

Employment Update¹

Good Things Come in 4, not 3: The New Tripartite Standards.

I. Introduction

During the Committee of Supply debate on 6 March 2017, the Minister of Manpower² announced that the Tripartite Alliance³ will be launching new “Tripartite Standards” on employment protection and progressive practices by the end of 2017.⁴ Given that Singapore already has legislations, the Tripartite Guidelines and the Tripartite Advisories to protect and enhance workers’ rights, what, why and how would this “Tripartite Standards” fit into the present regulatory ecosystem?

This article seeks to answer these questions to prepare organisations for the “Tripartite Standards”. First, an overview of the present regulatory framework is set out as a useful reminder. We take this opportunity to also briefly elaborate on this framework for the benefit of new HR staff. This article then elaborates and explores the very nature of this “Tripartite Standards” and its impact. We finally conclude with some likely areas that may be covered by the first batch of “Tripartite Standards”.

For ease of understanding and reference, a graphical representation of the new regulatory ecosystem can be found in Annex B⁵ of this update.

II. Existing Labour Regulatory Ecosystem

Singapore’s labour regulatory regime does not comprise of only legislations. In addition to legislations, the Government, in alliance with the National Trades Union Congress⁶ (“NTUC”) and the Singapore

¹ The author extends his heartfelt gratitude to Ms Chow Jia Ying and Ms Mary-Lisa Chua for their assistance with this article.

² Minister Lim Swee Say.

³ Tripartite Alliance refers to the alliance among the Singapore Government, the Singapore National Employers Federation and the National Trades Union Congress. Depending on the alliance’s focus, it comes in many forms. For example, there is the Tripartite Alliance for Fair and Progressive Employment Practices, and in another form, there is the Tripartite Alliance for Dispute Management.

⁴ Ministry of Manpower (2017, March 6) *Main Speech by Mr Lim Swee Say, Minister of Manpower at Committee of Supply 2017*. Retrieved from <http://www.mom.gov.sg/newsroom/speeches/2017/0306-main-speech-by-min-lim-at-cos-2017>.

⁵ Please feel free to use this graphical representation in your daily work.

⁶ The NTUC is a national confederation of trade unions, comprising 58 affiliated unions, 2 affiliated associations, 10 social enterprises, 6 related organisations, and a growing network of “U Associates” and enterprise partners. “U Associate” is an initiative by NTUC to connect working professionals through professional guilds and communities.

National Employers Federation⁷ (“SNEF”), has produced numerous sets of guidelines and advisories to supplement existing laws. They are known as the Tripartite Guidelines and Tripartite Advisories respectively. They cover areas that may or may not have already been addressed by existing legislations, and range extensively to include contingency scenarios. Presently, there are no less than 5 Tripartite Guidelines and 9 Tripartite Advisories. An indicative list is annexed hereto as Annex A for the reader’s further information.

Both the Tripartite Guidelines and Advisories are strictly not legislations. Accordingly, they do not have the force of law, save in limited circumstances where a legislation incorporates one.⁸ However, they differ in purpose, and therefore consequences in their non-compliance.

The Tripartite Advisories are published to merely encourage employers to adopt the more progressive workplace practices as set out therein. Compliance is purely voluntary.

Conversely, the Tripartite Guidelines are intended to be fully complied with by organisations. Sanctions are consequently provided for in respect of non-compliance. Sanctions come either as statutory offences and/or remedies or loss of employment-related privileges. This depends on whether the relevant Tripartite Guidelines is referred to or incorporated by any legislation, and consequently becomes part of it.

For example, Section 11B of the Retirement and Re-employment Act⁹ provides expressly that regard may be had to any issued guidelines related to the same subject matter, for the purposes of determining if certain legislative provisions are complied with. In this example, these guidelines were issued as the Tripartite Guidelines on Re-employment of Older Employees. Consequently, non-compliance of this Tripartite Guidelines would attract statutory offences and/or remedies as provided by the corresponding legislation.

On the other hand, an example of a Tripartite Guidelines in which non-compliance results only in loss of employment-related privileges is the Tripartite Guidelines on Fair Employment Practices. These guidelines are not part of any legislation, and thus there is no statutory remedy available for their non-compliance. Instead, the Ministry of Manpower relies on its discretionary powers in other employment areas to ensure compliance of this Tripartite Guidelines. Specifically, the Ministry of Manpower would curtail an organisation’s ability to hire foreign workers by not approving the required work passes¹⁰.

III. The New Tripartite Standards

⁷ The SNEF is the national trade union of employers, and it represents the interests of all sectors of the economy from an employer’s point of view. It aims to promote tripartism and increase flexibility in the labour market so that employers can implement responsible employment practices.

⁸ See below for the example of Section 11B of the Retirement and Re-employment Act which incorporates the Tripartite Guidelines on Re-employment of Older Employees.

⁹ Cap 274A, 2012 Rev Ed.

¹⁰ Ministry of Manpower (2016, November 14) *Fair Consideration Framework*. Retrieved from <http://www.mom.gov.sg/employment-practices/fair-consideration-framework>.

The “Tripartite Standards” is essentially a set of progressive workplace practices published as standards for organisations to aspire to adopt for the benefits of their workers. It complements and reinforces the existing regulatory ecosystem by being a somewhat intermediate species between the Tripartite Advisories, and both the Tripartite Guidelines and legislations. While adoption of the Tripartite Standards would likely be voluntary, it will at least be verifiable.¹¹ This then allows organisations to publicise their adoption of the Tripartite Standards through the Jobs Bank and the website of the Tripartite Alliance for Fair and Progressive Employment Practices.¹²

When announcing the introduction of the Tripartite Standards, the Minister of Labour attributed its creation to the gap between mandatory and voluntary workplace practices.¹³ It was felt that this gap creates uncertainty among workers who are unable to identify employers that adopt progressive workplace practices beyond the minimum statutory level as required. In the same vein, progressive employers are similarly unable to differentiate themselves to attract talent. A solution is thus needed to identify and acknowledge progressive employers for their efforts.

Presently, it is unclear what precise scope or nature of workplace practices will be covered by the Tripartite Standards. It was suggested that it can be sector specific.¹⁴ The examples of Tripartite Standards on flexible work arrangements or one specific to the media sector were further given. For its adoption to be verifiable though, it would suggest that only workplace practices that are quantifiable, measurable and/or tangible would be part of any Tripartite Standards. Subsequently, it was further announced that work is in progress for a Tripartite Standards that sets out standards for the procurement of services from media freelancers.¹⁵ These standards include having written contracts that set out payment terms, intellectual property rights and dispute resolution.¹⁶

As regards the verifying process, it is not yet revealed if a formal verification process will be implemented or if it would operate on an honour system, coupled with random audit checks.

IV. Views and Conclusion

The rationale behind the creation of the Tripartite Standards suggests that either existing Tripartite Advisories have low adoption rate, or there is little confidence in organisations being willing to adopt present or future Tripartite Advisories without incentives. From a macro point of view, it reflects and

¹¹ Ministry of Manpower (2017, March 6) *Main Speech by Mr Lim Swee Say, Minister of Manpower at Committee of Supply 2017*. Retrieved from <http://www.mom.gov.sg/newsroom/speeches/2017/0306-main-speech-by-min-lim-at-cos-2017>.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Ministry of Communications and Information (2017, March 6) *Response by Mr Chee Hong Tat, Minister of State of Communications and Information at Committee of Supply Debate 2017 on 6 Mar 2017*. Retrieved from <https://www.mci.gov.sg/pressroom/news-and-stories/pressroom/2017/3/innovation-in-media-and-communications?page=6>.

¹⁶ *Ibid.*

possibly is a tacit admission that Singapore employers lag behind their counterparts from developed countries in adopting progressive workplace practices.

To improve the aforesaid situation, these new standards could have been published as Tripartite Guidelines or in fact be legislated. However, this is not the case. One reason would be the impact on business costs if such progressive workplace practices were made mandatory. At present, the competitiveness of Singapore's economy remains an overriding consideration for our policymakers.

Separately, it is to be commended that the Tripartite Alliance is open to the idea of the Tripartite Standards being sector specific. While any exhortation to improve workplace rights and practices should apply to all, it should not be overlooked that different industry sectors have vastly different cost pressures. Moreover, some sectors may "need" the Tripartite Standards more urgently.

Overall, the enhancement of the existing regulatory ecosystem is a step in the right direction. Any efforts to enhance workplace rights and practices can only be welcomed. However, and until the first batch of Tripartite Standards is published at the end of 2017, it remains to be seen if any Tripartite Standards will achieve its desired effects. Nevertheless, we are hopeful.

This article merely provides an introduction and overview of the subject matters discussed therein. It is not intended to be comprehensive nor should it be construed as legal advice. Any views and opinions expressed are solely that of the author. Please do not hesitate to contact the author if legal advice related thereto is required, or if you wish to discuss the article further.



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Singapore's Tripartite Guidelines and Advisories

List of Tripartite Guidelines.

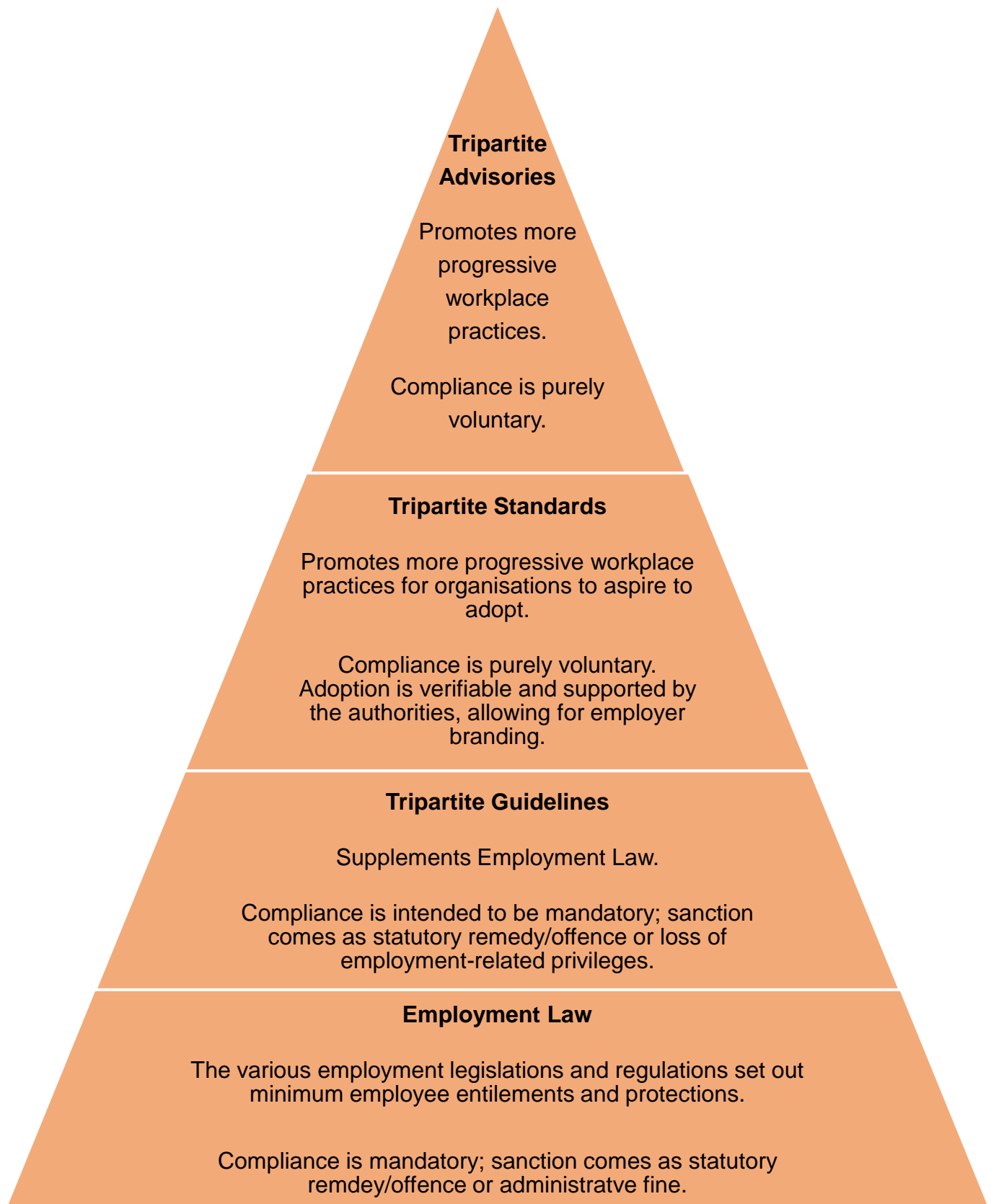
1. Tripartite Guidelines on Re-employment of Older Employees.
2. Tripartite Guidelines on Expanding the Scope of Limited Representation for Executives.
3. Tripartite Guidelines on Extending the Scope of Union Representation for Executives.
4. Tripartite Guidelines on Mandatory Retrenchment Notifications.
5. Tripartite Guidelines on Fair Employment Practices.

List of Tripartite Advisories.

1. Tripartite Advisory on Managing Workplace Harassment.
2. Tripartite Advisory on Flexible Work Arrangements.
3. Tripartite Advisory on Best Sourcing Practices.
4. Tripartite Advisory on the Employment of Term Contract Employees.
5. Tripartite Advisory on Industrial Relations Practice.
6. Tripartite Advisory on Workplace Measures to Tackle Influenza A (H1N1).
7. Tripartite Advisory on Workplace Measures to Tackle MERS-CoV.
8. Tripartite Advisory to Employers on Haze-related Workplace Measures.
9. Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment.

¹⁷ Annex A to Gateway Law Corporation's Employment Update, "Good Things Come in 4, not 3: The New Tripartite Standards." (2017, July 3). Retrieved from <http://www.gateway-law.com/newsletter/03072017.pdf>.

Singapore's Employment and Labour Regulatory Ecosystem



¹⁸ Annex B to Gateway Law Corporation's Employment Update, "Good Things Come in 4, not 3: The New Tripartite Standards." (2017, July 3). Retrieved from <http://www.gateway-law.com/newsletter/03072017.pdf>.