

Sports Sponsorship - COVID-19 Contractual Impact Assessment Flowchart

Sponsors and sports rights owners ("**SRO**") are grappling with the impact of COVID-19 event cancellations on their sponsorship agreements. The 'partnership' spirit in which sponsorship agreements are entered into will no doubt be tested, as rights can't be delivered and purse-strings are tightened. Although it must be hoped that strong long term relationships will result in sensible compromises being reached, understanding the strict contractual position is important, particularly where disputes arise. We hope this flowchart will help assist you in analysing the legal position and working to a sensible resolution. If however you do need further support in working through issues we're ready to help you find a solution: please contact your usual Lewis Silkin contact or Alex Kelham@lewissilkin.com. For sponsors and SROs who are not Lewis Silkin clients but are looking for an efficient way of reaching conclusions, LS Resolve also offers fixed fee informal dispute resolution.

Check what the express contractual obligations are. Are they still being performed/delivered?

Sponsors: You will need to check the wording of the rights schedule and related definitions. For example, if you are simply granted the right to be named as a sponsor of a team, to receive branding at events/matches in which the team competes, to have the right to use the team's name and logo in marketing, and to be featured in some of the team's social media and fan communications, the team will still be able to deliver these rights despite them not participating in events/matches. On the other hand, if there is an express obligation on the team to participate in a defined event/match on a particular date which has been cancelled, then the team may be prevented from performing that obligation.

SRO: The Sponsor's main obligations are likely to be to pay you and/or to deliver value in kind ('free' products or services). Has the sponsor failed to pay/deliver in accordance with the agreed schedule?

Under English law force majeure is only a matter of contract. If there is no clause addressing it, you can't rely on 'force majeure' to excuse any obligations or get out of a contract.

If there is a force majeure clause the precise wording is of critical importance. Even where the contract does contain a force majeure clause careful analysis of the clause will be required to determine whether a party will be able to rely on it to protect against claims for non-performance as a consequence of difficulties arising from COVID-19 (and/or any Government, legal or regulatory steps taken to combat the virus).

Has either party failed to perform or been prevented, hindered or delayed in performing any of their obligations under the contract? No Yes There is no breach of contact and therefore this cannot be a basis for Has this been caused by COVID-19 renegotiating or terminating the agreement. i.e. there is no obvious (and/or any Government, legal or reason why the parties shouldn't be held to the bargain they struck. regulatory steps taken to combat If you nevertheless still want to get out of, or renegotiate, the deal, the virus)? consider other options: Yes, at least arguably Are any other Might any terms Is the other termination be implied into party willing Does the contract contain a force majeure clause? rights relevant? the contract? to negotiate a For example, If so, have they new deal on the No there may Yes been breached? understanding be right to Note that Courts that holding you terminate by are very reluctant to the letter of Has the contract been giving a period of to imply terms so the contract is frustrated? i.e. is the whole notice, and there this is unlikely to commercially contract now physically or is often a right apply. unsustainable? commercially impossible to terminate if to perform, or is it now the other party radically different from suffers certain that contemplated by insolvency the parties at the time of events. Do they entering the contract? (See apply? our Frustration flowchart for more detail).

Force majeure clauses normally entitle a contracting party to terminate a contract, avoid liability for breaching obligations under the contract or delay performance of contractual obligations on the occurrence of specified events which are beyond the control of the parties and where the party seeking to rely on the force majeure clause is not the cause of the specified event. For example, if the SRO has agreed that it will provide hospitality at an event to take place on a specific date, and that event is cancelled due to the COVID-19 lockdown making it impossible, provided that falls within the contractual definition of 'force majeure' the SRO will probably be able to be rely on the force majeure clause to avoid liability for breach of contract by failing to provide the hospitality.

To rely on a force majeure clause there are often procedural requirements that must be complied with, e.g. the party who is unable to perform some of its obligations may have to give formal notice of the situation to the other party. (See our **Force Majeure flowchart** for more detail).

Force majeure is rarely straightforward. We would always advise obtaining legal advice a) before declaring force majeure or b) after receiving a force majeure notice from a counterparty.

The contract is automatically terminated. The courts will determine whether any payments should be made/refunded taking an equitable

approach.

unlikely to be

Frustration is an English common law 'doctrine' and it is a matter of fact whether a contract is frustrated (i.e. it doesn't depend on a particular clause in the contract). Frustration only applies in extreme scenarios and is rarely applied by the Courts. It is unlikely to apply in a sponsorship context unless the whole event/season being sponsored is abandoned due to events outside of the parties' control. If one season in a 4 season deal is lost, the number of events is reduced or only some of the rights can't be delivered, it is unlikely to apply. We would advise obtaining legal advice prior to seeking