REGULATING NON-STANDARD EMPLOYMENT IN ASEAN AND EAST ASIA: A COMPARATIVE SURVEY OF LABOUR LAWS AND UNION STRATEGIES

Melisa R. Serrano

Introduction

In general, the face of non-standard employment all over the world is the same. In six countries in the Association of Southeast Asian Nations (ASEAN), namely Indonesia, Malaysia, Philippines, Singapore, Thailand and Viet Nam, and four countries in East Asia, namely Hong Kong, Japan, South Korea and Taiwan, most workers engaged in non-standard employment experience, in varying degrees, many of the following conditions: short or limited duration contractual arrangements; indirect or triangular or ‘disguised’ employment relationships; low and stagnant wages; poor protection from termination of employment; lack of access to social protection and benefits usually associated with full-time standard employment; low-skilled work; lack of opportunities for career advancement; and inability to exercise rights at work (including the right to organize and bargain collectively). In short, non-standard employment in the two regions is largely precarious.

The paper highlights several convergences and divergences in terms of trends and characteristics of non-standard employment in the two regions. The paper posits two stylized types of regulatory regimes that deal with various forms of non-standard employment, including those that involve a triangular employment relationship. These two typologies are used to compare and analyze how regulatory frameworks in the 10 countries regulate the use of non-standard employment. Finally, the paper highlights the critical role of trade unions both in according protection to non-standard workers and in arresting the spread of non-standard employment.

Defining non-standard employment

Standard employment usually refers to permanent (or regular), full-time employment that involves a direct employee-employer relationship. Edgell (2012) lists the characteristics of standard employment which sprung from the Fordist production system: job security, expectations of rising living standards through high wages, workplace participation of workers, the presence of strong trade unions, free collective bargaining, and a strong welfare state (i.e., welfare benefits provided by the state).

The decline of Fordism in the 1970s and the rise of flexible production systems (e.g. Japanese lean production system or ‘Toyotism’) accompanied the move away from the standard model of permanent and full-time work and towards the growth of non-standard work or numerical flexibility. The emergence of lean and mean production methods was accompanied by the

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widespread practice of customizing, subcontracting, outsourcing, offshoring and downsizing, all of which privilege flexibility. In short, the increasing flexibilization of the workplace went hand in hand with the increasing flexibilization of the workforce. This is what has been referred to as the “de-standardisation (of work) thesis” where flexible production is complemented by flexible labour. Edgell (2012: 146) distinguishes the key dimensions of standard and non-standard work or employment in Table 1.

<table>
<thead>
<tr>
<th>Dimensions</th>
<th>Standard work</th>
<th>Non-standard work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractual</td>
<td>Highly regulated* and collectively negotiated</td>
<td>Deregulated and individually negotiated</td>
</tr>
<tr>
<td>Spatial</td>
<td>Spatially concentrated, specialist site separate from home</td>
<td>Spatially variable, multiple sites</td>
</tr>
<tr>
<td>Temporal</td>
<td>Full-time, permanent</td>
<td>Variable time, impermanent</td>
</tr>
<tr>
<td>Gender system</td>
<td>Male breadwinner/female houseworker</td>
<td>Dual earner/variable houseworker</td>
</tr>
</tbody>
</table>

*Regulations covering hours, pay, redundancy, health, safety and benefits, such as pensions, holiday and sick pay, etc.
Source: Reproduced from Edgell (2012: 146), Table 7.1.

From Table 1, forms of non-standard employment may include part-time work, temporary work, casual work, project-based work, seasonal work, agency work, ‘disguised’ or ‘bogus’ self-employment and other variants of these types of employment.

Ebisui defines non-standard employment based on the nature of the employment relationship, that is, work arrangements that are “associated with formal employment relationships (e.g. part-time, temp agency work, fixed-term work, etc.) and outside such relationships (e.g. informal work, commercial contract holders such as those in contracted/subcontracted work, or economically dependent self-employment), including where relationships are either disguised or unclear” (2012: 2). She clarifies that there is no single and universally accepted terminology describing such forms of work and that a variety of terms has been used across countries and regions. Nonetheless, Ebisui lists several conditions that non-standard workers are thought to face which make them more insecure, vulnerable and precarious (2012: 2-3):

- Low employment security/poor employment protection: non-standard jobs can be terminated more easily or with little or no prior notice by the employer
- Lower quality of work than standard work (lower wages, irregular or uncertain income, limited occupational safety and health protection, fluctuations in hours of work or volume of work)
- Little or no access to “standard” non-wage welfare benefits
- Limited social security coverage
- Limited mobility toward better-quality jobs (e.g. regular/permanent job)
- Limited opportunities for promotion
- Limited access to training opportunities
- Low or no trade union representation or collective bargaining coverage
- Low bargaining power
- Reluctance/unwillingness to engage in non-standard work
- Lack of labour market alternatives
- Low labour law coverage, in particular for those who hold commercial contracts

In defining non-standard employment, I adopt the key dimensions of non-standard employment presented by Edgell and the characterization of non-standard work by Ebisui.
Non-standard employment and precarious work

The concept of non-standard employment is strongly interrelated with that of precarious work. According to the ILO, precarious work is “usually defined by uncertainty as to the duration of employment, multiple possible employers or a disguised or ambiguous employment relationship, a lack of access to social protection and benefits usually associated with employment, low pay, and substantial legal and practical obstacles to joining a trade union and bargaining collectively” (2011: 5). In an earlier paper, the ILO notes that the definitions of ‘precarious’ and ‘atypical’ overlap, but are not synonymous (ILO, 2010, in Ebisui, 2012). Accordingly, “‘precarious’ work refers to ‘atypical’ work that is involuntary – the temporary worker without any employment security, the part-time worker without any employment security, the part-time worker without any pro-rated benefits of a full-time job, etc.” (ibid: 2).

Similar to precarious work, non-standard employment may be classified into two categories of contractual arrangements, as identified in an ILO symposium on combating precarious employment (Ebisui, 2012: 3). The first group comprises those associated with limited duration of contract (i.e., fixed-term, short-term, temporary, seasonal, day labour and casual labour). The second group pertains to the nature of the employment relationship (i.e., triangular and disguised employment relationships, bogus self-employment, subcontracting and agency contracts). The first category may refer to the ‘temporal’ dimension of non-standard employment and the second to the ‘contractual-spatial’ dimensions.

A variety of terminologies in ASEAN and East Asia

In ASEAN and East Asia, the terminology ‘non-standard employment’ is not used. Instead, various terminologies are used to refer to different forms of non-standard employment. Nonetheless, they could be classified into four major categories of non-standard employment: (directly-hired) fixed-term employment, part-time employment, self-employment and agency work.

Table 2 lists the various terminologies used in the ASEAN countries of the different forms of non-standard employment in the formal sector, including those that create triangular employment relationships (Serrano, 2014). The variety of terminologies used, some of which overlap and even bear contradictory meanings, makes it difficult to use a single term in comparing the forms of and trends in non-standard employment among the six ASEAN countries. For example, in Indonesia, ‘contract’ workers are those workers that have employment contracts with the principal company (or the user company), while ‘outsourced’ workers are those workers that have employment contracts with the outsourcing company. In the Philippines and Singapore, ‘contract’ workers can also be ‘outsourced’ workers or workers dispatched by manpower supplying agencies or contractors.

In Malaysia, fixed-term contracts may refer to either ‘contract of service’ or ‘contract for service’. A contract of service is a fixed-term employment contract between an employer and an employee. This type of contract is covered by the labour law. In contrast, a contract for service involves a person, also doing work for another party but not recognised as employee of that party for which he or she is doing work. A contract for service is also referred to as ‘independent contracting’. As such, persons or workers under this type of contract are excluded from the coverage of labour and employment legislation. In Thailand, the
counterpart for Malaysia’s contract of service called hire of service employment contract, while the counterpart for Malaysia’s contract for service is called hire of work contract.

Table 2: Specific terms used officially in referring to non-standard employment in the formal sector in six ASEAN countries

<table>
<thead>
<tr>
<th>Terminologies</th>
<th>Ind</th>
<th>Mal</th>
<th>Phi</th>
<th>Sin</th>
<th>Tha</th>
<th>Vie</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Fixed-term employment</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Fixed-term/contract</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contract of service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Hire of service employment contract (for fixed-term)</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>✓</td>
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<tr>
<td>Casual work</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Contractual/project-based</td>
<td></td>
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<td>✓</td>
<td></td>
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<tr>
<td>Seasonal work</td>
<td></td>
<td></td>
<td></td>
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<td>✓</td>
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<tr>
<td>Piece-rate work</td>
<td>✓</td>
<td></td>
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<td>✓</td>
<td></td>
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<tr>
<td>On-call work</td>
<td></td>
<td>✓</td>
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<tr>
<td>Probationary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Apprenticeship</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Part-time work</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Self-employment</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Contract for service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Hire of work contract</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>4. Agency work*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outsourced/subcontracted work</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Agency-hired work</td>
<td></td>
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<td></td>
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<tr>
<td>Employee subleasing/labour dispatch</td>
<td></td>
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</tr>
<tr>
<td>Job/service contracting</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Labour contracting</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Work that involves a triangular employment relationship.
Source: Serrano (2014).

In Singapore, fixed-term contracts are called term contracts. In Viet Nam, labour dispatch or employee subleasing is equivalent to agency-hiring, labour contracting, outsourcing or subcontracting work, terms used in Indonesia, the Philippines, Malaysia, Singapore and Thailand.

Nonetheless, the various terminologies used to refer to non-standard forms of employment in the six ASEAN countries bear the key features of non-standard employment as listed above. Moreover, types of non-standard employment involving a triangular employment relationship are present in all the six ASEAN countries. In most of these countries, the practices of outsourcing and subcontracting often involve triangular employment relationships.

Similarly, there are a variety of terminologies and categories of non-standard employment in Hong Kong, Japan, South Korea and Taiwan. Part-time work, fixed-term work, contract work, and agency or dispatch work are all present in the four countries.

Hong Kong’s Employment Ordinance distinguishes only two types of employment – ‘continuous’ and ‘non-continuous’. An employee who has been employed continuously by the same employer for at least four weeks, and has worked at least 18 hours in each of these weeks, is considered as being employed in a continuous contract. It doesn’t matter whether the employee worked under separate, successive employment contracts with the same
employer, only that the employee has worked the required number of hours in each of the weeks. Absent these conditions, the employee is considered as being employed on a non-continuous contract. Continuous employees are entitled to a greater level of statutory employment rights, such as rest days, paid annual leave, sickness allowance, end of year payment\(^2\) and severance payment and long service payment\(^3\).

Contracting-out, also called in-house subcontracting in Korea, is used in Japan and Korea. Here, what is interesting to note is that, despite the existence of an indirect employment arrangement, contract-out or in-house subcontracted workers are considered ‘regular’ workers in Japan and Korea to the extent that the contractor is the only employer of these workers who perform work for the contractor within the workplace of the prime contractor or hirer. Under a contract-out arrangement, an employment relationship exists between the contractor and the contract worker. The contractor has the right to control and supervise the contract worker. There is a contract for work or a contract agreement between the contractor and the prime contractor (corporation or hirer).

Agency or dispatch work also involves an indirect employment arrangement and a triangular employment relationship. In Japan and Taiwan, there are two types of agency or dispatched workers: the regularly-employed type (in the case of Japan) or the constant-type (in the case of Taiwan) and the registration-type (in the case of Japan) or the registered-temporary type (in the case of Taiwan). Most, but not all, agency workers of the regularly-employed type have open-ended contracts with the staffing agency (JILPT, 2011). The employment contract of these workers are not dependent on the presence of a client or dispatch request, which means that they continue to be employees of the agency even if they are not working in a user company. The regularly-employed dispatched workers are often deployed to perform technical jobs in fields such as IT and software.

In the case of the registration-type agency workers, their employment contract with the agency depends on the existence of a dispatch agreement with a client company. Registration-type workers are usually dispatched as office equipment operators or general clerks. The employment contract of these workers with the agency varies in length but most of them will have a three month term contract.

In Korea, agency or dispatch work is of the registration-type.

Self-employment, particularly the ‘disguised’ or ‘bogus’ type, is another category of non-standard employment in Hong Kong and Korea. Self-employed persons are not covered by the employment laws in Hong Kong. However, in practice, many self-employed persons in Hong Kong are under ‘disguised’ self-employment arrangements (e.g. insurance agents and brokers, construction site workers, truck drivers, mini-bus drivers, massage providers, restaurant workers, etc.).

\(^2\) End of year payment means any annual payment (including double pay, 13\(^{th}\) month payment, end of year bonus) of a contractual nature. It does not include any payment which is of a gratuitous nature or which is payable at the discretion of the employer (Labour Department, 2014: 29).

\(^3\) To qualify for severance payment, an employee should have worked for not less than 24 months under a continuous contract. To eligible for long service payment, an employee should have worked for not less than five years under a continuous contract. For monthly-paid employees, the severance payment/long service payment is calculated as follows: (last month wages × 2/3) × reckonable years of service. For daily-rated/piece-rated employees, it is calculated as follows: (any 18 days’ wages chosen by the employee out of his last 30 normal working days) × reckonable years of service. (Labour Department, 2014: 42-44)
In Korea, the self-employed workers are defined as workers who work on their own account or with one or few partners or in a cooperative. Their remuneration is directly dependent on the profits derived from the goods and services produced. In Korea, there are three sub-categories of self-employed persons, namely: employers, own-account workers, and members of producers’ cooperatives. Like in Hong Kong, Korean labour laws do not include the self-employed in the definition of employee.

In Japan, while self-employed workers are not considered part of the sphere of non-regular workers, a number of researchers (Chatani, n.d.; Iwata, n.d.) note ‘novel’ working arrangements that tend to suggest the employment of these workers is dependent on an employer, but statistically they are counted as self-employed. Examples are workers receiving commission-based compensation such as taxi drivers, insurance agents – workers who are ‘economically-dependent self-employed’ or dependent on just one company for their income. Corresponding issues of coverage under labor and social security laws therefore become relevant questions for these workers.

Table 3 summarizes the categories of non-standard employment that are present in the four study countries.

<table>
<thead>
<tr>
<th>Category</th>
<th>Hong Kong</th>
<th>Japan</th>
<th>South Korea</th>
<th>Taiwan</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Fixed-term work</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fixed-term (directly-hired)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Contract work (directly-hired)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Arbeits/temporary work</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Casual work/daily work</td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Entrusted</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Part-time work</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>3. ‘Disguised’ self-employment</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>4. Agency-work</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Contract-out or in-house subcontracting</td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Agency/dispatch work</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>4. Special category</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Continuous (may be on temporary contract) and non-continuous employment</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Zero-term contract (as special category)</td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

Source: Author’s own elaboration.

In Japan, there are two other categories of non-standard workers that are not used in the other East Asian countries – the arbeits and/or temporary workers and the entrusted workers. The arbeits and/or temporary workers are those who are working less than 35 hours a week but compared to part-time workers, these workers act as buffers for peak hours or seasons and are not often part of the usual number of workforce complement. The Labour Force Survey of the Ministry of Interior Affairs and Communications (MIAC) lumps together arbeits and temporary workers suggesting that they consider these workers as basically belonging to the same group. Other authors (Chatani, n.d.) consider temporary workers not the same as arbeits; they are full-time workers on short-term contracts, e.g. a month, or those hired on a daily basis.
Entrusted workers are retired workers who are re-hired by the company. They perform the same function but receive comparably lower wages than what they were receiving before retirement. The retirement age in Japan is 60 years old.

In Korea, agency or dispatched workers, contract workers, daily workers, and domestic workers are grouped together as non-typical non-regular workers. In recent years, a special category of work in Korea has been on the rise—the so-called ‘zero-term contract’. This new category of ‘regular’ work was repeatedly highlighted from the interviews between the author and officers of various trade union federations in South Korea.⁴ A zero-term contract worker has an indefinite employment period but he or she receives lower wages compared to the wages received by full-time permanent workers. Although zero-term contract workers may have open-ended employment contracts, the fact that they are treated less favourably in terms of receiving lower wages puts into question their status as regular workers. As most of the Korean trade union officers interviewed explained, zero-term contract is the product of a compromise between the employers’ need for flexibility and the workers’ need for job security. The unions nonetheless clarified that this is a temporary solution.

**Trends in non-standard employment in ASEAN and East Asia: Commonalities and variations**

*The rise of non-standard employment in ASEAN*

Among the six ASEAN countries, there is very limited comparative and disaggregated data on non-standard employment. To compensate for this limitation, studies and surveys done by academics and research institutions were likewise reviewed by the author.

With the exception of Singapore, the incidence of non-standard work, including temporary agency work (or outsourced work or dispatched work), is high and on the uptrend in the ASEAN countries studied. In Indonesia, it is estimated that about 65% of all employed workers in formal enterprises in 2010 were non-standard workers (Anwar and Supriyanto, 2012). In Malaysia, according to data from the Ministry of Labour and Human Resources, the combined share to total employment of own-account workers, unpaid family workers, and employers, who are most likely operating informal enterprises and employing non-standard workers, suggests that, at the very least, nearly one in four of all employed persons in Malaysia were non-standard informal workers. In the Philippines, about 1 in 3 rank-and-file workers employed in formal enterprises (with 20 or more workers) in 2010 was a non-regular worker (BLES, 2012). This was a marked increase from the proportion in 2008 when one in four of these workers were non-regulars.

In Thailand, informal employment, which includes jobs both in the formal and informal sectors, accounted about 63% of all employment in 2012, according to the country’s National Statistical Office. In Viet Nam, data from Viet Nam General Confederation of Labour (VGCL) indicate that across all types of enterprises over one in three contracts were of one to three years’ term in 2013. The incidence is higher in the foreign direct investment (FDI) sector where over two in five labour contracts were of one year to three years term.

Data on non-standard or non-regular employment disaggregated by type, sex, age and industry are either very limited or not available at all. Nonetheless, there are a few studies

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⁴ The interviews were done from 28 to 30 July 2014 in Seoul.
that provide some information on trends in non-standard employment. In Indonesia, women and relatively young workers dominate non-standard work. In the Indonesian metals industry, for example, a survey by the Akatiga Foundation, FSPMI and Friedrich Ebert Stiftung (2010) covering the provinces of Riau Islands, West Java and East Java points out that majority of the workers had fixed-term contracts – either contracted or outsourced. While there were more men than women workers in the metals industry in these provinces, two-thirds of the all the women workers were outsourced workers. Moreover, most of the workers were young under the age of 35. As regards length of employment, two in five of the respondents had been working for more than five years.

In the Philippines, data from the ILO (2012) indicate that although the share of men in precarious work, that is, short-term, seasonal or casual work, was higher than that of women for the period 2000-2010, the overall trend for men was one of gradual decline while that of women was of gradual increase. This implies that more and more women are engaging in precarious work.

In terms of industry distribution, establishments engaged in real estate, renting and business services and those engaged in manufacturing are the two biggest employers of non-regular workers in the Philippines. Together, they accounted for more than half (54%) of the total non-regular employment in 2010, according to the 2010 BLES Integrated Survey (BLES, 2012). In terms of agency-hired workers, manufacturing establishments (46%) and those engaged in wholesale and retail trade (14.9%) accounted about three-fifths of the total agency-hired workforce in 2010 (ibid). For the manufacturing sector in particular, one in six workers was agency-hired.

Overall, the use of fixed-term contract of employment through outsourcing is widely practiced in the six ASEAN countries in almost all sectors and across a variety of occupations. The manufacturing sector tends to have the highest incidence of outsourced workers. Moreover, export-oriented establishments are more likely have greater tendency to practice outsourcing than those serving only the local market. Outsourcing practices have also given rise to triangular relationships.

Also, it has been observed that the practice of outsourcing or putting out work to a third party is increasingly being done more within than outside the premises of the principal.

Triangular employment relationships created through the use of temporary agency work, dispatch work, labour outsourcing, etc., may exist at different layers of the contracting or subcontracting chain, as user companies or service buyers can also be a contractor of the principal or a subcontractor of the principal’s contractor. To the extent that most workers in this type of employment relationship are in precarious working conditions, this suggests that the degree of precarity (or precarization) gets higher as the contracting or subcontracting chain goes down the value chain.

The rise of non-standard employment in East Asia

Except in the case of Hong Kong where flexible employment has been the norm since the 1960s, non-standard or non-regular employment is rapidly expanding in Japan and South Korea. In Taiwan, although the rate of non-regular or atypical employment is very low, a gradual rise in the number of part-time, temporary and dispatched workers has been observed in recent years.
In Hong Kong, part-time employment is gradually expanding since the 1990s, and in lieu of resorting to non-standard employment, Hong Kong workers have been working longer hours a week with much of overtime work unpaid. In fact, the trend of extending work hours has been accompanied by a rise in the incidence of unpaid overtime work. Also, the proliferation of non-continuous employment is worrying workers and trade unions in Hong Kong.

In Japan, with about 3 in 5 (64%) employees holding regular jobs according to the 2013 Labour Force Survey, standard or regular employment remains the dominant form of employment. Nonetheless, 25 years ago, the share of regular workers to the total number of workers in the country was higher at 82%, that is, 4 in 5 workers were regular workers. Between 1988 and 2013, the proportion of regular employees decreased by a sizeable 20 percentage points. The marked decline in the share of regular workers in just two and a half decades clearly paints a landscape of expanding non-standard employment in Japan. Beginning in the 1980s, the number of non-regular employees, notably those working on short hours or part-time started to rise and in time became a major job category.

In South Korea, as of March 2014, there were 5.91 million non-regular workers. This number comprised 32.1% of all wage and salary workers in the country during the said period. This means that about 1 in 3 wage and salary workers in Korea was a non-regular worker. However, a recent survey done by the Ministry of Employment and Labour (MOEL) involving workplaces with more than 300 workers revealed a more nuanced picture. This survey found that about 20% of all the workers of the enterprises surveyed were in-house outsourced or subcontracted workers. If this proportion and the share of fixed-term workers (one-third of all non-regular workers) are combined, the share of non-regular workers becomes staggering – 50% of all workers in Korea! This means that 1 in 2 workers (or every other worker) in Korea is a non-regular worker! Of course this is still a conservative estimate as there are other forms of non-regular employment, particularly those considered as non-typical. From interviews with researchers in Korea, the author learned that in recent years, the biggest chunk of non-regular workers in Korea is no longer the fixed-term directly-hired workers, but the indirectly-employed non-regular workers, particularly agency or dispatched workers and in-house outsourced or subcontracted workers.

In Taiwan, part-time, temporary and dispatched workers comprise the non-standard atypical workers. According to a professor of the Chinese Culture University, labour dispatching was actually started by some employers 20 years ago, but it was only in the last 10 years that it was commonly used. He adds that based on official statistics in 2011, there were 171,000 contractual workers or 1.59% of the total employment population; 91,000 part-timers or 0.61%; and 574,000 dispatched workers or 5.3%. This means that in 2011, the number of dispatched workers relative to the other atypical workers was already high. Though their proportion is still small, a steady increase in the proportion of part-time workers and temporary and dispatched workers has been observed between 2011 and 2013.

Among the four East Asian countries, non-regular workers appear to be dominated by women and older workers in elementary jobs in the services sector.

Women workers outnumber their male counterparts in non-standard or non-regular work. This trend is observed in Japan, South Korea, Taiwan and Hong Kong. In Japan, women comprised 57.6% of all workers in non-regular employment in 2012, from 30.7% in 1982,

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5 Professor Junyen Chiu, interview on 08 July 2014 in Taipei City.
according to the Statistics Bureau, Ministry of Internal Affairs and Communications, 2012. In Korea, women comprised the majority (53.7%) of non-regular workers in March 2014, from a share of 51.1% in March 2009. In Taiwan, women outnumbered men in part-time, temporary and dispatch work in 2011 to 2013. In Hong Kong, according to the 2009 General Household Survey (GHS), women took up the majority (64.4%) of part-time employment, with the sex ratio of 553 males per 1,000 females.

In Japan and Korea, older workers are more likely to be engaged in non-regular work. In Japan, the ratio of workers aged 55 to 64 who are joining the ranks of non-regular workers have been increasing steadily between 1988 until 2013. In 2013, this age group comprised the biggest number of non-regular workers at 22.4%, according to the Statistics Bureau, Ministry of Internal Affairs and Communications. In Korea, majority of non-regular workers are in the older age groups: over 3 in 5 (63.5%) non-regular workers were aged 40 and over in March 2014, according to the Supplementary Survey by Employment Type to the Economically Active Population (SREAPS) by Statistics Korea. In Hong Kong, among the part-time workers covered by the GHS survey in the 2nd quarter of 2009, 50.3% were aged 30 to 49, 30.6% were aged 50 and over, and 19.1% were aged below 30. In Taiwan, the part-time workers and temporary and dispatched workers were dominated by workers aged 15 to 24 in the period 2011-2013.

Most non-regular jobs are elementary jobs in the services sector. In Japan, data from the Statistics Bureau indicate that majority of part-time and arbit work workers (male and female) were employed in service-related sectors, such as accommodations, eating and drinking services; living related and personal services and amusement; wholesale and retail; and medical, health care and welfare. In Korea, nearly half (48.9%) of all non-regular workers are in business, personal and public services in March 2014, from 42.5% in March 2009. The share of non-regular workers in the wholesale and retail trade and restaurants and hotels was also high at 18.9% in March 2014. In Taiwan, nearly 1 in 3 (29%) temporary and dispatched workers was a low level technician or worker, and another 1 in 4 (24.9%) was a service and sales worker in 2013. Meanwhile, about 1 in 4 (20.4%) was a craftsman. In Hong Kong, the majority of part-time workers, who are more likely lower-skilled, were engaged in the services sector, namely in public administration, social and personal services; retail, accommodation and food services sector; transportation, storage, postal and courier services, information and communication sector (12.8%); and construction sector (11.9%). Casual employment is also most pronounced in the service sector, particularly in construction.

In terms of the average duration of employment of non-regular workers, the trend is rather mixed depending of the category of non-regular workers. In Hong Kong, according to the 2009 GHS, over 4 in 5 of the casual employees had been working in their present job for less than two weeks. In Korea, based on the SREAPS in August 2013, the average service period of non-regular workers was two years and six months.\(^6\)

\(^6\)This in a way contravenes the two-year rule of the Fixed Term and Part-Time Work Act – that an employer shall not employ a fixed-term employee for longer than two years, otherwise the fixed-term employee is considered a permanent employee.
The regulatory framework for non-standard employment

In analyzing the regulatory framework adopted by the six ASEAN and four East Asian countries in regulating the use of non-standard employment, including those that involve a triangular employment relationship, Serrano (2014) posits two stylised forms of regulation – ‘relaxed’ regulatory framework and ‘highly-regulated’ framework – which could be placed at two opposite poles of the regulatory spectrum. Countries may be situated between these two types of regulatory frameworks. Table 4 lists the key features of these two types of regulatory framework on non-standard employment.

Table 4: Two stylised types of regulatory framework on non-standard employment

<table>
<thead>
<tr>
<th>Dimension</th>
<th>‘Relaxed’ regulatory framework</th>
<th>‘Highly-regulated’ framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage by sector, job type and business activity</td>
<td>No specification on sectors, business activities and types of jobs where use of agency work/outsource work/labour contracting or outsourcing/labour dispatching is allowed</td>
<td>Business activities and/or types of jobs (and in some cases exigencies at work) which could use labour supplied by an outsourcing company/labour contractor/manpower supplier/labour dispatch or subleasing company are specified</td>
</tr>
<tr>
<td>Duration of term contracts</td>
<td>No limitations set on the number of times a contract can be renewed</td>
<td>Limitations are set on the term of the first contract, the number of times a contract can be renewed, and the cumulative number of years of working under a fixed-term contract</td>
</tr>
<tr>
<td>Regulations on the operations of third-party labour suppliers</td>
<td>Existence of laws and regulations on manpower recruitment and supply</td>
<td>Laws and regulations on manpower recruitment and supply are complemented by stricter and special regulations on the operation of labour/manpower supply and dispatch, e.g., capitalisation requirement, ownership of tools and equipment, registration with the Ministry of Labour/Manpower, etc.</td>
</tr>
<tr>
<td>Provision on solidary liability between user company and third-party labour supplier</td>
<td>Not specified</td>
<td>Specified; principals or user companies are jointly liable with the labour/manpower supplier for the latter workers’ wages, overtime pay, holiday pay, holiday overtime pay, severance pay, special severance pay, etc.</td>
</tr>
<tr>
<td>Provisions on the rights and legal entitlements of workers</td>
<td>Not clearly specified in laws and regulations</td>
<td>Clearly specified and identified in laws and regulations</td>
</tr>
</tbody>
</table>

Source: Table reproduced from Serrano (2014: 175), Table 50.

The ‘highly-regulated’ regimes

From Table 4, among the 10 Asian countries, the regulatory framework on non-standard forms of employment in Indonesia, the Philippines, Viet Nam, Japan and South Korea may arguably be classified as leaning towards a ‘highly-regulated’ regime.

1. Indonesia, the Philippines and Viet Nam
According to Indonesia’s Manpower Act (Act No. 13/2003), fixed-term employment should not exceed two years, although a one-year extension may be allowed. If the engagement extends beyond the allowable period, the employment converts to a permanent status. Further, a fixed-term contract is only allowed for certain jobs that are expected to finish at a certain time, such as: (a) work which is temporary by nature; (b) Seasonal work; and (c) work that is related to a new product, a new [type of] activity or an additional product that is still in the experimental stage or try-out phase. The MOMT Decree No. 100 of 2004 (“Guidelines on the Implementation of Fixed-Term Contract”) provides that workers under a fixed-term contract can be hired directly by a company or recruited through a labour agency.

Contracting or outsourcing is a legal undertaking in Indonesia under the Manpower Act. Only those activities that are ‘supplemental’ or auxiliary to the main business of the company may be outsourced to third-party contractors. In 2012, the Indonesian government issued Ministerial Regulation No. 19 that identified five types of auxiliary services where labour supply outsourcing is allowed: activities associated with the provision of cleaning service; the provision of catering service (a supply of food) to workers; the provision of a supply of security guards; auxiliary business activities in the mining and oil sectors; and the provision of transport for workers.

In the Philippines, workers on non-standard employment are called non-regular workers. These workers are hired by companies on a non-permanent status. According to BLES (2012), there are five categories of non-regular workers:

- **Casual workers** — workers whose work is not usually necessary and desirable to the usual business or trade of the employer. Their employment is not for a specific undertaking.
- **Contractual/project-based workers** — workers whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of engagement.
- **Seasonal workers** — workers whose employment, specifically its timing and duration, is significantly influenced by seasonal factors.
- **Probationary workers** — workers on trial period during which the employer determines their fitness to qualify for regular employment, based on reasonable standards made known to them at the time of engagement.
- **Apprentices/Learners** — workers who are covered by written apprenticeship/learnership agreements with individual employers or any of the entities with duly recognised programmes. Apprentices without compensation are excluded.

The BLES defines agency-hired workers as those “workers hired through agencies and contractors to perform or complete a specific job, work or service within a definite or predetermined period and within the premises of the establishment pursuant to a service agreement with a principal” (2012b: 1). Though agency-hired workers are mainly contractual workers, they can also be casual workers, project-based workers, seasonal workers or, to a lesser extent, probationary workers.

Like in Indonesia, service or labour contracting is allowed in the Philippines, but only for activities that are not considered necessary or desirable, nor directly related to the business or operation of the principal. The Labor Code (Articles 106 through 109) recognizes the legitimacy of ‘independent job contracting’. Department Order (D.O.) 18-A issued in 2011 on prohibits ‘labour-only contracting’ (LOC), defined as “a situation where the contracting agency has no substantial capital to back up its capacity to do the outsourced work, no
equipment or tools to undertake the work, and no control over the manner and conduct of the work as performed by the recruited workers” (Ofreneo, 2013: 437).

The D.O. recognizes and clarifies the existence of a trilateral relationship and solidary liability in contracting arrangements: an employer-employee relationship exists between the contractor and the employees it engaged to perform the specific job, work or service being contracted; and in the event of any violation of any provision of the Labor Code, including the failure to pay wages, there is solidary liability on the part of the principal and the contractor for purposes of enforcing the provisions of the Labor Code and other social legislation.

Finally, D.O. 18-A accords to agency workers all the rights and privileges in the Labor Code, such as: safe and healthy working conditions; labour standards (such as but not limited to service incentive leave, rest days, overtime pay, holiday pay, 13th month pay, and separation pay); retirement benefits under the Social Security System or retirement plans of the contractor; social security and welfare benefits; the right to self-organisation, collective bargaining and engagement in peaceful concerted activities; and security of tenure. It is also interesting to note that under the D.O., the principal is obligated to provide a copy not only of the Service Agreement (a sample template of such is provided as well) with the contractor but also of the employment contract of the contractor’s employees to the principal’s sole and exclusive bargaining agent (SEBA).

In Viet Nam, the National Assembly of Viet Nam amended the Labour Code and integrated labour dispatch in Chapter 2, Section 5. This amended Labour Code took effect on 1 May 2013. The labour dispatch provision in the Labour Code aims to regulate the widespread practice of labour dispatch and clarify the responsibilities of each party.

Rules on operating a labour dispatch enterprise have also been made stricter. To be able to get a 36-month term of license to operate this type of business, a company should have a capital of VND 2 billion (USD 95,200) and be able to pay a VND 1 billion deposit (USD 47,600), according to an official of Action Aid International Viet Nam. These regulations were issued to ensure that these companies can pay the same wages to dispatch workers who are doing the same job as those directly employed in the enterprises and that the dispatched workers will be paid statutory allowances and insurance.

Labour dispatch work is limited to 12 months for each labour contract. This means that the employee cannot renew the contract with the same job and neither can he be extended nor supplied another job contract in the same company. The labour dispatch enterprise can however hire another worker for the job. Hiring through labour dispatch is permitted only when an employer needs to temporarily hire seasonal workers to accommodate peak production period or temporarily replace workers who are on maternity leave, who are affected with work-related accident or disease, who must carry out civic obligations, or who reduced their working hours. However, companies are not allowed to hire these workers for replacement of those who were retrenched and to work in locations with harsh living conditions (National Wage Council, 2013).

Recently, the Vietnamese government released Decree No. 55/2013/ND-CP detailing the conditions for labour dispatch. This decree, which took effect on 15 July 2013, limited to 17 the types of work that can be outsourced or dispatched (Lee, 2013), namely: interpreters, translators and stenographers; administrative assistants; receptionists; tour guides; sales
support staff; project support staff; programmers of production machine systems; staff that produce/install broadcasting and telecommunications equipment; staff that operate, examine, and/or repair machines used for construction or electrical systems in production systems; cleaning and sanitation staff for buildings and factories; document editors; bodyguards and security guards; staff for marketing and customer care via telephone; staff handling financial and tax problems; automobile mechanics; staff that produce scans and drawings for industrial engineering and interior decoration; and drivers.

2. South Korea and Japan

Japan and Korea have specific laws for certain categories of non-standard employment. These laws provide protection to non-standard workers, i.e. prohibits less favourable treatment of these workers vis-à-vis regular/permanent workers, and restrict the use of non-standard employment by providing a list of jobs that can performed by dispatched workers, and by limiting the duration of use of dispatch work, among others.

In Japan, special types of labor laws apply to specific categories of non-regular workers. These are the Labour Standards Act, Labour Contract Act, Part-time Workers Act, and Workers Dispatch Act. The first two applies to fixed-term workers, the third to part-time workers, and the last to dispatched workers.

Under the Labour Standards Act, the maximum duration of a fixed-term contract is one year, but the law was amended in 1998 and also in 2003 to the effect that the term limit has become three years for highly skilled and other workers\(^7\) and five years for workers age 60 and above. The Labour Contract Act governs the conditions of work under a fixed-term arrangement. In the 2012 amendment of the Labour contract Act, fixed-term workers whose contracts were renewed after five years of continuous renewal were given open-ended contracts. Recent amendments in 2007 and 2014 to the Part-time workers Act mandated equal treatment of part time workers with other workers in terms of wages, job duties and responsibilities, employment period, and career prospects.

Japan’s Workers Dispatch Act regulates the terms and conditions of dispatching workers. When it was enacted in 1985, the law effectively lifted the ban on labor supply business (Chatani, n.d.) specified under the Employment Security Act. Initially, labour dispatching was allowed in only 13 jobs, but in 1996 the government expanded the list to 26.\(^8\) Later, a new revision permitted labour dispatching to all but five jobs: port transport, construction, security, medical work, and manufacturing. In 2004, the ban on the use of dispatched workers in manufacturing was lifted and the number of dispatched workers there spiked. Further, the limit on worker dispatch periods were extended or removed. Nonetheless, there have been recent amendments meant to further limit the use of dispatch work. These are the following:

\(^7\) Based on comments by RENGO, March 10, 2015.
\(^8\) Software developer; mechanical designer; broadcasting devises operator; office equipment operator; interpreter, translator, stenographer; secretary; filing; research; financial processor; business documentation; demonstration; tour conductor; building cleaning; driving, checking, maintenance or building facilities; receptionist, parking management; R&D; planning and developing of the implementation system of the business; book production, editing; advertising, designing; interior coordinator; broadcaster; OA instruction; telemarketing; sales, engineer, marketing of financial products; large prop and prop. (Source: Ministry of Health, Labour, and Welfare (2012). Table C-36 Percentage according to the jobs that dispatched workers are engaged in General survey on dispatched workers.)
• Day-labour dispatching or dispatching workers for contracts of less than 30 days were banned with some exceptions (2012 Amendment of Workers Dispatch Act). Previously, dispatching for work that can be as short as a day was permitted.

• A few years ago, groups of companies created their own staffing agencies only to supply dispatched workers to subsidiaries mainly due to cost considerations. Now, however, an 80% limit to the ratio of dispatched workers that in-house staffing agencies can deploy to subsidiary firms has been set (RENGO, 2014). This means that in-house companies must find other user companies to supply workers to.

• A three year limit has been set on the maximum period a position or a job may be occupied by a dispatched worker. After such period, a company must directly hire a worker for such a position or job.

• Re-dispatching a worker to the same company within a year after the end of the most recent contract is no longer allowed (2012 Amendment of Workers Dispatch Act). Apparently, no such restriction existed before this amendment took effect.

In Korea, there are two employment laws that regulate non-regular or non-standard work and accord protection to specific types of non-regular workers. One is the Fixed-Term and Part-Time Work Act (2006), also known as the Act on the Protection of Fixed-Term and Part-Time Employees, and the other is the Temporary Agency Work Act (2006), also known as the Act on the Protection of Dispatched Workers. These Acts prohibit less favorable treatment of non-regular workers. Like in Japan, Korea’s Temporary Agency Act lists certain occupations – 32 occupations – that can be assigned to agency or dispatched workers (Table 5).

<table>
<thead>
<tr>
<th>Job classification</th>
<th>Type of business or occupation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profession</td>
<td>Computer business, administrative service (management and finance), patent, certified librarian (archive professions), translator, creative jobs (performing arts), broadcasting (theatrical arts)</td>
</tr>
<tr>
<td>Engineer or technician</td>
<td>Computer, electricity, communication, education, arts, entertainment, sports, maintenance</td>
</tr>
<tr>
<td>Staff or clerk</td>
<td>Technical drawing, optics (electric equipment), office work, library (mail service), telephone operator, personal guard, assistant cook, travel guide</td>
</tr>
<tr>
<td>Service job</td>
<td>Attendant in gas station, shop assistant, telemarketer, chauffeur, building cleaner, janitor (watchman), parking attendant, delivery clerk (porter &amp; meter reader)</td>
</tr>
</tbody>
</table>

Source: Reproduced from Chun (2013: 27), Table 5.

The Fixed-Term and Part-Time Work Act stipulates that fixed-term employees can enjoy all the labour rights provided by Korea’s labour laws, except that their employment contract terminates upon the expiration of a specific term. This term is subject to the two-year rule. Accordingly, an employer shall not employ a fixed-term employee for longer than two years, whether such term is continuous or broken or the contract has been renewed several times. The two-year rule is cumulative; it is calculated by adding up all the periods. If the fixed-term worker is employed beyond the two-year period, he or she automatically becomes a permanent employee.

The Fixed-Term and Part-Time Work Act also defines a part-time employee as “an employee whose agreed on weekly working hours are less than those of full-time employees with the same or similar job in a workplace” (Chun, 2013: 16). Under the Act, if an employer has made a part-time employee work more than the agreed-on number of hours, the employee is considered as a full-time employee. In addition, the Labour Standards Act of Korea provides a pro rata rule for part-time employees’ pay, fringe benefits and working conditions in
proportion to those for comparable full-time employees. Pay for a part-time employee is calculated based on an hourly rate.

The Temporary Agency Work Act regulates temporary staffing agencies, hirers (or clients), and agency or dispatched workers in triangular employment relationships. This Act protects agency or dispatched workers from less favorable treatments compared with regular employees who are directly employed by a hirer. Under the Act, a temp agency is required to obtain a staffing business license certified by MOEL. To be eligible to get this license, the temp agency should have enough assets to run the business and should have multiple clients. These requirements are to ascertain that firms do not circumvent the employer’s liability as specified in labour laws. The license is renewed every three years. If a temp agency makes an agency worker work in a hirer’s workplace without the temp agency having a staffing business license, both the temp agency and the hirer shall be subject to a fine of not more than 20 million won, to imprisonment for not more than three years, or both.

In addition, in Korea, there are also in-house subcontract workers who are mostly found in large enterprises in the shipbuilding, steelmaking, electronics, and automobile industries. According to Eun (2012), in-house subcontracting is regarded as a form of labour outsourcing which involves a triangular employment relationship between two employers and one worker. It differs from and yet it is often very similar to temporary agency or dispatch work. Under a temporary agency or dispatch work arrangement, the agency or dispatched workers are supervised by and receive direct instructions from the user enterprise (or principal or hirer).

Firms or agencies that send dispatch workers to user enterprises must register and get a staffing business license, in accordance with the Worker Dispatch Act, also referred to as Temporary Agency Work Act, of South Korea. Under this Act, both the dispatch firm and the user enterprise are legally responsible for the wages and working conditions of dispatched workers. In contrast, in-house subcontracting is a form of indirect employment where an employment contract (employment) is separated from command and control over (use of) a worker (ibid: 5). Moreover, there are no regulations to date governing this type of work. In fact, the user enterprise or principal is not under any obligation imposed by labour laws for the in-house subcontracted workers assigned in his or her workplace. What is also peculiar is that in-house subcontract work has been regarded not as non-regular work, but as regular employment, in that the contractor supplying labour is the only employer of the subcontracted workers (Chun, 2013: 32). This is of course a contentious issue in South Korea. The labour movement and many academics and think-tanks consider in-house subcontracting work as non-regular work.

The ‘relaxed’ regulatory regimes

The regulatory frameworks on non-standard employment in Hong Kong, Malaysia, Singapore and Hong Kong are arguably more ‘relaxed’.

In Hong Kong, there is a relatively high level of flexibility of the labour market and employment relations. Employers and employees are free to negotiate and agree on the terms and conditions of employment provided that they do not violate the provisions of the

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9 Some authors use the terms contract work or contract for work in referring to in-house subcontracting work.
Employment Ordinance (EO), the principal employment law in the country. A contract of employment can be made orally or in writing.

The EO sets out a number of mandatory employment rights. At close scrutiny, the EO appears to be a parsimonious piece of employment legislation; it identifies only two categories of employment – continuous and non-continuous – with the former being entitled to a greater level of statutory employment rights. The EO also provides that every continuous contract “is deemed to be a contract for one month and renewable from month to month” (Labour Department, 2014: 5). This suggests that the labour market in Hong Kong is indeed highly fluid.

Temporary employees have the same protections under the labour laws as permanent employees if they are considered continuous workers. Otherwise, they are considered non-continuous workers with fewer statutory rights and privileges. There are no specific laws relating to protections for agency workers in Hong Kong. Nonetheless, like temporary workers, they are entitled to the same protections as permanent workers provided they are considered continuous workers.

Hong Kong’s brand of flexible employment is the ease in hiring and firing workers. This practice is facilitated by the minimal administrative and legal costs involved in doing so. There are no legal restrictions on summary dismissal and except for a few cases, firing an employee requires no explanation. In fact, employers can use their employees’ contributions to the MPF to pay for severance to workers fired. All this, plus minimal employment legislation, explains why contract work, casual work and agency or dispatch work are not common in Hong Kong. In short, there is no incentive for employers to resort to these types of non-standard work, as most types of work in Hong Kong are arguably considered non-standard.

In Malaysia, there are a limited number of regulations on the use of fixed-term employment contract in Malaysia. At present, there are no limitations on the use of fixed-term contract, no limitation on the maximum number of successive fixed-term contract allowed, and no limitation on the maximum cumulative duration of fixed-term contract (Saad, 2011: 65). In 2010, the Malaysian government attempted to give statutory recognition to labour suppliers by introducing the concept of ‘contractor for labour’ via an amendment to the Employment Act 1955. The amendment defines contractor for labour as “a person who contracts with a principal, contractor or subcontractor to supply the labour required for the execution of whole or any part of work which a contractor or subcontractor has contracted to carry out for a principal or contractor, as the case may be” (A1419 Employment [Amendment] Act 2012). The inclusion of this provision in the Employment Act accords recognition and legality to outsourcing agents and their practices, including the creation of triangular employment relationships whereby workers supplied by the outsourcing agents to companies where these workers perform work remain the employees of the former. With this amendment, the Malaysian government wanted to establish the contractor for labour as the employer, and this was to remain so even after the outsourced workers have started working in the workplaces of principals. This proposed amendment was withdrawn later. In June 2011, the amendment was again re-introduced and subsequently passed and came into force on 1 April 2012, despite strong protests coming from the Malaysian Trades Union Congress (MTUC) and civil society groups. Nonetheless, the continuing protests coming from trade unions and civil society forced the government to suspend the effect of the amendment on other sectors and confine the use of contractor for labour in the agricultural sector.
In Singapore, there is currently no legal framework in place on outsourcing of contracts. However, the operations of private employment agencies (PrEAs) are regulated under the Employment Agencies Act 2012 (as amended). This Act covers all entities and individuals, whether based in Singapore or overseas, that carry out employment agency (AE) work in Singapore. Outsourced workers as employees of third-party contractors are covered under the Employment Act, Employment of Foreign Manpower Act (EFMA) and the Work Injury Compensation Act (WICA).

In order to address the problems associated with cheap sourcing and provide an alternative (later on referred to as ‘best sourcing’), the National Trades Union Congress (NTUC) took the initiative to tackle the issue at the Tripartite Committee (TriCom) for Low Wage Workers and Inclusive Growth. In March 2008, the TriCom released a Tripartite Advisory on Responsible Outsourcing Practices which encourages service buyers to consider the five principles enumerated in Table 6 when outsourcing.

Table 6: Five principles of best sourcing practices

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Safeguard the basic employment rights of workers.</td>
</tr>
<tr>
<td>2</td>
<td>Specify service contracts on the basis of service-level requirements rather than headcount.</td>
</tr>
<tr>
<td>3</td>
<td>Recognise factors that contribute to service quality (i.e., good track record, provision of written employment contracts to workers, grading and accreditation level, training of workers, and appropriate tools and equipment).</td>
</tr>
<tr>
<td>4</td>
<td>Seek to establish a long-term collaborative partnership with service provider.</td>
</tr>
<tr>
<td>5</td>
<td>Provide a decent work environment for workers.</td>
</tr>
</tbody>
</table>

Source: Ministry of Manpower, National Trades Union Congress and Singapore National Employers Federation (n.d.: 8–10).

To motivate service providers to adopt best sourcing practices and remain competitive, the Best Sourcing Initiative (BSI) fund was introduced to fund up to 5% of the contract value up to a maximum of SGD 150,000 (USD 12,000) per contract. When bidding for projects, the service provider can also tap on the Inclusive Growth Program (IGP) funding to undertake productivity improvement projects, including the improvement of manpower capabilities. What is interesting to note is that both the BSI and IGP fund are managed by NTUC.

Other government agencies have also set up measures to encourage fair employment practices and provide training to low-wage outsourced workers. Singapore’s National Environment Agency (NEA) introduced the voluntary Clean Mark Accreditation Scheme to recognise companies that deliver high standards of cleaning not only through upgrading equipment and technology to improve work processes, but also through training of workers and fair employment practices. Beginning 1 November 2012, NEA’s accreditation scheme required accredited companies to pay their cleaners progressive wages under the proposed PWM (Maidden, 2012). To complement NEA’s accreditation scheme, the Singapore Workforce Development Agency (WDA) has set aside USD 6.1 million over two years to train and upgrade 7,800 cleaners (ibid).

In July 2013, the National Wages Council issued a recommendation mandating a SGD 60 (USD 48) built-in wage increase for low wage workers, including outsourced contract cleaners, who earn a basic monthly salary of SGD 1,000 (USD 800) and below. According to
a key officer of NTUC, while 80% of all unionised enterprises adopted NWC’s recommendation, less than 30% of nonunionized enterprises failed to comply.

The government of Singapore, through the MOM, also engages in a name-and-shame strategy to discourage cheap sourcing that violates labour and social legislations. The website of the MOM provides a list of employers convicted for infringements of the Employment Act and the Central Provident Fund (CPF). It also provides a list of offenders convicted under the Workplace Safety and Health Act.

Singapore’s various tripartite initiatives aimed at improving the working conditions of term contract workers arguably compensates for a less restrictive regulatory framework on the use of short-term or contract workers.

3. Between a ‘relaxed’ regime and a ‘highly-regulated’ regime

Taiwan and Thailand may be special cases which could be situated between the ‘relaxed’ regulatory type and the ‘highly-regulated’ type. In Thailand, there is no official definition of non-standard or non-regular work in Thailand’s Labour Protection Act (LPA). In fact, there is no formal regulation in Thailand on which jobs or work can be outsourced or subcontracted. Nonetheless, Section 5 of LPA distinguishes a contractor and a subcontractor: ‘First-level contractor’ means a person who agrees to undertake to carry out all or part of a job for the benefit of the employer, while ‘sub-contractor’ means a person who makes an agreement with a first-level contractor by undertaking to carry out all or part of a job under the responsibility of the first-level contractor for the benefit of the employer, and shall also mean a person who makes an agreement with a subcontractor to undertake a sub-contracted job under the responsibility of the sub-contractor, regardless of how many stages of sub-contract there may be. Here, it is clear that multiple chains or layers of subcontracting exist and are allowed to operate in Thailand.

While Thailand’s Labour Protection Act specifies joint liability between the (labour) contractor/subcontractor and the principal or user enterprise and non-discrimination in terms of wages and benefits between a regular and a non-regular (subcontracted) worker doing the same job, regulations limiting the use of subcontracted workers in certain business activities and job types and the duration (and renewal) of contract of these workers are seemingly missing.

In Taiwan, temporary or contractual workers or fixed term contract workers are directly hired by the user-enterprises. These workers are covered by the Labor Standards Act. The Labor Standard Act specifies that “a fixed term contract shall be deemed as a non-fixed term upon the expiration of the contract”. The contractual workers are supervised directly by the user company and their wages and benefits should be the same as the regular employees. The provisions of the Labour Standards Act on fixed term contract of workers are very strict and have little flexibility causing employers to prefer dispatched workers (Liou, 2010). Recently, a Dispatch Labor Protection Law is being proposed in Taiwan. This proposed law defines labour dispatching as “sending workers employed by one entity to another entity to provide services under the second party’s supervision and management” (American Chamber of Commerce in Taipei, 2014). The proposed law sets a 3% cap on the proportion of the total workforce of an enterprise that can be allocated for dispatched workers. Employers however are proposing a higher cap of 20%.
The proposed Dispatch Labor Protection Law states that the user-enterprise and the agency are bonded by a commercial contract in which the agency will provide the needed workers to the user enterprise to perform a certain job. Since the agency is the legitimate employer of the worker, there exists an employment relationship between these two parties. Such relationship is governed by the Labor Standards. The wages, benefits and even in cases of industrial accidents of the dispatched workers are the responsibility of the agency as the employer and not of the user enterprise. It is the responsibility of the agency to select and interview job applicants and supervise and discipline dispatched workers in the workplace of the user enterprise.

**Commonalities and variations in the legal frameworks**

What is common in the regulatory framework of all the six ASEAN countries is the identification of the outsourcing company/service provider/manpower agency/labour dispatch or employee subleasing enterprise/company lessee/contractor or subcontractor for labour as the employer of the workers engaged in triangular employment relations. Another area of commonality is in terms of employee discipline: the company that supplies labour has the power to impose disciplinary measures against its employees that breached the employment contract or the user company’s rules and regulations.

With the exception of the Philippines, the outsourced or dispatched workers are supervised by the user company in all the countries studied. However, not all the countries identify specific jobs, sectors or circumstances where agency-outsourced/dispatched workers can be hired. In Indonesia and the Philippines, job outsourcing and labour outsourcing (in the case of the former) and service or labour contracting (in the case of the latter) are only allowed for activities that are supplemental, auxiliary or not necessary and desirable to the main or principal business or activity of the user company. In Indonesia, Viet Nam, Japan and Korea, regulations list specific jobs that can be outsourced.

Table 7 sums up the key dimensions of the labour and related laws dealing with non-standard workers engaged in triangular employment relationships in the 10 Asian countries based on the typologies proposed by Serrano (2014).

Another way of classifying the regulatory frameworks on non-standard employment in the 10 Asian countries is by focusing on two dimensions – constraints/restrictions on the use of non-standard forms of employment and protection for non-standard workers. Countries may score high or low in these two dimensions. I attempt to show in Figure 1 how the 10 countries may be classified.
Table 7: Dimensions of regulatory frameworks on non-standard employment (involving triangular relations) in Hong Kong, Japan, South Korea and Taiwan

<table>
<thead>
<tr>
<th>Dimensions</th>
<th>Ind</th>
<th>Mal</th>
<th>Phi</th>
<th>Sin</th>
<th>Tha</th>
<th>Viet</th>
<th>HK</th>
<th>Jap</th>
<th>Kor</th>
<th>Tai</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existence of specifications on sectors, business activities and types of jobs where use of agency work/outsource work/labour contracting or outsourcing/labour dispatching is allowed</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Existence of limitations on the term of the first contract, the number of times a contract can be renewed, and the cumulative number of years of working under a fixed-term contract</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Laws and regulations on manpower recruitment and supply are complemented by stricter and special regulations on the licensing and operation of labour/manpower supply and dispatch</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Solidary liability: clear provisions that principals or user companies are jointly liable with the labour/manpower supplier for the latter workers’ wages, overtime pay, holiday pay, holiday overtime pay, severance pay, special severance pay, etc.</td>
<td>?</td>
<td>✓</td>
<td>?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Clearly stipulated provisions on the rights and legal entitlements of workers under triangular employment relations</td>
<td>?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Source: Author’s elaboration.
Figure 1: Classification of legal frameworks of 10 Asian countries

<table>
<thead>
<tr>
<th>Constraints/restrictions on the use of non-standard forms of employment</th>
<th>Explicit provisions of/protective rules on the rights of non-standard workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Low</td>
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<tr>
<td>High</td>
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</tbody>
</table>

The dimension ‘constraints/restrictions on the use of non-standard employment’ may be considered ‘high’ when a regulatory framework covers at least three the following: a specified duration for a fixed-term contract and the number of times it can be renewed, specific circumstances and conditions where forms of non-standard employment can be used, a list of jobs that can be subjected to some forms of non-standard employment (particularly for outsourced work or agency work), and additional regulations on the operations of third-party labour suppliers, including temporary work agencies. Otherwise, this dimension is considered low.

The dimension ‘explicit provisions of/protective rules on the rights of non-standard workers’ may be considered high if the legal framework covers any of the following: existence of equal treatment rules for non-standard workers (i.e. part-time, fixed-term and agency workers), prohibition on discrimination on the basis of status of employment, listing of specific rights of non-standard workers, and similar regulations. Absent any of these provisions and rules, this dimension is considered low.

**Regulating non-standard employment: The role of trade unions**

A pattern of union decline in terms of union density is observed in Indonesia, Malaysia, the Philippines, and Thailand. In contrast, union density is increasing in Singapore and Viet Nam. It is to be noted that there is only one union confederation in these two countries. In Singapore, the incidence of term contracts is declining between 2006 and 2012, albeit gradually. And despite the absence of regulations on outsourcing (which also creates triangular employment relations), Singapore’s tripartite initiatives on low-wage (short-term) workers have been quite successful in according protection and better terms of employment for these workers.

In countries where union multiplicity is a distinct feature of unionisation, such as Indonesia, Thailand, the Philippines and Malaysia, we observe a higher incidence and broader spread across sectors and occupations of agency work, outsourced work or dispatched work, despite an apparently “highly-regulated” legal framework on these types of work in some of these countries.
Meanwhile, in East Asia, the unionization rates in Hong Kong, Japan, South Korea and Taiwan vary. Hong Kong, surprisingly, has a relatively high unionization rate at 23.9% in 2013. In Japan, the unionization rate in 2012 was 17.9%. In South Korea, the unionization rate was low at 10.3% (in 2012). In the case of Taiwan, various figures are provided. According to Chiu (2011: 58), the union density rate in 2009 varies from a high of 37.8% (including members of the so-called “boss-controlled” occupational unions) to 15.4% (if only members of “industrial” unions, which are actually company or factory level unions, are considered). Further, if the total number of employed and self-employed was considered, Taiwan’s union density rate in 2009 was even lower at 5.3%. To determine the latest count of union density, we tried to do our own computation based on the 2012 data on the number of employees from the Taiwan Statistical Data Book 2013 and the number of union members in the Statistical Yearbook of the Republic of China 2012. With 3,387,524 union members out of 11,341,000 employees in 2012, we estimate that the union density in Taiwan was 29.9% in 2012.

In terms of unionization growth over time, the unionization rates in Hong Kong and South Korea were gradually increasing in the period 2008-2013 and 2004-2013, respectively. In Hong Kong, there was a steady increase in union density between 2008 and 2013. An increasing unionization rate trend was also observed in Korea between 2004 and 2013, albeit incrementally. Nonetheless, when the unionization rate of 12.3% in 2012 is taken out, the overall unionization trend in Korea was one of decline during the said period.

In contrast, Japan’s unionization rate had been constantly going down between 1995 and 2012. The same trend of decline is observed in Taiwan between 1989 and 2009.

Taking all the 10 Asian countries together, trade union density in the majority of these countries have been declining overall. A low unionization rate, among others, has contributed in the expansion of non-standard employment. Nonetheless, trade unions in the four East Asian countries have been adopting a variety of strategies to accord protection to non-standard workers and arrest the spread of non-standard employment.

**Representation structures for non-standard workers**

According to Regalia (2006), there are two dimensions influencing unions’ attitude towards representation of non-traditional (i.e. non-standard) types of worker. These are: (1) awareness of the specific nature of diverse workers’ interests, and (2) willingness of unions to innovate representation models. Accordingly, she identifies four types of union attitude on representing these workers (Figure 2). The first is indifference, ignoring or underestimating the difference between the interests of such workers and those of traditional core workers. The second is opposition and resistance, exhibited by unions which are well aware of the different interests of such workers but refuse to represent them for fear that these informal and atypical workers may compete unfairly against existing members. Instead they seek restrictive legislation to limit the entry of such workers to the labour market. The third attitude – imitative extension of protection – manifests when a union seeks to extend to these workers the same standards and protections enjoyed by core workers; unions endeavour to expand their capacity for representation while underestimating the diversity of the interests at stake. The fourth attitude – specialization of protection and reconfiguration of representation – seeks new solutions to the problems of
representation through experimentation; the union appreciates the diversity of workers’ interests and is willing to change its representation model.

**Figure 2: Union attitudes to and representation of workers different from their traditional membership**

![Union attitudes to and representation of workers different from their traditional membership](image)


With the exception of Viet Nam, an examination of the representational structures for non-standard workers developed and adopted by the trade unions\(^\text{10}\) in the ASEAN countries suggest that the dominant attitude may be either ‘imitative extension of protection’ or ‘specialization of protection/reconfiguration of representation’.

In Indonesia, the inter-union collaboration beginning 2001 between the Federation of Indonesian Metal Workers (*Federasi Serikat Pekerja Metal Indonesia*, or FSPMI) and the union Lomenik, which is affiliated to the Indonesian Prosperous Workers’ Union (*Serikat Buruh Sejahtera Indonesia*, or SBSI), resulted in the organization of thousands of non-standard workers in the export processing zones in Batam. These workers became members of FSPMI. This initiative adopted the ‘imitative extension of protection’ representation type.

In Malaysia, outsourced or agency-hired workers can individually become members of the Union Network International-Malaysia Labour Centre (UNI-MLC). At DiGi Telecommunications, UNI-MLC established a Subcommittee of Outsourced Workers to represent about 450 outsourced workers from two outsourcing companies. In the former case, ‘imitative extension of protection’ is pursued, while the latter representational initiative took more of ‘specialization of protection/reconfiguration of representation’.

In Singapore, the National Trades Union Congress (NTUC) established the Unit for Contract and Casual Workers (UCCW) in 2006 to represent low-wage workers who are at the lower end of the outsourcing business. NTUC also initiated the formation of the Tripartite Cluster for Cleaners (TCC) in early 2012 to address the stagnating wages of contract cleaners. The establishment of the UCCW within the NTUC suggests the representational type ‘specialization of protection/reconfiguration of representation’.

In Thailand, trade unions are also organising subcontracted workers. One example is the Auto Subcontract Workers’ Union at the Ford/Mazda factory in the Rayong Province. Through

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\(^{10}\) Most of these trade unions are in the services sector.
collective bargaining, this union seeks to get permanent status for subcontracted workers after a year of subcontract work. Here again, ‘specialization of protection/reconfiguration of representation’ is practiced.

In the case of the East Asian countries, ‘imitative extension of protection’ appears to be the dominant representational type pursued by majority of the service sector trade unions that were included in the study. Further, most of the unions in Hong Kong, Japan and South Korea recruit only the directly-hired fixed-term workers as union members. In Taiwan, however, the dispatched workers in the Public Television Service (PTS) were able to organize themselves into a union and successfully ‘negotiated’ the conversion of 130 dispatched workers into regular workers in June 2014. This organizing initiative may be considered of the ‘specialization of protection/reconfiguration of representation’ representation model.

A variety of union strategies in curbing non-standard employment

Aware of the limitations of existing regulatory frameworks with their attendant enforcement issues, many trade unions in the 10 Asian countries have been at the forefront of not only organizing the various categories of non-standard workers, but also utilizing a variety of strategies to protect workers in non-standard employment and arrest the spread of this type of employment. These strategies include collective bargaining, the use of strike action, pushing for more protective laws for non-standard workers and restrictive laws and regulations to limit the use of non-standard employment, and the use of tripartite mechanisms and structures (Table 8).

Table 8: Trade union strategies to protect non-standard workers and arrest the spread of non-standard employment

<table>
<thead>
<tr>
<th>Country</th>
<th>Innovating new forms of representation</th>
<th>Collective bargaining</th>
<th>Use of strike action</th>
<th>Improving policy framework/amending labour laws</th>
<th>Use of tripartite mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASEAN</td>
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<tr>
<td>Indonesia</td>
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<tr>
<td>Malaysia</td>
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<td>Philippines</td>
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<td>Singapore</td>
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<td>Thailand</td>
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<tr>
<td>Viet Nam</td>
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<tr>
<td>East Asia</td>
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<tr>
<td>Hong Kong</td>
<td>√</td>
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<tr>
<td>Japan</td>
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<tr>
<td>S. Korea</td>
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<tr>
<td>Taiwan</td>
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</tbody>
</table>

1. The role of collective bargaining

In the Philippines, the National Union of Bank Employees (NUBE) focuses on preserving regular jobs within the banks, preventing those jobs from being transferred to third parties. At the enterprise level, unions negotiate for provisions in the collective bargaining agreement (CBA) that would help safeguard members’ jobs. Many of the CBAs of NUBE’s local unions require
management’s consultation with the union in case the management “decides to outsource or hire contract employees” as shared by Jose Umali, the National President of NUBE. Some CBAs limit the number of contract employees or the duration of their employment.

In Thailand, the Auto Subcontract Workers’ Union at the Ford/Mazda factory in the Rayong Province seeks to get permanent status for subcontracted workers after a year of subcontract work through collective bargaining. Since its establishment at the Ford/Mazda plant, the union was able to narrow the wage gap between permanent and subcontracted workers and improve the benefits of subcontracted workers. Also, the union has been able to successfully negotiate permanent status for some of its members.

In the public sector, Thailand’s State Enterprise Workers’ Relations Confederation (SERC) employs a twin-strategy that involves first, the negotiation with management of the proportion of subcontracted workers that can be hired, and secondly, the regularization of these subcontracted workers. This strategy was used at the Thai Post, CAT Telecom and the Telephone Organization of Thailand (TOT) beginning 2008. By 2015, SERC expects that all the subcontracted workers previously hired in these companies will be fulltime or permanent workers.

In Hong Kong, before the 1990s, all public bus drivers in Hong Kong were on impermanent contract. About 50% of these public bus drivers were on two to three years contract term. The Hong Kong Confederation of Trade Unions (HKCTU) was able to negotiate that the contract bus drivers can become permanent employees after three years of work. Nonetheless, newly-recruited bus drivers are still on contract for two to three years. In 2001, the HKCTU was also successful in negotiating with the government the reduction of working hours of security guards engaged in government offices from 12 to eight hours per day. It should be noted that the government outsources the provision of security services.

In Japan, the Japan Postal Group Union (JPGU) had successfully negotiated since 2010 a system of converting non-regular workers (whether hourly or monthly-wage based) to regular employment status. Under this mechanism, the requirements are: first, workers should have been with the company for three years; second, they should have performed well and were recommended by their supervisors for the program; third, they must be willing to work full-time (at least 35 hours a week); and fourth, they should pass the examination. The round of negotiations started in 2009 and while it was initially difficult to get the management to agree to the idea of converting the employment status of workers, they eventually saw the merit in the Union’s proposal. One of the significant issues that the union rallied for was the need to retain the good employees in the company especially with a looming shortage for workers that is aggravated by the number of workers that the Company is losing out to other sectors and industries. Under the said mechanism, the following number of workers had been converted from non-regular to regular: 8,438 workers in 2011; 2,122 workers in 2012; 944 in 2013; 5,325 in 2014; and 2,700 in 2015.

In South Korea, the Korea Federation of Private Service Workers’ Union (KFSU), which draws members mainly from retail establishments, restaurants, hotels, and tourism services, uses collective bargaining at the enterprise level as a mechanism to provide more job security to non-regular (fixed-term) workers and arrest the spread of non-regular jobs. For example, its union at
the Hilton Hotel Kyungju was able to have a collective bargaining agreement (CBA) that provides, among others, the shift to a regular status of contract workers who have worked for a year in the said company. The CBA, meanwhile, in Millenium Hilton Hotel has a provision since 2009 that vacant regular job openings should not be filled up by non-regular workers. The union at Homeplus TESCO has a CBA provision since 2008 that provides an automatic conversion to zero-term contract of fixed-term workers who have worked in the company for 16 months. At the Agri Coop Supermarket, the union was able to negotiate a CBA provision that resulted in the change of employment status of 200 workers from fixed-term contract status to zero-term contract status.

The Korea Financial Industry Union (KFIU) likewise extensively uses collective bargaining as a mechanism to accord more security and better protection to non-regular workers, particularly fixed-term workers. KFIU does industry bargaining every two years, with wage provisions negotiated every year. Bargaining starts normally in March. Industry bargaining in the banking and financial sector started in 1962. Bargaining at the enterprise level started after 1980. However, after 2000, bargaining went back to the industry level.

All KFIU bank unions have three standard provisions in their CBA. These are:

- Conversion of temporary/fixed-term workers to either zero-term contract status or regular status after working for a year in the company.
- The benefits enjoyed by fixed-term workers and regular workers should be the same.
- In the long run, all non-regular work should be eliminated.

The Korea Federation of Clerical and Financial Labour Union (KFCFLU) seeks to limit the spread of non-regular work through collective bargaining. In particular, it emphasizes in its CBAs the rule of equal pay for equal work to prevent the expansion of non-regular work.

The Korea Health & Medical Services Workers’ Union (KHMU) also tries to limit the spread of non-standard work in their sector through collective bargaining. While there are no provisions in their CBAs stipulating which jobs can be contracted-out, outsourced or placed under agency contract, there is an expressed prohibition of using contract-out workers to do the existing jobs done by regular workers. Most CBAs require "sincere consultation with the union" or "agreement with the union" in the use of non-standard workers. For example, in the CBA of the Chonnam University General Hospital Union, Article 35 on contract-out and outsourcing states that: “When the hospital plans to contract out or outsource current jobs partially or totally, it should be implemented through full and sincere consultation with the union, and it should not bring disadvantage to the union members”.

The Korean Construction Workers’ Union (KCWU) uses collective bargaining to protect and improve the working conditions of construction workers. The union has three types of collective bargaining based on union density. The first type is at the construction-site level. If union density

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11 Homeplus Tesco is formerly the Carre Four. During the period 2007-2008, the union at Carre Four went on strike for 510 days to oppose the outsourcing of cashiers. After this long drawn-out strike, a CBA was concluded with a provision that after 18 months of working in the company, non-regular workers shall be regularized.
is low, the CBA concluded only applies to union members. The second type is at the regional level and this type demands a higher rate of organization. In some regions in Korea, there are major construction companies (principal and subcontractors) which could be parties to a regional bargaining initiative. Here, multi-employer bargaining may also be pursued. The third type of bargaining is at the industry or national level. The subsector of crane operators, for example, has a very high union density so they can bargain with crane owners.

According to a key KCWU officer, it took the union 10 years to get to the construction site bargaining level. The union is now attempting to bargain with the National Association of Construction Companies in order to have a collective agreement that can be applied nationwide.

It is very difficult to conclude a CBA in the construction industry. The CBA of crane operators, for example, merely reinforces statutory provisions in terms of pay rate, working hours, and paid holidays. In theory, labour laws should be applied in construction sites, but employers avoid their legal obligations. In this regard, reiterating these provisions in CBAs improves compliance to these statutory labour standards. There are, however, some benefits in the CBA that are beyond what the law provides, such as the grant of transportation subsidy.

In Taiwan, the Union of Public Television Service Foundation at the Public Television Service (PTS) was able to successfully ‘negotiate’ the conversion of 130 dispatched workers into regular workers in June 2014. These dispatched workers were able to organize themselves into a union. The success of this union action was facilitated by public pressure on the government to set a good example by complying with employment laws.

The Taiwan Federation of Financial Unions (TFFU) plans to include in their collective bargaining a limit on or totally ban the use of dispatched workers.

2. The use of strike action, often to aid or facilitate collective bargaining

In Indonesia, the massive protests organised by the Confederation of Indonesian Workers Union (Konfederasi Serikat Pekerja Indonesia, or KSPI) and the Indoensian Metal Workers Federation (Federasi Serikat Pekerja Metal Indonesia, FSPMI) in 2012 in the metals industry that called for the regularization of contract workers, increase in the minimum wage, and elimination of outsourcing, forced companies to regularise 40,000 fixed-term workers.

In Hong Kong, after a one-night strike at a Coca Cola factory where about 90% of truck drivers were contract workers, the HKCTU-affiliated union was able to negotiate for the successful change of employment status of some of these truck drivers from contractual status to permanent status. The negotiation that took place was rather ‘informal’ as there was no actual CBA signed. In lieu of a CBA, there were the minutes of the series of meetings that took place in two months.

In South Korea, the Korean Construction Workers’ Union (KCWU) continuously puts pressure on the government to monitor the enforcement of labour standards in all construction sites. This is done through the staging of a modified version of a “political strike”. In Korea, a political strike is illegal. In this regard, KCWU’s strike focuses on minimum standards provided by the labour laws. On 22 July 2014, the union staged a general strike to demand the strict observance
of the eight hours-per-day work, among others. The immediate result of this strike was the recruitment of new members.

3. Pushing for amendments in labour laws or new labour legislations and improving policy framework

In Hong Kong, the trade union movement has been demanding a review of continuous employment. The increase in the number of workers working less than 18 hours a week as a result of employers’ evasion of EO coverage is raising concern among trade unions. The government has been proposing to reduce the threshold number of hours from 18 to 16. On the other hand, the HKCTU has been demanding the total scrapping of the minimum number of working hours per week in reckoning whether a contract is continuous or not. Also, the HKCTU proposes a maximum working hours of 44 hours per week, and beyond this threshold, the overtime work pay should be 1.5 times higher than the normal wages. The CTU has also proposed to the Labour Department a special legislation for part-time and temporary workers.

In Japan, many of the amendments to the the Labour Contract Act, Part-time Workers Act, and Workers Dispatch Act as mentioned earlier in this paper were pushed by the trade unions. In Korea, the KFSU makes representation to the MOEL to demand tighter supervision and enforcement of labour laws. In fact, one of KFSU’s demands is the elimination of agency or dispatch work or at the very least limiting the scope of this type of non-regular work. Also, KSFU demands the government to guarantee the basic labour rights of non-regular workers classified as special employment status workers (e.g. golf club caddies, home visit tutors, cargo truck drivers, insurance agents/brokers, tourist guides, quick service delivery men, etc.). For KFSU, many of these workers are under ‘disguised’ self-employment arrangements.

4. The use of tripartite mechanisms and structures

Singapore is one country where tripartism in industrial relations is intensively used to address problems and challenges in the labour market. The establishment of a Tripartite Committee for Low Wage Workers, Tripartite Cluster for Cleaners (TCC), BSI and PWM are some of the country’s good tripartite practices that aim to protect the rights and improve the working conditions of fixed-term contract workers.

The NTUC initiated the formation of the TCC in early 2012 to address the stagnating wages of contract cleaners. Through the TCC, UCCW-NTUC pushed for the adoption of a Progressive Wage Model (PWM)\(^{12}\) in the cleaning industry, which provides a career ladder for three groups of cleaners so that wages of cleaners increase as they scale up through up-skilling. In 2013, the Singaporean government has already implemented the PWM for cleaners in the government sector. Beginning 2014, all service providers in the cleaning industry are required to comply with the PWM. This means that all cleaners will earn a minimum salary ranging from SGD 1,000 to SGD 1,600 (about USD 800 to 1280), depending on their job functions.

In the Philippines, during the period when agency-hiring was becoming widespread, the trade unions that are represented in the Banking Industry Tripartite Council (BITC) worked together in

\(^{12}\) For more information about the PWM, see Serrano (2014: 113-115).
asking the Bangko Sentral ng Pilipinas (Central Bank of the Philippines) to define the essential banking functions which cannot be outsourced. Through the BITC, the unions negotiated added protection for jobs in the banks. For example, while the BSP only limited the essential banking functions to five areas, the BITC forged an agreement (BITC Regulation No.1, 2.b) with the other tripartite partners (employers and the BSP) that the union shall be consulted in case a company plans to outsource certain positions, when employers will re-assign affected regular workers to other departments within the banks, or when workers will be employed by third-party subcontractors.

**Conclusion**

Clearly, there is an expansion and diversification of non-standard employment in most of the ASEAN and East Asian countries included in this paper. This trend is accompanied by a variety of often confusing terminologies and/or categories of non-standard employment. This has become a challenge to the legal frameworks of the countries studied. Nonetheless, the dizzying types of non-standard employment could be classified into four major categories: (directly-hired) fixed-term employment, part-time employment, (dependent) self-employment and agency work. Further, the conditions in which most workers in non-standard employment are exposed to are, in varying degrees, precarious.

Several observations can be drawn from the trends in non-standard employment in the 10 Asian countries. The majority of non-standard employment workers are engaged in the services sector, particularly in business, personal and public services and wholesale and retail trade, hotels and restaurants. In addition, countries with a higher level of manufacturing activity tend to have a higher share of non-standard workers to total number of workers. This may be attributed to the general trend of higher concentration of non-standard workers in manufacturing.

In the ASEAN countries, women and young workers are overrepresented in non-standard employment. In the East Asian countries, women likewise predominate in non-standard employment. However, in contrast to the ASEAN countries, older workers in East Asia tend to outnumber younger workers in non-standard employment.

In most of the countries studied the use of various forms of non-standard employment cuts across sectors, jobs, and skill levels. Nonetheless, the majority of non-standard workers in both regions occupy elementary jobs.

While most of the non-standard workers in majority of the countries studied are engaged (or employed) directly, there is an observed trend, particularly in most of the ASEAN countries (i.e. Indonesia, Malaysia, the Philippines and Thailand) and South Korea, of increasing use of non-standard workers in a triangular employment relationship. Among the majority of the 10 Asian countries, outsourcing or subcontracting often results in the creation of triangular employment relationship. Moreover, it is also observed that work that is outsourced or subcontracted is increasingly performed within the company or factory of the principal or user enterprise.

For some of the countries where data are available, there exist possible associations between union density trends, growth in non-standard employment and the type of regulatory regime. In the Philippines, Indonesia, Japan and South Korea which are thought to lean towards a highly-
regulated regime, union density is declining and the share of workers in non-standard employment is increasing. Relatably, this may suggest that the existence of a highly-regulated framework is associated with an increasing trend in the proportion of non-standard workers. There are however exceptions. For example, in Viet Nam, which also tends to lean towards a highly-regulated regime, union density has been increasing while the overall trend on the share of non-standard employment to total employment has been declining.

In response to the increasing diversification and incidence of non-standard employment in recent years, a tightening of legal regulation, albeit to varying degrees, of different forms of employment has been observed. This is consistent with the recent finding of the ILO (2015) as noted in its newly-released *World Employment and Social Outlook*. In Japan, South Korea and, to a lesser extent, in Taiwan, this tightening of regulation is largely done through equal treatment rules (i.e. equal treatment for fixed-term, part-time and agency workers), specification on the duration and permitted circumstances of fixed-term contracts, and listing of permissible jobs that can be dispatched, outsourced, or subjected to agency-work. The latter regulation has also been adopted recently in Indonesia and Viet Nam. In Indonesia and the Philippines, regulations on the allowable duration and permitted circumstances for fixed-term contracts and agency-work have been strengthened as well. In Thailand, equal treatment rules between regular workers and subcontracted workers doing the same or similar jobs have likewise found their way in recent labour law amendments.

In short, in the 10 Asian countries, regulations on the use of various forms of non-standard employment focus on temporal (i.e., setting the duration of contracts and the number of times a contract can be renewed), occupational (i.e., listing jobs that can be performed by agency or dispatched workers), or operational (i.e., requiring licenses for agencies to dispatch workers, diversifying the clients of in-house contractors or subcontractors, etc.) aspects.

Aware of the limitations of regulatory frameworks with their attendant enforcement issues, the trade unions in the six ASEAN countries and in the four East Asia countries have been at the forefront of organizing many of the various categories of non-standard workers. A good number are also innovating ‘new’ representation models and schemes, although unions have yet to extend their mantle of protection to other non-standard workers, particularly those that are enmeshed in a triangular employment relationship.

Extending bargaining coverage to include non-standard workers is widely used by many trade unions in the countries studied. There are also innovations in bargaining made by several unions. Beyond organizing and bargaining, strike actions are periodically staged by several unions, particularly in South Korea, as a way to display their strength and to pressure the government to act on the union demands for protection of non-standard workers. On some occasions, strike actions facilitate the recruitment of new union members. Finally, many of the trade unions in ASEAN and East Asia are trying to initiate or influence legislative and policy initiatives aimed at according more protection to non-standard workers and arresting the spread of non-standard employment in their countries. All this suggest that indeed non-standard employment is a multi-faceted issue requiring a multi-dimensional strategic approach to effectively address it.
References


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