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Insights

POSTPONEMENT OR CANCELLATION OF SPORTS EVENTS - COVID 19 IMPACTS IN HONG KONG SAR, SINGAPORE AND MALAYSIA:

FORCE MAJEURE CLAUSES AND OTHER RELIEF

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SUMMARY

The COVID-19 pandemic has led to the implementation of various temporary laws and regulations for social distancing in Hong Kong SAR, Singapore and Malaysia. In this article, we will discuss the relevance of these laws and regulations in the context of the sports industry, as well as the implications of force majeure clauses for sports event organisers and legal issues to be considered if a sports event is postponed or cancelled.

Introduction

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Social distancing laws and regulations and sports events

In Hong Kong SAR, indoor and outdoor public gatherings of eight or more people are temporarily banned. Failure to comply with these restrictions attracts a fine of HK$25,000 and up to six-month's imprisonment. Various exemptions apply, including for private gatherings; gatherings for the purpose of work of the government, courts, district council or legislative council; public transport or gathering at workplaces. Public sporting events scheduled to occur while these requirements are in place must be canceled.

Singapore's Ministry of Health announced on 20 March 2020 that all ticketed cultural, sports and entertainment events cannot involve more than 250 participants. This was expanded on 24 March

2020 to require that all sporting events of any size be deferred or canceled.

In Malaysia, a Movement Control Order ("**MCO**") was introduced on 18 March 2020 and will be in effect at least until 9 June 2020. Under the MCO, sports activities involving large groups of gathering and contact sports, including football, rugby and all indoor and stadium sports events, are prohibited. The Sports Commissioner's Office also announced on 12 March 2020 that all local and international sports events should be postponed.

These restrictions have led to the cancellation of major sporting events, including Singapore's HSBC Women's World Championship (golf), Hong Kong's Standard Chartered Marathon and the Rugby Sevens Tournaments in both cities. In Malaysia, the Men's Cricket World Cup Challenge (League A), the Malaysia Open (badminton) and the Maybank Championship (golf) have been postponed.

Implications of force majeure clauses for sports industry participants

The restrictions discussed above have put a spotlight on *force majeure* clauses as a potential protection against liability arising out of cancelled or postponed events. Sports industry participants in Asia should review their key commercial contracts to confirm the scope of any *force majeure* clause and whether COVID-19 or COVID-19 related events (including government imposed social distancing orders or travel restrictions), are addressed. Contract types which should be covered by this review include contracts with sports governing bodies, participants, sponsors, suppliers, venue owners, other commercial partners (such as broadcast right holders) and ticket holders. Our recent article "*Force Majeure FAQ*" provides a helpful guide to the important issues arising out of such a review.

The schedule for the removal of social distancing measures in Hong Kong SAR, Singapore and Malaysia remains uncertain. It is reasonable to expect that such measures will be relaxed by degree and will continue to have a material impact upon major events for months to come. Even when local measures are lifted, circumstances in other countries and regions will continue to impact Asian sport as travel bans and quarantine requirements for incoming travelers are likely to continue, affecting sports persons, referees, officials and other key personnel. Whether such restrictions will constitute a *force majeure* event will depend upon the particular terms of the relevant contracts.

An economic downturn, unfavourable market circumstances or a reduction in international tourism are unlikely constitute *force majeure* events in and of themselves. To receive relief, there usually must be a *force majeure* clause in the relevant contractual arrangement, and the affected party must demonstrate that the circumstances preventing performance of the contractual obligation arise directly out of an event included within the scope of that *force majeure* clause. Relevant grounds might include "*disease*", "*epidemic*", "*pandemic*", "*governmental intervention*" or "*Act of God*". The scope of qualifying events will depend on the contents of the clause in question.

Statutory relief from performance of contractual obligations

In Singapore, the COVID-19 (Temporary Measures) Act 2020 was passed on 7 April 2020 (the "**Act**"). Under this Act, a party under an "*event contract*" (being defined as a contract relating to the provision of goods and services for a sporting event or for "*the participants, patrons and spectators*" of the sporting event) entered into before 25 March 2020 is entitled to certain temporary relief. The Act allows the non-performing party to notify a counter-party that it cannot perform its contractual obligations to a material extent because of the COVID-19 pandemic or COVID-19 related law made by the Singapore government or any other national government. Following receipt of such notice, the counter-party is prohibited from:

- commencing or continuing court or domestic arbitration proceedings;
- enforcing security or applying for insolvency proceedings (such as winding up or bankruptcy applications); or
- enforcing a court judgment or a domestic arbitral award, against the non-performing party.

Where ongoing court or domestic arbitration proceedings are on foot, the Act requires that such proceedings be stayed on the lodgment by the non-performing party of a copy of the notification with the relevant court or arbitral tribunal. Importantly, Singapore-seated international arbitrations are not affected by the Act which only provides relief in respect of Singapore-seated domestic arbitrations.

The Act also provides the following specific relief limited to event contracts:

- after the service of notice under the Act, a counter-party is prohibited from forfeiting any deposit provided by the affected party or, if the deposit has already been forfeited, the counter-party must reinstate the affected security; and
- where an contractual obligation cannot be performed for reason of COVID-19, this will be a defence to any claim for the payment of a cancellation fee.

The Act expressly states that it will not operate to limit the effect of any *force majeure* clauses already present in the relevant contract.

Failure by a counter-party to comply with the Act may result in criminal conviction and a fine up to S$1,000. Any court or domestic arbitration proceedings commenced in breach of the statutory prohibition will be dismissed by the relevant court or arbitral tribunal upon receiving the notification for relief from the affected party. Relief under the Act is temporary, covering the six (6) month period from 20 April 2020 to 19 October 2020 with the potential for a further twelve (12) month extension. Non-performing party's liabilities and court or arbitration proceedings will start running again after the expiry of the Act's effect.

Postponement or cancellation of sports events

Key contracts relating to sporting events are likely to include provisions addressing the postponement or cancellation of the event. Parties should review such clauses carefully to assess their risk exposure, including for breach of contract, termination and financial liability. Other clauses likely to be relevant to an event cancellation or postponement include indemnities, duties to mitigate, and provisions providing for the payment of damages or the reimbursement of costs associated with a postponement or cancellation. If postponement or cancellation is permitted, parties should be careful to comply with procedural requirements imposed by the contract, which may include a requirement to consult or negotiate with relevant stakeholders or to provide regular updates regarding the implementation of arrangements for the postponed event.

Sports events contracts may cover a series of events across multiple months or years. In such case, the postponement or cancellation of one event may have knock-on effects for future tournaments and parties should ensure such effects are carefully managed. Where commercial partners have entered into a multi-year contract contemplating a long-term relationship, considerable resources may have been invested in preparation, marketing and branding. In such circumstances, parties will likely be motivated to negotiate a commercial settlement to accommodate the postponement or cancellation of an event affected by COVID-19. Any such commercial arrangement should be reflected by amendments to the original contract.

When planning for postponement or cancellation of an event, obligations towards ticket holders and patrons for hospitality packages should also be considered in light of relevant consumer law and the applicable contractual provisions. Depending on the circumstances, a refund of ticket costs or replacement tickets for the postponed or cancelled events may or may not be required. Where a refund is not required, organisers should consider the potential for reputational damage – patrons are likely to reward fair conduct now with continuing loyalty once the COVID-19 crisis passes.

Conclusion

The global COVID-19 outbreak poses an unprecedented challenge to the sports industry. Postponement and cancellation of sports events seem inevitable, with an increasing likelihood of claims of *force majeure* and other contractual remedies. Sports industry participants involved in major events are well advised to review their contracts, as well as temporary government relief measures (such as the COVID-19 (Temporary Measures) Act 2020 in Singapore) so that they fully understand their rights and obligations during this crisis and can take such action as may be necessary to protect their position.

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