

## Protecting Workers' Rights When Employers Abscond: A Human Rights-Based Comparative Analysis

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### ABSTRACT

Employer abscondment in Vietnam creates acute violations of workers' rights to just remuneration, social security and effective remedy. This article reframes abscondment as a human-rights problem that engages the State's duties under the ICESCR and the UN Guiding Principles on Business and Human Rights (UNGPs). Methodologically, it combines doctrinal analysis of Vietnamese labour, social-insurance and bankruptcy law; functional comparison with leading wage-protection models (EU Directive 2008/94/EC; France's AGS; Korea's KCOMWEL; Japan's reimbursement scheme); and international human-rights benchmarking (UNGPs Pillars I–III; OECD Responsible Business Conduct). The analysis reveals a persistent implementation gap: while Vietnamese law recognises wage entitlements and prioritises employees' claims in bankruptcy, workers seldom recover promptly (or at all) when employers disappear, due to slow procedures, asset dissipation, fragmented enforcement and the absence of a systemic insolvency protection instrument. Comparative evidence shows that mature systems decouple workers' subsistence from firm status by guaranteeing rapid payments through employer-financed schemes with subrogation. The article proposes a policy package, stress-tested against UNGPs criteria of effectiveness, efficiency and feasibility: (i) creation of a national wage guarantee fund (with indexed caps and subrogation); (ii) a fast-track insolvency/dissolution route triggered by a clear legal definition of an absconding employer and supported by interim asset-preservation measures; (iii) a one-stop administrative gateway to close employment relations and unlock social protection; and (iv) mainstreaming responsible business conduct via human-rights due diligence and participation in the fund. The contribution is both normative (reframing abscondment as a human rights obligation) and institutional (offering a practical design blueprint and KPIs for access-to-remedy compliance).

**Keywords:** absconding employer; Wage guarantee fund; Subrogation; Insolvency protection; UNGPs; Responsible business conduct; Vietnam.

### INTRODUCTION

Across Vietnam's labour market, a persistent subset of enterprises abruptly ceases operations with owners vanishing from the jurisdiction and leaving behind unpaid wages and social-insurance liabilities. This pattern - commonly referred to as employer abscondment - does more than frustrate contract enforcement: it threatens workers' subsistence, corrodes trust in labour institutions, and exposes a structural gap between formal legal entitlements and practical access to remedy. In October 2018, a Government report to the National Assembly estimated that enterprises which had gone bankrupt, suspended operations or whose foreign owners had fled

owed over VND 1 trillion in social and health insurance premiums to nearly 60,000 workers. This snapshot illustrates the scale of the problem and its human impact (News, 2019).

Although reforms have strengthened sanctions against contribution evasion, enforcement has struggled to keep pace with evolving evasion tactics and the cross-border mobility of owners. Vietnam Social Security reported hundreds of case files referred to investigation agencies between 2018 and 2023 for criminal handling related to social-insurance violations, indicating a more assertive posture, yet also the persistence of the phenomenon. Where employers abscond, administrative fines and even criminal provisions often arrive too late to preserve assets or deliver timely redress for workers already facing income loss (News, 2019).

This article advances two claims. First, employer abscondment should be reframed as a human rights problem, not merely a private dispute. Non-payment of wages and unremitted social insurance directly implicate the rights to just remuneration and social security recognized in the ICESCR, which are tied to human dignity. Under the UN Guiding Principles on Business and Human Rights (UNGPs), the State's duty to protect against business-related abuses and to ensure access to remedy is engaged when workers are left without effective avenues to recover wages and benefits. Second, comparative evidence shows that many jurisdictions treat this risk as a matter of public policy by decoupling workers' subsistence from the employer's legal status through guarantee institutions that pay promptly and then recover via subrogation - an institutional design largely absent in Vietnam today. (Subsequent sections review the EU's Directive 2008/94/EC and the French, Korean and Japanese schemes that operationalise this logic.)

Situated at the intersection of labour law, insolvency practice and international human-rights obligations, the paper integrates your empirical and legal analysis of Vietnamese practice with a comparative, rights-based framework. We draw on doctrinal review of the Labour Code 2019, Bankruptcy Law 2014 and social-insurance regulations; map the implementation gap that workers encounter in abscondment cases (slow procedures, asset dissipation, fragmented mandates); and benchmark Vietnam's arrangements against international standards and responsible business conduct expectations. The goal is twofold: to clarify the State's responsibilities to protect and fulfill labour rights when employers vanish, and to suggest an institutional framework - such as a wage guarantee fund, expedited procedures, and a one-stop administrative portal - that can be assessed based on UNGPs criteria like effectiveness, efficiency, and feasibility.

The rest of the article is structured as follows. Section 3 reviews international research on employee protection during insolvency, wage-guarantee mechanisms, and their human rights implications. Section 4 outlines the methodology, including doctrinal, functional-comparative, and human-rights benchmarking approaches. Section 5 describes the theoretical framework based on UNGPs, ICESCR, and State duties. Section 6 integrates Vietnam's legal framework and institutional roles. Section 7 examines practice-level gaps that make rights ineffective in abscondment cases. Section 8 compares leading models such as the EU Directive 2008/94/EC, France's AGS, Korea's KCOMWEL, and Japan's reimbursement scheme. Section 9 explores policy implications, including design parameters, KPIs, and safeguards, before Section 10 concludes by reframing abscondment as a human rights issue and proposing a path toward compliance and effective protection.

## LITERATURE REVIEW

### Global Scholarship on Employer Insolvency and Workers' Claims

Comparative insolvency research has long recognised that ordinary priority rules and civil enforcement do not secure wages when firms collapse or quietly shut their doors. Early work in the International Labour Review mapped two broad families of solutions. Some systems prioritize statutory workers through liquidation. Others add a guarantee institution that advances payment to workers and then seeks recovery from the estate. The second approach treats unpaid wages as a social risk that requires organised pooling and rapid disbursement (Baldock, 1994; Bronstein, 1987; Nuryanto et al., 2024).

Recent comparative law scholarship confirms that mixed models perform best. Mucciarelli shows that France couples a strong wage privilege with a dedicated guarantee scheme, while Germany and the United Kingdom rely more on insurance-type mechanisms with narrower statutory priority. The practical lesson is that priority alone rarely delivers money on time. Prompt payment requires an institution that stands between workers and the slow pace of insolvency practice (Federico M Mucciarelli, 2017).

Policy writing in insolvency and labour journals reaches a similar conclusion. Secunda's review across OECD countries finds that most mature systems combine some priority for wage and benefit claims with a guarantee fund that pays within weeks rather than years. The fund structure breaks the link between workers' subsistence and the residual assets of a distressed employer (Secunda, 2013).

## **International Standards and Design of Wage Guarantee Mechanisms**

International labour standards endorse explicit protection for workers when employers are unable or unwilling to pay. ILO Convention No. 173 invites states to protect claims either through insolvency privileges or through guarantee institutions. It also highlights a minimum reference period for covered wages and emphasizes the importance of straightforward access to benefits.

Within the European Union, Directive 2008/94/EC requires every member state to operate a guarantee institution that secures at least three months of remuneration in a defined reference period and to manage cross-border cases with clear responsibility rules. This framework has secured national funds that enable quick payment and then proceed against the estate through subrogation.

Country practice illustrates the core design choices. In France, the AGS advances wages and related employment entitlements once collective proceedings open, applies tenure-linked caps, and then recovers through subrogation while courts supervise administration. In Korea, the Wage Claim Guarantee, administered by the Ministry of Employment and Labour through KCOMWEL, finances substitute payments from employer charges and enables recovery after payout. In Japan, the Act on Ensuring Wage Payment provides a reimbursement pathway with defined proof standards and timelines, administered by the labour authority and JOHAS, with direct transfer to workers. These systems converge on three features that matter for Vietnam. They define clear triggers, finance payouts collectively, and legalise subrogation to replenish the fund.

The ILO's more recent guidance reiterates that wage protection requires timely and regular payment, straightforward procedures, and accessible mechanisms for vulnerable workers, including migrants. Guarantee funds and insolvency wage insurance are presented as complementary instruments that move cash to workers while litigation continues.

## **Human Rights Framing of Unpaid Wages and Abscondment**

Human rights doctrine situates wage non-payment within the right to just and favourable conditions of work and the right to social security. The Committee on Economic, Social and Cultural Rights in General Comment No. 23 clarifies that timely remuneration is part of Article 7 of the Covenant and applies to all workers, and that states must ensure practical access to remedies. The Covenant itself recognises the related right to social security in Article 9.

The UN Guiding Principles on Business and Human Rights sharpen the analysis. Under Pillar I, the state has a duty to protect against business-related abuse through regulation and enforcement. Under Pillar III, the state should ensure the availability of effective judicial and non-judicial remedies. These expectations provide a benchmark to evaluate whether wage recovery pathways in abscondment scenarios are effective, accessible, predictable, and rights-compatible.

Research and reporting on wage theft and salary abuse, including work by Human Rights Watch, underline the real-world harms that follow from delayed or denied wages. While the contexts vary, the common thread is that weak enforcement and slow procedures leave workers without subsistence for months and sometimes years. The human rights framework, therefore, supports institutional solutions that deliver immediate relief, not only after final judgments (Baldock, 1994; Blank et al., 2000; Watch, 2020).

Finally, the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct ask companies to identify and address risks to workers in their operations and supply chains. A national policy that establishes a wage guarantee fund and fast-response procedures aligns with these expectations and the state's duty to protect (Buhmann, 2018).

## **METHODOLOGY**

### **Research Design and Objectives**

The study combines three approaches. First, a doctrinal analysis identifies the legal position of workers in cases of absconding employers under Vietnamese labour law, social insurance law, bankruptcy law, and criminal law. Second, a functional comparative review examines how selected jurisdictions protect wage claims when employers are unable or unwilling to pay. Third, an international human rights benchmark assesses whether the Vietnamese framework and the proposed reforms meet the State's duty to protect, respect, and fulfill labour rights and to ensure access to remedy.

### **Doctrinal Analysis**

The doctrinal strand maps rules to the classic triad of hypothesis, rule, and sanction. It refers to the Labour Code 2019 regarding wage payment, termination, and dispute resolution. It reads the Law on Bankruptcy 2014 on priority ranking and procedural entry points. It reads the Social Insurance Law 2014 and subsequent

amendments on contribution duties and benefit access. It reads relevant penal provisions on evasion of social insurance and wage theft. The analysis identifies gaps in scope, triggers, procedures, institutional mandates, and sanctions that matter when the employer is absent.

### **Functional Comparative Method**

The comparative strand selects systems that address the same social problem. The sample includes the European Union standard, as outlined in Directive 2008/94/EC, France's AGS, the Republic of Korea's wage claim guarantee administered by KCOMWEL, and Japan's reimbursement scheme under the Act on Ensuring Wage Payment. The comparison focuses on function. It asks how each system moves money to workers quickly, preserves assets, finances payments, and uses subrogation to recover later. It documents design choices on triggers, caps, administration, and links to insolvency courts and labour authorities.

### **Human Rights Benchmarking**

The benchmark interprets the ICESCR in relation to the rights to just remuneration and social security. It references the UN Guiding Principles on Business and Human Rights, specifically the State's duty to protect and access to remedy. It applies the UNGPs effectiveness criteria for non-judicial mechanisms. These include legitimacy, accessibility, predictability, equity, transparency, rights compatibility, and learning. The benchmark also considers the OECD Guidelines for Multinational Enterprises and due diligence guidance on responsible business conduct.

### **Data, Sources, And Triangulation**

Primary sources include statutes, decrees, circulars, guidance of the social insurance authority, and publicly available court materials where accessible. Secondary sources include peer-reviewed articles in labour law, insolvency, and socio-legal journals, as well as ILO and OECD reports, and authoritative policy notes. Practice insights draw on aggregated administrative reports, case summaries and reputable media reporting that document patterns of abscondment and wage arrears. Triangulation across legal texts, comparative practice, and international standards supports internal validity.

### **Scope And Limitations**

Official data on abscondment is incomplete and time-bound. Case outcomes are under-reported. Foreign language materials require translation and careful interpretation. The comparative sample is selective and aims at functional diversity rather than exhaustive coverage. These limits are mitigated by conservative inference, explicit statement of assumptions, and cross-checks with multiple sources.

#### **Ethics**

Where individual matters are referenced, identifying details are removed. The study aims to enhance the protection of vulnerable workers and inform public policy in accordance with international human rights standards.

## **THEORETICAL FRAMEWORK**

### **Labour Rights as Human Rights**

The International Covenant on Economic, Social and Cultural Rights protects the right to just and favourable working conditions and the right to social security. Timely and full payment of wages is part of these rights. Protection is owed to all workers without discrimination. When wages are withheld and social insurance is not remitted, the immediate consequence is a loss of subsistence and dignity for workers and their families. A human rights lens, therefore, treats unpaid wages in abscondment cases as a denial of core rights, not only as a private breach.

### **State Duty to Protect and Fulfil Under the Ungps**

The UN Guiding Principles are structured into three pillars. Pillar I requires the State to protect against business-related abuse through policy, regulation, and enforcement. Pillar II addresses corporate responsibility to respect rights. Pillar III requires access to remedy through judicial and non-judicial means. In abscondment cases, the State must ensure that a worker can obtain money in a reasonable time and through a pathway that is accessible and predictable. The State must also create conditions that discourage flight and asset stripping. This implies early triggers, interim asset measures, and an institution that can pay first and recover later.

### Effectiveness Criteria for the Remedy

The UNGPs set criteria for an effective non-judicial mechanism. The mechanism should be legitimate, accessible, and predictable. It should be fair and transparent. It should be compatible with rights and enable learning. These criteria translate into practical indicators. Examples include time to first payment, coverage of eligible workers, clarity of forms and guidance, public reporting of performance, and periodic review with stakeholder input.

### ILO Standards and Decent Work

ILO Convention No. 95 on the Protection of Wages and Convention No. 173 on the Protection of Workers' Claims in Insolvency recognize the need for regular payment and for special protection when employers are unable to pay. The decent work agenda treats secure payment and social protection as pillars of a fair labour market. Many countries meet these standards through wage guarantee institutions that decouple workers' subsistence from the employer's residual assets. This approach fits with the rights-based view that the State must ensure a practical remedy even when the immediate debtor has disappeared.

### Responsible Business Conduct and Due Diligence

The OECD Guidelines for Multinational Enterprises and related due diligence guidance expect companies to identify and address risks to workers. Human rights due diligence plans should include continuity measures for wage payments and social insurance in the event of distress. A national policy that requires participation in a wage guarantee fund and sets minimum standards for wage risk management aligns private conduct with public duties. This helps prevent abscondment and reduces harm when it occurs.

### Conceptual Model and Propositions

The framework yields a simple model with three layers, as shown in Figure 1. Prevention reduces the risk of flight through supervision, disclosure, and sanctions. Protection ensures rapid payment through a wage guarantee fund financed by employers and backed by subrogation. Remedy secures longer-term recovery through insolvency proceedings and civil or criminal enforcement. From this model follow testable propositions. A clear abscondment trigger and interim asset measures increase the chance of recovery. A guarantee fund that pays within weeks increases household welfare and reduces secondary social costs. Subrogation and recovery rates sustain the fund and improve compliance over time.

[Figure 1].

Conceptual Model: Prevention, Protection, Remedy

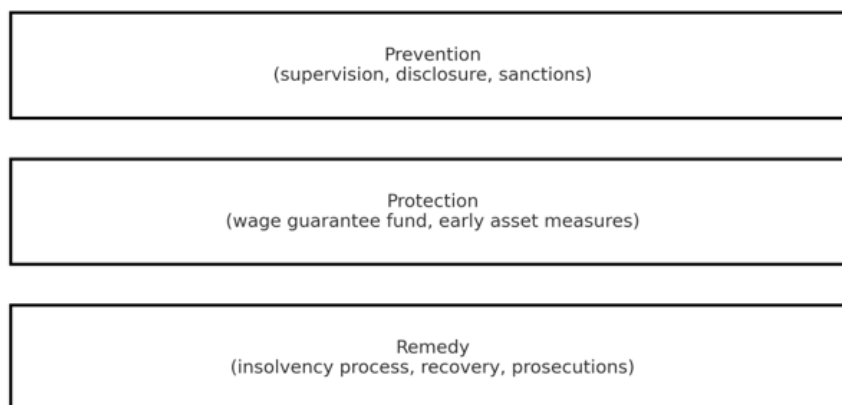


Figure 1. Conceptual model of prevention, protection and remedy.

## VIETNAMESE LEGAL FRAMEWORK

### Wage Payment Obligations and Timing

Vietnamese law recognises the worker's entitlement to timely and full payment of wages. The Labour Code 2019 sets rules on salary payments and payment times. These provisions require payment in cash or bank transfer and place the cost of transfer on the employer. They also authorise the Government to elaborate on the

implementation details. These rules provide the normative framework for claims arising from delayed or unpaid wages.

### Contract Termination and Individual Dispute Pathways

Workers can terminate the employment relationship subject to the Code's notice rules. Practice guides and official summaries indicate that non-payment or late payment of wages is a recognised ground for the employee's unilateral termination. When disputes arise, the Labour Code outlines a default path through conciliation by a labour mediator before a case may proceed to the Labour Arbitration Council or to court, with specified exceptions. This mediation step is often ill-suited to abscondment scenarios, since the employer cannot be reached, yet the worker still needs a formal record of unsuccessful mediation to advance.

### Social Insurance Duties and Practical Handling When an Employer Disappears

Employers must register and contribute to compulsory social insurance, health insurance and unemployment insurance. The Social Insurance Law and official guidance frame these contributions as legal obligations that underpin access to pensions, unemployment benefits and other schemes. In practice, when an employer has absconded or lost contact, local social insurance agencies verify the worker's contribution period up to the date of payment, allowing benefits to be processed. Missing months are confirmed later when arrears are recovered. This practice is documented in official and quasi-official channels, helping to prevent a complete loss of benefit access while recovery actions continue.

### Administrative and Criminal Enforcement for Contribution Evasion

Persistent non-payment or evasion of social insurance contributions attracts administrative sanctions and, in serious cases, criminal liability. Article 216 of the Penal Code establishes the offence of evading social insurance, health insurance and unemployment insurance contributions for employees. Recent legal commentary and practice notes confirm the continued use of Article 216 in enforcement. The deterrent effect is real, although prosecution often comes too late to preserve assets once an owner has fled (Tram et al., 2025).

### Bankruptcy Law and the Ranking of Workers' Claims

If proceedings are initiated, Vietnamese bankruptcy law prioritizes workers' claims in distribution (Booth, 2004). After bankruptcy expenses, the law prioritizes payment of unpaid wages, severance allowances, social and health insurance entitlements, and other contractual benefits. Employees and internal trade unions are among the parties that can petition to open bankruptcy proceedings, which, in principle, provide a collective route to marshal assets. In practice, recovery depends on the timely preservation of assets and the existence of residual value in the estate.

### Responsible Business Conduct Policy Baseline

Vietnam adopted a National Action Plan to promote responsible business practices in July 2023. The Plan references the UN Guiding Principles and OECD guidance, creating a policy platform for measures that protect workers in business distress, including those that facilitate access to remedies. This policy baseline is relevant when considering a wage guarantee institution and fast procedural routes for cases where the employer has absconded (Chien et al., 2025; Felice & Graf, 2015).

Table 1 assesses gaps in the practice of applying core regulations when employers abscond.

[Table 1]

**Table 1.** Core provisions and practical 'failure points' in abscondment cases.

Legal source	Right or duty (in brief)	Procedure or trigger	Practical failure point in abscondment
Labour Code 2019 (Arts 94, 97)	Timely and full wage payment; payment form and timing	Administrative compliance and inspection; worker can bring a dispute	Employer not reachable; wages already overdue; no rapid payout channel.
Labour Code 2019 (Art 188 and related)	Mediation as default gateway to adjudication	Labour mediator issues minutes before arbitration or court	Mediation cannot proceed when employer is absent; delays access to court.
Labour Code 2019 (employee termination grounds)	Worker may terminate if not paid as agreed	Notice and documentation; later claim for sums due	Termination does not produce cash; enforcement still needed.
Social Insurance Law and VSS guidance	Employer must contribute; worker's benefit access	VSS may confirm contribution period up to amounts actually paid	Confirmation helps benefits but does not create funds for unpaid months until arrears are recovered.

Penal Code Art 216	Criminal offence of evading social insurance contributions	Investigation and prosecution	Sanctions arrive after the fact; assets often dissipated; limited effect for immediate relief.
Law on Bankruptcy 2014 (Art 54 and petition rules)	Priority for wages and related entitlements; employees and unions can petition	Opening proceedings; distribution according to ranking	Proceedings are slow; by the time of liquidation there may be little or no estate.
NAP on Responsible Business (Decision 843/QD-TTg, 2023)	Policy mandate to align with UNGPs and OECD RBC	Cross-ministerial action plan	Needs concrete instruments to reach workers in abscondment cases.

**PRACTICAL IMPLEMENTATION GAPS**

**Early Detection and Legal Trigger**

Authorities lack a clear and operational definition of an absconding employer. Without a statutory trigger, agencies hesitate to act. Business registries, labour inspectors and social insurance offices often wait for each other. Time passes while wages remain unpaid. A precise legal status for abscondment would enable measures such as issuing a notice to creditors, appointing a temporary administrator, and preserving assets.

**Asset Preservation and Information Flow**

By the time workers reach court, many enterprises have little to recover. There is no routine use of interim measures at the first sign of disappearance. Banks and tax authorities hold relevant information but do not always share it quickly. A practical solution is a rapid alert protocol that links the registry, banks, tax, labour, and social insurance systems, allowing thefor and identification and preservation of accounts and movable assets within days.

**Cross-Border Mobility of Owners**

A significant share of abscondment involves foreign investors or managers who leave the jurisdiction. Civil and criminal processes then slow down or come to a halt. Mutual legal assistance is a complex and rare process. Even when a judgment is obtained, enforcing it abroad can be challenging. The policy answer is to shift focus from personal pursuit to reliable payment for workers at home through a guarantee institution and domestic asset preservation.

**Access To Justice for Individual Workers**

Workers face mediation requirements, filing deadlines, court fees, and evidence duties that they cannot always meet. The employer is absent and cannot be served. The worker needs money quickly, not a paper judgment months later. Practical access requires a pathway that bypasses futile steps, offers collective representation through the union or a representative action, and provides immediate financial relief.

**Fragmented Mandates and Weak Coordination**

Multiple agencies have partial jurisdiction. None has a full mandate to pay workers. Labour inspectors may sanction, the registry may revoke a licence, the police may open a case, and the court may later liquidate, yet workers still wait. A single lead authority or a standing task force for abscondment cases would shorten delays and focus effort on outcomes for workers.

**Data Gaps and Evaluation**

There is no unified dashboard that tracks the number of abscondment cases, time to first payment, recovery rates, or worker satisfaction. Without data, learning is slow. A simple set of indicators, collected by province and published quarterly, would guide management and signal areas where practices are improving.

[Table 2]

**Table 2.** Implementation gaps, consequences, and human rights implications

Gap	Immediate consequence for workers	Systemic effect	Human rights implication
No clear abscondment trigger	Delay in action and notice	Assets dissipate	Weak protection duty and weak access to remedy
No early asset preservation	Little or no estate at liquidation	Judgments cannot be executed	Rights are formal but not effective
Cross border flight of	Proceedings stall	Enforcement becomes	Remedy is not accessible or

owners		symbolic	predictable
Complex and slow dispute path	Workers abandon claims	Trust in institutions declines	Barriers to effective remedy
Fragmented mandates	Effort without payout	Accountability diffuses	State duty to protect becomes diluted
No performance data	Poor learning	Policy drift	No continuous improvement as required by UNGPs

## COMPARATIVE LEGAL MODELS

### European Union Standard

The European Union establishes a common floor for wage protection in the event that employers become insolvent. Directive 2008/94/EC requires each Member State to operate a guarantee institution that advances outstanding remuneration for a minimum of three months within a reference period of at least six months, subject to national ceilings. The instrument leaves institutional design to national law while fixing the core obligation to pay employees first and settle recovery later through the insolvency estate. The Directive also addresses cross-border cases by requiring cooperation between institutions designated by Member States.

*Design features that matter in practice.* Triggering events are linked to the opening of insolvency or an equivalent event defined by national law. Coverage must include at least three months of remuneration within a six-month reference period. However, States with a reference period of at least eighteen months may limit the covered period to eight weeks, provided the most favourable weeks for the worker are used. Administration is carried out by a public body or a mandated institution on standardised forms with published timelines. Financing is employer-funded and may be supported by public backstops. Recovery proceeds through subrogation into the insolvency estate.

*Implementation evidence.* The Commission and the ILO summarise the minimum guarantee period and point to broadly convergent outcomes across Member States once a dedicated guarantee body is in place.

*EU exemplars in brief.* Germany's insolvency benefits are managed by the Federal Employment Agency, which provides insolvency payments covering the last three months before an insolvency event. Applications for these benefits must be submitted within two months after the event. Since payments are made retroactively and can be claimed online, this process helps reduce delays (Ariqah & Anisah, 2022; Federico Maria Mucciarelli, 2017). In the United Kingdom, the Redundancy Payments Service handles statutory redundancy payments, which are subject to a weekly cap that is adjusted annually in April. Although official guidance indicates that payments may take up to six weeks, government reports from 2024–2025 show that RPS processed claims in an average of approximately ten to eleven days.

The EU approach is influential because the Directive establishes a baseline that includes a straightforward trigger, a guaranteed minimum coverage, and institutional responsibility for prompt payouts with subsequent subrogation. Consequently, households obtain cash before the estate is divided, prioritizing subsistence and the right to an effective remedy.

### France: AGS Wage Guarantee

France pairs a strong wage privilege with a dedicated guarantee scheme administered by AGS. When collective proceedings open, insolvency professionals verify claims and request payment. AGS then advances wages, paid leave, and termination payments up to tenure-linked caps and steps into the worker's position for recovery.

*Operational strengths that drive performance.* First, the legal trigger is clear, and the documentation is simple. Second, financing is collective and predictable through an employer levy that has been maintained at 0.25 percent in 2024 and 2025. Third, processing times are short because the Labour Code stipulates that funds should be made available to the judicial representative within five to eight days upon receipt of verified claims.

*Recent scale and outcomes.* AGS intervened in more than 23,000 cases in 2023, as business failures increased. Public reporting shows that the workload increased in late 2023 while procedural time limits remained unchanged.

The explanation highlights that the system's effectiveness relies on several key factors. Clear triggers, collective financing, professional administration, and routine subrogation work together to sustain the fund and minimize household hardship. Additionally, the combination of a strict advance timetable and court-supervised verification ensures that incentives are aligned among administrators, creditors, and the fund.

### **Republic of Korea: KCOMWEL Wage Claim Guarantee**

Korea operates a public wage claim guarantee anchored in statute and administered through the Ministry of Employment and Labour and the Korea Workers Compensation and Welfare Service. The core guarantee pays a defined portion of the last three months of wages and the last three years of retirement entitlements once insolvency or an equivalent ground is established. A separate small-amount system enables the prompt payment of up to ten million won in defined circumstances, including when the enterprise has not entered formal insolvency but the worker has obtained a final court judgment.

*Design details that matter.* Multiple entry routes exist. Claims can be verified by labour authorities or courts. The small-amount route relies on confirmation of unpaid wages and a final judgment, with the service deciding within a short administrative time limit once the file is complete. The statute provides explicit subrogation and recovery powers, allowing the authority to require information on debtor assets.

The reason this approach is effective is that the inclusion of a small amount of fast track helps protect low-income households from lengthy delays. Additionally, enhancing administrative capacity and utilizing court judgments as a gateway improves the predictability of outcomes and minimizes disputes regarding the amount involved (Kim et al., 2001).

### **Japan: Reimbursement of Unpaid Wages**

Japan's reimbursement system is administered through the labour authority and the Japan Organization of Occupational Health and Safety. Once insolvency is certified, the authority pays a fixed rate of eighty percent of unpaid wages and retirement allowances, subject to age-based caps. Proof standards and forms are clearly defined and widely available in both English and Japanese (Health).

*Design features and outcomes.* The 80% rule, with explicit monetary caps by age band, makes entitlements predictable and easy to budget for both public finance and workers. Direct transfer to workers shortens the path to remedy. Subrogation closes the loop with the estate.

### **Cross-Cutting Lessons**

*Pay first, recover later.* All effective systems decouple household subsistence from the employer's legal status by paying first and pursuing recovery through subrogation. This design choice is visible in the EU standard, in France's AGS and in the statutory frameworks in Germany, the United Kingdom, Korea and Japan.

*Simple and objective triggers.* Systems perform well when triggers are simple and objective, such as the opening of insolvency proceedings, a certified equivalent event, or a final court judgment confirming wage arrears for small-amount fast-track payments.

*Rapid processing with clear time limits.* Publication of service standards and statutory or regulatory time limits drives performance. France fixes five to eight days for fund availability after verified claims. The United Kingdom reports average processing times of ten to eleven days in 2024–2025, with public guidance that payments usually arrive within six weeks to manage expectations. Germany pays retroactively over a standard three-month window with an application deadline of two months, which reinforces timeliness.

*Coverage floors with transparent ceilings.* The EU minimum of three months within a six-month reference period sets the baseline. Japan's 80% rule and age-indexed caps, as well as the United Kingdom's weekly caps, illustrate how ceilings can be set while preserving predictability.

*Institutional capacity and data.* Dedicated bodies with professional staff and digital workflows shorten the time to payment and improve accountability. The UK Insolvency Service reports tens of thousands of claims processed and a sustained ten to eleven-day average cycle time in 2024–2025. French reporting indicates that the scheme expanded during a surge in business failures in 2023, while maintaining short time limits for advances.

*Human rights alignment.* The common architecture supports effective remedy under the UN Guiding Principles by ensuring access that is legitimate, predictable, equitable and rights compatible. Comparative analysis by the ILO highlights how guarantee institutions meet international labour standards when minimum coverage and clear triggers are in place. The matching model is shown in Figure 2.

[Figure 2]

## Comparative Design Map: AGS, KCOMWEL, JOHAS

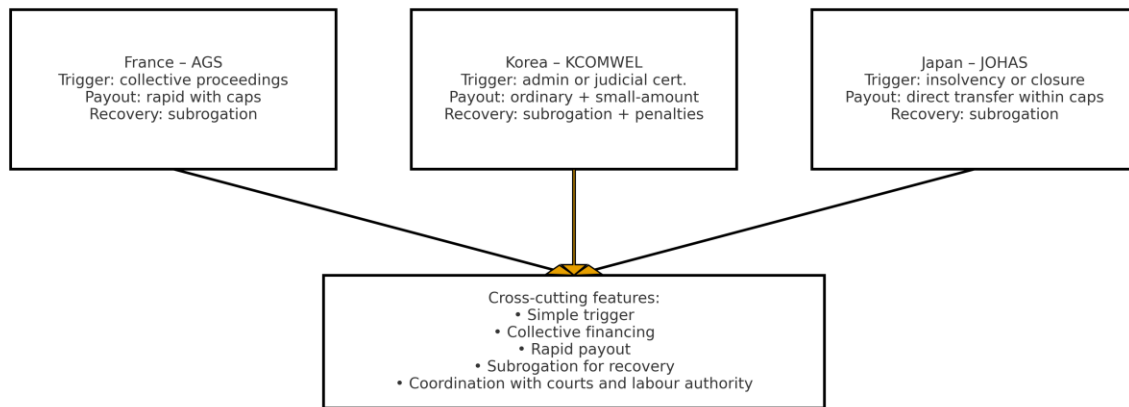


Figure 2. Comparative design map for AGS KCOMWEL and JOHAS.

## POLICY IMPLICATIONS

### Define ‘Absconding Employer’ in Statute and Trigger Early Protection

*Rationale.* The most damaging gap is the lack of a clear legal status for an employer who has disappeared, leaving wage and contribution arrears. Comparative experience treats the risk of non-payment as a social risk that justifies early, administrative triggers rather than waiting for a full liquidation. The European Union standard requires each country to operate a guarantee institution that meets outstanding wage claims when an employer is insolvent, and it allows Member States to define equivalent triggers while ensuring a minimum floor of protection. This model prioritizes moving cash to workers first and pursuing recovery later.

*Proposal.* Amend core labour and insolvency legislation to codify an ‘absconding employer’ status based on objective indicators, such as verified loss of contact, workplace closure without notice, missed wage cycles, and prolonged non-remittance of social insurance contributions. The status should unlock immediate measures, including public notice to creditors, the appointment of a temporary administrator, and the preservation of key assets and payroll records. ILO standards recognise the need for special protection of workers’ claims in insolvency, whether through priority or a guarantee mechanism.

### Establish A Contributory Wage Guarantee Fund (WGF) With Subrogation

Subrogation is an important concept because it helps maintain the solvency of the fund and encourages effective recovery efforts without delaying initial payments. This practice is commonly used in guarantee schemes and is explicitly supported by Japan’s guidance and civil code practices, particularly in matters such as wage reimbursement. When designing such schemes, it’s crucial to consider these aspects to ensure the system functions smoothly and effectively.

- *Financing.* A small payroll levy is pooled nationally, with an employer-financed baseline and an optional public backstop. France’s AGS operates at a contribution rate of 0.25% of gross wages, set by its board and adjusted when needed.
- *Coverage.* At a minimum, guarantee three months of remuneration within a defined reference period, consistent with the EU floor that permits a three-month period within at least a six-month reference window. Germany’s Insolvenzgeld provides up to three months’ payment via the Federal Employment Agency, illustrating the operational feasibility of this floor.
- *Access routes.* Provide a standard route and a small-amount fast track for modest claims, following the Republic of Korea’s practice where small claims are processed quickly up to a statutory ceiling.
- *Subrogation.* The fund pays workers first, then subrogates to their claims for recovery from the estate and responsible parties. Japan’s reimbursement scheme is explicit that the administrator acquires wage claims by subrogation upon payment.

## **Integrate Social Insurance Entitlements and Strengthen Deterrence**

Workers should not lose access to social security because employers failed to remit contributions before going out of business. EU law requires that non-payment of compulsory contributions by the employer does not reduce workers' benefit entitlement when employee deductions have been made. Vietnam's 2024 Social Insurance Law, effective 1 July 2025, modernizes coverage and timelines, and can be operationalized to interface with the WGF through data sharing and the fast confirmation of contribution periods. In parallel, Article 216 of the Penal Code on evasion of compulsory insurance provides a deterrent baseline; official commentary explains how liability attaches for prolonged evasion.

## **Align With UNGPS and OECD RBC: Effectiveness, Efficiency, Feasibility**

*UN Guiding Principles.* The WGF and associated complaint handling should meet the effectiveness criteria for non-judicial mechanisms outlined in Principle 31, specifically in terms of legitimacy, accessibility, predictability, equity, transparency, rights compatibility, learning, and dialogue. These criteria provide a ready checklist for designing and evaluating both the payment workflow and the worker-facing grievance channel.

*Responsible business conduct.* The OECD Guidelines (2023 update) require risk-based due diligence across operations and supply chains, emphasizing labour rights and access to remedy. Vietnam's National Action Plan on Responsible Business Practices 2023–2027 (Decision 843/QD-TTg) establishes a policy baseline for mainstreaming participation in a wage guarantee scheme and outlines disclosure duties for employers.

### *Three-E Test for Vietnam*

- **Effectiveness:** target disbursement within 15 working days, high take-up, and public dashboards of performance aligned with GP31.
- **Efficiency:** keep administrative costs to a modest share of payouts by using a one-stop digital portal and standardised forms, mirroring mature EU practice.
- **Feasibility:** start with a modest levy in the 0.2–0.25% range and adjust it through periodic actuarial reviews, using AGS as a workable reference point.

## **Streamline Procedures in Labour and Insolvency Practice**

Workers who face an absent employer need simple, rapid routes. Allow administrative findings by labour inspectors or social insurance agencies to serve as provisional evidence of wage arrears for WGF purposes, without requiring claimants to undergo futile service attempts. Maintain access to mediation, arbitration, and courts, but decouple immediate subsistence from the slow process of reaching a final judgment. The EU approach illustrates how guarantee institutions sit alongside courts and insolvency practitioners to deliver early relief while legal processes continue.

## **Implementation Roadmap and Monitoring**

- Phase 1. Issue a government decree defining the absconding trigger; constitute the WGF governing body; launch an online intake system.
- Phase 2. Pilot in high-risk sectors; connect registry, tax, banking and social insurance data for early alerts and asset holds.
- Phase 3. Scale nationally; publish quarterly indicators: time to first payment, coverage, recovery through subrogation, and user satisfaction.

These steps align with Vietnam's National Action Plan on Responsible Business Practices and with CESCR guidance on developing transparent and accountable social protection strategies.

## **Terminology Alignment (EN–VI Consistency)**

The wage guarantee fund is a public guarantee mechanism designed to provide payments for specified wage claims in the event of insolvency or similar situations. After making these payments, the fund recovers the amounts from the estate. The EU directive mandates such institutions.

- **Subrogation.** Transfer of the worker's wage claim to the fund after payment, used to pursue recovery; explicitly recognised in Japan's wage reimbursement scheme.
- **Insolvency protection.** Statutory protection of employee claims triggered by insolvency events or equivalent triggers set by national law.
- **Absconding employer.** A Vietnam-specific policy term is proposed here to capture de facto market exit without lawful procedures.
- **Responsible business conduct.** As in the OECD Guidelines and Vietnam's NAP, which link due diligence to practical access to remedy.

## CONCLUSION

Employer abscondment is not simply a private contractual dispute. It is a human rights issue that involves the rights to just remuneration and social security, as well as the State's duty to protect and ensure access to a remedy. International labour standards and European practice converge on a workable solution: guarantee institutions that pay workers quickly and then recover through subrogation, combined with priority rules in insolvency. ILO Convention No. 173 and Convention No. 95 articulate the normative case for special protection of wage claims in insolvency. The EU directive operationalises this through a guarantee institution and a minimum floor for coverage and timing, including the well-known three-month reference period option.

For Vietnam, three moves would close the most serious implementation gaps. First, codify the absconding for absconding employers and enable early administrative measures that preserve assets and evidence. Second, create a contributory Wage Guarantee Fund with subrogation, with a small-amount fast track and clear ceilings, following the experience of France, Germany, the Republic of Korea, Japan and others. Third, integrate social insurance and deterrence, so that workers retain benefit entitlements despite employer non-remittance and so that evasion of compulsory insurance attracts credible sanctions under Article 216. These steps align with the effectiveness criteria of the UN Guiding Principles and the OECD Guidelines on Responsible Business Conduct. They also align with the Government's National Action Plan on Responsible Business Practices and the recent Social Insurance Law 2024 reforms, which take effect on 1 July 2025. Together, they decouple household subsistence from the fate of a failing enterprise and turn formal rights into a remedy that is accessible, timely and predictable.

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