

# De la relation

DEL50 ANS  
AVOCATS

#28 July 2023

The DELSOL Avocats  
Newsletter

ÉNIGME : LEQUEL DE CES AVOCATS TRAVAILLE CHEZ DELSOL AVOCATS ?



Henri-Louis DELSOL & Emmanuel KAEPPÉLIN  
Managing partners

This autumn, the Firm will celebrate its 50th anniversary.

Founded during the Pompidou years, the Firm has seen oil crises and then the more prosperous periods of the 1980s and '90s. After the fall of the USSR, the world looked set to be led by a strong America, possibly assisted by Europe and Japan. But today's world is different to the one we were expecting. The famous BRICs (*Brazil, Russia, India, China*) have not all emerged. New technologies have changed the game. The logic of blocs remains intact and the bipolarity of Western democracies has been reinforced.

Over the past half-century, DELSOL Avocats has grown, with the aim of continuously improving our services in an increasingly complex environment. To do so, we must constantly adapt and strengthen our teams of experts. In the spring, we reinforced our Lyon-based employment law and corporate law / mergers & acquisitions teams. And we will no doubt be announcing further projects this autumn.

This anniversary is also a great illustration of our ambition to strike a balance between tradition and innovation.

Tradition is perhaps our conception of work. Rather like the one described by Charles Peguy, to whom work had to be well done: *"It wasn't that it had to be done well for the salary or on account of the salary. It wasn't that it had to be done well for the boss. It had to be done well itself, in itself, for itself."* (L'Argent, 1913).

But in 2023, this traditional conception of our profession can only be achieved by combining it with innovation. And that is exactly what we are striving to do. On top of digital technology, we must now deal with artificial intelligence. We believe that new technologies, and the improved circulation of information, increase our added value on the cases we handle, and consequently the quality of the services we provide.

This is the spirit with which the teams at DELSOL Avocats will strive to continue assisting you over the next fifty years.

In 2023, DELSOL Avocats celebrates its 50th anniversary

« *Trees with deep roots grow tall* ».

Frédéric MISTRAL



# A look back at 50 years of entrepreneurial adventure

## Retrospective since 1973

In 1973, Jean-Philippe DELSOL founded his legal and tax advice business in Lyon. In 1976, he went into partnership to create SCP DELSOL DUQUAIRE MILLON GARIAZZO (DMG).

In 1982, Xavier DELSOL and his partners in DMG launched Editions JURIS-SERVICE, and six years later created DMG JURIS ASSOCIATIONS CONSEIL, a legal and tax consultancy specialising in non-profit organisations.

The same year, an office opened in Paris. This was when the law of 31 December 1990 created the new profession of lawyer by merging the judicial and legal professions into one. The 1997 merger between SCP DELSOL DUQUAIRE CHAPAS & Associés and DMG JURIS ASSOCIATIONS CONSEIL gave rise to the Law Firm DMG JURIS Association.

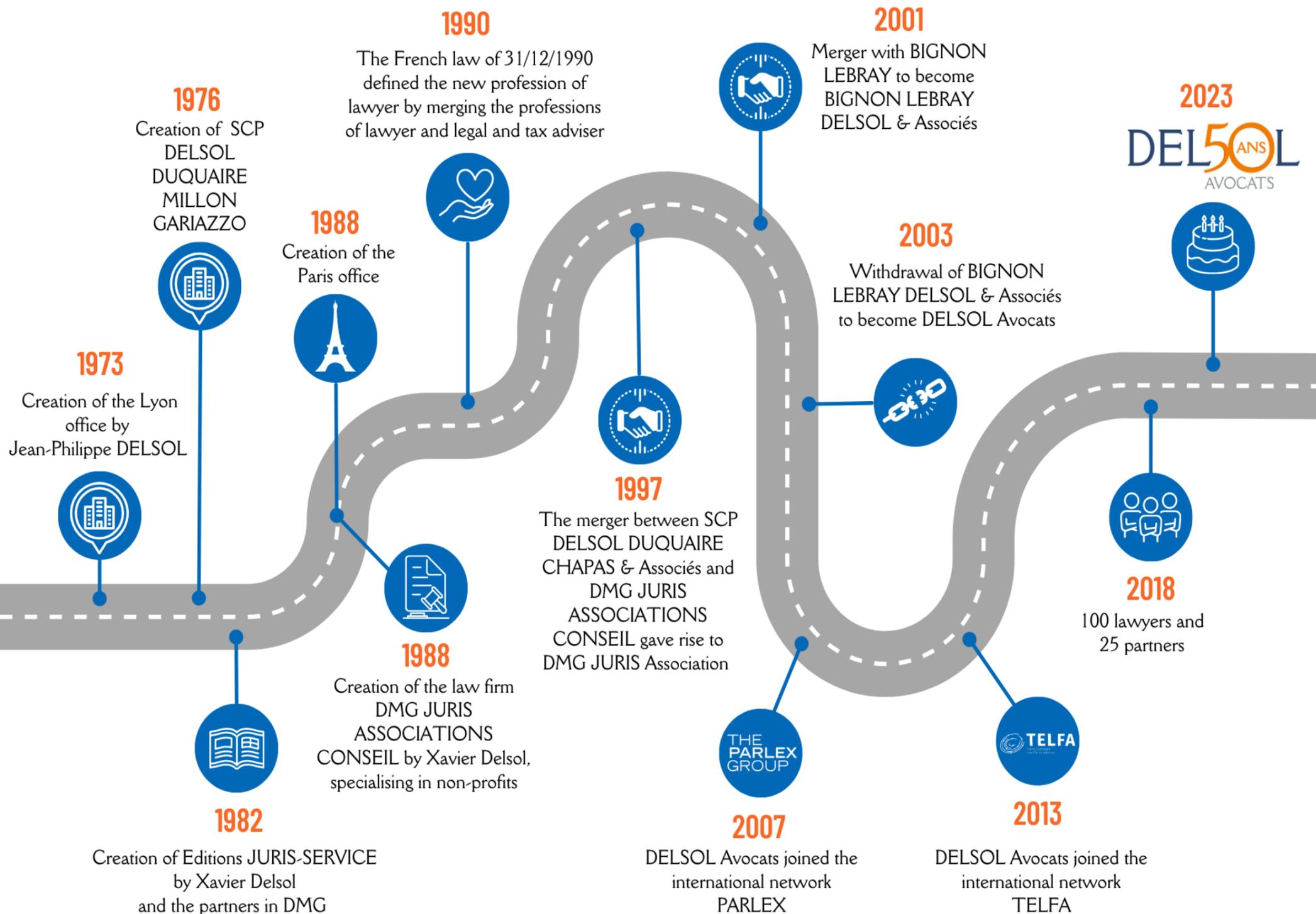
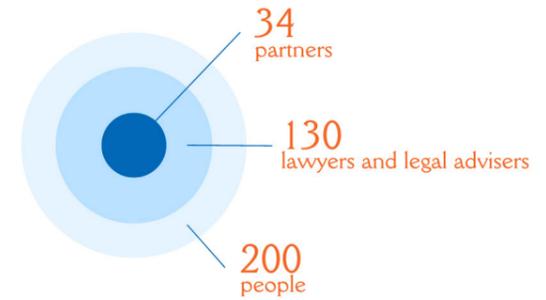
Boasting a client base of SMEs, mid-caps and non-profits, DMG JURIS Association decided to merge with another independent business law firm, BIGNON LEBRAY, to become BIGNON LEBRAY DELSOL & Associés in 2001. However, the merger soon reached its limits, and nine partners continued to develop their business within the firm, which was soon renamed DELSOL Avocats.

The next 20 years saw the firm's expansion, in terms of staff numbers, revenue and office space. This carefully managed growth was guided by the ambition to cover a wide range of areas of business law, in order to offer different types of expertise tailored to clients' needs, and be able to assist, advise and defend them. With this aim, the firm also joined two international networks of lawyers: PARLEX in 2007 and TELFA in 2013.

More than ever, DELSOL Avocats is a firm of entrepreneurs serving entrepreneurs, businesses and investment funds. By remaining attentive to the needs of economic actors, we are able to offer not only legal and judicial advice, but also a genuine business strategy.



2 sites



# Two new partners to continue the Firm's development

With the constant aim of expanding our departments and providing clients with a broad range of skills, DELSOL Avocats has welcomed two new partners since the beginning of the year. Brice Briel has joined the firm's Employment and Social Welfare Law practice and Raphaël Ory has been co-opted into the Mergers & Acquisitions - Corporate Law department.



Social Juriste in early 2019. He joined DELSOL Avocats in March 2023 together with three associates: Marie-France THUDEROZ, Kassia PICHANICK and Mélodie SEROR as well as a legal assistant, Khalida BOUABDELLI.

Brice BRIEL has developed particular expertise in collective bargaining, workforce management, social welfare, individual and collective grievances, challenges to Works Council remits and acquisition audits. He also assists employers with restructuring.

A member of the Lyon Bar since 2007, he began his career within the Aguera law firm before founding his own practice in 2012, which he expanded by acquiring



Raphaël ORY advises companies on strategic acquisitions and disposals, capital transactions and shareholder structuring. He spent five years in Asia working for a leading French law firm where he developed specific knowledge of cross-border deals. He therefore advises both foreign groups operating in France and French groups abroad. He also advises investors and growing companies on capital raising transactions (from seed investments to series A, B) and on exits.

Raphaël ORY was admitted to the Paris bar in 2009. He joined DELSOL Avocats in 2017 and became a partner in April 2023.

and contribute to furthering the outreach of DELSOL Avocats.

DELSOL Avocats now has some 130 lawyers and legal advisers, including 34 partners. This strike force is a real competitive advantage, aligned with the firm's ambition to pursue a policy of regular, well-managed growth in order to preserve an internal culture based on mutual trust and the quality of human resources. Maintaining know-how and training our talent are core focuses for the firm, which has always placed great emphasis on internal advancement. Lateral recruitments bring in complementary expertise



## Our commitment to non-profit organisations

In 2009, at the instigation of the firm's partners and associates who specialise in non-profit organisations and social entrepreneurship, DELSOL Avocats created its own endowment fund, one of the very first to be declared in France.

As well as advising the managers of associations, foundations, trade unions, and mutual benefit societies, etc., DELSOL Avocats was particularly keen to become involved in sponsorship and to demonstrate its esteem for the world of non-profits.

Thus, since its creation, the DELSOL Avocats Endowment Fund's annual competition, which rewards projects championed by public-interest organisations that promote human dignity in particular, has awarded a total of €400,000 to 62 non-profit organisations and/or endowment funds.

The social economy sectors (disability, health, integration, children and families, education, training, rehabilitation, CSR and environmental protection) were extensively represented by all the finalists when they presented their projects to the DELSOL Avocats Endowment Fund's panel of judges and the audience attending the *Forum National des Associations & Fondations*.

In 2022, for the 13th DELSOL Avocats Endowment Fund competition, the FRATRIES endowment fund (whose project involved creating inclusive co-living housing) and the non-profits DOMAINE DE L'AUBE (creation of a community-based centre developing palliative care) and GRÂCE AU JARDIN (a market garden farm promoting integration and agro-ecology) were the winners and received prizes of €20,000, €12,000 and €7,000 respectively.

Come and defend your project this year in our 2023 competition!  
The closing date for submitting your project is midnight on 11 September 2023.

# Family businesses: sell, transfer or protect?

## Should you sell or transfer your family business?

The tax schemes applicable to business transfers aim to strike a balance between taxing the proceeds of the transfer and facilitating the continuity of the business, after the management has changed. Use of legal engineering must therefore integrate tax law aspects to anticipate these transfers.

### *Direct sale vs. contribution and sale*

Natural person taxpayers frequently use holding companies for the sale of businesses as they thus benefit from a tax deferral that cancels out, at least temporarily, the tax effects generated by the contribution and, more generally, those inherent in the sale of the business by the holding company.

An exchange of securities - which is of course the creation of a holding company to which the shares of the business to be sold are contributed - does not, by its very nature, give the taxpayer the necessary liquidity to pay the capital gains tax arising on the transaction, contrary to a sale.

Aware of this difficulty and after a number of attempts, a tax deferral mechanism (Article 150-0 B ter of the French Tax Code) has been introduced, for contributions

made to a company controlled by the contributor.

This deferral of taxation requires the capital gain on the contribution to materialise and be declared in the year following the contribution, and ends if the securities contributed by the company receiving the contribution are sold within three years of the transaction, unless at least 60% of the proceeds of the sale are reinvested within two years of the sale.

### *Gift and sale*

One commonly used strategy consists of making a gift before going ahead with the sale. It involves reversing the sequence of transactions, so that the first step is to transfer the shares before they are sold. Here, the donees sell the gifted securities and receive the proceeds themselves.

In this case, duties will only be payable on the gift.

A gift of shares in a company that is liable for corporate income tax does not give rise to any capital gains tax, since the transfer is free of charge and not for valuable consideration.

From a tax perspective, the gift has the effect, in principle, of clearing the unrealised capital gains on the gifted securities.

### *Dutrel Pact*

When it comes to transferring businesses, the *Dutrel Pact* is a highly effective scheme that, under certain conditions, grants a partial exemption from up to 75% of the conveyance duties.

If the transfer of the business consists of a gift of full ownership by a donor who is under 70 at the time of the gift, the duties calculated on this reduced basis are further reduced by 50%.

However, this is a complex scheme for which a number of conditions must be met, including:

- The company's business activity, which must be industrial, commercial, artisanal, agricultural or professional or be treated as such, such as a managing holding company (asset holding companies are excluded);

- Two consecutive commitments to retain the shares must be given: a collective or unilateral commitment to retain the shares must in principle be signed for a minimum period of two years, and this agreement must relate to at least 17% of the financial rights and 34% of the voting rights attaching to the shares issued for an unlisted company (at least 10% of the financial rights and 20% of the voting rights for a listed company); once the transfer is completed and the collective commitment has expired, an individual commitment to retain the shares for four years must be given by the heirs, legatees or donees at the time of the transfer. However, certain

mechanisms can reduce this overall period from six to four years (commitment deemed acquired).

- One of the signatories of the collective commitment or one of the heirs, donees or legatees who have made the individual commitment must hold a management position for the duration of the collective commitment, but also for three years after the date of transfer (death or gift, etc.).

These tools can be used in combination or separately to provide clients with a personalised and efficient structure that meets all their tax, governance and transfer issues.

Mathieu Le TACON, Partner  
Léa ZERILLI, Counsel



## An alternative: protecting the family business in a “shareholder foundation”

Alongside the traditional schemes for transferring businesses within a family or to third parties by sale, gift or contribution, an alternative is emerging based on the Northern European “shareholder foundation” model, which is widespread in Denmark, Germany, Switzerland and Sweden. A shareholder may wish, for various reasons, to transfer ownership of all or part of a company's capital to a non-capital legal vehicle, so that this structure holds and retains the shares to secure the long term continuation of the business.

Under French law, a “shareholder foundation” does not have a dedicated legal status, but can take one of three forms: a foundation recognised as being in the public interest, an endowment fund or a ‘sustainability fund’ (fonds de pérennité). In practice, founders tend to opt for the endowment fund which meets their needs by offering both considerable organisational freedom and a very advantageous fiscal framework, allowing a completely neutral transfer of assets. In addition to this

shareholder mission, the endowment fund should primarily pursue a general-interest mission, which will then be financed over the long term by dividends from the company and/or a gradual redemption of the shares. The fund will then have a vested interest in preserving the business, thereby creating a virtuous circle for the “*common good*”, with a patient capital approach. This is an irrevocable and therefore binding choice, in the form of a gift or bequest.

### *Why protect all or part of a family business in a “shareholder foundation”?*

There are many reasons for choosing this option and they often relate to the family context or the founder's personal aspirations: no heirs, no prospect of the business being passed on to a family member, or the wish to use part of the value created in serving the general interest by building up philanthropic capital.

Although still rare in practice, this model can meet a wide range of goals: ensuring that the business will continue by solving the problems of a future transfer (the foundation does not belong to anyone); aligning the capital-ownership with the company's values; protecting a particular management model or entrepreneurial commitment such as a mission, or a CSR or R&D policy; or even fostering a progressive transfer to employees through the support of a stable shareholder with a view

to organising the gradual takeover and its funding.



Xavier DELSOL and Lionel DEVIC, Partners  
Arnaud LAROCHE, Associate



# In the press...

## Directions

Jean-Baptiste AUTRIC answered Direction[s]'s questions for the article «Placer sa trésorerie avec discernement», published in the June 2023 issue.

The stand taken by Thomas AMICO on the Ministry of Justice's 2023-2027 orientation and programming bill was echoed in an article on the topic published in Option Droit & Affaires on 31 May 2023.

Jeanne BOSSI MALAFOSSE contributed to the "EU Whistleblower directive jurisdictional overview" report produced by TELFA, which compared the CNIL's position with those adopted in other EU countries, in collaboration with the network's member law firms.



Jean-François DEFUDES contributed to a White Paper on electronic invoicing in collaboration with Yooz (the French leader in electronic purchasing and invoicing) for which he notably penned the "Expert's opinion" section.

Marie d'OZOUVILLE and Nicolas NIEL respectively contributed to the magazine Associations mode d'emploi with two articles published on 13 April 2023 and 20 March 2023.

Philippe PACOTTE and Henri HAGUET penned an article on daily and weekly rest periods in issue no. 561 of Jurisprudence Sociale Lamy published on 7 April 2023.



For the fiftieth anniversary of DELSOL Avocats, Henri-Louis DELSOL and Emmanuel KAEPPÉLIN were interviewed by the editorial team of Décideurs Magazine. The article "The firm's DNA is based on an entrepreneurial approach", published on 31 January 2023, looks at the firm's specific features.

Séverine BRAVARD and Amaury DUMAS-MARZE answered Option Finance's questions for an article on state-guaranteed loans published on 6 February 2023.

DELSOL Avocats is pleased to announce the appointment as Counsel of Vincent GUEVENOUX and Damien REMY.



Vincent joined DELSOL Avocats nine years ago after completing his final internship with the firm, where he mainly works on acquisitions, disposals and restructuring, as well as raising capital. Damien gained over 13 years' experience in intellectual property with leading specialist firms and a major multi-practice firm before joining DELSOL Avocats in May 2023. We are delighted with these appointments.

# Work highlights

**Equity investment by HBR Investment Group**

**Equity investment**

**Acquisition**

**Joint venture**

**Equity investment**

**Off-plan lease agreement negotiation**

**ZEWAY fundraise**

**CHOUETTE fundraise**

**Sale**

**MBO**

# Spotlight on...



... presumed resignation, the security trust, the development of negotiated justice in criminal law, and the taxation of international professional athletes. Brice BRIEL, Séverine BRAVARD, Thomas AMICO and Léa ZERILLI have analysed these current legal topics.

The video podcasts and previous episodes can be found in the video library by scanning the QR Code opposite.

**Development of NEGOTIATED CRIMINAL JUSTICE**

**Taxation of PROFESSIONAL ATHLETES**

**SECURITY TRUST**

**PRESUMED RESIGNATION**

# Events

26,27 et 28/09/2023

On the initiative of Laurent BUTSTRAËN, DELSOL Avocats will be partnering the Congrès des Mutuelles de France at the Palais Pharo in Marseille.

20/06/2023

Mathieu Le TACON, Léa ZERILLI, Xavier DELSOL, Lionel DEVIC and Arnaud LAROCHE jointly ran a seminar on the theme of "Family businesses: sell, transfer or protect?", at which external speakers shared their experience (Patrick Jolly, De Particulier à Particulier, Blandine Pessin-Bazil, For Talents, Yann Rolland, Cetih, and Cyrille Vu, Seabird Impact).

## SciencesPo CHAIRE SANTÉ

06/06/2023

Jeanne BOSSI MALAFOSSE took part in the round-table conference on "The challenges of artificial intelligence in healthcare" organised by the SciencesPo Health Chair.

20/04/2023

Laurent BUTSTRAËN took part in the «Matinées de la philanthropie» organised by ODDO BHF Banque Privée, at a conference on legal and tax news.

04/04/2023

Florence ROUILLON-LECHERE took part in a breakfast conference organised by the Associations - Foundations - SSE Law Committee of the Lyon Bar Association on the topic of fundraising tools and non-profits.

30/03/2023

Nathalie PEYRON and Benoît BOUSSIER hosted a breakfast conference on the theme «Is it still possible to control the price and timeframe of a building project in 2023?»



14/03/2023

DELSOL Avocats took part in the MIPIM trade fair in Cannes. Benoît BOUSSIER and Adrien WILLIOT were present at this key event for the real estate sector.



03/02/2023

Frédéric SUBRA and Léa ZERILLI spoke at the conference on "The tax aspects of business transfers" organised by Jean Moulin University in Lyon. Frédéric SUBRA took part in the round table discussion on the

Dutreil Pact and presented the application of the Dutreil Pact scheme in family buy-out deals.

Léa ZERILLI spoke on sequencing family buy-outs as part of the round-table discussion on contribution and sale transactions.

31/01/2023

Jeanne BOSSI MALAFOSSE and Aura BRAUN ran a webinar on the topic of remote surveillance and the use of data.

## DELSOL Avocats partners charity and sports initiatives

On Arnaud LAROCHE's initiative, the firm has launched a campaign to collect books and CDs in partnership with the social enterprise Ammareal. The aim is to give new life to the items collected by redistributing them 'second hand'. The company also donates 10% of its sales to charity. In the context of this partnership, DELSOL Avocats decided to donate these profits to the Lire et Sourire fund in Lyon. DELSOL Avocats has sponsored the Volleyball and Beach Volley sections of the Paris Bar Sports association for several years. In June 2023, the firm supported the 97 athletes from the Paris Bar delegation, which included two of our lawyers (Eleonora BUFALINI in volleyball and Nicolas NIEL from the swimming and freediving section), at the European corporate sports games in Bordeaux.



We were also delighted to host the launch session of the Bar Pilates Section at our Paris offices in March.

For the second year running, the firm supported the Paris Bar Chess Association by sponsoring the Women's National 2 Final, which was held at the reception hall of the Cercle National des Armées in Paris on Saturday, 8 April.