The employment law concerning the "expatriates" in Italy

Nowadays, Chinese branded companies operating in Italy are more than 100, staffing almost 5,000 employees; numbers expected to swiftly rise in the next years. Most of those employees are so-called "expatriates", often managers from Chinese Headquarters entrusted with the powers to set-up Italian projects. How to manage employment issues related to this new class of Chinese workers is becoming one of the crucial topics for Chinese HR managers.

Considering Italian laws and conventions in place between the two countries, possible approaches could be the following:

(i) termination/suspension of the Chinese employment agreement and execution of a new employment agreement by and between the relevant employee and the Italian entity; or

(ii) to second the relevant employee of the Chinese company to an Italian entity.

In both the above cases, an appointment in the Board of Directors of the Italian company, if any, could be possible, but as such the relationship between the relevant employee and the company would be a self-employment one.

(i) New employment agreement with the Italian entity

The new employment relationship will be entirely governed by Italian law and applicable National Collective Bargaining Agreement ("**NCBA**").

The Italian entity – as new employer – will be the only one entitled to exercise all the relevant powers vis-à-vis the employee (i.e., disciplinary and directive powers). Nevertheless, it is admitted that the reporting line of the employee is based in a foreign country.

In the framework of the option under examination, in order to make the relevant employee more attracted by the opportunity to terminate/suspend his/her employment contract, it is wise to propose a fixed-term employment agreement with the Italian entity along with a side letter in which the Chinese employer undertakes to re-employ the employee upon expiration of the agreement with the Italian entity (granting certain employment conditions and covering repatriation).

(ii) Secondment agreement

Italian law establishes specific rules governing the secondment of personnel by foreign employers.

In particular, Law Decree no. 72/2000 – applicable to secondment of foreign employees to third parties or Italian branches\subsidiaries belonging to the same company or other companies belonging to the same group - sets forth the following requirements:

- the activity carried out by the seconded employee in favour of the secondee shall be performed in the interest of the seconding company and under its direction;
- secondment has a temporary nature, thus its duration shall be defined in advance, if possible since the beginning of the mission;
- the employment relationship between the seconding company and the seconded employee shall continue during the whole term of the secondment.

The seconded employee will be entitled to the same remuneration and employment conditions granted by Italian law and the NCBA to employees carrying out similar employment activity within the secondee.

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Italian law shall be applicable also with reference to social security contributions, which have to be paid on the remuneration granted to the relevant employee throughout the secondment period. Indeed, lacking a specific convention between China and Italy concerning social security matters, the relevant employee shall be entitled to the same social protection standards provided for Italian workers employed in the same sector carrying out comparable tasks. Therefore, irrespective of the payment of social security contributions to the competent Chinese authority, the seconding company shall pay to *INPS* (i.e., the Italian Social Security Authority) certain social contributions.

However, same law also provides that, in spite of the contributions requirements and any international convention among States, seconded employees shall maintain the social security rights accrued in Italy when they come back to the State of origin (that will be granted when he\she turns 65). This circumstance could be used by the employer as an additional incentive for the employee to move to Italy.

With reference to tax payable during the secondment relationship, the Convention executed between China and Italy on October 31st, 1989 n. 376 shall apply, having – *inter alia* – the purpose of preventing cases of double taxation on employment incomes.

The residence permit for employment ("Permit")

Finally, Legislative Decree no. 286/1998 establishes the rules governing the issuance of the Permit to extra-EU citizens and sets forth quotas – to be yearly defined by the Government – for the issuance of the Permits to said individuals.

In this respect, it is worth reminding Section 27 of the aforementioned law that refers to particular categories of employees – including, among others, managers and highly skilled employees of companies having branches or representative offices in Italy or foreign companies which have their headquarter within a State member of the WTO – that may apply for the Permit, regardless of the quotas defined by the Government. Please, note that, in case of Permit issued pursuant to the abovementioned Section 27, the period of secondment shall in no event exceed – including extensions, if any – the overall term of five years.