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DELSOL AVOCATS
LA QUALITÉ DE LA RELATION

#26 July 2022

The DELSOL Avocats
newsletter



Henri-Louis DELSOL & Emmanuel KAEPPELIN
Managing partners

Despite the turbulence brought by the war in Ukraine, the first half of 2022 was a busy period.

Our firm was pleased to welcome two new partners in January: **Gaëlle MERLIER**, in the Life Sciences department, and **Jean-François DEFUDES** in Corporate Taxation. These new hires reinforce our firm in two particularly dynamic sectors: healthcare for Gaëlle, and digital tax audits for Jean-François.

In spring, we were also pleased to co-opt as partner **Jean-Baptiste AUTRIC** who thus becomes the fifth partner in our department dedicated to non-profit organisations and social entrepreneurship.

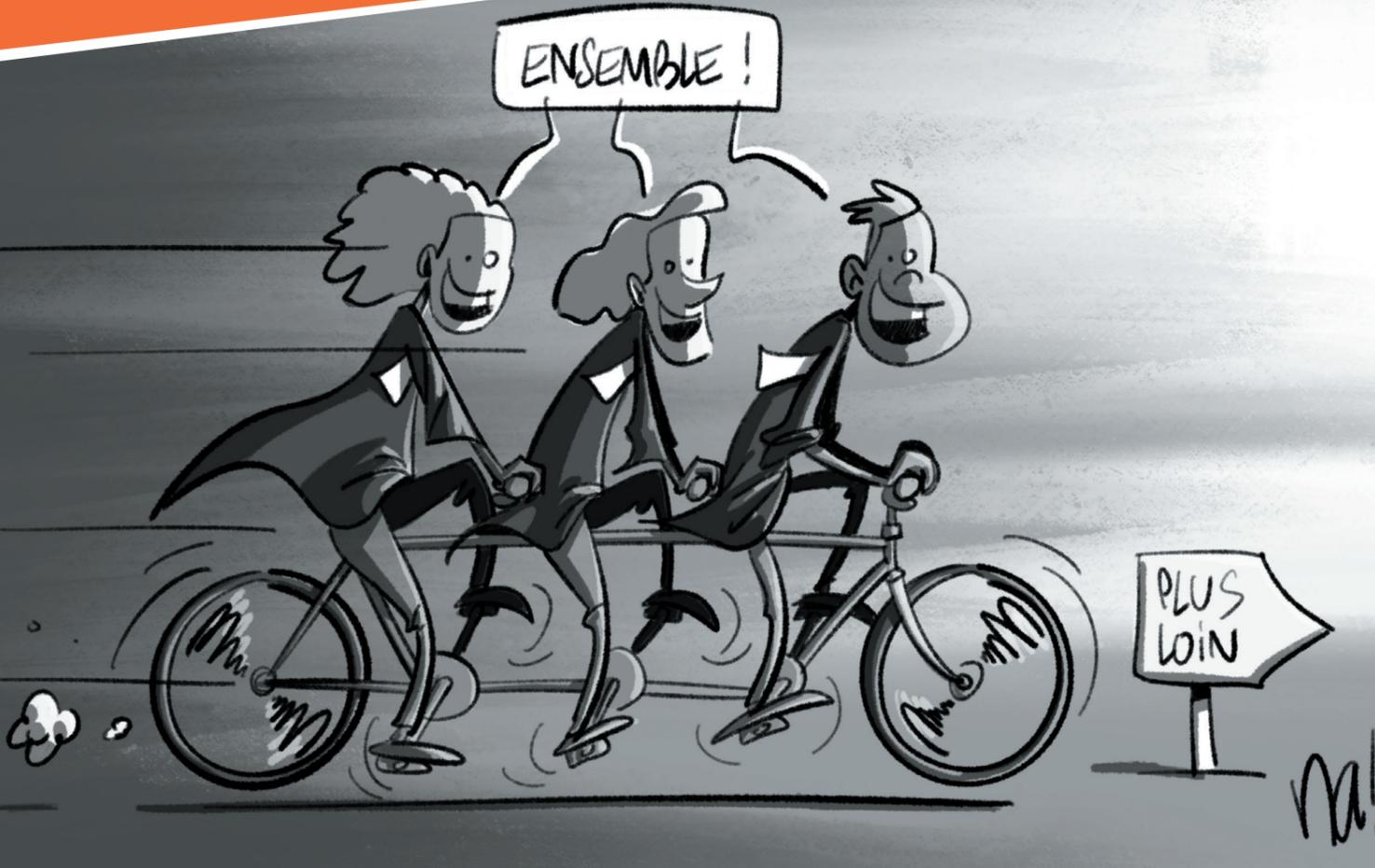
As mentioned in our previous editorial, our mission is to bring our range of expertise to all your challenges. The firm is therefore growing to achieve this goal.

However, in addition to building our expertise, we are working to develop collaboration within the firm. In an increasingly complex legal world, it is often a good idea to combine several skills on a given case, as this newsletter shows.

In an email sent to all his employees, **Elon MUSK** explained that *“A major source of issues is poor communication between depts. The way to solve this is to allow free flow of information between all levels.”* Therefore, according to the Tesla boss, communication should travel via the shortest path, rather than through the traditional chain of command.

“We can’t compete with big car companies in size, so we have to be smart and fast” he concluded.

At our level, we put trust at the heart of our professional relationships, which indeed implies autonomy and respect, but also high standards between us in order to guarantee smooth and efficient handling of your cases.



Continued Growth at DELSOL Avocats

Boasting steady and controlled growth, in recent years DELSOL Avocats has been enhancing its service offering in order to provide clients with optimal support on all their legal issues.

This approach has particularly led to hiring or co-opting new partners who bring their expertise to supplement that of the teams in place and thus contribute to the firm’s outreach.

Therefore, since the beginning of the year, **Jean-Baptiste AUTRIC**, **Gaëlle MERLIER** and **Jean-François DEFUDES** have joined the ranks as partners.

assisting in particular, non-profits, foundations and endowment funds with their legal and tax issues, especially in the context of reorganising their activities or their assets.

as their partners, at every stage in their projects.

She also works on regulatory and structuring aspects of mergers and acquisitions in the healthcare sector.

dematerialisation.

After fifteen years within the French tax administration, **Jean-François** joined the law firm Fidal in 2008, and went on to join Taj in early 2020.

These three new partners are part of the cross-cutting approach adopted by the firm to work in collaborative mode on clients’ issues so as to offer a comprehensive, technical and strategic vision.



Jean-Baptiste AUTRIC joined DELSOL Avocats in 2007 for his final internship. His nomination as partner reflects the firm’s ambition to train and promote talent internally.

Jean-Baptiste works with entities in the **social and solidarity economy**,



Gaëlle MERLIER has joined us from the English firm Clifford Chance in the “Life Sciences” department as partner, together with Bastien PAVEC as associate.

Gaëlle assists firms in the healthcare and medical technologies sector, as well



Jean-François DEFUDES assists both French and international groups with their fiscal issues, be it planning or monitoring their tax obligations, implementing strategies, providing support with tax audits or with their digital projects. He has extensive expertise in the field of

DELSOL Avocats announces the co-opting of Jean-Baptiste AUTRIC as partner in the “Non-Profit Organisations - Social Entrepreneurship” department



A cross-cutting approach for distressed non-profit organisations

Due to the scope and diversity of the cases it handles, the “Non-profit Organisations - Social Entrepreneurship” department naturally draws on the cross-disciplinary nature of DELSOL Avocats’ specialities by creating synergies between sectors.

The integration in Lyon of the “Distressed Companies - Restructuring” department gives non-profit organisations the benefit of dedicated expertise, both for preventing and dealing with crisis situations.

Any organisation, whether or not for profit, is liable to face financial difficulties that can jeopardise the activity, whether economic or otherwise. By providing legal support for our clients in the social economy sector, we can **detect potentially risky situations**, which require preventive measures as soon as possible. With the aim of avoiding insolvency proceedings we analyse the root cause of the difficulties encountered, follow them up with the various creditors, and **roll out appropriate measures**,

in an amicable and confidential context.

Law of distressed non-profit organisations provides for various procedures that are applicable, classified and used depending on how serious the financial difficulties actually are. With regard to procedures for non-profits facing difficulties, a distinction must be drawn between preventive procedures (the ad hoc mandate and conciliation), which are **amicable and confidential procedures**, and judicial procedures in the event of financial default (safeguard, receivership and judicial liquidation), which come under the jurisdiction of the judicial courts (unlike companies which come under the jurisdiction of the commercial courts).

One of our non-profit clients, after taking out a bank loan on less than favourable terms, found itself facing major financial difficulties and the medium-term prospect of having to suspend payments. As negotiating the financial terms of the loan failed to secure the activity, the organisation, with the support of DELSOL Avocats, decided to initiate a preliminary procedure for addressing difficulties, by means of an ad hoc mandate. In this case, the president of the judicial court appointed a professional (often a judicial administrator), who acts as an ad hoc representative in order to help the various parties reach an agreement to secure the organisation’s activity.

The distressed organisation proposes

the professional person they would like to see appointed.

These procedures aim to reach a balanced agreement with regard to the constraints of the situation, by designating a credible and independent third party to handle the information transmitted while respecting the parties involved.

The appointment of an ad hoc representative allows for “bespoke” and completely confidential action, while the managers remain free to run their organisation.

Therefore, the “Non-profit Organisations” department, drawing on the expertise of the Restructuring teams and their acute knowledge of the sector, obtained the appointment of an ad hoc representative by

Jean-Baptiste AUTRIC has developed special expertise in structuring corporate or family patronage (he co-authored the Guide Pratique du mécénat d’entreprise, Editions Larcier-Dalloz, 09/2015), and more broadly in tax assistance, providing both advisory and litigation services for all non-profit organisations.

Admitted to the Bar in Lyon in 2008, Jean-Baptiste AUTRIC holds a Master II

in Business Law and has held the Certificate of Specialisation in the Law of Associations and Foundations issued by the French National Bar Council for nearly 10 years.

The “Non-Profit Organisations - Social Entrepreneurship” department, led by Alexis BECQUART, Laurent BUTSTRAËN, Xavier DELSOL and Lionel DEVIC, now has five partners, four counsels and twelve associates.

It is the largest and most structured team in the French market.



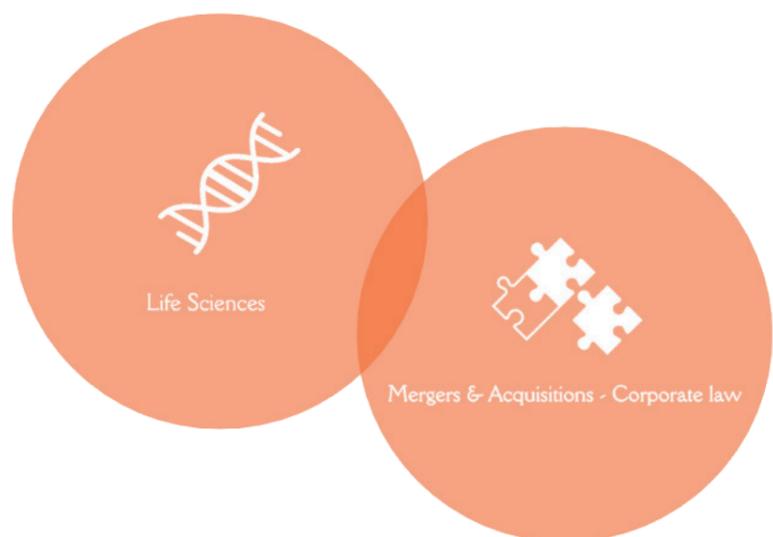
Jean-Baptiste AUTRIC,
“Non-Profit Organisations - Social Entrepreneurship”



Amaury DUMAS-MARZE,
“Distressed Companies - Restructuring”

DELSOL Avocats strengthens the “Life Sciences” practice with the arrival of Gaëlle MERLIER as partner

The “Life Sciences” department thus continues its growth and supplements its offering. The team, led by another specialist in the sector, Jeanne BOSSI MALAFOSSE, now has two partners and five associates.



Gaëlle MERLIER is a lawyer registered with the Paris bar. After being sworn in in 2009, she joined Hogan Lovells before moving to the Paris office of Clifford Chance in 2011 as counsel in charge of the “Healthcare & Life Sciences” practice.

Gaëlle advises on regulatory and contractual matters and acts for clients in the context of complex and serial lawsuits in commercial matters and healthcare product liability.

She also assists her clients in the context of criminal enquiries and in their dealings with the various health authorities.

In addition, Gaëlle advises clients on their mergers and acquisitions and investments in firms in the healthcare sector (pharmaceutical companies, manufacturers of medical devices, medical biology laboratories and other regulated healthcare professions).

Lastly, she works on the development of compliance programmes (governance of benefits, anti-corruption, lobbying, etc.).



Multi-practice support for healthcare groups

Our team works on a number of cross-cutting issues, particularly those affecting regulated healthcare professions. In this context, it works closely with the “Mergers & Acquisitions - Corporate Law”, “Non-Profit Organisations - Social Entrepreneurship”, “Corporate Taxation” and “Employment Law” departments.

The medical biology, medical (ophthalmologists, dentists, etc.) and veterinary sectors in particular, have seen **considerable consolidation** in recent years.

This consolidation has particularly enabled these professions to **pool certain costs** (administrative burden, recurring procurements, continuing education, investments in new technologies that a practice cannot afford alone) and today meets these healthcare professionals’ expectations as regards their work-life balance (helping them to meet their obligation to provide ongoing care by facilitating replacements and offering access to several specialities within a same group).

The creation of groups also improves the quality of care (thanks to the investments made, especially in terms

of equipment) and helps prevent medical deserts (by facilitating establishment in rural areas or the use of telemedicine for example).

The **emergence of these healthcare networks** has sometimes sparked intense discussions with the professional associations concerned.

At DELSOL Avocats, we assist several healthcare groups, either with their creation, or with their structuring in accordance with national regulations, especially equity-related requirements specific to each profession (e.g. rules on prohibited investors) and the key principle of professional independence, which is central to their ethical obligations. Our objective is thus to facilitate their talks with the professional associations and to ensure, in general, that they comply with all regulations applicable to their sector.

We also assist clients with raising capital, securing financing, external growth and the ensuing restructuring operations.

Lastly, we advise and act for our clients in all litigation, particularly lawsuits likely to have a structural impact (disciplinary litigation, administrative deregistration procedures, etc.). This year, we have also worked in the context of several lobbying actions.

As an example, we are currently assisting a start-up seeking to set up a healthcare group in a sector not yet affected by this consolidation. The objective of practicing as a group is to allow the healthcare professionals concerned to spend more time with their patients by delegating some of their administrative workload, which can account for around 30% of their activity, while guaranteeing continuity of care.

In addition to a thorough understanding of the regulatory requirements applicable to the creation and development of such healthcare networks, our firm provides clients with a proven practice in corporate and business law.

In this respect, we are involved in the various stages of the life of groups, be it the incorporation of companies and the implementation of governance and shareholder incentive schemes adapted to regulatory requirements, or in the context of raising seed capital or equity to support growth. Our expertise also extends to external growth transactions, including acquisitions and mergers, as well as disposals.

Assistance in the field of employment law is also needed when these healthcare groups plan to have salaried employees.

Finally, the fiscal aspects can also be of particular importance.

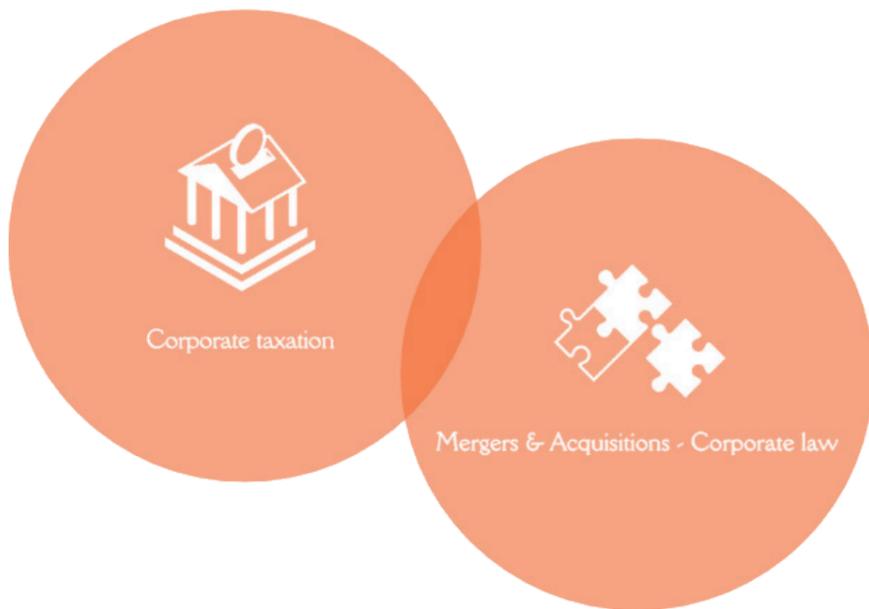


Gaëlle MERLIER,
“Life Sciences”



Pierre GOUGÉ,
“Mergers & Acquisitions - Corporate Law”

Jean-François DEFUDES joins the DELSOL Avocats "Corporate Taxation" department as partner



Due Diligence: integrating tax dematerialisation to assess risks

In any external growth deal, the buyer must ensure that the target company presents little or no risk, particularly legal, and that the estimation of the price it is prepared to pay is well founded. Through a first-level diagnosis, **due diligence** identifies potential risks and checks compliance with a number of rules.

Among the key points to be audited, the fiscal dimension obviously needs to be considered right from the start. A simplified audit of VAT, direct taxes or compliance with reporting obligations provides the potential buyer with an overview of the target company's tax situation. However, in view of the constant regulatory changes, new practices adopted by the tax authorities both in terms of selecting files to be audited and the resources available to them, and future developments strongly impacting the organisation of firms, a more thorough audit is now proving necessary.

Developments in tax dematerialisation is one of the subjects to be analysed in greater depth.

First, it is essential to **validate the accounting entries** file. As a reminder, this file containing all of the company's accounting entries must be sent to the tax authorities on request and according to a precise standard. Failure to comply with the standard may lead to a fine amounting to €5,000 or, in the event of rectification and if the amount is higher, a 10% increase of the duties payable by the taxpayer (Art. 1729D of the French Tax Code), not to mention the risk of the accounts being rejected. In addition, the analysis that the tax authorities can make will facilitate and guide their audits. Consequently, in the context of due diligence, a validation of the form and a "fiscal" analysis of the file in question are vital.

Regarding VAT, one obligation that is often underestimated is the **reliable audit trail**, which should be given special attention. Note that in order to guarantee

the probative nature of an invoice, all VAT payers must have a reliable, documented and permanent audit trail (excluding electronically signed invoices and invoices sent by Electronic Data Interchange (EDI), as long as these two processes meet the Administration's requirements). For the company, this means introducing procedures adapted to its organisation and to the complexity and volume of its flows, in order to demonstrate the economic reality of a transaction underlying an invoice (any invoice issued or received must effectively correspond to a real economic transaction). These checks must make it possible to trace the entire invoicing process and they must be effectively carried out and documented. Also, the audit trail documentation must be sent to the Tax Administration if requested. The absence of documentation, or worse, of control, gives the Administration a legal basis to challenge the company's right to deduct VAT and/or, as regards output VAT, to apply

penalties (for a missing invoice or incorrect information).

In connection with tax issues related to invoicing and VAT, **anticipating the electronic invoicing reform** is also essential. From 1st July 2024, all businesses must accept and be able to process invoices in electronic format. The obligation to issue invoices in this same format will come into force between 1st July 2024 and 1st January 2026 (depending on the size of the company). This reform will have a major impact on the organisation and ability of companies to manage their invoicing and will require considerable investments in their organisation, tools and control of tax data. Even if this change will take place at the earliest in two years' time, anticipation is essential, by reviewing invoicing procedures and identifying the consequences of this regulatory development. Due diligence will be the right time to identify and have a full understanding of the necessary changes in order to be in compliance in 2024.



The "Corporate Taxation" department, led by Julien MONSENEGO and Frédéric SUBRA, now has three partners, one counsel and six associates. It advises corporate groups on all their tax issues.

With fifteen years' experience in the Tax Administration, Jean-François has developed extensive expertise in tax dematerialisation, an area that is impacting businesses more and more. He works on digital

accounting audits, accounting file generation and validation, information system tax configuration, and implementing electronic invoicing.

His expertise also extends to managing and implementing projects involving both legal and IT issues.



Jean-François DEFUDES,
"Corporate Taxation"



Emmanuel KAEPPÉLIN,
"Mergers-Acquisitions - Corporate Law"

In the press...

Pierre GOUGÉ and Edouard PIQUE provided their insights on foreign direct investment (FDI) screening in France, often regarded as obscure in M&A deals. The Option Droit & Affaires newsletter ran as a headline their article titled "Contrôle des investissements étrangers en France : anticiper les mesures à prendre dans les opérations de M&A".

Amaury DUMAS-MARZE and Manuel WINGERT wrote an article titled "Les entreprises n'ont pas vécu la crise de la même manière" published in the April/May 2022 issue of MEDEF Paris magazine.

Alexis CHABERT and Anne-Flore CASSASSOLLES turned their attentions to contract revisions for unforeseeable circumstances in their article published in the Option Droit & Affaires newsletter on 30 March 2022.



Alexis BECQUART, Laurent BUTSTRAËN, Xavier DELSOL and Lionel DEVIC answered questions put to them by Le Figaro on legal and tax advice for the social and solidarity economy, for the "Partner" section dedicated to business law of 22 March 2022.

Julien MONSENEGO and Céline VIAULT signed an article titled "Transfer Pricing for the International Practitioner" published in the "Tax Transfer Pricing Forum Fall 2021" issue of Bloomberg Tax.

Les Echos

In an interview published on Les Echos.fr, on 27 April 2022, Xavier DELSOL analysed the development of patronage over the decade, following a survey of the "Recherches & Solidarites" network revealed by Les Echos.



Edouard de MELLON penned an article titled "La fin de l'effet suspensif des jugements de première instance : une fausse bonne idée ?" published in the "Point de vue" column of the Lettre des Juristes d'Affaires on 28 March 2022.

Mayeul FOURNIER de SAINT JEAN co-led a report titled "Quels enjeux réglementaires, juridiques et de mise en œuvre pour le développement d'une finance durable ?" published in the January/February 2022 issue of the Cahiers de Droit de l'Entreprise.

Renaud-Jean CHAUSSADE and Alexis ROBBE co-wrote an article in the June 2022 issue of Courrier des Maires et des Elus Locaux titled "Offices de tourisme : comment choisir le statut juridique le plus adapté ?", analysing the readjustment of authority for "promoting tourism, including the creation of tourist offices" for certain tourist centres and resorts.

LE MONDE DU CHIFFRE

Jean-François DEFUDES co-penned the article "Facturation électronique : anticipez pour l'adopter en douceur" published in Le Monde du Chiffre on 30 May 2022.

Work highlights

<p>Establishment and development of a new datacenter</p>	<p>TELAQUA fundraiser</p>	<p>Fast-track safeguard procedure</p>	<p>Fundraise</p>	<p>External growth deal</p>	<p>Exclusive negotiations with Eagle Football Holdings</p>
<p>Fundraise</p>	<p>Legal structuring of the "2050" investment fund</p>	<p>Sale of the Paris, Bordeaux and Lyon dealerships</p>	<p>Lease of premises</p>	<p>Merger</p>	<p>Capital Increase</p>

Spotlight on...



... new relationships with the Tax Administration, restructuring of state-guaranteed loans, the development of groups of healthcare professionals and the latest developments in the real-estate market.

Jean-François DEFUDES, Amaury DUMAS-MARZE, Gaëlle MERLIER and Adrien WILLIOT were interviewed and respectively turned their attentions to these topics.

Discover our video podcasts published on LinkedIn and on the firm's website for a crisp and clear analysis of current legal issues by our partners. New interviews will soon be added to this video library.

The latest developments in the real-estate market
COLIVING, COWORKING



Restructuring of STATE-GUARANTEED LOANS



New relationships with the TAX ADMINISTRATION



Development of groups of HEALTHCARE professionals



Events



28 June 2022

Philippe PACOTTE and Arthur LAMPERT contributed to the training course “2022 Employment news overview” organised by ELEGIA Formation (Dalloz Lefebvre).

28 June 2022

Camille ROUSSET, Alexis CHABERT, Joanna AMSALLEM and Anaïs CONTAT ran a webinar titled “Focus on arbitration in business and employment law” on 28 June 2022 in partnership with Thierry HOSCHEIT, Judge at the Luxembourg Court of Appeal and arbitrator, and Nicolina BORDIAN, Legal advisor at the Luxembourg Arbitration

Center. They addressed the advantages and challenges of this legal alternative, which allows the parties to appoint their own judge to settle a dispute in law and equity, within controlled timeframes.



11 May 2022

In collaboration with YOOZ, the French leader in automated purchasing and invoicing, Jean-François DEFUDES chaired a webinar on “Mandatory electronic invoicing for all 2024-2026: the tax impacts”.



7 April 2022

Jeanne BOSSI MALAFOSSE participated in the Ethics & Compliance seminar organised by the SNITEM, in a round table on: “The challenges of data privacy in medical devices”; she also spoke at the conference: “The new challenges of personal data protection in medical devices”.



January 2022

January is traditionally the month when the Finance Act and the resulting new tax measures for companies and individuals are presented. We organised several webinars to review the main provisions for 2022 applicable not only to companies (specific webinars on 13 and 20 January 2022) but also for individuals (webinars on 13 and 25 January 2022).

20 January 2022

Jeanne BOSSI MALAFOSSE chaired a webinar on “Websites, Cookies and Canvassing: what rules apply today and tomorrow?”, with a view to guiding website publishers towards compliance with the legislation applicable to personal data and business canvassing.

20 January 2022

Camille ROUSSET and her “Employment law - Social protection” team ran a webinar to present the different legal, jurisprudential, health and employment news.

Distinctions

DELSOL Avocats is regularly ranked among the top business law firms by the French and international press and has been rewarded on many occasions by various honours lists.

The firm recently joined the “Corporate/M&A: Mid-Market” ranking published by Chambers and Partners and was recognised in nine categories of the Legal 500 EMEA:

- Construction,
- Data privacy and data protection,
- Dispute resolution: White-collar crime,
- Employment,
- Healthcare and life sciences,
- M&A,
- Private equity : venture/ growth capital,
- Tax and
- The regions.

Our teams’ expertise in Tax Law, Mergers & Acquisitions and Real-Estate Law was also recommended in the French law firm ranking published by Le Point magazine.

DELSOL Avocats was also honoured at the Paris edition of the **Palmares du Droit** and won six awards in the following categories:

- Non-Profit Organisations,
- CSR,
- Tax litigation,
- Wealth law,
- Distressed companies and
- Life Sciences - Healthcare.

These awards bear witness to the satisfaction of our clients and the recognition of our peers and are an incentive to continue working to the same high standards.

