employee protection in insolvency: insolvency administration through the Malaysia Department of Insolvency (MdI), employment adjudication and policy insight through the Industrial Court and legal practice, worker representation through the Malaysian Trades Union Congress (MTUC), and social protection through the Social Security Organisation (SOCSO). The study is designed as an informant-based article rather than a general employee perception survey. Its purpose is to examine how experienced institutional actors understand the practical limits of employee protection and what reforms may improve policy and practice.

This article translates the interview findings into a reform-oriented analysis of policy and practice. It argues that employee protection requires stronger coordination between insolvency law, employment justice and social security. Corporate rescue mechanisms alone cannot provide that protection. Immediate improvements include clearer employee communication and more accessible claim procedures. Broader reform should also examine distribution rules, the limited scope of lawful judicial interpretation and policy mechanisms that reduce dependence on the assets remaining in the insolvent estate.

Literature Review

Corporate Rescue and Winding Up in Malaysia

The Companies Act 2016 introduced corporate voluntary arrangements and judicial management as alternatives to immediate liquidation for financially distressed companies. The normative promise of corporate rescue is that business rehabilitation may preserve going-concern value and employment. However, the employee-protection value of rescue depends on

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balancing conflicting regulatory frameworks and the potential for stakeholder vulnerability (Gant, 2022). If rescue fails, employees return to the winding-up framework, where claims are mediated through statutory priorities, available assets and administrative procedures (Vaccari, 2026). The transition from rescue to winding up therefore reveals a critical policy question. The Companies Act 2016 recognises employee-related preferential debts in winding up, but their effect depends on the type of security. A secured creditor may ordinarily realise charged property under section 524. Section 527(4) applies specifically to floating charges, giving the debts specified in section 527(1)(b), (d) and (e), together with qualifying advances under section 527(3), priority over the claims of debenture holders under a floating charge where assets available for general creditors are insufficient. Employees may therefore remain vulnerable where fixed-charge assets dominate or the remaining estate is inadequate under sections 524 and 527 of the Companies Act 2016.

Employee Protection as a Justice Issue

Employee claims in insolvency involve more than commercial loss, extending to wages, livelihood continuity, household stability and social dignity (Kekana et al., 2024). For this reason, employee protection is properly understood through organisational justice and legal philosophy. Colquitt (2001) distinguishes procedural justice, which concerns fairness in process, from distributive justice, which concerns fairness in outcomes. In the insolvency context, procedural justice includes notice, explanation, transparency and access to claim processes. Distributive justice concerns whether employees receive a fair share of available resources and whether legal priorities adequately reflect their vulnerability (Unterhitzenberger & Lawrence, 2023).

This article draws a jurisprudential contrast between Hart (1961) and Dworkin (1986). Hart's legal positivism helps explain why insolvency actors may feel bound by statutory text, claim ranking and institutional authority. Dworkin's interpretivism provides a counterpoint. In hard cases, legal reasoning is not merely mechanical. Judges and legal institutions may need to interpret rules in the light of principles such as fairness, integrity and equal concern, especially where employees experience severe consequences from corporate failure.

The frameworks perform related but distinct functions. Hart’s (1961) legal positivism explains why legal actors adhere to enacted priority rules and institutional authority, while Dworkin’s (1986) interpretivism explains how principles such as fairness and equal concern may inform legal reasoning where the law permits interpretation. Colquitt’s (2001) framework then assesses the consequences of that reasoning through procedural justice, including notice, transparency and access, and distributive justice, including the allocation and actual recovery of employee claims. Statutory compliance may support legal certainty without necessarily producing a fair process or outcome. Together, these lenses explain the gap between legal validity and employees’ experience of justice.

Policy and Practice Gap

This article examines corporate rescue mechanisms, the treatment of secured claims and employee priority under the Companies Act 2016. It focuses on how institutional actors understand employee protection as a policy and practice problem. Sections 524 and 527 of the Companies Act 2016 regulate secured creditors’ options and preferential debts in winding up. In *AmBank (M) Bhd v CA Steel Sdn Bhd* [2012] MLRHU 1667, decided under the Companies

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Act 1965, the High Court held that a secured creditor enforcing a registered land charge did not require leave of the winding-up court because the proceeding was against the security rather than the company. The case shows that secured creditors may realise their security outside the liquidation process, but it did not determine employee priority under section 527.

This article therefore positions employee protection as an integrated policy issue. Insolvency law determines claim ranking. Employment law determines employment-related rights and remedies. Social security law and administration determine whether workers receive immediate support. Trade unions and employee representatives expose practical barriers that may not be visible in legal doctrine. A reform agenda must therefore be multi-institutional rather than confined to one statute or one court.

Methodology
This study adopts a qualitative socio-legal design. The doctrinal component provides the legal context for corporate rescue, winding up, employee priority and social protection. The empirical component consists of semi-structured interviews with four informants representing institutional standpoints relevant to the research problem. The authors used purposive sampling to select informants with experience in insolvency administration, employment adjudication and policy, worker representation, and social protection. Two interviews were conducted face to face and two through Microsoft Teams. Their interview dates, media, verified recording durations and analytical contributions are set out in Table 1. This selection was adequate for the article's narrow exploratory aim of comparing institutional understandings across these functions, but it does not represent all institutional or employee perspectives and does not support statistical generalisation.

Table 1. Informant Profile, Interview Details and Analytical Contribution

Informant	Institutional standpoint	Interview date	Interview medium	Verified recording duration	Core experience	Analytical contribution
I1	Malaysia Department of Insolvency	17 June 2025	Physical, face-to-face	1 hour 17 minutes 37 seconds	Company winding-up administration and employee compensation processes	Statutory priority, asset distribution, Official Receiver practice and limits of employee recovery
I2	Industrial Court	15 August 2025	Microsoft Teams	49 minutes 52 seconds	Employment disputes, compensation issues in winding-up matters and Employment Insurance System policy development	Judicial fairness, interpretive justice, procedural barriers and compensation dilemmas
I3	Malaysian Trades Union Congress	8 September 2025	Physical, face-to-face	1 hour 1 minute 42 seconds	Worker advocacy and insolvency-related employee claims involving Perwaja Steel and Nationwide Express	Employee hardship, worker displacement, inadequate compensation and reform demands

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Informant	Institutional standpoint	Interview date	Interview medium	Verified recording duration	Core experience	Analytical contribution
I4	Social Security Organisation	7 August 2025	Microsoft Teams	43 minutes 7 seconds	Employee compensation, Employment Insurance System, re-employment and social protection processes	Social security access, benefit limits, employer responsibility and re-employment-centred support

The four informants were anonymised using institutional standpoint and informant codes. Collectively, they contributed perspectives on insolvency administration, employment adjudication and policy, worker representation, and social protection. Table 1 summarises their relevant experience and analytical contribution.

The authors analysed the four interviews using Braun and Clarke's (2006) six-phase approach. The process involved familiarisation with the data, generating initial codes, developing candidate themes, reviewing the themes, defining and naming them, and producing the final analysis. Coding combined inductive attention to the informants' accounts with deductive consideration of procedural justice and distributive justice. Hart's (1961) legal positivism and Dworkin's (1986) interpretivism were subsequently used to interpret the legal and normative significance of the themes.

The authors removed individual names from the findings and identified the informant only by institutional standpoint and informant code. These labels indicate each informant's institutional standpoint without disclosing personal identity. The authors reproduced selected quotations from the verified transcripts and made only minor punctuation adjustments for readability.

Findings and Discussion

The analysis produced five connected themes across the four informants. Statutory priority first determines the assets potentially available for employee claims, while procedural access affects whether employees can understand, document and pursue those claims. These conditions shape the timing and adequacy of compensation and define the space within which judicial and institutional interpretation may operate. The final reform theme responds to the combined effect of legal hierarchy, procedural barriers, compensation limits and restricted discretion. Table 2 consolidates the five themes, informants, key codes and analysis.

Table 2. Consolidated Themes Across the Four Informants

Themes	Informants	Key Codes	Analysis
Structural Priority and Employee Marginalisation	MdI, Industrial Court, MTUC	Priority hierarchy, employee marginalisation, priority injustice, legal formalism	Employee recognition as a preferential claimant does not guarantee effective protection where asset scarcity and the treatment of secured claims restrict the estate available for distribution.
Procedural Fairness and Institutional Access	MdI, SOCSO, Industrial Court, MTUC	Transparency efforts, procedural access, procedural barriers, liquidator barriers	Employees require practical access to information, documentation and institutional channels before legal rights can become meaningful.

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Themes	Informants	Key Codes	Analysis
Compensation Limits and Employee Well-Being	SOCSO, Industrial Court, MTUC	Benefit limitation, compensation dilemma, inadequate compensation, worker displacement	Insolvency converts livelihood loss into compensation claims, but compensation may be delayed, inadequate or inaccessible.
Judicial Interpretation Between Legal Formalism and Fairness	Industrial Court, MdI, MTUC	Equitable decision-making, interpretive justice, discretion deficit, court intervention	Judicial and institutional interpretation may soften harsh outcomes where discretion exists, but statutory limits remain strong.
Policy Reform Through Social Protection and Comparative Learning	All informants	Policy reform, social justice reform, international benchmarking, scheme expansion	Employee protection requires coordinated reform across insolvency law, employment justice, and social security mechanisms.

Source: Authors' own compilation.

Structural Priority and Employee Marginalisation

The first theme concerns the structural position of employees within insolvency distribution. The MdI informant described distribution through the language of statutory priority, noting that officers must refer to section 527 and its categories of preferential creditors. The MdI informant illustrated the practical effect of this ordering through a simple distribution example: *"Kata lah, duit yang kita agihkan tu ada 2 ratus ribu je. Itu saja duit keuntungan. Nombor satu dah sapu dah 2 ratus ribu. Maka orang nombor dua, tiga, empat tu takkan dapat apa-apa"* (I1). The example shows that statutory recognition does not ensure recovery where the available assets are exhausted by a higher-ranking category. This reflects a rule-based administrative structure in which entitlement depends not only on the existence of employee claims, but also on the order of priority and the pool of assets available for distribution.

The difficulty is sharpened by the treatment of secured claims. The effect on employee recovery depends on the nature of the security and the assets remaining within the estate. Where assets are subject to a charge, employees' practical recovery may be limited even though certain employee-related debts receive statutory preference. This finding is consistent with the MTUC informant's account, which identified priority injustice and legal formalism as central concerns. The worker-representative standpoint emphasises that employees experience the hierarchy not as a technical legal ordering, but as a structure that places banks and secured creditors above livelihood-related claims (Jaelani et al., 2023).

Through Hart's positivist lens, this hierarchy reflects legal validity and institutional discipline (Hart, 1961). Officers and liquidators cannot disregard the statute or security structure because they sympathise with workers. Yet through Dworkin's interpretivist lens, the rigidity of priority raises a principled question about whether the insolvency framework expresses adequate concern for employees as vulnerable stakeholders (Dworkin, 1986). The finding therefore reveals a distributive justice problem. Employees may be recognised in law, but they remain marginalised where legal priority does not translate into actual recovery.

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Procedural Fairness and Institutional Access

The second theme concerns the process through which employees understand and pursue their claims. The MdI informant described meetings and explanations before distribution, including efforts to tell employees what they may receive and how they may raise dissatisfaction. This indicates an institutional attempt to provide procedural fairness. However, the SOCSO and Industrial Court informants indicated that procedural fairness extends beyond a single meeting or explanation. The SOCSO account highlighted access, employer responsibility and documentation requirements, while the Industrial Court account identified legal, administrative and procedural obstacles that may delay or hinder access to justice. MTUC adds liquidator barriers, including lack of cooperation, communication, or transparency from insolvency actors.

The procedural justice dimension is therefore mixed. There are institutional efforts to inform employees, but the process remains fragmented and difficult. Employees may need salary records, proof of debt forms, contribution histories, court permission, union assistance, or agency referrals. If these requirements are unclear, delayed or poorly coordinated, procedural fairness becomes formal rather than effective. The article therefore treats transparency, documentation support, and institutional coordination as policy issues rather than mere administrative details.

Compensation Limits and Employee Well-Being

The third theme links compensation limits with employee well-being. In insolvency, reinstatement is usually unrealistic once the employer has ceased operations or entered winding up. The Industrial Court informant described this as a compensation dilemma. Compensation may become the main available remedy, but it may not restore lost livelihood, unpaid wages, housing stability, or long-term economic security. The Industrial Court informant described the practical weakness of an unenforceable award as a "paper judgement", explaining: *"Saya keluar perintah, memang dapat paper je. You memang tak ada dah, bila bailif pergi buat sita, buat jual pun, dah tak ada apa"* (I2). This observation captures the difference between obtaining a legal remedy and receiving actual payment from an insolvent employer.

The SOCSO informant reinforced this concern by emphasising benefit limits and re-employment support. Social security mechanisms may provide temporary relief and re-employment support, but these mechanisms do not necessarily replace the full value of unpaid wages, retrenchment benefits, or other employment-related claims. MTUC's theme of inadequate compensation captures the lived severity of this gap. This theme shows why employee protection cannot be treated as a narrow insolvency issue. It is also a social protection issue requiring links to EIS, SOCSO, re-employment support and wage-guarantee mechanisms. Discrepancies in compensation and fair procedure affect employee perceptions of justice and well-being (Versteegt et al., 2022).

Judicial Interpretation Between Legal Formalism and Fairness

The fourth theme concerns the judicial role. The Industrial Court informant emphasised equitable decision-making and interpretive justice. This account reflects section 30(5) of the Industrial Relations Act 1967, which directs the Industrial Court to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form. This statutory approach permits fairness-sensitive reasoning within the Court's

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jurisdiction, but it does not authorise the Court to disregard the separate statutory framework governing insolvency priorities and secured claims. This perspective is important because insolvency and employment disputes often involve legal categories that do not fully capture employee vulnerability (Gant, 2022). At the same time, the MTUC informant described a discretion deficit, referring to the limited willingness or ability of judges to adopt a more protective interpretation where statutory text is applied rigidly.

Judicial discretion remains restricted by the statutory framework governing secured claims and preferential debts under sections 524 and 527 of the Companies Act 2016 (Aziz et al., 2024). In *AmBank (M) Bhd v CA Steel Sdn Bhd* [2012] MLRHU 1667, decided under the Companies Act 1965, the High Court held that a secured creditor enforcing a registered land charge did not require leave of the winding-up court because the proceeding was against the security rather than the company. The case illustrates the practical autonomy of secured creditors in realising their security, but it did not determine employee priority or require courts to subordinate employee claims. Judicial interpretation does not amount to unlimited discretion. It operates within the statutory boundaries governing secured claims, preferential debts and available remedies. Where the legislation permits more than one legally defensible interpretation, courts may consider principles of fairness and employee vulnerability. Where the statutory framework leaves no sufficient interpretive space, stronger employee protection requires legislative or policy reform.

Policy Reform Through Social Protection and Comparative Learning

The fifth theme concerns reform. All four informants identified the need for stronger institutional and legal safeguards. The MdI account supported reviewing priority provisions and learning from jurisdictions with dedicated employee protection funds. The SOCSO informant emphasised social protection, re-employment support, employer responsibility and policy reform. The Industrial Court informant highlighted protective mechanisms, social justice reform and institutional responsibility. The MTUC account supported legislative reform, international benchmarking and expansion of existing protection schemes.

The reform implication is that Malaysia needs to move beyond the assumption that corporate rescue and statutory priority are sufficient. A more effective system would connect insolvency administration with employment adjudication, social security, employee representation, and earlier intervention. It would also consider whether EIS or a related wage-guarantee-style mechanism could provide baseline protection when the insolvent estate is insufficient. Comparative learning should not be understood as copying foreign law. France, Australia, and other jurisdictions operate within different fiscal, institutional and legal structures. The value of comparison is to identify the policy principle that employee wage loss is a social risk, not merely a private debt (Gant, 2022). Figure 1 synthesises these relationships into an informant-based policy framework.

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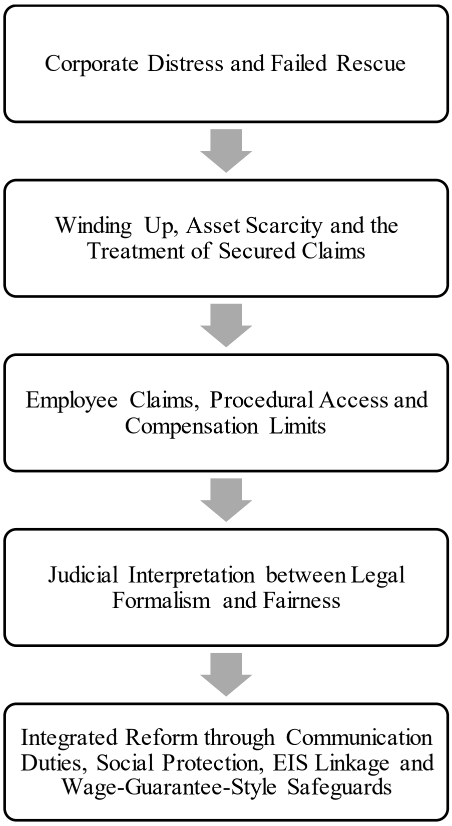

Figure 1. Informant-Based Policy Framework for Employee Protection in Malaysian Corporate Insolvency

Source: Authors' own compilation.

Policy and Practice Implications

The findings support five policy and practice implications. First, employee communication should become a clearer institutional duty during insolvency. Employees should receive accessible explanation of claim ranking, proof requirements, timelines, and realistic recovery risks.

Second, employee claim processes should be better coordinated among insolvency administrators, employment institutions, SOCSO and employee representatives. A fragmented system places too much burden on workers who may already have lost income and access to workplace records. Standard referral protocols and claim guidance would strengthen procedural justice.

Third, compensation design must recognise that employee claims are livelihood claims. Where the insolvent estate is insufficient, ordinary priority rules cannot provide adequate protection. Malaysia should therefore examine whether EIS-linked or wage-guarantee-style mechanisms can provide baseline payments while preserving recovery rights against the insolvent estate where assets later become available.

Fourth, judicial and quasi-judicial actors should be encouraged to articulate fairness reasoning clearly where employee claims arise in insolvency-related disputes. This does not require courts to disregard statutory hierarchy. It requires transparent reasoning on how statutory limits, employee vulnerability and remedial constraints interact.

Fifth, corporate rescue policy should be evaluated not only by company survival, but also by employee outcomes. Rescue mechanisms that preserve the company while ignoring unpaid wages, consultation and worker insecurity risk becoming commercially efficient but socially incomplete. A human-centred rescue culture must preserve both enterprise value and employee dignity.

Conclusion

This article examined employee protection in Malaysian corporate insolvency through the perspectives of four institutional informants. Their accounts indicate that corporate rescue has not eliminated employee vulnerability when companies ultimately fail. Although statutory priority recognises certain employee debts, effective recovery may still be weakened by asset scarcity, the treatment of secured claims, procedural barriers and limited compensation.

The theoretical contribution lies in distinguishing legal constraint from the fairness of process and outcome. Hart (1961) and Dworkin (1986) explain how legal actors reason within statutory limits, while organisational justice explains how employees may assess the resulting procedures and distributions.

In practice, insolvency administrators should provide clearer claim guidance and earlier communication, while employment institutions, SOCSO and worker representatives require more coordinated referral arrangements.

At policy level, the findings support reviewing employee priority under section 527 of the Companies Act 2016 and examining whether the Employment Insurance System or a related wage-guarantee mechanism can provide baseline protection when the insolvent estate is insufficient.

This exploratory study is limited to four institutional informants and does not include affected employees. Its findings therefore reflect institutional and practitioner interpretations rather than employees' direct accounts of insolvency, claim procedures and compensation outcomes. The study also does not quantify actual recovery. Future research should examine affected employees across multiple insolvency cases and assess the feasibility of wage-guarantee-style protection in Malaysia. Despite these limitations, the informant evidence supports a clear policy implication: employee protection in insolvency should not depend solely on the assets remaining after the treatment of secured claims and liquidation costs. A fairer system must connect legal priority with practical access, timely support and principled reform.

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Conflict of Interest
The authors declare no conflict of interest in relation to this article.

Ethics and Data Availability
The interview data used in this article are not publicly available because they contain institutional and professional viewpoints that were provided in a research context. Anonymised thematic summaries may be made available by the corresponding author subject to ethical and confidentiality considerations.

Author Contributions
Muhamad Yohaniz Atan led the conceptualisation, data collection, analysis, and manuscript drafting. Aimi Anuar contributed to supervision, conceptual refinement, and manuscript review. Saslina Kamaruddin contributed to theoretical and methodological review, comparative perspective, and manuscript refinement.

Declaration on AI-Assisted Drafting
AI-assisted language support was used to organise and refine the manuscript under author supervision. The authors reviewed, verified, and remain responsible for the accuracy, integrity and final content of the article.

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