



« Fluctuat nec mergitur »

France lived through some very dark hours in November 2015. At our firm's offices in Lyon and Paris, the entire staff assembled at midday on Monday 16 November to observe a solemn minute's silence.

The mood was one of feeling for the pain and grief of the families, gratitude for having escaped harm from Islamic terrorism, coupled with an awareness that more difficult times undoubtedly lie ahead.

In January of this year, France had come under a similar but deliberately targeted attack. Another level of horror was reached on 13 November, when the aim was clearly no longer to kill "just" a few selected victims, but to kill as many as possible, indiscriminately.

Together with our clients and partners, we have naturally resumed the normal course of our activities, as the simplest way of demonstrating the spirit of resistance to terrorism.

Before these events took place, we had already decided on the theme of "patrimony" for this newsletter, to once again give you the best possible insight into the activities of a firm that now numbers over 90 attorneys.

Ultimately, such a choice strikes a chord with the tragic events that took place here in France.

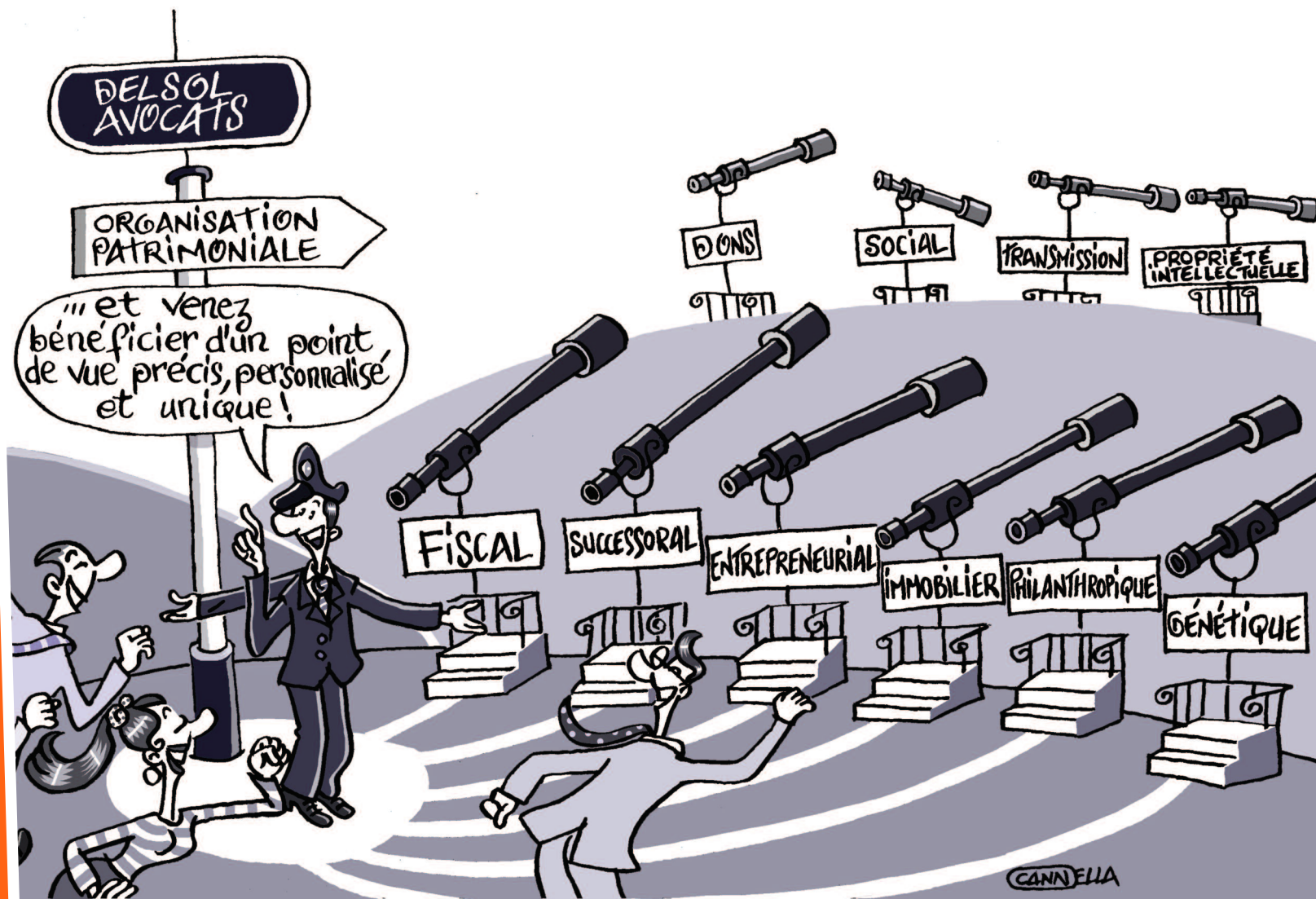
The word patrimony comes from the Latin, *patrimonium*. This linguistic origin alone takes us back to a period of centuries that contributed much to the founding of our country: the Gallo-Roman period. As lawyers, for example, we are reminded every day of the Roman law that is part of our legal system.

But while the word has one meaning familiar to all, that of "a father's estate" in the historic sense, it also has another meaning that is perhaps still more widely understood, as that which forms the basis for the founding of a country, a nation, a civilisation. That meaning is heritage in the broadest sense: historical, cultural, intellectual, philosophical, scientific, spiritual, architectural, economic, etc.

The concept of patrimony relates directly to the concept of heritage, which in turn relates to the concept of handing something down to future generations. In the pages that follow, you will see just how important this is, in both material and immaterial terms.

While the transmission of an inheritance from parents to children is widely accepted, the same is not always true of the inheritance of civilisation. And yet human beings are rooted in and develop from a nation's heritage. Let us not forget how fortunate we are in having France as our heritage, a heritage to be preserved and handed down.

Amaury NARDONE
Chairman of the Board of Directors



DE LA RELATION

The Delsol Avocats Newsletter - N°13 - December 2015

Inheritance planning: protection and transmission

An estate cannot be analysed in a snapshot.

It persists over time and carries a history both for its current holder and for the generations to whom it will pass.

For Delsol Avocats, estate planning is a cross-disciplinary field above all others. Every one of the firm's departments finds itself supporting clients in one way or another in the various inheritance/transmission issues they may face, and helping them cope with constant changes, on both the tax and legal fronts.

Be it a personal or professional inheritance, tangible material assets or intangible intellectual assets, all the teams at Delsol Avocats stand ready to provide the most pertinent advice on how best to achieve your estate management goals, whether protection, enhancement, optimisation or transmission.

Effective estate management is not just a matter of developing and expanding wealth, but also of protecting and organising it in order to hand it down on the best possible terms, whether to family, colleagues or third parties. Whatever the circumstances, it is vital to take decisions with a view to the medium term and, more especially, the long term. Managing and planning your estate also means taking the full measure of the interaction between

personal and professional wealth. It is here that the issue takes on its full human dimension. It is not merely a financial matter. It also has to do with personal integrity. Entrepreneurs dedicate their life to their business. The boundaries between professional and personal vanish.

All the questions business leaders, chief executives or decision-maker ask themselves on the subject of their succession come down to one single concern, as material as it is emotional: how to protect, enhance and hand down a life's work?

While the question may be the same, the solutions vary. The strength of Delsol Avocats lies in our ability to bring to our clients the solutions most appropriate and pertinent to their situation.

Our firm's attorneys are equipped to tackle a wide range of briefs, from business succession or transfer, philanthropic giving, creation of shareholder pacts, tax optimisation, securities and real estate management, organisation of family holding companies and the protection of intangible assets, to matters relating to personal data. One of our greatest advantages is our teams' capacity to work together in the sole interest

of the client. No one attorney can cover matters as diverse as taxation, succession, real estate, intellectual property or business law. Our attorneys are adept at putting together teams chosen to respond effectively to each client's particular situation. Once in place, this support structure is global and yet remains highly personalised, as we all know how important it is for an attorney to be close to a client on matters as sensitive and confidential as those relating to the client's estate.

Delsol Avocats has always been singled out by its entrepreneurial culture, aligned with that of its clients. Our approach makes us a partner of choice to assist economic actors in their day-to-day and strategic decision-making, in particular on matters of inheritance planning.

Organise, enhance, protect and transmit: teams related issues

Life sciences

Genetic inheritance: will we want to know?

Thomas ROCHE
Partner, Life Sciences
Department



Genetic inheritance will undoubtedly be at the heart of ethical and commercial concerns in the years ahead, given the growing availability of genetic susceptibility tests.

No one can have failed to notice that the latest scientific advances have made it possible to sequence an individual's entire genetic code in a matter of hours, at a cost of just a few hundred euros.

This high-speed DNA sequencing, coupled with the vast quantity of digital data available throughout the world (the famous "big data"), is enabling researchers to discover new interactions between genetic characteristics and certain diseases, on an almost daily basis.

These scientific discoveries may lead to commercial applications, such as offering susceptibility tests to assess the likelihood of developing this or that diseases, depending on the individual's genetic profile.

In other words, it is becoming easier to identify the origins and the risks of evolution of certain diseases once we know individual's



genetic characteristics, i.e. once we have access to his or her genetic inheritance.

Knowledge of this inheritance grants access to the most intimate aspects of an individual's personality, and may pave the way for very real discrimination, the kind of discrimination of which eugenics is the extreme form.

The ability to acquire detailed information on genetic heritage, a process already well under way, demands the greatest prudence and much careful thought; above all, it raises important ethical questions that our society must not seek evade.

Real estate law

Benoît BOUSSIER
Partner, Real Estate Law
Department



Enhancing your real estate assets: a strategy fraught with pitfalls

Every inheritance includes a real estate asset, either "commercial" (offices, shops, business premises, etc.), the lease of which is governed by the public policy status of "commercial lease", or "residential", often governed by the law of 6 July 1989, also of public policy, relating on residential leases.

The rental yield on these assets may change in such a way as to improve the return on the assets and hence increase their valuation. Two recent reforms have limited the possibilities for rent increases, however: the ALUR Law of 24 March 2014 on residential properties in certain zones where rental demand is high (Paris and other major cities as defined by the decree of 10 May 2013), particularly on renewal of leases or reletting, and the PINEL Law of 18 June 2014 for commercial leases. In fact, there is even a risk of rents falling as a result of these laws, particularly on residential properties. In the case of a residential lease, a new tenant or sitting tenant renewing a lease may request a reduction in rent, at the reference price plus set by the Prefect, and potentially including certain additional sums in rent that have yet to be defined in courts: this creates the potential for adjustments and, unfortunately, for disputes.

In the case of commercial leases, the option to remove the ceiling on rents, available in the event of changes to local marketability factors, is now limited to no more than 10% annually over the previous rent (article L145-34 of the French Code of Commerce). Nevertheless, all these limits allow for certain "exceptions", which means it will be more necessary than ever to formulate a virtually procedural strategy to support owners in the process of making the most of their assets.

Social law – Social protection

Retirement: a time for transmission of business assets

Camille ROUSSET
Partner, Social Law–Social
Protection Department



Retirement is something that must be prepared in advance, so that it does not come as a hammer blow: this period of transition can be a good time for re-thinking work-life balance, perhaps cutting down on work and leaving more time for the demands of private life.

The choice of whether or not to continue some form of professional activity is equally important to a business, when it comes time to hand on the torch of executive power.

It is a question that arises again and again in the case of business founders or chief executives, particularly in the case of family businesses where there is a clear imperative to hand over to the next generation. In this respect, combining work and retirement can offer both a safeguard for a successful handover of business assets and a solution for a former chief executive looking to continue working but take more of a back seat.

It is now possible for employees to cash in their pension rights and still continue working (even in the same position) for their previous employer, but perhaps with the possibility of a more flexible organisation of work. In other instances, a founder or CEO of a business may continue to serve on the governing bodies – Chairmanship of the Supervisory Board is often a coveted position – although, from the tax standpoint, this involves liability for tax on investment income.

It is important to note that, with effect from 1 January 2015, combined work and retirement, whether under a service agreement (or freelance) or in continuation of a salaried employment contract, no longer attracts any further basic or supplementary pension fund entitlements. Only the phased retirement scheme now allows the individual concerned to accumulate additional pension entitlements.

Non-profit organisations

Charitable giving: when assets bec

Pierre Deschamps, former CEO of Unilog, Chairman to 2010, is the Chairman and founder of CapitalDon, was set up to support research programmes focusing

Can you tell us a little more about CapitalDon and what led you to launch this fund?

CapitalDon has very different aims from many foundations, which are set up to provide relief from poverty in all its many forms. These institutions, humanitarian or charitable, operate downstream from economic and social channels. CapitalDon aims to operate upstream, making its contribution towards the emergence of a financial and economic context more conducive to social justice.

CapitalDon seeks to play a part in reducing poverty through the creation of jobs and by promoting methods of corporate governance inspired by Christian social thinking. Since it is not in a position to aid companies directly, CapitalDon aims to support academic research programmes exploring these two themes.

The focal point of my initiative has its source in the call issued by Pope Benedict XVI, who invited us to put into practice the principle of gratuity and the logic of gift set out in his "Caritas in Veritate" encyclical of July 2009, and which I had the occasion to study by virtue of my role as Chairman of Entrepreneurs et Dirigeants Chrétiens.

This call from Benedict XVI is what sparked the genesis of CapitalDon, because it enlightened me as to my personal situation and enabled me to answer the question: what should I do with the wealth acquired from the sale of Unilog? I have always been firmly of the belief that, for both economic reasons and in the light of the Church's social doctrine, wealth is not meant to be stored up, but to circulate, to provide employment, to invest, to innovate and also to help. Now I have found a use for the capital I received: in giving part of it to a non-profit structure working in the general interest.

And what part does Delsol Avocats play?

In 2010, when I established the purpose of the philanthropic structure

Company law – M&A

When managers invest part of their assets in LBOs

The "management package" is the term used to describe the incentive scheme for senior managers, either under their standard terms of employment or as part of more unusual operations such as leveraged buy-outs (LBOs). Through this package, managers directly invest some of their assets in the company.

Delsol Avocats advises investment funds, companies and managers on all the issues, both legal and tax, associated with the management package, including:

- the choice of legal tools to use: shares (ordinary or preference), share purchase warrants, convertible bonds, free shares, founder's share purchase warrants, commitments to sell, etc.;
- analysis of market practices in sharing the capital gains between managers depending on the multiple and IRR to be obtained from the buyer – often an investment fund;
- any performance-related conditions of the package (external growth, turnaround of a subsidiary, etc.) and protection for the managers in the event of under-performance;

on hand to address the entire range of estate-

Interview

Pierre DESCHAMPS
Chairman and founder
of the CapitalDon
endowment fund



ome

of Entrepreneurs et Dirigeants Chrétiens from 2006
an endowment fund launched in 2011. The fund
on the corporate world.

I wanted to set up, I had very little knowledge of the differences between non-profit organizations, foundations, sheltered or otherwise, endowment funds, etc. I was put in touch with Maître Lionel Devic, and asked him to produce a comparative study of the possible articles of association, and I examined with him all the characteristics of what was to become CapitalDon.

Our work together led us to opt for an endowment fund, and we then went on to draw up the articles of association, setting out the purpose of the fund, the resources available to it, how endowments would be managed and its governing bodies.

After four years in existence, what are the most significant actions accomplished thanks to CapitalDon?

Once CapitalDon was founded, I was able to meet teams of researchers with whom we entered into sponsorship agreements that are still ongoing today:

- GRACE, *Groupe de Recherche Anthropologie Chrétienne et Entreprise*, which conducted a programme on corporate giving. One product of the group's efforts is a work published in July 2015, entitled "L'entreprise une affaire de don – Ce que révèlent les sciences de gestion" (Business is a matter of giving – what management sciences reveal), published by Nouvelle Cité;
- the Economics-Humanity-Society department of the research unit at the Collège des Bernardins, which produced papers on corporate propriety and forms of governance;
- a research laboratory at Ecole Centrale Paris, which studies the different types of corporate growth.

In addition to these research programmes, we also have an agreement with the Uniapac Fund, which publishes studies on corporate ethics for an international audience.



Henri-Louis DELSOL et Emmanuel KAEPPÉLIN
Partners, Company Law-M&A Department

- negotiation of a shareholder pact, in particular:
 - securing exit conditions (tag-along and drag-along rights, liquidity preference clauses, etc.);
 - commitments to sell in the event of managers leaving (good leaver and bad leaver clauses), setting out the financial terms of the sale;
 - non-compete and exclusivity clauses.
- validation of the tax structure, given the strict interpretation by the tax authorities, which tend to reclassify capital gains as income on the grounds that the managers involved incur no risk, etc.;
- examination of the various ways of optimising the package from a tax standpoint (possibility of advancing intra-family transfers, setting up personal holding companies, etc.)

Litigation

Being an innovator in your field is great, but even better is knowing how to protect and defend your intangible assets.

Intangible assets are coming to represent a growing proportion of corporate asset portfolios. Protecting them is a sensitive issue, so complex is the legislation in this field. While creations of the intellect are protected by intellectual property rights assigned to them (copyright, patents, designs and models; trademarks), other

Stéphane PERRIN
Partner, Litigation Department
Director



Intangible assets: wealth to be protected

intangible assets do not enjoy such specific protection, even though in most cases they represent information of considerable value (messages, advertising signs or slogans whether in prior use or common, methods, algorithms and operating rules, immaterial concepts, knowhow, terms and conditions of sale, terms and conditions of use, industrial and commercial secrets, customers and products files and data, etc.) to either their owner or to their competitors.

The Litigation Department teams at Delsol Avocats bring all their expertise in intellectual property and information technology to offer clients clear solutions, to help them identify and categorise their intangible assets and the associated risks, to gain a clearer view of their intangible asset portfolio and navigate the maze of appropriate solutions for its protection, whether by regulatory means (filing for trademarks, patents, designs and models in France, Europe and around the world, reserving domain names, etc.) or through agreements (secrecy and confidentiality agreement, NDA, non-compete clause, knowhow licence, IP protection clause in commercial contracts, IP rights licensing or transfer agreements).

Recourse to legal measures, whether civil or criminal, by action for infringement or for unfair and parasitic competition, or to extrajudicial measures (Syrelli or

UDRP dispute resolution procedures), is sometimes, in fact often, the only viable response. Here, once again, the path is strewn with pitfalls, particularly as regards categorising and proving the rights to be protected, and choosing from amongst the increasingly complex avenues of legal action or procedural rules.



Tax law

Tax structuring and transmission of an inheritance

DELSOL Avocats routinely advises individuals, managers, entrepreneurs and business angels on organising their estate, whether private or professional, personal or family, in France and abroad. The tax team assists clients with their filing obligations (income tax, wealth tax, gifts of shares, declarations under the Dutreuil Law, etc.) and advises them on the optimal management of their estate, including:

- breaking up a real estate portfolio, temporarily or otherwise;
- setting up a holding company (management, buyout or lead) in France or elsewhere;
- "activating" a company in order to enjoy preferential tax treatment;
- or creating an endowment fund, a field in which our firm specialises.

Even in a complicated tax context, proper structuring of assets and revenue can significantly optimise a taxpayer's liability (especially with regard to the wealth tax), without impacting on standards of living.

In addition to this everyday management, we are also very much involved in organising the handing on of assets, particularly professional assets, for our clients.

This transmission may take place within the family circle: in such instances, French tax law contains certain "nuggets" such as the

Dutreuil scheme that, used wisely and combined with deferred/split payment options, can make it possible to hand on even very large companies at a cost that remains affordable.

In the absence of a family member to inherit, the transmission will take the form of selling the business to a third party. Here, once again, solutions exist to limit the tax cost (reduction for length of ownership, use of deferred taxation via contribution-sale, donation prior to sale, etc.).



Mathieu LE TACON et Frédéric SUBRA
Partners, Tax Law Department

Introducing

A new addition to the Real Estate Law Department team

Alexandra Goumot Neymon joined the firm's Lyon office in October 2015 as Of Counsel in the Real Estate Law Department, which now consists of 10 attorneys.



Alexandra, a specialist in commercial leases and corporate real estate projects, as well as in litigation in construction and co-ownership law, will be joining the existing team in the Lyon office to help DELSOL Avocats achieve its objective of expanding in the real estate market, particularly in its region of origin. Her expertise will also be invaluable to the Public Law Department, also based in Lyon and headed by Renaud-Jean Chaussade, with whom she will find herself working on cross-disciplinary cases involving major real estate programmes and urban development projects.

Alexandra (41) holds a post-graduate degree (DESS) in Urban Development, Public Contracts and Regional Development Law (Sorbonne Paris 1) and a post-graduate degree (DEA) in Public Law (Paris 5), both awarded in the same year, and was called to the Lyon Bar in 2000.

After majoring in Real Estate Law in 2005, Alexandra also became a member of the Real Estate Commission of the Lyon Bar.

Having worked for a number of business law firms in the region, in January 2012 she was made partner in charge of the Real Estate Law Department at Veber Avocats, a firm she joined in 2010. Alexandra also gives training courses for professional training organisation EFE, with special emphasis on commercial leases.

THE PARLEX GROUP

Spring seminar in Lyon, 19 to 22 May 2016

Save the date

The most important annual meeting in the Parlex network calendar will be held in Lyon in 2016, hosted by DELSOL Avocats.

Over 60 overseas lawyers will come together for three days in the heart of Lyon Metropole for an introduction to the economic advantages of France's "most business-friendly" city. The event will also be an opportunity for Delsol Avocats to introduce its partners to the firm's expertise in assisting our French clients abroad, and in the setting up of overseas businesses in France.

Founded in 1971 by three European business law firms keen to share good practices in commercial law, Parlex is now made up of around thirty law firms, most of them European but some based in China, the USA, Israel and Malaysia.

Non-profit organisations *Ambition Cité*, *Geneses* and *Les Habilleuses*, winners of the 2015 annual Delsol Avocats endowment fund prize

Held annually since 2010, in partnership with the Forum National des Associations et des Fondations (FNAF), the annual Delsol Avocats endowment fund prize has just been awarded to three new non-profit organisations.

The first prize of €14,000 was awarded to the Ambition Cité association, which aims to set up an experimental programme to encourage educational success in the northern districts of Marseille.

The second prize of €6,000 was awarded to Geneses, an organisation that provides support

for young jobseekers marginalised from society and employment but anxious to make a fresh start.

The third prize of €3,000 went to Les Habilleuses, an organisation that creates and alters clothing and accessories for disabled people who need specially adapted clothing.

The endowment fund, set up by the firm in February 2009 as a vehicle for its sponsorship and patronage initiatives, issues an annual call for projects from which five are selected. The final selection is made on the strength of a public oral examination held under FNAF auspices, this year on 21 October.



In the press...



Laurent BUTSTRAËN, a partner in the Non-Profit Organizations Department, was interviewed for the "Lyon Eco" programme on Radio RCF Lyon, broadcast on 26 September, on the subject of corporate sponsorship and to talk about a book he recently co-authored with fellow attorney and associate, Jean-Baptiste Autric.

Xavier DELSOL, a partner in the Non-Profit Organizations Department wrote a study for the Q4 edition of *Analyse Financière* magazine on the legal form of the shareholder foundation, which he considers particularly well suited to reconciling the business world and philanthropy, but as yet under-used in France.



Renaud-Jean CHAUSSADE, Of Counsel in the Public Law Department published an article on the VWEKA website on 29 October, on the Macron Law and the liberalisation of inter-city bus transport.



Anne IMBERT and Camille ROUSSET, partners in the Social Law-Social Protection Department, produced an analysis for the November issue of *Le Particulier* magazine on the changes brought about by the recent Rebsamen and Macron Laws on the capacities of employee representatives.

Mathieu LE TACON, a partner in the Tax Law Department, had an article published in the October edition of *Finance & Gestion* magazine on the temporary scheme to encourage investment in business by means of a fiscal amortisation measure, and another in the November-December issue on a landmark decision by the CJEU on the French tax position of corporate groups.



Gilles VERMONT Of Counsel in the Litigation Department wrote an article for *Option Finance* magazine, published on 16 November, analysing the singular nature of the concept of disagreement in the revocation of a director, and the pragmatic approach adopted by the courts in such cases.



Philippe DUMEZ, a partner in the Company Law-M&A Department, and Anne Laure Rivat, associate, wrote an article for the November-December issue of *Actes Pratiques et Ingénierie Sociétaire - Les revues Jurisclasseur - LexisNexis* on the specific characteristics of variable capital investment companies.

Philippe PACOTTE, a partner in the Social Law-Social Protection Department, is a regular contributor to *Jurisprudence Sociale Lamy* magazine on topics ranging from disciplinary measures to the status of employee representative, or the various issues associated with dismissal or mutually agreed termination.

Events

TELFA General Meeting Paris, 19, 20 and 21 November 2015

Why & how invest in France

On 19, 20 and 21 November, Delsol Avocats was due to be host to network member firms as part of the TELFA General Meeting scheduled to take place in Paris this year. In memory of the victims of the terrorist attacks of 13 November that took place in the French capital, however, and in view of the period of



national mourning that followed, it was decided that the seminar should be cancelled.

Frédéric Subra, partner in the Tax Law Department, spoke at a number of conferences in September and November: one on the subject of international taxation at a colloquium organised in Geneva by the association of French international civil servants (AFIF), and two others on estate taxation, in Lyon at the Patrimonia exhibition and at a workshop reserved for chief executives, in conjunction with Philippe Dumez, partner in the Company Law-M&A Department, at the Primorial symposium.

Delsol Avocats supported the 10th "Startup weekend Open Labs" organised by the national institute of applied sciences (INSA) in Lyon on 25-27 September. Emmanuel Kaepelin, partner in the Company Law-M&A Department, and Thomas Roche, partner in the Life Sciences Department, formed part of the teams tasked with coaching the working groups organised around a selected innovation.

Delsol Avocats partnered the 9th Finance & Gestion Trophy organised by the regional federation of CFOs and financial controllers DFCG Rhône-Alpes Auvergne. The trophy was presented at a ceremony held in Lyon on 23 November.

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