



Business lawyers

An unhelpful political climate, especially marked by a public and reprehensible untruth, has led to direct accusations being made against our profession.

The government is obviously having trouble seeing the wood for the trees. Rather than introducing a simple measure, such as life-long ineligibility for those who have misled the public, a general atmosphere of suspicion appears to be taking root.

Even if the publication of ministers' assets is understandable, as they have an executive power which allows them to use the State's assets, should we be thinking that all elected representatives must make their assets public, as if voters were more concerned by what they owned than by what they thought?

If, and I'm smiling as I write, members of the hair transplant profession need to be closely monitored when they become members of parliament or even ministerial advisors, why doesn't the government ban the members of this profession from sitting in parliament?

Quite clearly, from what we read or hear, it seems that "business lawyers" are a source of evil within the State and public authorities, as they have been personally and directly accused.

Being at the head of a firm with 74 business lawyers, I want to clarify a certain number of points:

- We have genuine expertise, both theoretical and practical, in our specialist areas which is greater than that of members of parliament. It is therefore very useful that members of our profession sit in the National Assembly or the Senate, as they enrich debates and allow for real legal progression. History has proved this.
- Our profession is governed by our code of ethics, which is both written and public, one of whose leading rules is a prohibition on conflicts of interest. Compliance with this code is ensured by the Bar Councils, which can, if necessary, disqualify us.
- Each of us takes an oath: "*I swear, as a lawyer, to perform my duties with dignity, conscience, independence, integrity and humanity*". The political class should try to think up an oath as ambitious as ours. It is the foundation of our profession and, for the firm DELSOL Avocats, proof of the quality of our client relationships.

Amaury NARDONE
Chairman of the Board of Directors



DE LA RELATION

DELSOL Avocats Newsletter - N°8 - April 2013

Real estate law: the rules of the game

The real estate sector, as a creator of wealth and an economic driving force, makes a global contribution of over 22% to French GDP, representing over one-quarter of French global assets and employing over two million people.

The legal and regulatory framework for real estate construction and management is particularly dense, with regard to both the construction process (from obtaining the administrative authorisations to following-up the works) and the management of the property once it has been built. It is always difficult for a decision-maker, when considering a real estate project, to identify the applicable legal rules, the good contractual practice to be followed and the other parties to be invited to participate in the project.

The extreme complexity is in particular a result of the range of construction methods, the variety of the equipment and materials used, the number of parties involved in a given project and the variations in end-user requirements. Increasing complexity caused by over-regulation, more often dictated by a precautionary principle, also imposes its own constraints on the building. The multiple risks of disputes and appeals therefore have a significant

impact throughout the construction project, leading to damaging legal uncertainty.

The project manager, whether a novice or a professional, whether building or renovating for sale or for his/her own use, will need legal assistance throughout the project, firstly to identify the risks and thereafter for greater security and peace of mind.

Our Real Estate department is involved in the structuring and follow-up of real estate projects for all types of project managers, whether developers or investors, industrial groups, institutional landlords, religious congregations, associations, federations etc., and contributes its extensive knowledge of the roll-out of each phase of a real estate renovation or construction project. The department also works with hotel groups, when they are involved in renovation or compliance works aimed at satisfying both client requirements and regulations relating to fire and accessibility for persons with reduced mobility.

As the needs and constraints of these professionals vary, we need to understand the objectives of each one of them, to take account of the end purpose of the building in which the works are carried out, to identify the risks for the parties and for neighbours and identify the precautions to be taken in order to create a personalised set of contractual rules, which is adapted to the project and protect our clients' interests whilst remaining balanced, so that the rights and obligations of each party are managed during the project.



Nathalie PEYRON
In charge of the Paris office Real Estate Department

A construction or renovation project is often long-term, and the financial stakes could lead to numerous conflictual situations. Both works contracts and contracts with architects or contractors must therefore give the project manager the means to deal rapidly with any failures.

After this upstream phase, the Real Estate department accompanies the various parties throughout the project to assist them with any problems which may arise and to manage with them any difficulties which could affect the successful roll-out of the project.

It is therefore natural that these same parties consult us afterwards on questions such as the building operating conditions or managing leases, whether they are landlords or tenants.

This long-term assistance leads to an ongoing questioning of our models, in order to include new regulatory, environmental or social constraints concerning a building.

Perspectives on real estate law

Building permit appeals: a right or an abuse?

Even though there is a continuing and significant need for new housing, there has been an explosion in the number of appeals against building permits. Renaud-Jean CHAUSSADE, of counsel in the Public Law department, has looked at this phenomenon for us.

Why does an appeal against a building permit undermine a real estate project?

A real estate project is a sensitive issue in and of itself in that its feasibility supposes that a number of essential conditions – legal, technical, financial and economic – be satisfied. Opponents have understood this. By filing an appeal, they have a simple and inexpensive way of paralysing a project as, in practice, no developer can start work before the court has made its decision. As court proceedings can take between 18 and 24 months, the developer is trapped by the appeal. If the lender or the notary do not give their consent, land cannot be bought, construction cannot start and the programme cannot be sold.

What are the grounds for appeals against a building permit?

Even if the reasons for opposition may be very varied, appeals exclusively in the interest of the law are rare. There are two main trends. Most often the developer is faced with a simple appeal for personal reasons from a neighbour who fears that the enjoyment of his property will be disturbed. There could though be genuine fraud, for example filing an appeal in order to cash in on its withdrawal.

What are the stakes in the fight against abusive appeals?

The number of appeals against building permits has reached alarming proportions. In some major towns, appeals are made against one-third of permits issued. The result is an increase in the cost of the project, a corresponding increase in new build prices and substantial delays in completing the building, which has a knock-on effect on housing output. There is therefore an urgent need to fight

effectively against this scourge which is seriously disrupting construction in France.

Are there no existing mechanisms?

Proceedings before the administrative courts make it possible to filter or sanction abusive appeals or appeals made on apparently malicious grounds, in particular by way of the *ordonnance de tri* (filtering order), which may, if the appeal is clearly inadmissible, be made rapidly by the examining judge after an appeal has been filed. This is for example the case when the appeal is late, when the grounds are unrealistic or of no effect (in particular those concerning disturbance of enjoyment), or when no notice is served on the initiator or beneficiary of the permit within 15 days of registration of the appeal with the court. The court may also order a fine – capped at € 3,000 – if it considers the appeal is abusive.

It is good that these mechanisms exist, but they are not sufficiently effective to block the flood of appeals. It is often too late once the matter gets to court. The developer's only remedy is a claim for damages in the civil courts, on the basis of article 1382 of the Civil Code. The courts are increasingly aware of this phenomenon and have no hesitation in severely condemning an abusive use of the appeal system, in particular since an important decision of the Supreme Court 3rd Chamber on 5 June 2012. But the damage has already been done.



What solutions could be introduced?

The management of appeals against building permits is not a new phenomenon.

There have already been a number of draft laws, intended to impose a time limit on the courts to deal with these appeals, to increase the fines for abusive appeals or to introduce a system of payment into court for the appeal to be admissible. This has now become a priority. The housing investment plan announced by the government on 21 March 2013 is aimed at freeing-up construction projects by speeding up the processing of urban planning disputes, and at considerably increasing the amount of the fine for abusive appeals in order to create a dissuasive effect and to avoid delaying actions. A group of experts, chaired by Mr Daniel LABETOUILLE, former section president of the Council of State, will be making proposals so that the government will be in a position to make orders on the basis of a draft enabling law which should be debated at the end of the month. The real challenge here is to perfect viable legal solutions to deal rapidly with abusive appeals, without substantially interfering with the right to appeal.

In your opinion, what are professionals expecting from the proposed reform?

Firstly, developers need procedures to be speeded up. I think that action mainly needs to be taken on administrative procedural rules, perhaps by strengthening the appeal filtering mechanism under article R. 222-1 of the Code of Administrative Justice and by making abusive appeals a manifestly inadmissible ground. A special procedural timetable could also be introduced, which would require that the case be investigated and judged within a given and mandatory period (for example 6 months).

Subject to the cost impact on public finances, these solutions have the threefold advantage of alleviating the appeal burden on real estate projects, clearing the courts dealing with urban planning matters and maintaining access to the courts.



Working with an international firm specialised in renovation

Laurent SERIVE-MATTEI, you are the Managing Partner of the MACE GROUP, a British consulting firm working with international investors and developers, and you have special responsibility for the French market. In France you are mainly involved in project management assistance and delegated project management for the renovation or redevelopment of existing buildings.

How did you hear about DELSOL and who do you work with?

I met Nathalie PEYRON around 2000, at the time of the renovation of the Marks & Spencer premises in boulevard Haussmann. She had drafted the initial Guaranteed Maximum Price agreements, which were very innovative at the time and unknown in France, which provide greater flexibility and certainty as well as permitting an injection of contractor know-how. With a major project, certain aspects are always easier to organise from the start, for example shell and core and structural works. On the other hand, others are refined as and when the works progress. The GMP agreement allows for the immediate launching of a clearly defined part of the works, whilst obtaining an undertaking from the contractor on provisional budgets for future works. We then worked together on renovation works for the Paris luxury hotel Shangri-La, which should soon be classed as a "palace". The works were carried out in several tranches and are now finished.

An architect's vision of office real estate

Jean-Lou BOISSEAU

Architect and partner with the firm Lobjoy & Bouvier



Jean-Lou BOISSEAU, you are an architect and partner of Lobjoy & Bouvier, a firm specialised in the design of real estate projects with a global vision encompassing urban planning, architecture, landscaping and design. You are mainly involved with office buildings, for either institutional investors or investment funds.

How did you hear about our firm and who do you work with?

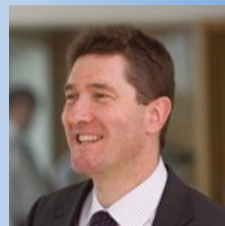
I met Nathalie PEYRON during a major renovation project concerning a building in boulevard Malesherbes, right in the centre of Paris, for CBRE Investors who she was representing. We then worked together for GECINA, concerning a building at avenue Charles de Gaulle in Neuilly; this project was moreover nominated for the 2012 SIMI and had a good deal of media attention.

What aspects of the Real Estate department's services did you find particularly attractive or useful?

What I like about Nathalie PEYRON's approach is that she has a dynamic and entrepreneurial vision of construction. She knows how to get to people's needs so that a project can move ahead as well and as quickly as possible. For example, and this struck me the first time, she contacted the neighbours of the building we were going to work on to inform them, listen to their concerns and their expectations. Major renovation projects in densely populated urban areas always lead to neighbourhood disturbance. By taking neighbours' concerns into account from the start, making them a part of the solution, she makes the project easier in a win-win situation.

You are developing the concept of « bureau therapy » - can you explain what this is?

In Paris at the moment there are 4.5 million square metres of empty office space, 2 million of which have been empty for over two years because they don't meet current business needs: a city office block should allow its occupants to feel good at work, should be adapted to how teams function and fit well in its environment. We have therefore developed an analytical and decision-making tool "Bureau Therapy" which allows the owners of an empty building to give it a future by choosing between 3 options: considered renovation to transform it into an appropriately adapted building, demolition & reconstruction, or transformation for mixed office and housing use.



Laurent **SERIVE-MATTEI**
Managing Partner
of **MACE GROUP**

International developer tion

In addition to my core business, I also work with Camille ROUSSET for the MACE GROUP's employment law needs in France.

Why do you use the Real Estate department's services?

The law is very technical and is constantly evolving. It isn't possible to copy and paste from one project to another, especially with projects as complex as renovation! As a project management assistant, not only do I not have the necessary legal competence, but I am not insured for this type of service and my clients would run major risks. Under French law, the project manager must not interfere in the running of the site, otherwise the contractors' liability would be greatly reduced in the case of problems, as would the possibility to obtain damages. Nathalie and her team are therefore systematically involved in the drafting of works contracts and amendments etc. She also deals with any disputes.

Nathalie also represents the MACE GROUP in preventive summary proceedings. A construction or major renovation project in a densely populated urban area is very likely to cause discomfort in a neighbourhood (noise, dust, access problems, cracks in their property etc.). We therefore ask the court to appoint an independent expert, who will manage and focus on all relationships between the project manager and the local neighbourhood. Before starting the works, the expert will prepare a list of neighbours who may be disturbed, quantify the potential nuisance and prepare technical specifications for neighbouring buildings. This preliminary study will serve as a benchmark in order to determine the actual impact of the project on its environment. It is Nathalie who represents the MACE GROUP with the expert.

What aspects of the firm's services did you find particularly attractive or useful?

The business cultures of the construction industry and the law are very different. Nathalie's strength is her ability to bridge the gap. She has in-depth knowledge of the construction world, its customs and practices, and she knows how to adapt her specialist area in order to find pragmatic solutions which work and are easy to implement. As she regularly appears in court, she also has a clear picture of the case law, the courts' awareness of the industry and trends in court practice. Agreements drafted by her are enforceable, unavoidable and have no adverse impact on the future life of the construction project. This is extremely important for a project manager, who works with major construction firms which have developed an acute in-house know-how in real estate law. Project managers cannot be seen as amateurs if they want to be treated on an equal footing!



Nathalie PEYRON, pillar of the Real Estate department

Nathalie PEYRON is in charge of the Paris office Real Estate department.

At 50 years of age, Nathalie has a *DEA* in

land and real estate law (University of Paris II Assas) and a Masters in international law (The American University – Washington DC - LLM).

She has been a partner of our firm since 2003 and is fluent in English. Before joining DELSOL Avocats, she was a partner with the firms Chazeaux Peyron and Bignon Lebray.

She has a reputed practice accompanying real estate projects, both construction and major renovation projects, from project structuring up to completion. Her work covers both **advice**: risk analysis, drafting and negotiating contracts, preventive dispute management during the project, commercial leases, and **litigation**: preventive summary proceedings, management of problems between project managers, contractors, sub-contractors,

neighbours etc., litigation after completion or delivery and landlord and tenant disputes.

She brings together specific expertise in real estate development law, construction law, property law, commercial leases, environmental law as applied to construction works, and amicable dispute resolution.

Her main clients are private project managers and delegated project managers (developers, investors and investment funds, hotel groups), construction firms, sub-contractors, consulting firms and property managers.

Nathalie is a lecturer in construction law and real estate development law for the Paris II Assas continuing education Master 2 in Real Estate – Construction. She is also responsible for the Paris Bar Council's Works Contracts sub-commission. She works regularly with *EFE*, the *Moniteur* and *Lamy* on various themes connected with her professional practice.



The arrival of Renaud-Jean CHAUSSADE

In order to improve its public law offer, the Lyon office has brought in Renaud-Jean CHAUSSADE in December 2012 as of counsel.

At 33 years of age, Renaud-Jean completed

a *DEA* in public law in 2002 at the University of Auvergne. He also has an LLM in international public law from the University of Québec, Montréal, where he was Professor Katia Boustany's research assistant, a specialist in international nuclear law.

He started his career in 2002 as an external collaborator in the International Labour Organisation's legal department in Geneva. He was then an associate in YGMA's public law department in Paris, before joining our Lyon office for the first time, where he remained for four years. In 2010, he took charge of Bismuth's public law department in Lyon.

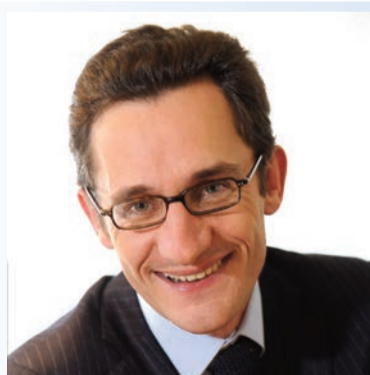
Renaud-Jean is specialised in property law and public procurement, regulatory town planning, environmental law, energy law and the

law relating to local authorities. He has developed a reputed practice in the legal set-up of public, private and joint real estate projects: project implementation, land purchases, choice of constructors, follow-up of works until delivery to the end client; he is also involved in a number of public-private partnerships for the construction and financing of public facilities.

Renaud-Jean works frequently with public entities, in particular the legal departments of large public organisations, to assist them with real estate management as well as the management of employees, institutional relationships, purchasing and organising their business.

He works for both local authorities, their associations and hospitals, as well as for private parties in the real estate sector and for industrial groups in the energy sector.

Renaud-Jean shares his experience through the publication of articles and by teaching on initial training and continuing education courses. He structured the training modules for organisations such as *EFE*, the *Moniteur*, *ENTPE* and the Colas group.



Company law – Mergers & Acquisitions

Promotion of Pierre GOUGÉ

Pierre GOUGÉ joined the firm in March 2012 as of counsel and was promoted

to partner of the Paris office Company law – Mergers & Acquisitions department last January.

At 40 years of age, Pierre is a graduate of the University of Paris II Assas. He has a Masters in Business and Tax law, a *DESS* in Industrial Property and a *DEA* in Philosophy of law. He is also a graduate of the Paris *Institut d'Etudes Politiques*.

He began his legal career in 1999 with the company Air Liquide America Corp. in Houston. He was an associate with the Paris

office of the English law firm Linklaters for six years. He then spent five years with the Paris office of the American law firm Debevoise & Plimpton, before joining us.

Pierre has developed a extensive experience in French and international mergers & acquisitions, joint ventures and in private equity, more particularly capital investment.

His clients include industrial and service companies, as well as French and foreign investment funds. He works in both English and French.

Nathalie PEYRON, Real Estate department partner, was a speaker at the annual *Association Française pour le Droit de la Construction* conference on 30 November 2012 in Paris, which dealt with the payment for works under private procurement contracts. She co-led the round table and debates on payment guarantees and penalties for non-payment.



The firm was a partner in the 16th Oddo Midcap Forum in Lyon on 10 and 11 January 2013. This forum has been organised for the last fifteen years by the Oddo et Cie group, and targets European mid-cap listed companies. 170 companies and 275 investors attended. The firm attended the entire Forum and in particular led a round table whose theme was « *Rigueur fiscale: décryptage et perspectives* » (Fiscal discipline: decoding and opportunities).

Frédéric SUBRA, partner, Mathieu LE TACON, of counsel, Marie CHOSSEGROS-LABILLOY, Jérôme CUBER, Violaine DIEUDONNE-LANGELOT and Laure GAY-BELLILE, Tax department lawyers, presented the personal income and corporation tax aspects of the 2013 Finance Act and the 3rd amending 2012 Finance Act during two breakfast meetings on 15 January 2013 in Lyon and on 17 January in Paris.



Camille ROUSSET, partner, Delphine BRETAGNOLLE, of counsel, and Mickaël PHILIPONA, lawyer in the Labour Law department, organised a breakfast meeting in Lyon on 29 January 2013 on the theme: « *Recours Versement Transport: point d'étape* » (The Transport Tax – Starting point).



Emmanuel KAEPELIN, partner in the Company Law - Mergers & Acquisitions department, and Alexis CHABERT, of counsel in the Business Litigation department, organised and led a breakfast meeting on 20 February 2013 in Lyon on the theme « *Comment faire face aux difficultés financières d'un cocontractant?* » (How to deal with the financial difficulties of a contractual partner).

Camille ROUSSET, partner, Audrey BABORIER and Mickaël PHILIPONA, lawyers in the Labour Law department, led a morning meeting in Lyon on 14 March 2013 on legal and case law news: the 2013 Social Security Financing Act, the amending 2012 Finance Act and the national inter-professional agreement on job security.

Anne IMBERT, partner, Delphine MONNIER, Katia VINAY and Colomban de LA MONNERAYE, lawyers in the Labour Law department, led a morning meeting on social news in Lyon on 19 April 2013, mainly concerning innovations introduced by the national inter-professional agreement, the draft law relating to job security of 6 March 2013, the Social Security Financing Act, the 3rd amending 2012 Finance Act, and recent case law.

Xavier DELSOL, partner in the Charitable Organisations department, participated in the Pasteur Institute's 3rd Philanthropy meeting in Paris on 9 April 2013, whose theme was « *A qui appartient l'intérêt général?* » (Who does the public interest belong to?); as the Pasteur Institute's Think Tank expert on philanthropic trusts, he co-led a workshop entitled « *A quand la fondation européenne?* » (When will we have a European foundation?).



In its mergers & acquisitions guide published at the beginning of March 2013, the group *Décideurs Stratégie Finance Droit* lists the Company Law – Mergers & Acquisitions department in its "Indispensable" category, and at first place in its listing of best business law firms for operations up to € 75 million in 2012.

In the press...

Xavier DELSOL, partner in the Charitable Organisations department, was interviewed for the 15 November 2012 edition of the weekly *La Lettre de l'Economie Sociale* on the threat to corporate patronage posed by the proposal to halve current tax advantages. He has been asked by *Editions Larcier*, one of the oldest Belgian legal publishing houses, to edit its collection « *Droit et économie sociale et solidaire* » as from the beginning of 2013.

In its « *L'ogre fiscal* » article published in the November 2012 edition, the monthly *Politique magazine* questioned Jean-Philippe DELSOL, tax lawyer and partner in the Company Law – Mergers & Acquisitions department, on the reasons why taxation in France is unfair and ineffective. Interviewed in November by the site *toutsurlesimpots.com* concerning tax exile, he stated that the explosion in tax exile is like a new revocation of the edict of Nantes and defended the individual's fundamental freedom to choose in the face of a system which has been held to be confiscatory.

In an article in the *Figaro* on 4 January 2013 entitled « *Conseil constitutionnel, un espoir pour l'Etat de droit* » (The Constitutional Council, a hope for the State of law), Jean-Philippe DELSOL considered the Constitutional Council's questioning at the end of December of several tax measures and analysed both the legal and social aspects. He was interviewed on this same subject by *France Inter* at the beginning of January.

Mathieu LE TACON, of counsel in the Tax department, was interviewed by *Les Echos* on 22 November 2012 on the draft 2013 Finance Act. He wrote an opinion piece for *Les Nouvelles Fiscales* of 1 December, entitled « *ISF: et maintenant... le plafonnement fictif?* » (The Wealth Tax: what now ... the fictitious cap?). Along with Marie CHOSSEGROS-LABILLOY, a lawyer in the department, he analysed the new tax rules relating to trusts for the *Les Petites Affiches* of 21 December. On 2 February in *Le Parisien*, he looked at the tax aspects of the arrival of the legendary English footballer David Beckham at PSG.

In the December 2012 edition, the monthly *Décideurs Stratégie Finance Droit* looked at the development of the firm in a two-page article entitled « *DELSOL Avocats s'impose à Paris* » (DELSOL Avocats – a force to be reckoned with in Paris).

Frédéric SUBRA, partner in the Tax department, was interviewed at the beginning of December 2012 by the weekly *Le Tout Lyon* on the details of the "fiscal shock" expected in 2013.



Alexis CHABERT, of counsel in the Business Litigation department, published a column under the heading « *Paroles d'experts* » in the January 2013 edition of the monthly *Décideurs Stratégie Finance Droit* concerning business litigation entitled: « *La preuve impossible des actes de concurrence déloyale et de leurs conséquences financières* » (The impossible proof of unfair competition and the financial consequences).



Frédérique MILOTIC, partner, and Amandine COGNEVILLE PEROL, lawyer in the Company Law – Mergers & Acquisitions department, published a column under the heading « *Paroles d'experts* » in the March 2013 edition of *Décideurs Stratégie Finance Droit* concerning finance law entitled: « *Le cautionnement réel à l'épreuve des pactes d'associés et du droit de préemption* » (Collateral security as a test for shareholders' agreements and the pre-emption right).

Real Estate department breakfast meetings

In order to exchange and transfer skills, update data and highlight the stakes involved in their specialist area, Nathalie PEYRON and her team regularly lead breakfast meetings on various construction-related themes:

- on 27 November and 13 December 2012 and 6 February 2013 in Paris and 14 December 2012 in Lyon, a breakfast meeting on « *Conformité et vente en l'état futur d'achèvement: un mariage impossible?* » (Compliance and off-plan sales: an impossible marriage?), co-led by Nathalie PEYRON, Alexis CHABERT, of counsel in the Business Litigation department, and Julie CARDOT, lawyer in the Real Estate department
- on 4 April 2013 in Paris, a breakfast meeting on « *Chantier et voisinage: une cohabitation à aménager* » (Construction sites and the local environment: cooperation to be organised), led by Nathalie PEYRON
- in Paris on 17 April and in Lyon on 17 May 2013, two breakfast meetings on « *Les recours contre les permis de construire: droit ou abus? Quelles solutions mettre en place?* » (Building permit appeals: a right or an abuse? What are the solutions?), co-led by Nathalie PEYRON and Renaud-Jean CHAUSSADE, of counsel in the Public Law department.

De La Relation N°8
April 2013
Editor:
Amaury NARDONE

PARIS
4 bis, rue du Colonel Moll
75017 PARIS
Telephone : 33 (0)1 53 70 69 69
Fax : 33 (0)1 53 70 69 60

LYON
12, quai André Lassagne
69001 LYON
Telephone : 33 (0)4 72 10 20 30
Fax : 33 (0)4 72 10 20 31

MARSEILLE
1, place Félix Baret
13006 MARSEILLE
Telephone : 33 (0)4 91 04 03 86
Fax : 33 (0)4 91 54 36 18

For more information:

www.delsolavocats.com