

Client Alert

B2B Relations in the Events Industry in Europe and the COVID-19 Pandemic: Legal Basics that Could Make All the Difference

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The Tokyo Summer Olympics have been postponed for one year, some of the major European cycling races have been pushed back to Q4/2020, as have most major industry conventions that have not actually been cancelled. Music festivals supposed to take place this summer are being cancelled on a daily basis. And so the story continues for the events industry around the globe since the outbreak of the coronavirus.

It's Not Just About the Ticket Holder

Besides the obvious social impact for ticket holders and the events industry (in a country like Belgium the events sector represents around 100,000 direct jobs), the industry is bracing itself for a wave of legal claims triggered by the fact that events are not taking place as originally planned. The legal risks on the B2C side have been at least partially covered by various initiatives taken by different governments and national industry associations to offer ticket holders vouchers or other options rather than a simple refund. On the B2B side we see a different picture, with the possibility of claims by frustrated advertisers, sponsors, entertainers, service and technology providers, exhibitors and dozens more industry actors who are heavily invested in helping music, sports and other event organizers offer the best possible experience to their visitors.

Lawyer First, Event Partner Second

Several of our clients in the arts, sport, media and entertainment sectors have admitted that they would rather spend time talking to their suppliers, artists, sponsors, etc. than to their lawyers. This is perfectly understandable. However, when they do eventually speak to us, most clients realize that they should have had that conversation first, before speaking to their business contacts.

Basic Grounds for a Solution

It is important to realize that the situation of every single event organizer is different. What's more, from a legal point of view, every relationship between two parties in the events industry is, at least in part, unique. Hence there is no one-size-fits-all legal solution for the challenges the industry faces. However, the basic grounds for a solution are very often the same and when handled correctly they can significantly improve your legal position. Here are five suggestions that may seem obvious but are often overlooked in stressful times like these.

1. What does your contract say?

A decent contract should, in theory, hold the answer to any legal question the contracting parties might face. In practice, and in particular in the event of a pandemic, the contract very often does not offer an answer or at least not a straightforward one. Even so, the contract will more often than not contain important elements. Is there a force majeure clause? How is force majeure defined? Are there any provisions on cancellation of the event? What law applies? Is there a reference to general terms and conditions that in their turn contain relevant provisions? Depending on the complexity of the contract it might take some time to map out the contractual landscape and pinpoint your exact position.

2. What has already been said?

While we agree that a good conversation between parties can often result in a good solution for both sides, we have also seen how frequently a good or at least some solution cannot be reached without the intervention of the courts. If litigation does transpire, well-meant emails, text messages, etc. from one of the parties may well backfire in court and be withheld as prejudicial admissions. For example, successfully invoking force majeure typically requires that the execution of the contractual obligation has become impossible. The mere fact that the execution becomes more burdensome (more expensive, etc.) is not sufficient. If a party plans on successfully relying on a force majeure defense, the last thing they should do is send an email to their contractual counterpart explaining that complying with the contract would cost at least twice as much, or would leave no decent profit margin, etc. Therefore, think strategically about your operational needs, as well as the legal risks and possibilities that your business faces, before engaging in a conversation with your contract partner.

Even if you have not yet admitted to anything, your counterparty may have. Be sure to collect documentation relied upon, and keep correspondence, emails and text messages between the parties. If your contract party admitted something useful during a conversation, follow up with an email to confirm in writing what was admitted.

3. Timing is of the essence

We already mentioned the importance of understanding your contractual position. You should give particular attention to whether certain notices need to be provided within a specific period. Obviously, a notice can be used as evidence and should be carefully worded to avoid creating an admission that may later restrict your rights.

Timing can also play another important role. Your contract partner may also be bound by contracts with subcontractors, suppliers, etc., which might be cancelled at no or limited costs if certain deadlines are respected. If a timely communication would enable your contract partner in their turn to cancel certain agreements in time, the size of the claim against you would by definition be reduced. In some cases it might even make the difference between your contract partner maintaining a claim against you or being willing to drop certain claims or renegotiate the agreement.

4. It doesn't hurt to ask

Even if your contractual position is not ideal, your force majeure defense is doomed to fail, all relevant deadlines have expired, etc., you may still be able to reach an acceptable solution with your contract partner. So you should not hesitate to make a proposal, provided that it is skillfully formulated and cannot backfire in court.

You might ask why your partner would not enforce their contractual or legal rights if they could? First of all, they just might prefer to be your partner and be more interested in long term cooperation than in short term gain. Second, don't forget that these are exceptional times. A court might, for instance, be more inclined than normal to accept an argument based on abuse of contractual rights or abuse of the law. Your contract partner might prefer a lower but guaranteed payment (or installments) over no payment at all. Some parties might even be able, directly, or indirectly via a sister company, to make identical or similar claims against their contract partner within the framework of other projects or disputes where the roles might be reversed.

5. Ask what your country can do for you

You do not have to be a skilled macro-economist to see that the last thing we need is a tsunami of bankruptcies in any sector. For the events industry this is no different. That is why several local, regional and federal governments and other institutions have developed, or are developing, measures to support companies that are or risk being in financially troubled waters. In fact, there are so many initiatives being taken that it is not always clear what type of economic support your company might qualify for. These measures will not remain available for an indefinite period of time and they continuously evolve. Also here, timing can be of the essence.

Obviously, you should not overlook the existing legal framework that may already provide you with sufficient protection against the challenges you are facing, such as protection against claims from creditors. Rather than chasing after every option you might be able to identify, it is again recommended that you first study your economic and legal position. This will enable you to follow a sound combination of smart operational decisions and decent legal advice, and might be what makes the difference between your making it out of the 'COVID-19'-swamp, or not.

Concluding by saying that the events industry is globally facing tremendous challenges is stating the obvious. Less obvious might be the conclusion that the interaction between the stakeholders now and in the near future could make the difference between recovering from the current crisis or not. Visitors not claiming massive refunds are just part of the solution. On the B2B side, the differentiating factor will be a combination of solid legal advice and well-timed, sound economic decisions that can prevent the making of basic mistakes.

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