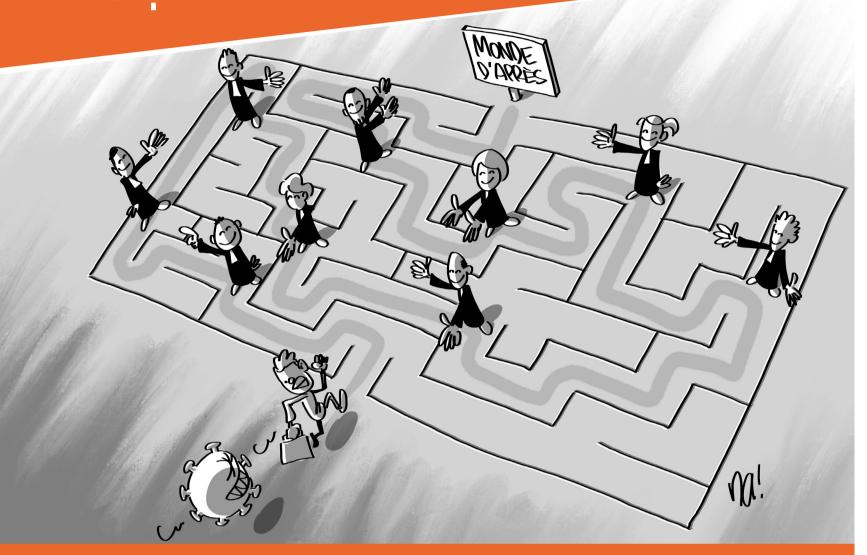
# Delarelation

DELSOL | AVOCATS

#**22** July 2020

The DELSOL Avocats newsletter



### DELSOL Avocats faced with Covid-19

In common with the companies and organisations we advise, we too have had to adapt to the unprecedented situation posed by the Covid-19 pandemic

As of 16 March this year, we were quick to reassure our clients that all our services would be maintained and all deadlines met, in full compliance with the protective measures ordered by government.

Throughout the period of lockdown, our key concern was to keep clients abreast of all the latest news regarding the health crisis and its repercussions for the business world, through a series of newsletters and webinars. We also made every effort to continue offering counsel and support remotely.

At the same time, DELSOL
Avocats is also made up
of over 120 lawyers and
legal advisers and some 60
employees based at two sites
(Paris and Lyon). Just like our
clients and partners, we had
to deploy solutions to allow
people to work from home
and to dematerialise our
internal procedures to ensure
the continuity of the firm's
activity whilst maintaining
links between colleagues via

solutions such as audio and video conferencing.

Finally, 55 days after the lockdown began, we were able to re-open our doors. Once again, this new phase has had to be carefully organised, in strict compliance with the Covid-19 protection measures agreed in consultation with the Economic and Social Committee and the occupational health service. A gradual return to the office environment was implemented for some of us, while others have continued to work from home.

You too will have gone through these various phases. You too will have found that every day calls for new ways of adapting to these new working conditions. From the very outset, we at DELSOL Avocats have always defined ourselves as a firm of entrepreneurs and, as such, we feel we are now closer than ever to our clients.

More than ever, we are at your side as we all confront the post-Covid world.

#### Interview -

**Grégrory SANDBRAND**, Information Systems Manager, DELSOL Avocats

What measures did you introduce when the lockdown was announced, in preparation for the inevitable shift to teleworking?

We had to buy and configure additional laptops so that we could provide hardware for colleagues not already equipped for working from home. In fact, it was our Italian correspondents who alerted us to the need to gear up for the teleworking that seemed increasingly likely, and we placed a number of orders three weeks in advance of lockdown in order to meet any needs that might arise. This meant we were able to equip as many people as possible.

No particular modifications or upgrades to the firm's server infrastructure were required, but we did see an increase of almost 13% in resource utilisation during lockdown as compared to normal operating conditions.

In what ways did you need to adapt your pre-pandemic activity?

Remote support and new procedures were introduced to make it easier for colleagues to learn how to use the IT and communications tools provided by the firm.

Did you encounter any new difficulties?

Continuity of service was our key priority. Over the lockdown period, we noted an upsurge in attempted phishing scams and using fake invoices to transmit viruses, and there were even two attempts to scam the Chairman! Luckily, we have a very effective firewall in place, meaning we were able to fend off these attacks without any risk to our systems.

Xavier DELSOL Chairman of the Board



Given the circumstances of the past few weeks, which have obviously been extremely difficult for all of us in both human and professional terms, each of us has had to find a delicate balance between the evident need to protect health, and the necessity for somehow keeping our economy going, to avoid the remedy proving worse than the cure.

This country steered the best course it could, as did so many others, each in its own way, each with its own false starts and uncertainties, facing a risk that, however new, found us ill prepared, reeling under a barrage of scientific facts-all too often risky or unproven-and subject to constraints at best restrictive and at worst draconian.

This crisis will leave its mark, in terms of human lives lost, and in terms of failed businesses, with all the sometimes serious consequences that ensue, but a semblance of a more normal life is now beginning to resume and, as Rudyard Kipling said: "[...] If you can meet with Triumph and Disaster

And treat those two impostors just the same;

[...] Or watch the things you gave your life to, broken,
And stoop and build 'em up with worn-out tools:

[...] You'll be a Man, my son!"

Like many others, this firm and all of us who are part of it have found ways to adapt and work to the best of our ability, first and foremost in support of our clients, to stand by them in this crisis as we all try to cope with these challenging circumstances. We have relied on teleworking, video conferencing and other means of communication, to maintain - even at a distance - the "quality of the relationship" so precious to us, whilst at the same time doing everything possible to protect the wellbeing of all, and their personal and family life in particular. This adaptation was only made possible by unfailing commitment from all concerned, and I would take this opportunity to thank them all, individually and collectively.

All our teams are thus available and primed to respond as needed to all those of you reading this newsletter (for once, in digital format only with no printed version, in view of the circumstances), ready to carry out our tasks and negotiate a smooth return to real life.

Let us take from this period its most positive aspects - in particular, a new way of working together and a new collective organisation - to get back to business as usual as swiftly as possible, working together on a basis of trust, with our eyes firmly fixed on the future.

### Preparing for the post-Covid world

Aside from the health issues, which are tragic and clearly override every other consideration, the business world has been affected by major legal problems. What will the repercussions be, and how are they to be dealt with?



#### The health sector under the spotlight

Setting aside for a moment all the negative repercussions, we should emphasise the considerable adaptability demonstrated across the health sector, industry players, healthcare staff and governing bodies alike. In the case of clinical trials, for example, we saw instances in which ANSM authorisation and a green light from an Institutional Review Board (CPP) could be obtained in a matter of only a few days.

So it really is a question of where there is a will, and resources, there is a way! Let us hope that this readiness to act promptly continues in the future and that significant resources are devoted to

facilitating the introduction and conduct of clinical trials in France. If this key public health issue is to be addressed, no time should be lost in launching an in-depth review of the management of clinical research, which has become increasingly inefficient as a result of a series of piecemeal reviews.

The Covid-19 epidemic also highlighted the importance of digital tools in preventing and managing the outbreak, and now as we emerge from lockdown. They have proved invaluable in areas such as personnel management, support for healthcare professions in their management of the crisis or

in collecting and analysing the health data needed to get to grips with the epidemic, as witnessed by the StopCovid app and the management of coronavirus clusters.

Widespread recourse to telehealth tools, authorised on exceptional grounds, has shown just how valuable such techniques could be. So where do we go from here? Do we revert to the status quo ante, with its safety requirements that continue to be essential, or do we use the lessons learned from this extraordinary period to adapt certain aspects of the law that are undoubtedly too restrictive? Watch this space.

### Reinventing the world of work

The relaxation of lockdown and the return to work is requiring employers to implement specific measures to limit the risk of spreading infection and allowing a resurgence of Covid-19. At the same time, financial aid programmes are being introduced to support economic recovery, such as the "Prévention COVID" subsidy for microenterprises and SMEs, the deferment/spreading of social security and tax expenses, or prolonging the partial activity scheme as part of a recently updated government support programme. Not forgetting the new patterns of work organisation and their impact on psychosocial risk (teleworking, working time annualization and flexibility, in particular), plus the more overarching concerns relating to workplace safety.

Bringing all these levers into play is a priority. In this particular context, the responsibility and the role of employers is central, and the sources of possible conflict many. It is absolutely vital to keep up an active and constructive dialogue with employees in order to retain their trust and their investment in the corporate goals.

Such dialogue will also enable employers to tailor their activity and their organisation to any changes in the health and economic situation. Negotiations on teleworking, for example (something that looks set to continue, and requires an appropriate management framework), on forward career planning (GPEC) or on salaries will also play a key role.

Similarly, collective performance agreements will be helpful in adapting working hours and remuneration, in particular. Lastly, constructive employee dialogue will ease the path of any reorganisations that may be necessary, along with the adoption of appropriate support measures.

#### New contractual balances

The Covid-19 crisis and the lockdown measures introduced by the government put a huge strain on the performance of certain contracts.

There has been no shortage of contracting parties and legal counsel claiming force majeure, on the grounds that the crisis was unforeseeable and unavoidable within the meaning of articles 1231-1 and 1218 of the French Civil Code.

During previous outbreaks, such as the chikungunya virus or dengue fever, many courts ruled against the application of force majeure. In our view, the scale of this pandemic and, above all, the measures introduced to stem its spread, are of a wholly different nature that should enable force majeure to be invoked, subject, naturally, to the merits of each case.

A decision to this effect has just been handed down by the President of the Paris Commercial Court in a dispute between EDF and Total Direct Energie, concerning the implementation of a framework agreement on electricity feed-in tariffs. This ruling opens the way to recognition of the Covid-19 crisis as a case of force majeure.

It is important to note, however, that in this particular instance, the terms and conditions of force majeure were established contractually.

This is a major issue for the future: while such a pandemic and the resulting lockdown measures could be considered as wholly unforeseeable in March 2020, this will certainly no longer be the case in the future.

Specific clauses will need to be drafted to reflect the new contractual balances that have yet to be reinvented.

### Preparing for the post-Covid world



### Impact on the holding of AGMs

The lockdown had a massive impact on the activity of businesses and non-profit organisations, on the preparation of their annual accounts and the holding of their AGMs, as well on meeting contractual and administrative deadlines. The gradual easing of lockdown begun on 11 May has certainly allowed for a resumption of business and greater mobility, but the legal and financial difficulties persist.

The government has therefore extended the exceptional measures, particularly those involving an easing of the rules on distressed companies, the holding of AGMs "behind closed doors", approval of annual accounts or extending deadlines falling due within the crisis period. The government has authorised the holding of AGMs and Board meetings by virtual means (via audio or video conferencing) until 31 July, even if company articles of association

make no such provision, when the meeting venue is in an area where group gatherings are banned on public health grounds.

In the case of AGMs, however, it remains impossible to consult shareholders in writing unless this is provided for in the articles of association. The initial strict list of venues covered by the ban has since grown much shorter and now applies only to those French departments in designated "amber" zones, where type L buildings (which includes meeting and conference rooms) can still not be opened to the public. Subject to this restriction and to following social distancing rules, however, governing bodies may resume meeting as normal.

In addition, there are also plans to grant entities closing their accounts between 30 September 2019 and 24 June 2020 a 3-month extension for:
-approval of the annual accounts, if the auditor

had not issued its report prior to 12 March 2020; -financial reporting on beneficiaries of public subsidies allocated by entities.

In these unusual circumstances, our teams are geared up to provide you with all the support and information you need, via newsletters, blog articles or webinars, on the business support measures available (governmentguaranteed loans, deferrals of expenses, etc.) and on temporary regulations. A webinar was held in conjunction with Lexis Nexis and the AFJE on the organisation of AGMs (available on YouTube) and a template for adapting AGM minutes developed by our teams was published in the JurisClasseur Sociétés Formulaire database.

The lockdown will at least have underscored the wisdom of making express provision in the articles of association for meetings to be held remotely.

# Taxation: where do we stand?

To counteract the impact of the economy suddenly grinding to a halt, a number of measures were introduced to allow taxpayers more time to declare or pay their taxes. The measures were necessary, but ultimately the tax due will still have to be paid.

Moreover, while most procedural deadlines have been suspended, the resumption of tax inspections will no doubt fuel many a debate on the impact of Covid-19.

Given the downward trend in corporate income tax, some groups might well have been tempted to recognise extraordinary provisions, expenses or write-downs for 2020 or even, as a precaution and when acceptable in accounting terms, for 2019. Similarly, there is no ruling out the possibility of certain downward adjustments

in valuations being retrospectively contested the tax authorities, particularly in the context of intragroup transactions or those between common shareholders, whether these relate to securities, other assets or even management packages. The same will be true for the valuations used for gifts, inheritances and real estate wealth tax (IFI) declarations.

Finally, there arises the question of increases in compulsory levies since, despite the colossal sums that have been injected into the economy and even if the government is ruling out any tax increases for the moment, the fear is that France will ultimately give way to the temptation to raise taxes.

# Data protection more topical than ever

In response to the health crisis, which certainly qualifies as exceptional circumstances, personal data were used for a variety of purposes and on each occasion, compliance with data protection principles was a consideration to be taken into account.

CNIL, the French data protection agency, authorised French employers to create files of suspected cases of transmission of the virus so that they could implement the necessary organisational measures inhouse. For many businesses, schools and universities, videoconferencing tools provided a means of continuing their activities.

Some of these tools were subject to hacking, leading to breaches of personal data. The authorities also opted to make much greater use of personal data in order to protect the health of the population. The "state of health emergency" law

authorised the creation of the two nationwide files designed to allow identification of those infected, those at risk of infection and the chains of transmission involved. As the implementation of the StopCovid app illustrates, however, such use of personal data to combat the spread of the virus caused much debate.

The gradual easing of lockdown now gives all concerned a chance to pursue those compliance initiatives already begun, especially since CNIL has continued to provide invaluable information and tools such as the new guidelines on data processing for HR management, use of the social security number (NIR) for social welfare purposes, and the publication of its updated register of processing activities.

### Preparing for the post-Covid world

#### What remedies are available to distressed companies?

In these unprecedented times, once senior executives have arrived at a lucid analysis of the economic, financial and commercial situation of their company, they need to look to the future.

The various emergency measures introduced (partial unemployment, government-backed loans, deferred expenses, etc.) should help them weather this difficult passage, as long as a "return to normal" is not too long in coming.

These measures, coupled with the temporary easing of the law on distressed companies, must not cast a veil over the reality of the situation businesses face and the scale of their difficulties.

The freezing of a company's cessation of payments status as at 12 March 2020, access to a safeguarding procedure even when the

cessation of payment status is largely exceeded, the automatic extension of conciliation procedures to 5 months... are all praiseworthy attempts at easing the law on distressed companies. Yet these same measures may also lead executives astray and into inappropriate actions.

It is vital to be able to arrive at the objective findings and analyses that will enable senior executives to take advantage of the right support tools, either within a confidential preventive framework (ad hoc mandate and conciliation) or as part of insolvency proceedings (accelerated financial safeguard (SFA) or administration).

Furthermore, the current crisis will inevitably result in a wave of business sell-offs. For some, these disposals will offer very real solutions for keeping their core activity going, and will provide corresponding external growth opportunities for others. Order n°2020-596 dated 20 May 2020 conveniently sets out to accelerate the implementation of company sell-off plans, but also to allow the possibility, under the supervision of the public prosecutor, of management buy-outs.

Whatever the circumstances, analysis and anticipation are, as ever, the key words.

# Impact on the real estate sector

Quite apart from the stunning effect of the widespread close-down of commercial premises and public buildings, and the slowing even complete halting of work on construction sites, the life-blood of the country's economy, we come back to the consequences of Covid-19 for the real estate sector.

Building, buying and holding a real estate asset that can be sold or rented always offers a certain security, although renting might have seemed a risky option if lockdown and working from home meant that the premises could not be occupied.

Government ordinances

have mitigated the effect of penalty clauses, but they have done nothing to address either the consequences of the crisis, or what the post-Covid world will look like.

As far as construction projects are concerned, completion dates, costs and penalties will be the key issues.

Residential: while buyers might be keen to hold off on buying, tenants will still need somewhere to live, and then there are the government's wideranging incentives for household energy-saving improvements, launched to kickstart the economy.

Hotels, restaurants, shops: it is too early as yet to determine the impact on rental values or marketability. On the other hand, there will be issues over rents and rental expenses while the Covid threat continues, with administrative closures, possible company insolvencies and a reduction in surface areas rented. The one word of advice that counts is: negotiate! Discussion, or even mediation or arbitration, will always prove speedier than litigation. And the Real Estate law Department will be here to help.



#### What about public services?

In the light of the extraordinary times we are living in, structural measures have been introduced to help the public sector overcome the difficulties caused by the crisis: management and organisation of public services, processing of applications, management of litigation proceedings, personnel management, the exercise of police powers, deployment of health

measures following the release from lockdown, etc.
The Public Law Department is fully mobilised to help you resume activities under the best possible conditions.

Carrying on from the series of news analyses introduced to help you deal with the Covid-19 crisis, this now includes an analysis in its June newsletter of the measures extending the state of health emergency

to 24 July and governing the gradual resumption of activity as the lockdown eases.

It offers a presentation of the new measures introduced, which have opted for a gradual resumption of procedural deadlines on matters of urban planning and public procurement; new measures on the organisation of administrative jurisdictions;

the organisation of teleworking for public servants; the running of municipal councils and the second round of the municipal elections; the exercise of police powers and the management of public services.

#### In the press...

**DELSOL** Avocats advised leading French private education group MediaSchool, specialising in media and communication, on its first major fundraising round, conducted by Florac Investissements. The DELSOL Avocats team consisted of partner Henri-Louis DELSOL and associates Vincent **GUEVENOUX** and Alexandre ZITOUNE (Corporate), partner Julien MONSENEGO and associate Clément GUITET (Tax Law); partner Elsa LEDERLIN and associate Marion STOFATI (Employment Law) and partner Benoît BOUSSIER (Real Estate Law). The deal was reported by CFNews, Capital Finance, La Lettre des Juristes d'Affaires and Juristes\_associés.



Alexis CHABERT, a partner in the Litigation Department, had an article entitled "Justice en danger: un espoir nommé nouvelles technologies" (Justice in danger: new technology holds out hope) published in Le Tout Lyon of 16 May 2020.

Partner Pierre GOUGÉ and associate Anaïs FAURY (Corporate -Mergers & Acquisitions), alongside partner Alexis **BECQUART** and legal advisor Sarah FARHAT (Non-Profit Organisations - Social & Solidarity-based Entrepreneurship), advised C'est qui le patron?! on the launch of its solidarity fund in response to the Covid-19 epidemic. The deal was reported in Le Monde du Droit, La Lettre des Juristes d'Affaires and Iuristes associés.

Amaury NARDONE, a partner in the Corporate - Mergers & Acquisitions Department, assisted by a team consisting of associates Hala NEHMÉ and Fanny RICHARD, advised programmatic recruitment platform Golden Bees during the acquisition of a majority stake in its capital by Figaro Classifieds. Tax Law Department partner Mathieu LE TACON and associate Sophie **MORAINE** were involved in the tax aspects of the deal, which was reported in CFNews, Fusions-Acquisitions Magazine, Capital Finance, Le Monde du Droit and Juristes\_ associés.



Jeanne BOSSI MALAFOSSE answered questions put by ZDNet in an article entitled "Physiotherapists: remote treatment delivery facing the test of Covid-19" published on 27 March 2020.



Partner Renaud-Jean
CHAUSSADE and associate
Alexis ROBBE from the Tax
Law Department co-authored
an article published in Les
Echos on 6 February 2020
entitled: "2020 municipal
elections: what changes for
British nationals living in
France".

Philippe MALIKIAN and Claire PECQUET advised MoneyGlobe on its acquisition by Small World Financial Services. The deal was reported in Le Monde du Droit, La Lettre des Juristes d'Affaires, Juristes Associés and Fusions&Acquisitions Magazine.



On 9 March 2020, La Lettre des Juristes d'Affaires published an article entitled "Et si les entreprises misaient sur la qualité de vie au travail comme outil de performance?" (What if employers relied on workplace quality of life as a performance tool?) by Camille ROUSSET, a partner in the Employment Law - Social Welfare Law Department.



Partner Benoît BOUSSIER and Counsel Virginie DELANNOY from the Real Estate Department advised startup Keranova on the signing of an offplan lease agreement for its headquarters in Saint-Etienne in the new Gingko development, a deal reported by Le Monde du Droit and Bref Eco.

Partner Emmanuel
KAEPPELIN, Counsel
Séverine BRAVARD
and associate Leslie
d'ALASCIO of the
Corporate - Mergers &
Acquisitions Department
advised Sofimac Régions
on the fiscal structuring
and bank financing of its
acquisition of Rhone-based
Poncin Métal. Capital
Finance devoted an article
to the deal.



Elsa LEDERLIN, a partner in the Employment Law - Social Welfare Law Department, and essayist Fanny LEDERLIN co-authored an opinion piece published in Le Monde on 16 March 2020, entitled « <u>Uber: l'arrêt de la Cour de cassation signe la fin d'un savant enfumage" (Uber: the Court of Cassation ruling finally blows away the smokescreen)</u> ».

Xavier DELSOL and Arnaud LAROCHE cowrote an article entitled "Actualité fiscal du mécénat" (Tax news for corporate philanthropy), published in the April issue of Ingénierie Patrimoniale.

### Voyage au pays des fondations actionnaires

Enjoying particular favour in northern Europe, the shareholder foundation offers a virtuous model of corporate protection, governance and transmission that is attracting increasing interest from entrepreneurs in France.

In conjunction with strategy consultancy PROPHIL, partner **Xavier DELSOL** and associate **Arnaud LAROCHE** from the Non-Profit Organisations - Social & Solidarity-based Entrepreneurship Department collaborated to produce the first practical guide to developing shareholder foundations. "Voyage au pays des fondations actionnaires" (Journey to the land of shareholder foundations) is aimed specifically at entrepreneurs to provide an insight into the strategic, legal and asset management issues involved.



o9/o7/20
"The impact of Covid on donations and corporate philanthropy: how have practices changed?", moderated by Alexis
BECQUART in partnership with Crowe Groupe
Fideliance and Don en

Confiance.

o1/07/20
""Neo-working"? How recent and impending changes in work pose a threat to democracy", a Droit et Démocratie webinar comoderated by Elsa LEDERLIN.



26/06/20 "The latest phase in deployment of the new "antigift" mechanism", moderated by Thomas ROCHE.

18/06/20
"Re-opening post-lockdown for the hotel and restaurant sector", moderated by Philippe PACOTTE and Benoît BOUSSIER.



15/06/20
"Resuming activities postlockdown: how to adapt the organisation of institutions - focus on the faith sector", moderated by **Philippe PACOTTE** in partnership with Ecclésia RH.

o4/o6 et 28/o5/20
"Post-lockdownorganisational measures and
government aid", moderated
by Camille ROUSSET,
Marion GRENERON,
Pierre SPINOSI and Alexis
CHABERT.

20/05/20
"Back to the office or keep working from home?
Facing the reality and preparing for what comes next», moderated by Elsa LEDERLIN and Alexis CHABERT, with the participation of Dr Patricia NEDDAM, occupational health physician.



o7/o5/20
"Associations & Covid-19:
how to handle the crisis and
prepare for post-lockdown?",
moderated by Alexis
BECQUART in partnership
with AssoConnect and Crowe
Groupe Fideliance.

o7/o5/20
"Opportunities for
distressed companies
to seize", moderated by
Philippe DUMEZ, Delphine
BRETAGNOLLE, Séverine
BRAVARD and Manuel
WINGERT.

o6/o5/20
"Journey to the land of shareholder foundations", moderated by Xavier DELSOL and Arnaud LAROCHE, Virginie SEGHERS, PROPHIL, Clara HOUZELOT, De Facto, and Cyrille VU, Seabird Impact.



04/05/20

« Covid-19: lockdown, postlockdown, risks of another lockdown: how to organise your 2020 AGMs? », a LexisNexis webinar moderated by Emmanuel KAEPPELIN and Mayeul FOURNIER in partnership with AFJE.

29/04/20
"Legal aspects and workplace health-related issues on post-lockdown resumption of activities", moderated by Alexis CHABERT and Elsa LEDERLIN, in partnership with occupational health physician Dr Patricia NEDDAM.



14/04/20
"Focus on coronavirus",
moderated by Camille
ROUSSET, Marion
GRENERON and Céline
COELHO.



14/04/20 "Latest news on compliance litigation", moderated by Gilles VERMONT.

31/03/20
"Partial unemployment and other working time management measures" moderated by Philippe PACOTTE in partnership with Ecclésia RH.



For the 11th year in succession, DELSOL Avocats is organising a call for projects to select the winners of its endowment fund awards.

The nationwide competition, organised in partnership with the Forum National des Associations et des Fondations, is aimed at non-profit organisations whose registred office is located in France: putting forward an innovative social, cultural, educational or sports project,

- •focusing on the material, intellectual or psychological development of individuals and their environment,
- · with particular emphasis on the dignity of the individual,
- ·and preferably of recent origin (less than 10 years).

A preliminary panel, consisting of the Board of Trustees of the DELSOL Avocats Endowment Fund, will shortlist three candidates.

These three will then be invited to present their organisation and their project via a 10-minute video, at the Forum National des Associations et Fondations in Paris on 15 October 2020. The jury will determine the order of winners (1st prize: €20,000, 2nd prize: €10,000 and 3rd prize: €5,000)

A fundraising specialist will analyse the strengths and weaknesses of the candidate projects and give a talk on best practices in fundraising while the jury is deliberating.

Deadline for applications: midnight on 10 September 2020.

For more information: fondsdedotation@delsolavocats.com



18 & 04/02/20 "The financing of electoral campaigns" and "Declaration of candidacy procedures", moderated by Renaud-Jean CHAUSSADE.

