

De la relation

DELSOL AVOCATS
LA QUALITÉ DE LA RELATION

#25 January 2022

The DELSOL Avocats
newsletter



Henri-Louis DELSOL & Emmanuel KAEPPÉLIN
Managing partners

As we enter 2022, we again want to wish you and all your teams health, happiness and success, both personal and professional, in a pandemic and political context that remains full of uncertainties but also opportunities.

In these times, team cohesion will be more vital than ever. We are convinced that work should be a source of pleasure and fulfilment. For that we need to maintain good working conditions of course, but also a strong company culture and momentum.

With that goal, all members of the firm came together in Beaune last September. Obviously, it was an opportunity to socialize and celebrate, but also to unite the teams. We reiterated our shared vision by setting clear targets. For us, that seems essential to enable everyone to work as independently as possible and find meaning in what they do. In other words, at the firm we strive to create a climate that delivers personal fulfilment for everyone, at every level, through an effective business development plan.

That business development plan focuses for instance on developing new expertise. We are delighted to announce the recent addition to the firm of a talented Restructuring team in Lyon. Led by Amaury DUMAS-MARZE, it primarily supports distressed companies, court-appointed receivers and agents as well as company buyers.

We will also announce the addition of two new partners in corporate taxation and health law to our Lyon and Paris offices in January.

If this editorial is concentrating on our firm's news, that is to help you get to know us better and appreciate what we can bring you across an increasingly broad skill set: LBOs, profit-sharing and incentive plans, pre-sales optimization, responsible governance, structuring endowment funds, asset optimization, commercial litigation, criminal law, managing your real estate assets, etc.

In an ever-more complex economic and legal environment, we see our role as helping you devise all possible scenarios in every high-stake situation and measure all the implications, legal, financial, social and interpersonal. Our mission: bringing our range of expertise to all your challenges.

DELSOL Avocats moves into 2022

Look back at the 2021 'away days' in Beaune

DELSOL Avocats was determined to bring together all members of the firm outside the office, recognizing that in order to address our clients' challenges effectively, it is important to maintain team cohesion and wellbeing at work.

Last 16 and 17 September, nearly 160 colleagues (lawyers, legal advisors, administrative and support staff) gathered in Beaune for our traditional 'away days'. Everyone was able to enjoy the walled city's attractions and especially the famous Hospices de Beaune. The more energetic pedalled past the Côte d'Or vineyards, whilst foodies sampled the wines and other local specialties. More importantly, the two days in the Burgundy sunshine were an opportunity to come together (at last).



→ Vidéo

To remember these special moments, a souvenir video was made. To watch it, scan the QR code opposite.

The 'quality relationships' we strive for were strengthened and now we're ready to face 2022 at your side!

DELSOL Avocats strengthens its Distressed Companies - Restructuring practice with the addition of Amaury DUMAS-MARZE and his team

With business support now essential ahead of the post-pandemic era, DELSOL Avocats was keen to expand the Distressed Companies - Restructuring team led by two turnaround specialists, Philippe DUMEZ and Manuel WINGERT, assisted by Delphine BRETAGNOLLE in labour law and Séverine BRAVARD in financing. Amaury DUMAS-MARZE is joining them as a partner. Two associates are accompanying him: Marie VIGOUROUX and Gabriela PINTILESCU.

Amaury DUMAS-MARZE began his career as a founder partner of an outdoor hospitality company. After taking the oath, he joined the law firm Lamy-Lexel before moving to the Lyon office of Bird & Bird and contributing to founding LexCase.

Amaury and his team advise entrepreneurs, shareholders (particularly investment funds), court-appointed receivers and

agents, helping them anticipate, recover, restart and regrow. More specifically, they act in the framework of pre-insolvency, insolvency and buyout proceedings at the bar of commercial courts.

From left to right:
Amaury DUMAS-MARZE,
Marie VIGOUROUX, Gabriela PINTILESCU



Analysis

Increased restructuring of bank loans

The PGE (Government-backed loan) has been one of the flagship measures of the COVID crisis.

It has prevented brutal bankruptcies in sectors that ground to a sudden halt and restored confidence by securing the cashflow of many businesses facing exceptional uncertainty.

It has also enabled, with remarkable responsiveness from banks and the Government, beneficiaries across the economy to prepare for the end of lockdowns and the new challenges that would bring.

Eighteen months after this unprecedented crisis began, we should acknowledge the success of a measure that

helped stem a surge in bankruptcies throughout that period, which could have become a tsunami had it not been launched.

From that point of view, the PGE is an undeniable success, although long-term data on the pandemic is still limited and all its adverse effects are not yet known.

Whilst early analysis suggests that most PGEs will be repaid, it is becoming clear that some businesses will only be able to do so following radical restructuring of their financing to release the necessary resources. This restructuring will be especially necessary for many businesses that entered the crisis with significant debt levels and have therefore piled debt on debt.

Recognizing this situation, authorities and lawmakers have started to lay the foundations for a significant reorganization of PGE financing (remembering that the repayment period is limited to six years including any grace period) with the Government forced to balance its ambition to support the economy «at any cost» with restrictive European regulations, although these have been relaxed amidst extraordinary global economic conditions.

The stakes are high as it aims to address a difficulty that is traditionally covered by insolvency law. Yet it would be a shame to rely on insolvency law to manage PGEs alone if the business would have

been in a strong position without them.

If the restructuring is to happen under insolvency law, with the Government backing maintained, it has wisely been decided to address the issue very upstream in an amicable and so confidential context, enabling the business to request similar repayment timescales to those of a turnaround or recovery plan, i.e. up to ten years.

Whilst that will refine the implementation of amicable PGE restructurings, situating them in an administration order or pre-insolvency procedure provides a solid framework overseen by a professional in distressed companies (a court-appointed receiver in most cases) who,

alongside the business's advisors, will quickly help it find lasting recovery and continuity solutions that go beyond the strict confines of the PGE.

The confidentiality offered by amicable settlements should convince directors to explore that avenue as early as possible, maximizing their projects' success.

Responsible business governance

On 19 October 2021, Bris ROCHER, Chairman and CEO of the ROCHER Group, officially submitted his report on the role of business in society to Bruno Le MAIRE and Olivia GRÉGOIRE. The report outlines fourteen proposals for governance that better reflects companies’ growing social responsibility.

Xavier DELSOL, Arnaud LAROCHE and Mayeul FOURNIER de SAINT JEAN were consulted in relation to work on the ROCHER mission.



This report provides an early review of the two new schemes created by the PACTE Act of 22 May 2019, focusing on the adoption of «fonds de pérennité» and «entreprise à mission» status by entrepreneurs as well as the management of companies’ CSR policies.

Their contributions centred on areas for improvement in the applicable regulation resulting from the reform.



For «fonds de pérennité», presented as ‘the French model of shareholder foundations’, initial findings show that this hybrid vehicle for business holdings does not meet business leaders’ requirements. Its legal and especially fiscal framework, although very recent,

already appears dissuasive in most situations due to a potentially prohibitive tax cost, compared to a similar structure based on a general-interest organization (such as a foundation or endowment fund). As we understand it, the fiscal neutrality of share transfers (by gift) to the «fonds de pérennité» is therefore the essential condition for its development.

As for the purpose and structure of «entreprises à mission», we have reiterated that the scheme is not relevant to all businesses incorporating ESG practices into their strategy. Indeed, many of them implement structural CSR policies and adopt

responsible governance practices without moving to «entreprise à mission» status.

Moreover, whilst we noted the importance of better identifying and managing the risks of ‘purpose washing’, which undermine the reputation of businesses and the scheme’s credibility, we recommended not overcomplicating the governance of «entreprises

à mission» and, particularly, not making the board’s membership and operation too rigid. We also touched on the role of independent third parties in the verification of «entreprises à mission».

From left to right:
Xavier DELSOL, Arnaud LAROCHE,
Mayeul FOURNIER de SAINT JEAN



Presale transactions: anticipating the sale of your business

Anticipating the sale of their business is an opportunity for entrepreneurs to ponder their future plans, such as transferring some of their assets to their children or reinvesting all or part of the sale proceeds.

In this context, making donations and contributions prior to a sale are standard asset management



Presale donations involve a taxpayer gifting shares, often to their children, with full ownership or subject to usufruct, before the donor(s) sell(s) them to the identified purchaser. The primary benefit of this type of scheme is to ‘purge’ the existing capital gains for the taxpaying donor, which is based on the combination of two favourable tax rules: (a) the donation doesn’t

generate capital gains, (b) the cost basis upon sale by the donor(s) is the value used to calculate gift duties, such that the donation ‘adjusts’ the cost basis and eliminates or near-eliminates capital gains.

Contribution and disposal transactions, meanwhile, involve contributing shares to a holding company before it sells them. In that situation, the capital gains generated by the taxpayer when contributing their operating company’s shares can benefit from the automatic taxation deferral mechanism stipulated in Article 150-0 B b) of France’s General Tax

Code. Therefore, the contribution triggers calculation of the capital gains tax, but its payment will only be required in limited cases: on the sale, redemption, repayment or cancellation of the holding company shares received in exchange for the contribution or on the sale, redemption, repayment

or cancellation of the shares contributed to the holding company if this transaction comes less than three years after the contribution. The deferral still applies, however, if the holding company reinvests at least 60% of the sale proceeds in an economic activity within two years. Moreover, within the holding company,

the sale of contributed shares could benefit from a favourable fiscal regime of near-exemption of corporation tax beyond two years of holding.

Presale transactions can therefore have powerful effects of ‘purging’ or deferring capital gains tax on sold shares and address entrepreneurs’ concerns. Particular attention should be paid to their chronology, however: these transactions must take place before the transfer of ownership of the sold shares or the benefits may be lost.



Mathieu LE TACON, Léa ZÉRILLI

The boom in LBO

LBOs (leveraged buyouts) are transactions that involve forming a holding company with a view to acquiring a target company. The acquisition is financed by borrowed money (leverage) and cash contributions from one or more investment funds. The debt is designed to be repaid by the profits generated by the target company and distributed to the holding company in the form of dividends.



In practice, the investor can take control of the holding company (so-called majority LBO) or hold only a minority stake, leaving control of the group to the longstanding shareholders (so-called minority LBO or owner buyout, OBO). The latter type of transaction appeals to many shareholders and/or directors of businesses

that want to retain control of their group whilst selling some of their assets to an investment fund, or even an industrialist.

As well as the possibility for shareholders and directors to convert part of their capital into liquidity, the involvement of investors in the holding company's capital can present a number of advantages. Investment funds in particular can facilitate external growth (so-called build-up) by providing funding and their experience of the mergers-acquisitions

market. LBOs are also an opportunity to involve employees in the capital.

Investment funds currently have a lot of liquidity to invest in the market, which explains the enthusiasm for this type of transaction.

DELSOL Avocats has contributed to several LBO transactions, e.g. in the sectors of education

(EDH Group, MediaSchool), construction (Bage), financial services (Union Générale des Placements), cybersecurity (Proph3cy), connected devices (Solem), telecoms (Legos), landscaping (Cap Vert Développement), etc.

Due to the competition between investment funds, today's market is quite favourable to shareholders

and directors who have the right balance of power to select their investors and negotiate a rise in their group's value and their contractual rights (governance, liquidity, etc.) throughout the investment.



From left to right: Séverine BRAVARD, Henri-Louis DELSOL, Jean-Philippe DELSOL, Philippe DUMEZ, Pierre GOUGÉ, Emmanuel KAEPPÉLIN, Philippe MALIKIAN

Trial of the 13 November 2015 terrorist attacks



8 September saw the start of the trial on the terrorist attacks that rocked France on 13 November 2015. Twenty defendants are being tried at the specially formed criminal court that sits in the former Palais de Justice in a room converted solely for this historic trial. Fourteen are present, including three who are not in detention, and six others will be tried in absence. The figures of the case are impressive: 1 million pages of proceedings, 9 months of hearings scheduled, over 2,300 plaintiffs: it is clearly a trial like no other.

Thomas AMICO is representing six plaintiffs and, with Pierre-Henri BAERT, takes turns to attend the most important hearings given that the Court sits Tuesday to Friday

from 12:30, sometimes until late into the night. After nine weeks of hearings during which dozens of witnesses have been heard, particularly those who were onsite (law enforcement, emergency services, and doctors) and the plaintiffs, we are focusing on the defendants' backgrounds then examining the substance of the case. In cooperation with other plaintiff lawyers, Thomas AMICO has worked closely on one of the accused: Mohamed ABRINI.

Our firm was determined to participate in this historic trial alongside the victims. Let's hope that it unfolds without incident and sheds all possible light on the terrible terrorist attacks that forever marked our country.



From left to right: Thomas AMICO, Pierre-Henri BAERT

Covid rent support and loss of the leased property

Benoît BOUSSIER and Virginie DELANNOY obtained a decision from the Interim Relief Judge on 'Covid rent support' declining jurisdiction, suggesting the possibility to claim loss of the leased property and stressing the good faith that should drive the parties.

Following the sudden and unprecedented closure of public premises first imposed during the first lockdown in March 2020 then from autumn 2020, there has been a series of decisions from jurisdictions used by both lessees and lessors, but no consistency. For months, certain jurisdictions, reflecting the lessee's activity and the lack of good faith discussions between the parties, have concluded in the loss of the leased property, meaning that the lessee is deemed to have been unable to carry on their business, administrative closures having prevented access to their premises. Almost all Interim Relief Judges have declined to rule on this serious dispute, encouraging the parties to resume discussions to reach an agreement. In response to a payment request from the lessor, Nantes's Interim Relief Judge refused to condemn the tenant and stressed the seriousness of the challenge by de facto inviting the parties to adjust their obligations to the exceptional circumstances.

The need for good faith discussions between the parties was therefore reiterated by the Interim Relief Judge in Nantes.



Benoît BOUSSIER, Virginie DELANNOY



Real Estate

In the press...

ASSOCIATIONS mode d'emploi

Laurent BUTSTRAËN penned an article entitled «*Fusion, scission ou apport partiel d'actif: trois formes de restructuration des associations*» and published in *Associations Mode d'Emploi*. Xavier DELSOL and Pierre DELICATA wrote the article «*Fonds de pérennité: faux espoirs?*» which was published in the same journal.

DÉCIDEURS MAGAZINE

Elsa LEDERLIN wrote an article «*Preuve des heures supplémentaires: l'employeur assure le contrôle des heures de travail*» published in the magazine *Décideurs* in

October 2021. Thomas AMICO penned an article entitled «*Les droits de clôture, garants d'un recours effectif au juge, y compris pour les délits de presse*» published in *La Gazette du Palais* dated 5 October 2021.

Le nouvel Economiste

Lionel DEVIC was interviewed on 17 June 2021 by *Le Nouvel Economiste* in the article «*Donations et legs sous conditions*».

Jeanne BOSSI MALAFOSSE contributed to the whitepaper «*Innovation digitale en santé: l'éthique au cœur*» published by SANOFI

on 16 June 2021. She wrote the chapters «*Le traçage numérique et la protection des données personnelles au temps de la COVID-19*» (page 7) and «*La protection des données numériques en santé*» (page 37).

Elsa LEDERLIN and Inès SAINT-LARY wrote an article «*Trouble dans le licenciement*» published in *La Semaine Juridique - Social* on 27 October 2021.

AGORIa SANTÉ

AstraZeneca, Dicaposte and Impact Healthcare have created the Agoria Santé

consortium to bring public and private shareholders a controlled legal framework and shared governance to conduct research projects on health data. Jeanne BOSSI MALAFOSSE has assisted the three partners in establishing the consortium (consortium agreement) since the project launch in November 2019.

Renaud-Jean CHAUSSADE wrote an article entitled «*La structuration juridique de la filière hydrogène en France*» and published in issue 506 of the journal *L'ENA hors les murs* on 27 July 2021.

Philippe PACOTTE and Julie LAYAT commented on a Court of Cassation judgement of 2 June 2021 on the timescale for challenging occupational health opinions and the locus standi of the employer behind the dismissal following the unfit for work statement for the journal *Jurisprudence Sociale Lamy*.

Philippe PACOTTE and Solène BOROCCO commented on a Court of Cassation judgement of 5 May 2021 on severance pay for the same journal.

...Some transactions we assisted our clients with

  Majority interest	  Sale	  Majority LBO	 Structuring the endowment fund	 €10M fundraising
  Sale	  Acquisition	  Equity investment by Siparex Entrepreneurs	 Commercial lease renewal	 Cap Vert LBO

DELSOL Avocats endowment fund annual competition: the 2021 winners are...

The DELSOL Avocats endowment fund was pleased to recognize the three finalists selected from candidates who entered its annual competition launched last July.

The three finalists presented their structure and project in a video as part of the Forum National des Associations et Fondations at Palais des Congrès de Paris on 13 October.

The jury of Jeanne BOSSI MALAFOSSE, Laurent BUTSTRAËN, Bruna BARDAWIL, Yaële AFERAT (Association Française des Fundraisers) and Florence BORDIAU-HARDOUIN (Les Échos/Le Parisien) gave the following prizes to the winners:

- **First prize of €20,000** awarded to Fondation Espérance Ruralités for creating a school to give young people in rural areas a solid foundation and built their self-confidence, helping them forge their future.
- **Second prize of €12,000** awarded to Association Tombée du Nid for the development of a mobile app aiming to support families with disabled children and those wanting to adopt a disabled ward of the state.
- **Third prize of €7,000** awarded to Association La Brocante Verte, which guides homeless

people into employment using a plant resource centre, thereby giving a second chance to people and plants.



Events

29/01/2022

The association of Paris Bar chess players is organizing a simultaneous exhibition featuring six-time French champion **Sophie MILLIET** and sponsored by the firm. It will follow a presentation by a charity supporting orphans and the war wounded.

07/12 et 23/11/2021

Nathalie PEYRON and **Benoît BOUSSIER** chaired a breakfast conference on the theme «Claims involving a real estate project: an inflationary trend».

26/11/2021

As part of the autumn seminar organized by the DJCE association in Lyon, **Xavier DELSOL** co-chaired a roundtable on the theme of governing CSR and SSE structures in the context of securing projects associated with these two approaches.

Les Entreprises de **valpré** Challenge^s

19/11/2021

Jean-Philippe DELSOL spoke at Entretiens de Valpré, which the firm partnered alongside the magazine *Challenges*. He took part in the roundtable «courage and truth».

17/11/2021

Mathieu LE TACON participated in the roundtable «Inter-professionalism and changing business models benefitting directors» organized as part of the Sommet du Patrimoine & de la Performance at Pavillon d'Armenonville.

16/11/2021



Mathieu LE TACON and **Léa ZÉRILLI** chaired a conference on the theme «Presale transactions – Identifying challenges and seizing opportunities before selling a business» alongside Sandrine QUILICI from Pictet Wealth Management and Sylvain GUILLAUD-BATAILLE, notary in partnership. The conference was followed by a Burgundy wine tasting organized by Athenaeum.



14° Trophée
**Finance
& Gestion**
DFCG

18/10/2021

As part of the fourteenth Trophée Finance & Gestion organized by the DFCG Auvergne-Rhône-Alpes, which the firm partnered, **Emmanuel KAEPPÉLIN** was part of the jury that chose the winner during the ceremony held at UCLY.

15 & 14/10/2021

Philippe PACOTTE and **Anne-Sophie FRANC** spoke during the Ateliers Omnidroit d'Avignon on the themes «Labour law» and «Taxation of non-profits' economic activities».

14/10/2021

Renaud-Jean CHAUSSADE chaired a webinar on the new general administrative specifications applicable to public procurement.

06/10/2021

Jeanne BOSSI MALAFOSSE attended a meeting of the National Academy of Medicine workgroup on the subject of «Perception of medication risk by the public and role of the media».

05/10/2021

In collaboration with the Paris-Ile-de-France Regional Division of Primonial Gestion Privée and the firm Deloitte, **Laurent BUTSTRAËN** spoke during a webinar entitled «Charities and foundations: analysis of the latest accounting, legal and asset management news».

05/10/2021

Camille ROUSSET and **Marion GRENERON** chaired an «Employment law news» webinar alongside Bertrand SOLEIL-PERONNET from Bys Conseil.

21/09/2021

DELSOL Avocats was pleased to host the 2021 RETIS Congress in its Paris office. **Renaud-Jean CHAUSSADE** spoke at the RETIS general meeting to chair the news

update «Public financing & members' financial challenges» alongside the Ministry of Higher Education, Research and Innovation.

09/09/2021

Jean-Philippe DELSOL contributed to the legal summer courses held at the Palais de Congrès and spoke during a conference on the theme of liberty.

08 & 09/07/2021

Elsa LEDERLIN, **Philippe PACOTTE**, **Julie LAYAT** and **Inès SAINT-LARY** contributed to the «Incontournables Dalloz de La Rochelle» courses as part of the workshops:

- Developments in individual working relations: legal news and changes in case law
- Introduction and management of remote working: good practices and operational guidance
- Changing working hours: impacts of the health crisis and operational guidance.

Retis

Palmarès du Droit Lyon



After last March's Paris edition, the Lyon edition again celebrated our teams' expertise at a ceremony held at the Cour des Loges on 24 November 2021.

DELSOL Avocats left with six trophies: two silver in «Litigation - Arbitration» and «Public Law» and four bronze in «Banking - Finance - Insurance», «Health Law», «Planning Law» and «Environment».

Sommet du Patrimoine & de la Performance

During the Sommet du Patrimoine & de la Performance organized by Décideurs, which was held on 17 November 2021, **DELSOL Avocats** received a special commendation from the jury in the «Asset Taxation Lawyer» category.

