



VMAE Virtual Town Hall Impact of COVID-19 On Meetings

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May 28, 2020

Force Majeure Clauses

- Contract language is key
 - Impossible and Illegal vs. Inadvisable and Impractical
- Only excuses complete performance, not partial (need to also consider attrition)

Model Force Majeure Provision

The performance of the Agreement by either party is subject to acts of God, war, government regulation, disasters, fires, earthquakes, hurricanes, disease, strikes or threat of strikes (except those involving the employees or agents of the party seeking the protection of this clause), terrorism or threats of terrorism, public health epidemics, civil disorders, use of the premises as a hospital or place of accommodation for medical patients, medical personnel, or homeless people within 6 months of Group's arrival, curtailment of transportation facilities preventing or unreasonably delaying at least 25% of Event attendees or guests from participating at the Event, or other similar cause, including emergency or non-emergency conditions, beyond the control of the parties making it inadvisable, illegal, impossible, or commercially impractical for the Group to hold the Event, for the Hotel to provide the meeting and sleeping rooms or related facilities and/or services for the Event, or for either party to fully perform the material terms of the Agreement. The Agreement may be terminated without fee, penalty or liability whatsoever and with performance fully excused for any one or more of the above reasons by written notice from one party to the other and any deposits or other sums previously paid will be promptly refunded. Should the Group decide to proceed with the Event when a force majeure event exists, all attrition penalties and food and beverage minimums under this Agreement will be waived by the Hotel.

Common Law Considerations

- Common law force majeure concept (absent contract language)
 - Frustration of purpose (if unforeseen event has undermined a party's principal purpose of entering the contract)
 - Difficult to uphold; need to have noted the fundamental purpose in the contract

Cancellation/Termination

- Timing
 - When did the force majeure event occur?
 - Is there a notice provision?
 - Will the force majeure event resolve itself?
- Circumstances must be considered broadly
- Renegotiate attrition
- Issues surrounding rescheduling/rebooking the meeting

Event Cancellation Insurance

- Most policies exclude “communicable disease” absent a special rider
 - After January, policies specifically exclude COVID-19
- Cancellation coverage typically limited to “physically” or “legally” being unable to hold meeting (if cause not excluded)
- Also covered for enforced reduced attendance/loss (if cause not excluded)

Questions and Answers

