CLIFFORD

CHANCE

Briefing note February 2012

Employment agenda focused on the banking sector

Anti-crisis changes in the renewed National Collective Bargaining Agreement applicable to employees in the banking sector

On 19 January 2012, unions and employers' association of the banking sector renewed the National Collective Bargaining Agreement for employees (other than executives or "*dirigenti*") of the banking sector (hereinafter the "NCBA"). This renewed agreement entered into force on 19 January 2012, for a term ending on 30 June 2014, except where different terms are specifically provided.

The NCBA contains groundbreaking changes useful to employers to strike a balance and to face the adverse market conditions: on the one side, it enhances working organisation flexibility and it limits employment costs, on the other side, it promotes employment growth.

More specifically, the parties have taken into account the debt crisis and the current international economic situation (which are significantly affecting the Italian market and, specifically, the employment rate), as well as the peculiar situation of the Italian banking sector, which is materially affected by the Italian Gross Domestic Product (GDP) trend.

We summarise the main changes introduced by the NCBA, as renewed.

Contacts

To discuss any of the issues in this publication, please contact one of our market experts below:

Avv. Simonetta Candela, Partner
E: simonetta.candela@cliffordchance.com

Avv. Marina Mobiglia, Senior Associate
E: marina.mobiglia@cliffordchance.com

Key issues

- Enhancing working organisation flexibility
- Limiting general employment costs
- Promoting employment growth in the banking sector

Enhancing working organisation flexibility

The NCBA gives banks or their parent companies more flexibility to decide opening hours for their front offices. Banks may now open their front offices within an expanded range of hours from 7 a.m. to 10 p.m. from Monday to Friday, subject to the following:

- opening hours at any time from 8 a.m. to 8 p.m. require only that unions be met with in advance of the change, i.e., agreement with the unions is not required for this; and
- opening hours starting from 7a.m. to 8 a.m. or ending from 8 p.m. to 10 p.m. require an agreement with the unions.

Changes in the front offices' opening hours do not alter the standard contractual working hours for banking employees, which will continue to be 37.5 hours per week per full-time employee.

Limiting general employment costs

The NCBA introduces some temporary provisions that allow banks to save costs in relation to accruals of severance indemnity/contributions to supplementary pension funds.

Italian labour laws provide for a special severance indemnity called TFR (namely, "*Trattamento di Fine Rapporto*"), which must be contributed to supplementary pension funds and/or set aside in the employer's financial statements each year, and is approximately calculated by adding up, for each year of employment, the all-inclusive remuneration (i.e. including items such as bonuses, fringe benefits, variable remuneration etc., and only excluding extraordinary items and expenses) paid during such year, divided by 13.5.

The NCBA now limits the items to be included in TFR calculation for the period from 1 January 2012 to 31 December 2014: in practice, only the minimum salary and the seniority increases (namely, "*Stipendio, Scatti di Anzianità ed Importo ex Ristrutturazione Tabellare*") will be relevant for the calculation. Consistently with this choice aimed to save employment costs, the NCLA also provides that:

- from 1 June 2012 to 30 June 2014, rather than "minimum salary" increases, additional payments will be made as "EDR" (namely, "*Elemento Distinto della Retribuzione*" – i.e. "separate item of the salary"), which are not to be included in the TFR calculation. These payments will be made on a monthly basis (for 13 monthly instalments per year, as usual) and the relating amounts vary for each ranking level and are effective from 1 June 2012, 1 June 2013 and 1 June 2014 respectively. In average among ranking levels, EUR 50 will be paid effective from 1 June 2012, additional EUR 50 will be paid effective from 1 June 2013, and additional EUR 70 will be paid effective from 1 June 2014 (for a total average increase of EUR 170 – calculated for employees ranked at the 3rd professional area, 4th level);
- from 1 January 2013 to 31 July 2014, the employees' seniority of service will be frozen and, therefore, shall have no impact on the accrual of *"seniority increases";*
- the bank (or its parent company) and unions may agree on a new variable bonus scheme (based on the achievement of targets to be agreed) to replace the previous incentive/premium items.

Promoting employment growth in the banking sector

Hiring promotion

With the aim of promoting hiring, the NCBA allows banks to fix a lower salary (consequently lowering the amount due as social security contributions) for employees hired on a open-term basis (including apprenticeship contracts) and ranked at the 3rd professional area – 1st contractual level. These employees will start employment with a monthly salary of EUR 1,679.89 (i.e., a reduction of approximately 18% from the salary applicable to the same rank), and will reach the minimum salary for the same rank after 4 years (EUR 2,048.65).

This change applies to employees hired after 1 February 2012 and will be in force for a 4-year period after the hiring date.

Insourcing of activities ancillary to banking

To promote employment in the banking sector, the NCBA provides that banks may now perform in-house at favourable terms and conditions several ancillary activities (which are defined in the NCBA), that up to now had been outsourced to non banking-sector employees. Employees performing these ancillary (i.e., non banking) activities will have employment terms and conditions that are not identical to banking sector employees: a 40-hour work week (instead of 37.5 hours) and a lower salary than the minimum banking salary. The applicable salary will be the salary they received when performing the ancillary services outside the banking sector, subject to any increases agreed with the unions in the following four years, up to a salary for ancillary services that is not more 80% of the minimum salary of banking employees.

Setting up of a fund for promoting employment in the banking sector

The NCBA sets up a national fund to promote employment in the banking sector, financed by employees and granting payments to employers that hire, under open-term contracts (including apprenticeship contracts), certain categories of out-of work persons (such as for example those under the age of 32 long-term and women residents in distressed areas) or transform other employment contracts into open-term contracts.

The national fund will be used to reimburse the banks who hire these categories of persons: for each open-term employee hired after a successful trial period, a bank will receive a payment of EUR 2,500 per year for three years, if funds are available in the national fund to meet the payment obligation.

The national fund will be funded by banking sector employees under an open-term or an apprenticeship contract, who will be required to contribute to the fund the equivalent of a one-day salary each year starting from 1 January 2012, for five years.

Employers' costs related to employees' criminal breaches

In addition to the above, the NCLA also introduces what does not appear a measure to face the crisis but rather a way to update the NCLA provisions to reflect recent trends in court decisions.

The protections granted to employees involved in criminal investigations/proceedings arising from acts committed while performing the duties of the job are now altered as follows: the bank shall be required to pay not only the employee's legal fees (as previously) but also any fines (this increasing the scope of the protection); however, and in line with prior court decisions, this protection will not apply where the employee has breached the bank's instructions or policies, or where the employee's behaviour was in conflict of interest with the bank (this narrowing the scope of the protection).

This is the introductory paragraph style ('Pubs Intro Para') – which is used to draw the reader to the start of your publication.

This is the body copy style. To change styles within this publication, go to the 'Toolkit' part of the ribbon, and refer to the 'Numbering' tab.

Clifford Chance Studio Legale, Piazzetta M.Bossi, 3, 20121 Milan, Italy
Switchboard: +39 02 80634 1

Studio Legale Associato in associazione con Clifford Chance

www.cliffordchance.com

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.