

## **CORONAVIRUS: EVENTS CANCELLATION – ISSUES TO CONSIDER**

The outbreak of Coronavirus has led to the cancellation of significant trade, arts and sporting events and governments banning large gatherings. The impact of such cancellations and bans is wide ranging and may result in significant losses for many businesses, including organisers, hosts, participants, sponsors, media firms and numerous other businesses that would otherwise stand to benefit from the event related tourism. Many businesses now face a critical decision as to whether to continue with events as planned, or whether to consider postponement or cancellation.

In this briefing, we set out eight key questions to consider when faced with the potential cancellation of an event.

### **What do your contracts say?**

Whether or not the outbreak will constitute force majeure in a contract is very much a case of interpretation of the relevant wording in the contract. For example:

- a. Is there a force majeure clause in the contract? Is the epidemic specifically covered? Does the contract excuse you from performance and/or exclude/limit your liability in the circumstances?
- b. Has there been a government decision or action preventing performance which (i) meets the political interference language commonly included in definitions of force majeure or (ii) triggers change in law relief and compensation?
- c. Is prompt notification a contractual condition precedent to relief?
- d. What is the contractual interface between different contracts and counterparties?

See our ten point checklist [here](#).

Where contracts do not include force majeure provisions, forms of relief (if any) would depend on the governing law of the contract. Under English law, the doctrine of “frustration” could be another form of relief available, but the threshold for a successful frustration claim is often a high one.

### **Are there alternatives to cancellation?**

The party claiming force majeure relief is usually under a duty to show it has taken reasonable steps to mitigate/avoid the effects of the force majeure event. For example, have you considered whether the event could be postponed, held virtually (i.e. behind closed doors), reduced in size or held with further safeguards in place?

This is an issue that the sports sector is grappling with. For example:

- a. The Guinness Six Nations rugby match between Ireland and Italy, which was to be held in Dublin on 7 March and the game between England and Italy, due to be held in Rome on 14 March, have been postponed.
- b. A number of Serie A football matches in Italy have been postponed, and others have been played behind closed doors. The Italian government announced that all Serie A games are to be played behind closed doors until the 3 April.
- c. Gianni Infantino, the president of the FIFA, said that *"[i]f games have to be postponed or played without spectators until it is over, then we have to go through that"*.
- d. UK and other football authorities are monitoring the situation carefully. UEFA is remaining "optimistic" that Euro 2020 will go ahead, whilst scenario planning for matters deteriorating. Given that the tournament is being hosted across the continent, matches may need to be relocated.
- e. The Chinese Grand Prix, which had been due to take place in Shanghai on 19 April, has been postponed.
- f. At present, the Olympic Games starting in Tokyo on 24 July is on schedule. International Olympic Committee president Thomas Bach told the Japanese media that preparations for the Games were continuing and told athletes to go "full steam ahead" with their training. However, the situation remains under consideration and Seiko Hashimoto, Japan's Olympic Minister, has stated that there is a provision in the hosting agreement which allows for a games to be "hosted in 2020" which *"could be interpreted as allowing a postponement"*.

## **Do you have insurance?**

It is important to identify at the outset which policies may respond to losses and to comply with policy provisions around notification and management of losses. For example, is the cancellation covered by bespoke event cancellation insurance? Sponsors, media firms and local businesses reliant upon sporting events taking place may have business interruption cover, either under a standalone policy or, more commonly, as part of cover provided under other policies (e.g. property or all risks policies), which may protect them from loss of income/profit. See our briefing on insurance issues [here](#).

## **What are the financial implications for your business?**

The cancellation of an event may create financial difficulties for your business. It is critical that directors of an affected company understand the scope and extent of their statutory and fiduciary duties when dealing with the cancellation of an event, particularly when they are operating in the "twilight zone" (i.e. when there is a real and obvious risk of insolvency). See our briefing on financial difficulties [here](#).

## How will you manage the risk of litigation?

Are you likely to face claims from attendees, suppliers, sponsors, participants, media firms, and/or other counterparties relating to the cancellation? Could potential claimants form a class action against you? If you proceed, is there a duty of care to participants and spectators that exposes the organiser to a liability risk? It is important to assess and monitor the risk of claims early on, develop a legal strategy and put in place procedures to manage potential claims and settlements, including protecting privileged communications.

In the sports sector, where the integrity of the competition is key, it is important that organisers act in accordance with the relevant rules and regulations and in a manner which is fair to all participants. If organisers do not, participants may seek to take action under the appropriate rules and regulations. For example, Bahrain and Vietnam are hosting Grand Prix's in the coming few months and both have imposed certain restrictions on those entering their countries. A potential unfair situation may arise where the Federation Internationale de l'Automobile allow a race to go ahead without a certain team (or teams) racing because they were not been permitted entry into the country. This could mean certain teams miss out on Championship points, potential winnings and associated revenue a team gains by participating. Formula One's Managing Director, Ross Brawn, has recognised this situation recently stating: *"If a team is prevented from entering a country, we can't have a race ... because that would be unfair."*

## What about future events?

It is unclear how long the outbreak will continue to disrupt events. Parties will therefore need to keep future events under review. In the meantime, should you amend future contracts to agree how risks around the outbreak and potential cancellations should be allocated?

## How will you manage communications with stakeholders?

Do you have a central team and protocol for communicating with various stakeholders (i.e. governments, sponsors, media firms and participants) in relation to the cancellation of the event? Are your internal and external policies/comms regarding the outbreak of Covid-19 consistent?

## What are the reputational implications for your business?

The consequences of a decision to proceed, postpone, or cancel an event due to Covid-19 are not purely financial. The possible negative effects of any decision, and of how that decision is communicated, on the reputation of your business need to be factored into any decision, prepared for, and managed. See our guide on crisis management [here](#).

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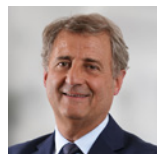
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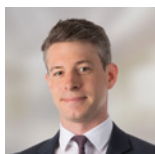
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