

De la relation

DELSOL AVOCATS
LA QUALITÉ DE LA RELATION

#24 June 2021

The DELSOL Avocats
newsletter



Henri-Louis DELSOL & Emmanuel KAEPPÉLIN
Managing partners

«Every cloud has a silver lining» was the theme of our 2021 greetings card. At the time of writing, it is still too early to tell if the pandemic is finally behind us, although the signs are encouraging.

In these ultra-cautious times, very little is certain. But there is one thing: the pandemic has forced us to work differently. We strove to bring you secure electronic signatures, quality online meetings, paperless closings, etc.

We now need to ensure that this new way of working does not contribute to dehumanizing professional relations. On the contrary, we at DELSOL Avocats believe that modern working tools, such as artificial intelligence, should help us dispense with everything that is superfluous to our core services and focus our energy on tasks with greater added value. Innovation is still key, which is why we continue to invest in our information systems and plan to offer paperless records shortly to those of you who want them. The firm has also invested in predictive justice software and partnered a whistleblowing platform.

Beyond these important but practical measures, the firm is growing, and we were delighted this spring to promote **Séverine BRAVARD**, specializing in financing, and **Manuel WINGERT**, who works on distressed companies, to partners. The firm also welcomed a new partner, **Adrien WILLIOT**, who is well versed in real estate sales and lease management.

These changes – the recruitment or promotion of teams with proven expertise – aim to help us help you, both day to day and with exceptional operations. Specialist insight ensures the quality of the work provided and our teams' responsiveness. We are careful, however, not to fall into the trap of hyper-specialization as we think it important that your lawyers understand all your challenges with even greater emphasis on «quality relationships.»

DELSOL Avocats structuring its practice areas to adapt to recent events and meet all of its clients' needs

Following years of positive changes and strong results for 2020 despite difficult conditions, DELSOL Avocats is pursuing its development strategy by structuring its practice areas to better address clients' challenges.

Expertise in tax law is now driven by two departments: **Wealth Law & Taxation** and **Corporate Taxation**. The first supports business founders, managers and families on managing their wealth protection, optimization and distribution strategy. The second assists groups, investors and managers on all their fiscal challenges: national and international M&A and restructurings, launch of profit-sharing plans, transfer pricing and R&D taxation.

Recognizing that intangible assets have

growing value for businesses and need to be protected, the firm has created an **Intellectual Property - Information Technologies** department. It helps clients, particularly in the new technologies sector, implement intangible asset protection and distribution strategies in both counsel and litigation.

The Real Estate department has sought to complete its skillset by welcoming a new partner, **Adrien WILLIOT**, who brings his experience in transaction and asset

management to players in the real estate sector (see page 3).

The firm is also pleased to announce that **Séverine BRAVARD** has been made a partner. Amidst growing financing needs, the Financing Department that she leads works with managers or banks to draft and/or negotiate banking or mandatory documentation (see page 2).

Finally, given the need to support business leaders ahead of the post-pandemic era, **Manuel WINGERT** was named

a partner within the Distressed companies - Restructurings department (see page 4). The team is also looking to expand...

Séverine BRAVARD is made a partner responsible for the Financing practice area

PGE, *prêt participatif* and *obligations Relance*: which schemes to support businesses?

The PGE was one of the key measures announced by the French Government in 2020 to help businesses meet their cashflow needs during the COVID crisis.

Its effectiveness can only be judged in the short term, but it has contributed to limiting the number of insolvencies despite challenging economic times. Note also that financial statements for 2020 suggest that some business activity was maintained, or even accelerated for those companies that were able to take advantage of the pandemic to continue their growth.



In addition to businesses' debt levels, however, the PGE could actually penalize their recovery.

In an economic climate that remains disrupted, particularly by rising raw material purchase prices, cutting margins for most businesses as longer supply lead times have a direct impact on their capacity to meet customer demand in the stated timescales and so on their cashflow, the Government announced **new schemes** valid until 30 June 2022 to support businesses over the long term. They include the *prêt participatif Relance* and *obligations Relance*.

What are they? Both schemes aim to support investment by businesses, although affected by the financial crisis, that are still in good financial health and have strong development prospects. As such, they are very

different to the PGE, which was introduced to address the effects of the crisis and is deliberately short term. Their access criteria are less flexible than the PGE. As this is a loan subject to the full repayment of other banking debts, it is a financial instrument targeting recovery, albeit at a higher cost, but with 30% Government backing.

Therefore, the measures are not designed to repay existing PGE-type debts. Let us be clear that the *prêt participatif* and/or *obligations Relance* remain compatible with previously awarded PGE. In that case, the limits are lowered (10% of revenue versus 12.5% for SMEs and 5% of revenue versus 8.4% for midcap companies).

The *prêt participatif* has an eight-year term with a four-year grace period for the principal. *Obligations Relance* have an eight-year repayment period.

Rates vary from 4% to 6% for the *prêt participatif* and 5% to 6% for the *obligations Relance*.

The measures offer businesses the

advantage of not having to change their governance and shareholding structure to access the financing.

An alternative to investment financing and/or external growth can be the use of LBO-type transactions, with equity or quasi-equity provided by investment or even venture funds.



Séverine BRAVARD joined the firm in 2001. She has since developed recognized expertise in financing and banking law, acting on behalf of senior managers or banks to draft and negotiate banking documentation (structured finance - mezzanine debt - asset financing and others).

She also works on mergers & acquisitions and national and international restructurings.

The Real Estate department continues its growth with the addition of Adrien WILLIOT as a partner

The changing property sales and rental market in the aftermath of Covid-19

Although the property sales and rental market experienced something of a slowdown in 2020 due to the Covid crisis, the trend seems to be heading towards a return to the pre-pandemic momentum. The main changes include different asset classes sought by investors and new ways of using office spaces and housing.

The slowdown in the property sales market, which was particularly pronounced in the second and third quarters of 2020, can be best explained by the freezing of investments and disinvestments amidst uncertainty over the changing market and asset

values; acquirers do not want to take rental risks or buy at overly high prices in case of a market downturn and vendors do not want to sell their assets without the option of reusing the sale proceeds.

In the office rental market, most users have also paused their expansion plans due to the forced rise in remote working and uncertainties over their economic activities. Only the logistics rental market has escaped the slowdown, largely due to the sector's growth during the pandemic. Although we are not yet completely out of the crisis, we can now see the property sales market easing, with investors feeling the need to allocate funds that remained frozen throughout the period, but with different asset classes targeted by investors.

Whilst retail was struggling before Covid, matters have not improved for the sector, except for the ever-popular 'prime' retail. Hospitality has also been hit hard and must be reinvented, particularly for its business clientele, who will travel less in future. Commercial real estate has experienced a slowdown in terms of transaction numbers, but the scarcity of offices to buy in the CBD is maintaining values at pre-crisis levels, which is less true for suburban offerings.

The major winner of this new order remains warehousing due to the acceleration of the sector's needs following the change in French shopping habits during the lockdowns. The Amazon effect has increased investors' appetite for that asset class.

Another notable effect of the crisis is investors' interest in residential property, previously neglected due to the challenges of users being

overprotected by tenancy law. However, residential property's appeal seems, thus far, to be limited to 'prime' real estate in uptown Paris.

The other prominent result of the crisis is the acceleration in changing ways of using workplaces. Open offices will increasingly be replaced by social and convivial workspace with more services available to employees, a bit like American campuses. There is real demand from employees, especially amongst the young, that businesses must meet if they want to attract and retain top talent.

Office users are increasingly turning to flex office operators' full-service offerings. A client even told us that one of its users had requested a redesign of its premises with 100% meeting rooms and social spaces, and no individual workstation.

Therefore, we can see that remote working will not drastically reduce demand for offices in terms of sq.m – despite some predicting «the end of the office!» – but will instead lead to new ways of occupying those spaces.

The same phenomenon is also reflected in housing with co-living. There is a real demand for this new living model from both students and graduates, but also from seniors outside the care system.



In short, the real estate market is changing fast and it is our role to support our clients to better protect their interests amidst all the new developments!



Adrien WILLIOT began his career within the Real Estate department of De Pardieu Brocas Maffei, then joined the Paris office of Ashurst as a Counsel.

Adrien has gained solid experience in complex French and cross-border real estate, including transactions, commercial leases, asset management and construction. His French and international clientele largely comprises landowners, family offices, institutions and promoters, as well as users.

Adrien has recently consolidated his expertise in the coworking, flex office and co-living sector by supporting some major players.

Manuel WINGERT, specialist in distressed companies, is made a partner

Post-pandemic recovery and financial difficulties

The pandemic has fundamentally shifted the economics and finances of the vast majority of businesses in both the commercial and nonprofit sector.

Direct or indirect Government interventions have provided financial support for businesses, sometimes at the risk of masking difficulties not caused by COVID-19.



With the expansion of the vaccination campaign, the end of the health crisis now seems near, leading to a progressive withdrawal of the extraordinary Government measures since March 2020. For many players, the support they received during the pandemic has generated or shifted debts (PGE, deferment of tax and social liabilities, etc.) without the possibility to make up or offset the shortfall caused by the downturn, or even the absence of revenue.

This situation should prompt business leaders to anticipate their post-pandemic recovery insofar as possible, particularly to avoid facing insurmountable levels of debts. Such anticipation means renegotiating and restructuring liabilities.

Discussions with creditors are greatly aided by the use of confidential support measures, also called 'preventive procedures', which are: the Ad hoc mandate or Conciliation.

These 'procedures' are wholly suitable for negotiating financial debts, and very often

banks set the use of such measures as a condition for the start of discussions.

It is important to emphasize that although these procedures are largely based on free negotiation between the parties, Conciliation also offers specific leverages (possibility to impose payment timescales or the suspension of proceedings on certain creditors, so-called 'new money' for capital injections, etc.).

With the reduction or progressive withdrawal of the support measures introduced during the pandemic, the Government wanted to support the recovery of viable businesses by launching, for a period of two years, a special insolvency avoidance procedure aimed at SMEs.¹

This streamlined procedure is particularly swift compared to standard insolvency proceedings (voluntary arrangement or receivership) as it can take only three months and make it possible to defer the company's debt for up to ten years.

However, although such proceedings (ad hoc mandate, conciliation and new simplified insolvency) clearly provide effective tools to address the issue of company liabilities, they offer only limited leverage, or even no leverage,

when the company's profitability is at stake. Government measures triggered by the pandemic have temporarily masked underlying difficulties linked to operating deficits. Statistics suggest that the number of business failures over the last twelve months has been far lower than the normal levels usually seen by the courts. This situation shows that businesses that were struggling before the pandemic have benefitted from state support, whereas in 'normal times' they would have been forced to knock at the insolvency court's door to request a voluntary arrangement, receivership or even liquidation. It is therefore essential for business leaders to reach the right conclusion over the difficulties encountered and the best tools to overcome them.

Despite their nonconfidential nature, voluntary arrangements or receiverships will remain effective ways to both restructure the business and address liabilities in a debt settlement plan.



Manuel WINGERT began his career within a large insolvency practice. He then moved to a firm specializing in business restructuring before joining DELSOL Avocats.

He works on both the prevention and management of crisis situations, whether with preventive (ad hoc mandate, conciliation) or insolvency proceedings (voluntary arrangement, receivership or liquidation).

He primarily supports business executives, creditors, buyers, as well as administrators and receivers.

(1) Article 13 of Act 2021-689 of 31 May 2021 on managing the post-pandemic recovery.

In the press...



Xavier DELSOL was interviewed by Lyon Décideurs for the 2021 edition of its *Lyon Solidaire & Philanthropie* guide. The article entitled «Creating a foundation, the ultimate form of philanthropy» was published on 3 June 2021.

Le Monde

Raphaël ORY and Mayeul FOURNIER de SAINT JEAN wrote an opinion piece on the gradual extension of social and environmental responsibility requirements to small businesses. The

article entitled «SMEs must be fully aware of their 'collective interest entity' status» was published in *Le Monde* dated 12 April 2021.



Israel obtained a stock of Pfizer coronavirus vaccines largely in exchange for sharing data on the immunization's effects on its population. Would that be possible in the French legal framework and in view of data protection? Jeanne BOSSI MALAFOSSE answered BFM TV's questions on 6 March 2021.



DELSOL Avocats obtained a discharge in the fake Hermès bags case. Following long proceedings involving nearly thirty defendants, the eleventh chamber of Paris Criminal Court issued heavy sentences and a single discharge for the firm's client. He was charged with receiving counterfeit goods due to the large sums passing through his bank accounts. The court dropped the case against him on the basis of the legal and factual arguments made by Thomas AMICO.

Elsa LEDERLIN and Arthur HITIER wrote an article entitled «Clarifications on litigation and electronic voting procedures in union elections» published in issue 1480 of the journal *La Lettre des Juristes d'Affaires* dated 1st March 2021.

Julien MONSENEGO and Clément GUITET cowrote an article entitled «Structuring the international acquisition of intangible assets: taxation as a means of deciding between asset and share deals» published in the review *JFA - Fiscalité internationale*.



Anne-Sophie FRANC answered ASH's questions for its article entitled «Establishments and services – the legal risk remains underestimated» published in issue 3192 of the review on 19 January 2021.

...Some transactions we assisted our clients with

dentsu

Assignments to managers



Acquisition



TokTokDoc
Acteur de santé en télémedecine

Fundraiser

Jasmin capital

Setting-up of an endowment fund

«From intern to lawyer»

Eight interns-turned-associates, counsel or partner within the firm agreed to be interviewed and filmed by Héloïse MOREL. They discussed their career path and shared a few anecdotes.

The video is accessible on the website in the « [Rejoignez-nous](#) » tab.

A short version «My career in a few words» has been uploaded onto the firm's LinkedIn page.

Thanks to our ambassadors:

Delphine BRETAGNOLLE, partner, Employment – Social Welfare Law,

Jean-Baptiste AUTRIC, counsel, Non-profit Organizations – Social Entrepreneurship,

Vincent GUEVENOUX, associate, Mergers & Acquisitions- Corporate Law,

Joëlle KOBLAN-HUBERSON, associate, Business Litigation,

Arnaud LAROCHE, associate, Non-profit Organizations – Social Entrepreneurship,

Nesrine MRABET, associate, Real Estate Law,

Alexis ROBBE, associate, Public Law, and

Martin SOUYRI, associate, Corporate Law – Mergers & Acquisitions.



Events



10/06/2021

All organizations with over fifty staff must have an internal whistleblowing procedure or risk criminal penalties. DELSOL Avocats, in partnership with EQS, has developed a turnkey solution bringing clients a whistleblowing platform that meets legal and regulatory requirements. **Thomas AMICO** and **Philippe PACOTTE** chaired a webinar to reiterate the main obligations incumbent on all organizations vis-à-vis whistleblowers and to present, using a practical case inspired by actual events, the solution proposed by our firm.

06/05/2021

Jeanne BOSSI MALAFOSSE attended the «AI and medicine: promises and limits» symposium in collaboration with France's National Academy of Medicine, the MIT Computer Science and Artificial

Intelligence Lab (CSAIL), the MIT Institute for Medical Engineering and Science (IMES), and the Health Data Hub.

08/04/2021

Camille ROUSSET and **Manon FAURE** chaired a webinar on social affairs. They presented a focus on jurisprudence from the first quarter of 2021 and provided a legal news update.



12/02/2021

Many directors are questioning the transformation challenges facing their businesses. A transformation plan's effects on staff can be both positive and destructive. In collaboration with **Elisabeth DARTIGUES**, director of the firm Mon Coach Mobilité, **Philippe PACOTTE** chaired a webinar entitled: «Different perspectives on the levers

for a successful social transformation from a lawyer and mobility specialist!».

28/01/2021

The Internet has become essential for promoting products or services, selling or fundraising. Innovative solutions are being developed and making it possible, thanks to analysis of the transactional data, to pinpoint the targets of an advertising or fundraising campaign. These solutions must respect a legal framework comprising data protection and electronic commerce legislation. **Jeanne BOSSI MALAFOSSE** and **Laetitia MATHIOLON** therefore proposed a webinar entitled «GDPR and digital strategy».



19/01/2021

Business email compromise costs French businesses millions of euros every year. As we have seen another upsurge in such scams over the last few months, how can we stop them when remote working is making it harder to maintain the same level of control? How should we respond? **Alexis CHABERT** chaired a webinar entitled: « Business email compromise: Having the right responses!» to answer those questions.



12, 13 & 15/01/2021

To coincide with the annual presentation of the 2021 Finance Act, the Wealth Law & Taxation and Corporate Taxation teams chaired webinars aimed at individuals and businesses to present the essentials of the new tax provisions and jurisprudences.

2021 Le Palmarès du Droit

DELSOL Avocats received four trophies at Le Palmarès du Droit organized by Le Monde du Droit, which was held in duplex mode from Le Grand Rex in Paris on 7 April.

Our teams' expertise was recognized by three gold awards in Mergers & Acquisitions: Operations < €50 M, Life Sciences-Health and Wealth Law; and a silver award in Public Corporate Law.



Partnerships



Recognizing that links with schools, universities and student societies are essential for an effective training and recruitment policy, DELSOL Avocats renewed in February 2021 its partnership with the Association of DJCE de Lyon, from which several of the firm's partners and associates graduated.

In May 2021, the same initiative was run with the Lyon III LL.M Public Corporate Law. Very recently, a partnership was also formed with the Rhône-Alpes (ADEA) region's Association des Elèves-Avocats



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De La relation #24 - June 2021
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