

CORONAVIRUS: EVENTS CANCELLATION – ISSUES TO CONSIDER - UPDATED

The Coronavirus (Covid-19) crisis continues to require the cancellation of significant trade, arts and sporting events as many governments continue to ban large gatherings. The end of the outbreak is unfortunately not yet in sight and governments will continue to take steps to mitigate the effects of the virus. The impact is wide ranging and may result in further significant losses for organisers, hosts, participants, sponsors, media firms and numerous other businesses that would otherwise stand to benefit from the event related tourism. These businesses are facing critical decisions as to whether to continue with events as amended, or how to deal with postponement or cancellation. In this briefing, we set out eight key questions to consider when faced with the potential cancellation of an event.

Key issues

- What do your contracts say?
- Are there alternatives to cancellation?
- Do you have insurance?
- What are the financial implications for your business?
- How will you manage the risk of litigation?
- What about future events?
- How will you manage communications with stakeholders?
- What are the reputational implications for your business?

What do your contracts say?

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

- 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?
- 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 a change in law relief and compensation?
- Is prompt notification a contractual condition precedent to relief?
- What is the contractual interface between different contracts and counterparties?
- Do your insurance policies impose any obligation to discuss options with insurers, or limit your discretion as to how to respond?

See further 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 available, but the threshold for a successful claim is often high.

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 the effects of the force majeure event. For example, have you considered whether the event could be postponed, held behind closed doors, reduced in size or held with further safeguards in place?

This continues to be a critical issue for the sports sector to grapple with. Major sporting events, such as the Olympic Games and Euro 2020 were postponed to 2021 but may still remain in the balance. Others, such as football leagues in England below the top three divisions, were cancelled but have been able to commence new seasons.

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, or by other policies? Sponsors, rightsholders 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. Certain exposures may also be covered by credit insurance. It is important to ensure everyone knows exactly what is required to make a claim and comply with duties to insurers, and that you consider whether to challenge any rejection of a claim which arises in these novel circumstances. In a recent test case brought by the FCA on behalf of policyholders of business interruption insurance, the Court has determined that most (but not all) of the policy wordings they reviewed which included "non damage" cover would respond to Covid-related losses, and set out the criteria an insured would need to satisfy in order to be covered. See our briefing on insurance issues [here](#) and on the recent test case [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? If you proceed, is there a duty of care to any participants or 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.

Integrity of the competition is key and organisers will have to take care to act in accordance with their own rules in a manner which is fair to all participants. If organisers do not, participants may seek to take action under those regulations.

What about future events?

As Covid-19 continues to impact our day-to-day lives across the globe, it is unclear how long the outbreak will continue to disrupt events. 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, rightsholders 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](#).

Clifford Chance is acting for several clients across Europe in response to the crisis as well as being able to draw upon a wealth of past experience. A summary is set out below:

France – Currently advising sports leagues and federations in response to the pandemic. Key contacts: **Yves Wehrli** and **Thibaud D'Ales**.

UK – Currently advising a broadcasters and several football clubs on a range of Covid-19 issues. Past experience advising governing bodies in relation to the impact of force majeure clauses, material adverse change clauses and government interference upon the cancellation of major sporting events. Key contacts: **Chris Yates**, **Philip Hill**, **Jennifer Mbaluto** and **James Cranston**.

UK – Acting for a number of banks on credit insurance issues arising from restructuring of loans to affected businesses. Key contacts: **Philip Hill**, **Christopher Ingham** and **Baljit Rai**.

UK – Advice to a global trade association on the impact of the cancellation of an international trade fair on all stakeholders including attendees, local government and sponsors. Key contacts: **Rob Lambert**, **Julian Acratopulo**, **Claire Freeman** and **Melissa Brown**.

Belgium – Acting for a sports Club in response to the pandemic. Key contacts: **Dorothee Vermeiren** and **Nathan Tulkens**.

Hong Kong – Acting for an organiser of international exhibitions on insurance issues arising from cancellation. Key contacts: **Philip Hill, Christopher Ingham** and **Baljit Rai**.

Key sport sector contacts

Ignacio Diaz, Luis Alonso and Eduardo Garcia (**Spain**). Fabio Guastadisegni, Simonetta Candela and Michele Curatola (**Italy**). Burkhard Schneider (**Germany**). Nish Shetty (Singapore). Lei Shei (**Shanghai**). Thomas Walsh (**Hong Kong**). Tim Grave and Heidi Gan (**Australia**). Paul Coates (**UAE**). John Alexander (**USA**).

A link to our sport sector web page is [here](#).

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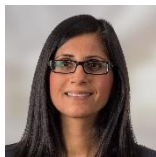
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