



“Due diligence” audits: it’s second nature to us.

Whatever our legal speciality – whether it’s technical (contract, company, tax, employment and public law etc.) or sector-based (LBO, not-for-profit organisations, real estate, professional occupations), the matters brought to us by our clients or partners always need to be analysed.

At the time of an acquisition, buyers obviously need information on how things are done and organised in their target and on the risks they could encounter; the need for a due diligence audit goes without saying. At times the sellers themselves will ask an outside party to take an independent look at their group before going ahead with a sale – these are the famous “VDD Vendor Due Diligence”.

When restructuring, the legal entities concerned expect us to accomplish a certain objective, which, once we have reviewed the various essential points, we help them refine in terms of both the end aim and the means of attaining this objective.

For tax restructuring, the aspiration of the natural persons or legal entities concerned is tax optimisation. Before attempting to find the best solution or solutions, the existing situation and past choices need to be analysed.

In the case of litigation, both plaintiffs and defendants need to have the best possible arguments available in order, through our intermediary, to convince the courts. Here again, a thorough knowledge of the file is essential – with a history often marked by a culminating point – in order to identify the most appropriate arguments in a dispute.

For a real estate project – whether construction or acquisition – our clients need to understand the rules of the game when carrying out works, as well as the conditions for using the property. We need to be aware of and be able to describe the legal environment of a building.

I could give you any number of other examples of our on-going need to analyse, but the Petit Larousse is right in defining a due diligence audit as “Any systematic analysis of the operating conditions of a business.”

This is a fundamental part of our business; our commitment to specialisation helps us to carry out a reliable and rapid analysis of the files entrusted to us by you, so that we can give you the best that our profession has to offer.

Amaury NARDONE
Chairman of the Board of Directors



DE LA RELATION

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Due diligence audits: analyse, understand, anticipate, estimate, advise, guide...

Originally an Anglo-American concept, due diligence audits combine audits, inspections and analyses carried out within a business or organisation, more particularly when structural changes are under consideration. The purpose is to provide an accurate portrayal of a business’s actual position, its value, its strengths and weaknesses and any potential risks caused by its management or past choices, compliance with established rules, any regularisation costs, and also any untapped performance possibilities.

In legal terms, the scope of a due diligence audit will depend on the sector in which the business or organisation operates, on the future which it is preparing for itself and on what triggers the audit: acquisition, merger, sale, internal reorganisation, tax optimisation, stock market listing, investment, financing needs, certification, etc.

They may therefore demand a fairly broad range of expertise: company law, tax law, employment issues, commercial contracts – including public procurement – real estate, environmental matters, litigation, insurance, financing, intellectual property etc.

A due diligence audit is more or less automatic in the case of a letter of intent concerning a proposed merger. It

will allow the potential purchaser or investor to make an appropriate offer for its acquisition of a stake in the target and determine the extent of guarantees of assets and liabilities. A due diligence audit will also give guidance on the legal structuring of the acquisition between the legal entities concerned.

Audits may also be carried out upstream by business owners “vendor due diligence”, who wish to have an impartial external opinion so that they can uncover any failings or weaknesses and assess their implications. Whether or not an owner decides to correct any shortcomings before the sale, or decides to redefine what will be sold and what will be kept, the seller will have the information necessary to optimise the project and the negotiation conditions.

In the context of the restructuring of a group of companies, a due diligence audit provides a basis for streamlining the organisation, optimising its various sites and harmonising procedures.

Even if no capital movement is involved, a due diligence audit can also be used by businesses which wish to ensure that they comply with the law; burdensome, complex and constantly changing legislation and regulations means that company managers are obliged to self-audit in order to avoid risks of misconduct etc. which could lead to disputes with the parties concerned or the authorities. These preventive compliance due diligence audits, which are in fact inescapable for ISO certification, as well as being strongly

recommended in order to protect company office holders and to prepare delegations of authority, also allow for the introduction or updating of appropriate procedures and to consider the training of internal teams.

Carrying out a due diligence audit is therefore an integral part of a business lawyer’s job. At DELSOL Avocats we think that, given the possible risks where decisions are based on such an audit, a due diligence audit demands the combination of several qualities: experience, technical skills and analytical finesse in order to detect relevant information and warning signs and assess their implications, leading to the organisation of a strong core team to carry out investigations rapidly, accompanied by on-going interaction among the various lawyers involved so that all items can be considered from an overall perspective, the adoption of a rigorous approach with regard to both the management of the collective process and each specialist audit area, and the development of an analytical approach which can be used on all sites, which are increasingly spread over a number of countries. This implies the ability to work in several languages, with the support of reliable foreign correspondents who are familiar with this type of audit.

Due diligence: a few recent examples...

The merger of two associations

Olivier DOUIN, you are the president of APAM (Association pour les Personnes Aveugles ou Malvoyantes – association for the blind and partially sighted), and director of the Association Valentin Haüy. APAM is a recognised public interest association, whose aim is to help visually impaired people lead a more independent life. It decided to merge with the Association Valentin Haüy (AVH), which has a similar objective and obtained public interest status this summer. As a first step, it decided to create and host an APAM foundation within the AVH foundation. You therefore asked DELSOL to assist you with this project and to carry out the legal and social due diligence audits.

What were your objectives and the main stakes of this operation?

APAM had two main activities, which it no longer carried out: the training of specialist trainers and the management of care facilities. It needed to rebuild an activity which complied with its original vocation. The Association Valentin Haüy has the necessary human, financial and logistic resources, a network and acknowledged legitimacy, all of which would save APAM time in its move to its new form. By creating an APAM foundation hosted by the AVH foundation, we made a step towards a highly integrated partnership. Obviously we wanted to make sure that there would be zero risk with the administrative, legal and social aspects of this merger for both parties, considering that APAM would contribute all of its assets to the hosted foundation it had created.

Why did you call on DELSOL and which lawyers did you work with?

The firm has already been working with the Association Valentin Haüy for some time. For example, it was Lionel DEVIC who dealt with the application for public interest status for the new foundation... Even if this hadn't been the case, the firm has a strong reputation in the voluntary world and considerable experience in this sector. In fact, a thorough knowledge of the rules and obligations applicable to associations is essential to carry out relevant due diligence audits. We worked with Lionel DEVIC for the legal audit and with Philippe PACOTTE for the social aspects.

Which of the firm's services were particularly attractive or useful?

The check list of points to consider in a legal audit proved to us that the firm is knowledgeable about its subject, especially the administrative and declaration obligations for structures with public interest status as regards their various supervisory bodies. The social audit was fairly complicated, as the closure of our two previous activities meant dismissals and the transfer of employees to other structures – potentially high risk areas and we wanted to be absolutely "clean"...

Lionel DEVIC, were any aspects of this operation especially sensitive?

It is not easy to foresee the impact of a shutdown of an association's main activities, which could lead to questions about its future. The sustainability of the association, its identity and the investment of those of its members who want to continue means we need to move ahead slowly but surely. The creation of the APAM Foundation hosted by the Valentin Haüy Foundation – a foundation for the visually impaired – is a way of protecting the work initially developed by the association.



The acquisition of FASIA INDUSTRIES group leads to the creation of MARCK

Christophe CUMORA
Administrative and Finance Director,
MARCK group

The French group MARCK is an international industrial group (including MARCK, SOFEXI, SPC LA CALAIS-SENNE, BBA, SILLINGER, MHK) which designs and sells uniforms and equipment to public authorities and companies.

Last July, it merged with the French group FASIA INDUSTRIES (which includes BALSAN, VTN, PROMO COLLECTIVITES, FASITEX, ANDORSTAR), leading to the creation of a French uniform manufacturing leader, generating turnover of some € 120 million, with a headcount of 495 and 7 production sites in France.

MARCK called on DELSOL Avocats for various aspects of the merger, in particular the legal, tax and social due diligence audits.

What were your objectives and main stakes of this operation?

We operate on globalised international markets, where product quality, product differentiation compared with local products and, thus, the level of innovation, are key factors in their sustainability. Both companies were convinced that an alliance would increase their research and development capacity and the range of technical know-how.

Due diligence audits in this context were needed to prepare a detailed overview of the FASIA's group's situation, in particular the tax aspects, so that we could ensure that we were aware of any possible risks which should be taken into account in the liability guarantee. A due diligence audit is also though intended to consider the group's post-acquisition organisation, in order to identify the absorbing and absorbed structures.

Why did you call on DELSOL and which lawyers did you work with?

In a previous professional life, I had worked with some DELSOL Avocats partners on tax and social issues, and had been extremely satisfied with the work done. I therefore suggested to group management, when this acquisition was mooted, that counsel be put in

A minority stake in the agricultural world

Emmanuel BOY
General Manager of the Sud Céréales Group

The Sud Céréales Group, a cooperative with 4 000 members, collects 200 000 tons of cereal in the south of France (PACA and Languedoc Roussillon), with turnover of € 100 million. It acquired a minority stake in a French company distributing phytosanitary products and fertilisers to farmers. DELSOL Avocats helped you with this acquisition and carried out the due diligence audits.

What were your objectives and the main stakes of the operation?

For us, this was development through external growth to a complementary business, which has allowed us to strengthen our presence with farmers.

Why did you call on DELSOL and which lawyers did you work with?

The financial assistance was provided by Unigrains through a capital increase. It was Unigrains which recommended the firm, mainly Franck BUFFAUD and Caroline STEPHANE-WACH. We worked together on all of the legal aspects... in fact mainly the legal, social and tax due diligence audits, even though in the context of a minority stake the tax aspects were fairly negligible. We wanted to be sure of how our target operated in order to determine the terms and conditions of the agreement.

Which of the firm's services were particularly attractive or useful?

The firm was extremely precise and clear in its due diligence analyses. I think it considered and anticipated every possible negative situation and all appropriate protective clauses, well beyond what we would ourselves have thought of.

Franck BUFFAUD, were any aspects of this operation especially sensitive?

Technically, there was nothing particularly difficult about the due diligence. The difficulties mainly concerned the sellers, who were members of the same family and experiencing their first business sale; their interests were not necessarily the same and the audit faced them with a valuation of the fruit of their lifelong work. As they were not assisted by a lawyer, they had no-one who could explain the usual acquisition procedure and the purpose of the due diligence audits, or de-dramatise the audit results.



A transalpine acquisition

Maurizio BERTOZZI, the Italian company ISOLTEMA, of which you are Chairman, designs and manufactures sealants used as waterproofing, insulation, repair or caulking products in numerous sectors, including the automobile and building industries, plumbing, boats, photovoltaics, silos etc. It has taken control of its French counterpart, OLIN, for which legal, social and environmental due diligence audits were carried out by DELSOL Avocats.

What were your objectives and the main stakes of this operation?

OLIN is the leading European producer, a long-standing and respected operator on its markets; it developed good products and had good industrial equipment available to it, but no longer had the necessary leeway to maintain its position. Together, we have become a world leader and have made the necessary economies of scale to finance continued research and development.

Why did you call on DELSOL and which lawyers did you work with?

Our mergers-acquisitions counsel recommended DELSOL. We also considered other law firms, but chose DELSOL because of its multi-disciplinary approach and the size of its teams. Being based in

INDUSTRIES by the MARCK of a French leader in uniforms



competition and that DELSOL be asked to make a proposal. Given the relevance of their approach – and the value for money! – the group decided to ask them to assist with the acquisition.

Amaury NARDONE and his team assisted us with the negotiations and the corporate aspects, as well as the legal due diligence, Frédéric SUBRA and his team carried out the tax audit, and Philippe PACOTTE and his team dealt with the social audit.

Which of the firm's services were particularly attractive or useful?

With hindsight, what really comes to mind is the climate of absolute confidence we enjoyed, as well as responsive people, who also contributed to this confidence: even if they were very busy, they always found time to speak to us. We continue to work with the firm on the structuring of the new group.

Frédéric SUBRA, were any aspects of this operation especially sensitive?

On the tax side, the main problem was the post-acquisition group structure; we needed to limit the tax impact as much as possible, in particular concerning tax consolidation rules and loss management.

Italy, it was important for us to have one single local firm to deal with the legal aspects. We worked mainly with Philippe DUMEZ, who was our main contact. He organised other firm members, depending on the audits and missions to be carried out, in particular Camille ROUSSET for the employment aspects. We are still working together on OLIN's day-to-day management.

Which of the firm's services were particularly attractive or useful?

Prudence and teaching skills... the firm analyses, suggests an idea, explains its reasons, but never imposes a decision. We didn't choose them initially because they spoke Italian, as this was a one-off operation and our counsel spoke French. But now, for our day-to-day contact, it's very useful!

Philippe DUMEZ, were any aspects of this operation especially sensitive?

OLIN was in mediation; the acquisition could only go ahead subject to a mediation agreement with the main creditors, in this case the banks and social security and tax bodies, which we finally obtained. At the end of the detailed legal, tax, social and environmental due diligence audits, the other complex matter to negotiate was the amount of the liability guarantee the sellers were asked to provide, always a problem when a sale price is expected...

The firm's intention is to maintain its leading position in Lyon, its historical base and the nerve centre of its organisation. It has therefore recently boosted three talented lawyers, all of them from the internal pool.

Emmanuel KAEPPÉLIN, former of counsel in the Company Law – Mergers & Acquisitions department, has become a partner after three years with private group; Delphine BRETAGNOLLE is promoted to of counsel in the Employment Law – Social Protection department, and Alexis CHABERT promoted to of counsel in the Business Litigation department.

Delphine BRETAGNOLLE Of counsel



Delphine BRETAGNOLLE has been an associate in the Employment Law – Social Protection department since January 2005, and was promoted to of counsel in mid-July.

At 32 years of age, she has a master's in private law – option legal careers, and a DESS in Law and the Evaluation of Health and Social Structures from the University of Lyon 3.

In addition to the usual employment law practice areas, she has developed specific expertise in collective advice and litigation, especially in the context of insolvency proceedings, mergers and acquisitions, corporate restructuring and reorganisation (business transfers, geographical and/or professional mobility, harmonisation of status, redundancy and job protection plans etc.), collective negotiations (working time organisation, harmonisation of collective status etc.), the management of the relationship with employee representative bodies and carrying out compliance and risk audits.

As a member of the firm's Italian desk, Delphine's main clients are French companies or groups of all sizes and the subsidiaries of Italian groups. Her working languages include English and Italian.

As part of a general technical watch and the sharing of knowledge, she regularly writes articles for various publications on employment law and also organises training sessions for company executives, managers and in-house counsel, as well as for students at the University of Lyon 3 (at degree and master's level) and at management schools.

Alexis CHABERT Of counsel

Dynamic and committed, as good a strategist and tactician as lawyer, Alexis CHABERT was promoted to of counsel in the Lyon office's Business Litigation department in mid-July.

At 33 years of age, Alexis has a master's in business law and a DESS in Community business law from the University of Lyon 3.

He started his career in 2004 in Lyon with the firm ANCEO, which is specialised in business litigation with a strong international focus. He joined DELSOL Avocats in 2007, and works closely with the Company Law – Mergers & Acquisitions department.

As a specialist in commercial litigation, he has developed considerable experience in shareholder disputes, the liability of company executives, unfair competition, product compliance, defective products etc.

He has also acquired special expertise in business criminal law and assists company executives who are the victims of offences (fraud, abuse of confidence, forgery and falsification etc) or defends them personally when they are accused.



He works for industrial and service businesses and for their executives, and acts above all as a support for his clients' general and legal managers and for their commercial and financial managers. His aim is to help them to anticipate, to give a financial value and a value over time and to manage their various risk exposures, and then to introduce appropriate legal strategies, whether aggressive, measured or consensual.

Alexis works in both French and English.

He is heavily involved in the profession's management bodies and is the chairman of the Lyon Bar's "exercice du droit" (legal practice) commission.

Emmanuel KAEPPÉLIN Partner

An associate and then of counsel of the firm, Emmanuel KAEPPÉLIN became a partner of the Company Law – Mergers & Acquisitions department at the beginning of September, after three years' experience with an international group.



At 36 years of age, he is a graduate of the University of Lyon 3, with a DESS in business and tax law and a Magistère Juriste d'affaires – DJCE (master's in business law); he also has a specialist diploma in company law.

He started his career in 1999 in the Corporate Finance – Mergers & Acquisitions department of the firm Reed Smith in Philadelphia. He was then an associate in Lyon with the firms Lamy Lexel and Ratheaux. He first joined the firm's Lyon office Company Law – Mergers & Acquisitions department in 2006, and was promoted to of counsel. From 2009 to 2012, he was the general secretary and legal director of a Danish leisure group, where he was in particular involved in the management of financial issues, business development and real estate matters.

Emmanuel KAEPPÉLIN has developed a respected practice in mergers, acquisitions and business transfers, financing operations, concentration law, commercial contracts and infrastructure financing. His clients are mainly international groups and he is fluent in legal English.

Emmanuel also has specialist knowledge of the new energies sector (wind power, photovoltaic, hydroelectricity etc), company real estate (the structuring of real estate operations) and leisure (hotel management and tour operators).

He teaches at the Lyon law school.

Emmanuel explains: *"The three years with an international group opened my eyes to disciplines which were connected with but complementary to the legal side. I have returned to my core profession, company law, but with an overall vision that takes account of the needs of a business and a more pragmatic approach to problems."*

Frédéric SUBRA, partner in the Tax Law department, spoke on tax issues at a workshop entitled “*Partenaires de la production artistique : quelles réalités, quels contrats?*” (Artistic production partners: realities and contracts), during the live performance resource centres’ 14th legal information day, in Paris on 19 March.

Anne IMBERT, partner in the Employment Law – Social Protection department, represented the firm at the spring seminar of the Parlex international network (The Parlex Group of European Lawyers), in London and Cambridge, from 17 to 20 May. The bi-annual seminars look at cooperative efforts, network development, strategic choices, the sharing of commercial and managerial good practice, etc.

Anne organised and led the Employment Law group meeting, which brought employment lawyers from fifteen countries together to discuss international mobility.

At the end of the Parlex general meeting on 18 May, Anne IMBERT became a member of the board of directors for a period of two years.



Philippe PACOTTE, partner in the Employment Law – Social Protection department, led a training session in Paris on 6 June organised by the Lamy Formation group on the theme “*Santé au travail : obligations fondamentales et responsabilités*” (Health at work: obligations and responsibilities) whose target audience was social affairs managers, human resources managers and in-house counsels.

On 12 June, he led a training session on the theme “*Comment gérer un dossier d’inaptitude*” (How to manage a “job inadequacy” problem) at the head office of the ESH – Entreprises Sociales pour l’Habitat federation in Paris.



The Not-for-profit department, along with Chorum, Crédit Mutuel, Deloitte – In Extensio and Juris Associations, was one of the organisers of the first Rhône-Alpes Regional Forum of Associations and Foundations in Lyon on 26 June, which took place in an uncertain environment where the voluntary sector needs to adapt to new rules relating to both financing and operational methods. Eight hundred people attended the Forum.

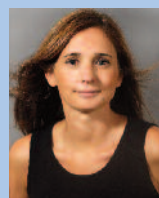
Frédéric SUBRA, partner, Mathieu LE TACON, of counsel, Marie CHOSSEGROS-LABILLOU, Jérôme CUBER, Violaine DIEUDONNE-LANGELOT and Laure GAY-BELLILE, lawyers in the Tax Law department, presented the “personal tax” and “company tax” provisions of the amended 2012 Finance Act (which came into force during the summer), during two breakfast meetings on Tuesday 11 September in Lyon and on Thursday 13 September in Paris. The tax edition of Lexbase Hebdo made a full report on this in its edition of 20 September.

Lionel DEVIC, partner in the Not-for-profit department spoke at the *Compagnie régionale des commissaires aux comptes de Paris* (Paris region statutory auditors’ group) seminar in Paris on 18 September, whose theme was “*L’évolution des marchés du commissariat aux comptes*” (market changes for statutory auditors). During a round table looking at new markets, he dealt with endowment fund needs.

On 28 September in Lyon the firm organised a conference on English, French, German, Italian and Spanish comparative law relating to international mobility. Several aspects were dealt with, depending on the law of the states represented (England, France, Germany, Italy and Spain): negotiate and manage international employment contracts, determine employee social security coverage, direct hiring by a foreign company, dealing with tax obligations, mobility in the light of business law and company law, international sponsorship.

Our firm’s contribution concerned the French legal aspects: Camille ROUSSET on the employment law aspects, Frédéric SUBRA on the tax law aspects, and Philippe DUMEZ and Amaury NARDONE on the contract and company law aspects.

The firms ABBATESCIANNI (Charlotte FRANZONI), FAILLA ROTONDI & Partners (Angelo QUARTO), TOFFOLETTO e Soci (Léa ROSSI) dealt with the Italian law aspects, the firms TWM Solicitors (Peter STEVENS) and ESSEX LEGAL SERVICES (Emma THOMAS) with the English common law aspects, JUSTEM RECHTSANWALTE (Barbara GECK) with the German aspects, and CUATRECASAS (Miguel GUERRERO) on the Spanish aspects.



Camille ROUSSET



The firm is a partner of the 7th National Forum of Associations and Foundations 25 October, Paris.

At this indispensable meeting of leaders and managers in the voluntary sector, the three beneficiaries of the DELSOL Avocats endowment fund are chosen after a public debate during which the candidates defend their projects.

The jury is made up of members of the endowment fund, members of the Forum and personalities in the voluntary sector.

At stake, a 1st prize of € 14,000, a 2nd prize of € 6,000 and a 3rd prize of € 3,000.

In the press...

Laurent BUTSTRAËN, partner in the Not-for-profit department, along with Philippe GUAY, partner in Deloitte’s Associations and Foundations department, drafted a ten-page article entitled “*Gestion quotidienne du fonds de dotation : points d’attention*” (Daily endowment fund management – things to look out for), which was published in April. Four years after this new legal tool came into existence, the authors prepared a list of legal, tax and accounting watch points, based on their experience.

Mathieu LE TACON, of counsel in the Tax Law department, published an analysis of possible decisions to be made by the new government relating to the Wealth Tax on 19 May in *Le Cercle Les Echos* and considered the limitations on these decisions.

He is regularly interviewed by France TV, Associated Press Television News and France Info concerning the government’s tax measures.



Frédéric SUBRA, partner in the Tax Law department, contributed to an article at the beginning of August which the sites www.toutsurlisf.com and www.toutsurmesfinances.com devoted to the exceptional wealth tax, a temporary surcharge that the government introduced for Wealth Tax payers.

He published, with Mathieu LE TACON, an asset taxation news column in Lexbase Hebdo – tax edition which analysed the 2nd amended Finance Act for 2012, which was adopted on 31 July.

Philippe DUMEZ, partner in the Company law – Mergers & Acquisition department, contributed to an article entitled “*Les sociétés sportives : l’heure des choix*” (sporting companies : time to choose), which was published in the April edition of the monthly *Journal des Sociétés*.

Jean-Philippe DELSOL, tax lawyer and partner of the Company Law – Mergers & Acquisitions department, contributed to an article that the weekly *Valeurs Actuelles* published on 9 August concerning the initial tax measures voted by the parliamentary majority.



Franck BUFFAUD, partner in the Company Law – Mergers & Acquisitions department, and Mathieu LE TACON, of counsel in the Tax Law department, published an article in English on 19 September in *Le Cercle Les Echos* on new French tax reporting requirements applicable to trusts.

Xavier DELSOL, partner in the Not-for-profit department, was interviewed by the monthly publication *Sens & Finances* for its September edition, on the threat to corporate sponsorship caused by the halving of tax incentives currently enjoyed by companies.



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