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DELSOL AVOCATS
LA QUALITÉ DE LA RELATION

#18 June 2018

DELSOL Avocats
Newsletter

Amaury
NARDONE

Chairman
of the Board



Are lawyers 'complicit'?

Surprisingly, at least in a true democracy, the current government's 'anti-fraud bill' aims to introduce an equivalent penalty for lawyers to criminal complicity, following decisions by the tax authorities to impose administrative penalties on taxpayers.

That is surprising and wholly justifies vigorous opposition from our profession (National Bar Council resolution of 8 and 9 June 2018) for several reasons.

Firstly, the Constitutional Council itself reiterated in 2013 that «*all taxpayers can legitimately seek to reduce their tax bill and all lawyers seek to reduce their clients' tax bill, without that constituting fraud.*» Tax optimization is not, therefore, fraud in itself. So why tackle the issue with administrative penalties, rather than reviewing the law?

Secondly the bill, which is general and vague, contradicts many of our legal principles: it would, for example, be possible to fine a lawyer after imposing an administrative penalty on a taxpayer before the appeal confirming the penalty's validity has concluded. Truly shocking.

Last but not least, what about our legal professional privilege?

If a lawyer was fined, would s/he have to reveal information covered by legal professional privilege, when its violation is punishable by law (Article 226-13 of the Criminal Code)?

Remember that our legal professional privilege is public, general, absolute and unlimited in time. It cannot be waived by our client or any authority whatsoever, except in prosecutions as the perpetrator of, or accomplice to, fraud or action against our client. Therefore, the bill infringes lawyers' defence rights, except if they breach their legal professional privilege!

As that is the essence of our role, quite simply this absurdity should be withdrawn and lawmakers made to address the root problem by enacting simple, intelligible and stable tax laws.



Corporate Law – Mergers & Acquisitions

Philippe MALIKIAN, a new partner for the department

A fast-growing sector, mergers & acquisitions enjoyed a record year in 2017, the best in a decade. According to Thomson Reuters data, transactions jumped by 50% to reach \$245.8 bn (€205 bn). In this context, DELSOL Avocats

is strengthening its Corporate Law – Mergers & Acquisitions Department, a key source of flexibility and competitive advantage, by welcoming Philippe MALIKIAN as a partner.

Philippe MALIKIAN has joined a team of six partners and three Of Counsels. Amaury NARDONE, Chairman of the DELSOL Avocats Board, is delighted that the team «*is continuing its growth with six partners with multisectoral expertise,*» and that the new arrival boosts the firm's national and international development strategy.

Philippe MALIKIAN began his career at Jones Day in 2005 and joined Sullivan & Cromwell a year later. For over six years, he worked within the M&A team for manufacturers and financial institutions on strategic transactions, listed and unlisted companies such as the merger of Crédit Agricole and Société Générale to form Amundi,



or the rebalancing of EDF and Veolia holdings in Dalkia, but also on intermediate transactions, for Spie Batignolles in particular.

He joined Pinsent Masons in 2012 when it opened its Paris office. «*I was driven to be part of the founding team and by the opportunity to contribute to building the M&A practice within the office,*» he explains, before adding «*the law firm combined an international platform and opportunistic approach in the development of M&A practice in Paris.*» Philippe MALIKIAN developed a small- and mid-cap M&A practice, expanded into venture capital and distressed M&A transactions, and explored sectors such as modern technology, engineering and real estate.

Drawing on his expertise in mergers & acquisitions as well

as national and cross-border transactions, Philippe MALIKIAN joined DELSOL Avocats in March, impressed by the firm's entrepreneurial spirit, which he had been seeking throughout his career. The structure's stability, which demonstrates the partners' clear adhesion to the firm, dynamic management and unashamed ambition in its national and international market only confirmed his choice.

Philippe MALIKIAN is currently assisting the Assystem Group on a new acquisition transaction and EDF on an investment project. He was recently joined by , Claire PECQUET, associate, who followed him from his previous law firm.

Corporate Law – Mergers & Acquisitions

A multisectoral team led by six partners to m

Guiding the DESCOURS & CABAUD Group through acquisition of a target company in Italy

For years DELSOL Avocats has assisted the Descours & Cabaud Group, the French leader and major player in Europe and North America in distributing professional stationery for industry and construction, particularly advising the directors of its target companies.



DESCOURS & CABAUD

The guidance for the Descours & Cabaud Group continued in December 2017 on an international transaction: acquisition of a target company in Italy.

As part of the group's active external growth policy, Philippe DUMEZ, a partner in the Corporate Law - Mergers & Acquisitions Department and joint head of the Italian desk, assisted by members of his team, guided the group through acquiring shares in a *Società per Azioni* (S.p.A.), an Italian joint-stock company.

Drawing on our knowledge of the Italian legal system, and more broadly the economic and cultural environment, and working with our Italian counterparts, we produced a letter of intent in both Italian and French versions. Until its finalization, the acquisition was managed by our best friends. The law firm Barel Malvestio & Associati carried out the legal, social and contractual due diligence under our supervision.



The other aspects, particularly financial and accounting, were managed by Mazars.

When the due diligence confirmed the transaction's feasibility for the acquirer, we drafted the bilingual French / Italian instruments relating to the planned sale (including the SPA, draft shareholders' agreement, escrow agreement, etc.).

To date, the capital balance not immediately acquired during this initial stage has led to puts and calls that can be exercised in the next few years. Therefore, the directors and as yet partial shareholders will remain in their positions at least until the granted options are exercised. This policy of supporting the directors in place in the targets acquired by the Descours & Cabaud Group has been successful for years, for all the completed transactions.

The quality of the guidance and technical advice provided by Philippe DUMEZ and his team, as well as the special relationship with the DESCOURS & CABAUD Group, have made it possible once again to conclude a satisfactory transaction in a relatively short timeframe.

That's another quality relationship!

Philippe DUMEZ
Partner

Henri-Louis
DELSOL
Partner



In February, the British group Proactis launched a public tender offer for shares in the company Hubwoo. DELSOL Avocats guided Proactis through the process. What did you take away from the collaboration?

DELSOL Avocats was able to position itself as a leader and the firm's decisive role made it possible to complete the transaction

Interview Tim SYKES, PROACTIS by Henri-Louis DELSOL



PROACTIS

The Spend Control Company

successfully. The team was attentive to the problems likely to affect Proactis and advised us based on our interests whilst coordinating the other advisors involved, going beyond the cultural and language differences.

What was the strength of the legal team that advised you?

I was struck by how easily DELSOL Avocats adapted, not hesitating to put in place innovative solutions when the context allowed.

'Quality relationships' is the firm's motto. Does that ring true to you?

It's not easy to see that type of

project through. The key to success is, for me, good communication between and within the various teams involved. That's what DELSOL Avocats brought, and with Brexit in the background that wasn't an easy task! Technically and operationally, the services provided exceeded our expectations. The Proactis Board and I would like to thank the whole team for their hard work and responsiveness.

Analysis

Application of the General Data Protection Regulation (GDPR): What impacts on M&A transactions?

The General Data Protection Regulation (GDPR) came into force on 25 May. The text introduces the accountability principle, which now supersedes the previous system of prior notification to the French Data Protection Authority (CNIL), and companies that collect large amounts of data that produce legal effects are required to appoint a Data Protection Officer (DPO).

M&A practice does not escape the GDPR's spotlight. One of the first areas of attention and often mandatory process for mergers or acquisitions is the audit phase. An audit will analyze any processing's level of compliance with data protection regulations, whether it involves the company's internal activity (staff and recruitment administration in particular) or external activity (managing the customer and supplier database, any other database of professional contacts, subcontracting contracts, etc.).

Data protection regulations should also be considered in the structuring of transactions, particularly in the choice between share and asset deals. Ahead of an asset deal, the persons involved should in principle be informed in advance of the databases' transfer to a new data processing manager, which could take various forms.

The target's acquirer should also take steps to tailor the drafting

of guarantees in the acquisition contract to personal data protection rules.

It should also ensure that, where appropriate, the consultation of staff representative bodies clearly includes a section on personal data processing if the transaction changes how data are processed.

Finally, before and after the closing, the parties should determine the measures to be taken (particularly via transition service agreements or TSA) to ensure the migration and integration of the target's data into the acquirer's information systems in compliance with the applicable data protection regulations.

Pierre GOUGÉ
Partner



meet our clients' needs



Amaury NARDONE
Partner

Assisting financial players at exceptional moments in their history

Creating a European strategic intelligence player: AVISA PARTNERS

Although a Corporate Law - Mergers & Acquisitions Department answers companies' usual questions (corporate matters, equity financing operations, issuing securities, contracts, regulations, etc.), it also supports them more intensely at certain key moments, such as acquisitions, sales, investments, joint-venture agreements and official listings.

Creating a leading European player:

- active in brand image, influence, action against online counterfeiting, public affairs and cybersecurity,
- based in two countries and three cities,
- using the teams' expertise, experience and availability,
- carrying on over half of its business on five continents,

is a complex operation.

- producing an agreement on capital and organization between three players with complementary but different ages, cultures and businesses,
- allocating resources enabling continued development.

With the cooperation of all parties, legal, accounting, financial and technical, a solution was found for every problem and a new player was born.

After completing the process, Matthieu CREUX said:

on all their sensitive issues. We're not stopping there... With almost D20 million in equity at this stage, without involving investment funds, the company is built on more solid and powerful foundations than much of our sector: that should give us the means to grow both organically and externally.»



«Avisa Partners' creation should make it possible to support our clients comprehensively and independently»

avisa partners

The three main difficulties to overcome have been:

- securing 'cashout' financing for certain assignors from banking institutes in a little-known area of activity and amidst tight deadlines, with a specific schedule for closing the accounts on different dates,

Analyzing challenges central to our expertise in Mergers & Acquisitions

Very often, our clients need more than expertise in Mergers & Acquisitions: a precise analysis of the challenges they face. After all, most transactions have a strong commercial and/or contractual dimension.

«We also guide our clients through external growth operations or restructurings in France and internationally,» says Emmanuel KAEPPÉLIN, who regularly works with international networks and particularly the TELFA network, where he is a director. It is then essential to fully understand the main types of commercial agreements. «In an acquisition process, our clients buy value, often industrial tools or contracts, and it's sometimes useful during acquisition due diligence to give legal expertise on a contract's solidity, its early termination conditions, how the buyer could possibly change it, etc.»

Testimonials

Sophie DURIÉVIG,
Chairman,
Happy & So:

«DELSOL Avocats assisted us when our investor acquired an equity stake, when we had to ensure that the terms of the shareholders' agreement were right for our specific situation. We felt totally guided through managing the transaction.»

happy&so

SUNPOWER®

Stéphane VALAT,
Senior Legal Counsel EMEA-APAC,
Sun Power:

«Our company has formed a close, trust-based relationship with DELSOL Avocats, which has assisted us with many corporate/M&A, contractual and litigation issues for almost ten years. The cases are handled efficiently, accurately and responsively with a good understanding of business challenges.»

Emmanuel
KAEPPÉLIN
Partner



Rankings

DELSOL Avocat won three awards at the *Palmarès du Monde du Droit* – Thank you!

On 29 March 2018, DELSOL Avocats was recognized at the sixth *Palmarès des Avocats* for the excellence of its practice in Mergers & Acquisitions (Silver Award), Private Equity (Bronze Award) and Life Science - Health (Silver Award). The firm was given the three awards following your votes – Thank you!



The Corporate Law - Mergers & Acquisitions Department included in the *Décideurs* rankings!



Once again this year, DELSOL Avocats was ranked 'Unbeatable' for its practice in Capital Investment (lower mid- and small-cap LBO consultancy and transactions), Mergers & Acquisitions (transactions up to €75 m), and Charity and Nonprofit Organization Taxation. The firm was also ranked 'Excellent' for its practice in Capital-Development Operations, Fiscal Transactions, Wealth Management and Asset Management.

In the press...

Amaury NARDONE, a partner in the Corporate Law - Mergers & Acquisitions Department, **Stéphanie GUILLOT** and **Séverine BRAVARD**, Of Counsels, assisted Vision Systems, the world leader in the sun protection and opacifying solutions sector, through its partnership with Idinvest Partners. **Frédéric SUBRA**, a partner in the Tax Law Department, contributed to the fiscal aspects. The transaction was reported in *Le Monde du Droit*, *Capital Finance*, *Option Droit & Affaires* and *Private Equity Magazine*.



Lionel DEVIC, a partner in the Nonprofit Organizations Department, was interviewed by *Le Magazine des Professions Financières* in December 2017 on the relevance of foundations in tax exemption matters.



Xavier DELSOL, a partner in the Nonprofit Organizations Department, was interviewed by *La Croix* on 29 January on the topic of patronage, as the amounts donated by companies to the charitable sector have grown consistently since 2010.



Jeanne BOSSI MALAFOSSE, a partner in the Personal Data Department, appointed Data Protection Consultant by the French Medical Council, will guide it through compliance with the new European requirements following implementation of the General Data Protection Regulation on 25 May 2018. The news was reported by *Le Monde du Droit* and *La Lettre des Juristes d'Affaires*.



Every Tuesday and Thursday from March to April and September to November 2018, one of the firm's partners takes to the airwaves on the Radio Classique morning show. The GDPR, planning permission, wealth tax on real estate assets, predictive justice, the end of the *société anonyme*, commercial leases, social entrepreneurship, relationships between companies and healthcare professionals and the MACRON executive orders are just some of the topics that have been analyzed in 'Parlons droit des affaires.'

Le Progrès devoted an article to Lyon Administrative Court's ruling of 21 December 2017, overturning planning permission given by the City Hall at the request of fifteen residents represented by **Renaud-Jean CHAUSSADE**, a partner in the Public Law Department.

Jeanne BOSSI MALAFOSSE, a partner in the Personal Data Department, wrote the chapter 'Personal data protection is becoming central to business strategy' in the ADEL project's whitepaper on good ethical practices in the algorithmic processing of digital data.

Pierre-Marie DURADE-REPLAT, **Alexis CHABERT** and **Stéphane PERRIN**, all three partners in the Litigation Department, discussed predictive justice software in *Décideurs Magazine* last March.

Our new website is online

Since 11 March 2018, the new DELSOL Avocats website has been online and available in French and English.

With its all-new structure and design, it aims to be clearer and more user-friendly. Simplified browsing enables intuitive use of the new site, which gives easier access to key information (news, information on the departments, job offers, etc.) and presents the firm's team. Nine pictograms have been created to illustrate each department's work.

The various features have all been

designed to improve the quality of relationships with our clients and the new visual identity will be used on our materials in future.



Restructurings in the nonprofit sector, a DELSOL Avocats book

The book *Restructuration des organisations non lucratives*, which was published by Editions Dalloz on 6 June, was edited by **Alexis BECQUART**, partner and joint head of the Nonprofit Organizations - Social Entrepreneurship Department, **Philippe PACOTTE**, partner and joint head of the Employment Law - Social Welfare Department, and **Emmanuel SADORGE**, a member of the Nonprofit Organizations - Social Entrepreneurship Department. It was written in full by nine members of the firm.

The book, which is organized into twenty themed studies, presents the rules that apply to various complex transactions in the

nonprofit sector. It has the advantage of being up to date on the MACRON executive orders in the labour law section and (finally) provides answers for players in the social and solidarity economy to increasingly topical technical questions on mergers and partnerships.

«It's an unprecedented book that's undoubtedly the most comprehensive on the subject. It's the result of our years of practical experience in the area,» comments **Emmanuel SADORGE**.



Events



Paul ALMEIDA has bolstered DELSOL Avocats's Tax Law Department as an Of Counsel. He began his career within our firm in 1998 before joining the DELOITTE network's Lyon office in 2005, which he left in 2008 for the XPO Group (previously Norbert DENTRESSANGLE), where he was the Tax Director for ten years. «We're delighted to have Paul ALMEIDA back, his return clearly reflects the firm's development dynamic,» says **Frédéric SUBRA**, a partner and joint head of the Tax Law Department. «With this new arrival, our firm can offer greater expertise in company taxation,» adds Amaury NARDONE, Chairman of the DELSOL Avocats Board.



Philippe PACOTTE, a partner in the Employment Law - Social Welfare Department, and lawyer **Hervé ROY** are presenting a series of webinars on the topic: 'Assessing and managing your business's professional risks.' The first one was held on 31 May and the next one on 28 June 2018 will aim to answer the question: 'How should we react to an industrial accident or illness?' Philippe also organized a breakfast with **Stéphane HENRY**, chartered accountant, auditor and partner with the law firm EUREEDIT, on 24 May on the topic: 'Legislative news, MACRON executive orders and deduction at source.'



On 28 March, **Mathieu LE TACON**, a partner in the Tax Law Department, co-chaired a webinar with **Joseph CHATEL** and **Christophe LANSON**, the co-founders of Pierre 1er Management, on the topic: 'Holding real estate assets through a specific open-ended property fund: the how and why behind the solution.'

Renaud-Jean CHAUSSADE, a partner in the Public Law Department, **Nathalie PEYRON** and **Benoît BOUSSIER**, partners in the Real Estate Law Department, organized breakfasts in the form of presentation-debates in Lyon on 15 March and in Paris on 27 March on the topic: 'Planning permission: what recourse against excessive appeals?'

Jeanne BOSSI MALAFOSSE, a partner in the Personal Data Department, spoke on 20 March during a conference organized by the Law and Health Institute (IDS) on: 'Legal management of today's and tomorrow's practices.'

Partners and associates in the Nonprofit Organizations - Social Entrepreneurship Department, in collaboration with **Philippe PACOTTE**, partner, and **Raphaëlle LEROY**, an associate in the Employment Law - Social Welfare Department, have produced a whitepaper entitled 'Proposals to improve the legal and fiscal framework of SSE players.' It can be accessed on our website and paper copies are available on request.