



## **Legal situation of event/trade fair cancellations due to COVID-19**

Many trade fair sites and organisers are announcing that they would cancel and postpone trade fairs and other events within the scope of the first COVID-19 virus cases in Germany. Some trade fairs in Spain, Italy, Germany and other European countries have already been cancelled and postponed. There is great uncertainty among the FAMAB members about how to handle such announcements.

FAMAB e.V. charged us with illuminating the legal situation on the status quo (28 February 2020) for members and to give them arguments and recommendations for action. We will try to answer the most common questions that come up in that context below.

### **1. Does force majeure currently apply in Germany or in individual Federal States or cities?**

The answer is: **No.**

Force majeure is based on the specific danger situation and the ability to prevent it. External factors that none of the parties can influence and that cannot be prevented even with the utmost diligence (epidemics, war, natural disasters, etc.) are legally called force majeure. Most trade fairs and Events in Germany will happen as planned. Postponement of a trade fair such as the Light + Building in Frankfurt am Main does not mean cancellation due to an unavoidable event. The organisers and the industry specialist associations are in constant exchange with the relevant ministries, the health authorities and the Robert-Koch-Institute in order to implement the current recommendations. The organisers have the contractual main performance obligation to perform the event.



Force majeure would only be present if authority orders (WHO, health authority, public order authority, ministries, etc.) or other outer influences were present that would make the trade fairs and/or other events impossible or forbid them in certain municipalities, cities, Federal States or in the entire Federal territory. This is not the case.

Since there is no case of force majeure, organisers, exhibitors, trade fair builders, technicians, hostesses, etc. remain bound to their existing contracts.

## **2. What does that mean for the existing contracts?**

Since most queries on this subject come from the area of trade fair construction, we are looking at this question in the contractual relationship

**Trade fair organiser – exhibitor – trade fair construction company – service provider.**

### **2.1 Contractual relationship trade fair organiser - exhibitor**

Trade fair companies that cancel or postpone, e.g. a large trade fair in spite of there not being any force majeure, are subject to a high liability risk.

If there is no force majeure, they are bound to contracts with exhibitors. GTC clauses that empower a trade fair to cancel or postpone a trade fair without the presence of force majeure and without any long lead time are likely invalid towards the exhibitors and trade fair visitors.

The higher costs for the area of security that are caused by the requirements of the health authorities alone do not constitute force majeure. Strictly economic considerations that lead to the cancellation or postponement of an event are part of the entrepreneurial risk of the respective trade fair organiser. Such additional costs



do not release the organiser from rendering his main performance obligation. The postponement of a trade fair does not obligate the respective exhibitor to be present at any replacement date. In such a case in which the trade fair is moved to a different date for any reason other than force majeure, any exhibiting company may dissolve the contract and demand reversal. The exhibitors may choose to accept that their contracts are transferred to the alternative date or not. If the trade fair organiser cannot render their contractual main performance obligation in the absence of force majeure, it is liable for damages towards the exhibitor.

### **Recommendation of action:**

The exhibitor would have a good chance to assert its claims from violation of the exhibitor's contract against the trade fair in court if a trade fair was cancelled or postponed in the absence of force majeure.

However, a civil action across two instances will quickly take two or more years. Court and legal fees must be prepaid by the exhibitor as claimant. Any legal expert reports (e.g. on the subject of whether or not there was any force majeure) additionally delay the proceedings.

Therefore, the exhibitor should first talk to those responsible for the trade fair about options of how to handle expenses made in vain or additional expenses. It should be made clear to the trade fair organiser that the cancellation or postponement is not a case of force majeure that renders the mutual contractual obligations void for the future.

## **2.2 Contractual relationship exhibitor - trade fair construction company**

Assuming that there is no force majeure, contracts between exhibitors and trade fair constructors are valid without limitation. In most cases, the greater share of the work will have already arisen and been performed at the time of the cancellation/postponement.



In the case of Light & Building, many trucks were already fully loaded or even had reached Frankfurt already.

Ideally, the payments should be made based on project progress, so that the trade fair construction company had already received most of the compensation for design, planning, special production, third-party cost, etc., before the cancellation/postponement. Payments already made by the exhibitor will be difficult for it to claim back, even if there was a case of force majeure in the end. However, the exhibitor will not voluntarily pay any further claims not yet invoiced, maybe due to wrong assessment (case of force majeure) or because it has already incurred a high damage. We believe that the trade fair constructor would have a claim to the full contractual remuneration, including lost profit, in the case of cancellation or postponement in the absence of force majeure.

If the alternative date for a postponed trade fair is accepted by an exhibitor, the trade fair construction company charged by it will be due the full wages for the trade fair stand, since the service continues to be valuable for the exhibitor. If the trade fair constructor additionally asserts further costs that have arisen in connection with the original date (e.g. personnel or logistics), such costs shall also be at the expense of the exhibitor.

#### **Recommendation for action:**

The exhibitor should communicate to the trade fair that it remains contractually obligated towards its contractors. However, the exhibitor will want to participate in the trade fair, which is important to it, again in future. It will therefore not want to burn all bridges with the trade fair and try to pass on any costs that it could legally assert against the trade fair organiser to the respective trade fair constructor and its contractors. There is no legal claim to this. Even if he, due to his care obligation as an employee, does not send his employees to a trade fair, he must fully remunerate the trade fair construction company in the absence of force majeure.



The trade fair construction company is, therefore, not legally obligated to give the exhibitor any consideration. It may refer the exhibitor in turn to the trade fair if it postpones or cancels the trade fair in the substance of force majeure.

On the other hand, a trade fair construction company does not want to anger existing or new customers entirely for the future. Therefore, one should be looking for a way to make the unpleasant situation more acceptable for the good of all parties concerned as partners. The trade fair construction company also has a damage reduction obligation in this situation, even if it is contractually entitled. That means that – once it is clear that the trade fair will be postponed or cancelled – any expenses that can still be saved are to be avoided. The trade fair constructor must accept deduction of such expenses saved from the agreed remuneration by the exhibitor as well.

### **2.3 Contractual relationship trade fair construction company – service provider**

Like the trade fair construction company may insist on performance of the contract towards the exhibitor, and he towards the organiser, the trade fair construction company is also obligated to remunerate the contractors and service providers charged by it. The contractors/service providers are willing to perform or have already rendered the work. Therefore, the trade fair constructor must remunerate their services accordingly.

Some exhibitors inform the trade fair constructors that they are to tell their contractors or service providers even without any clear statement on whether a trade fair would be cancelled, postponed or they only do not participate in the trade fair on their own due to the Corona situation that cancellation or postponement may threaten. We cannot recommend such measures. Without clear cancellation, the contractual relationship will continue unchanged. Drawing one's vicarious agents' attention to the possibility of cancellation may cause them to plan their capacities elsewhere. They may become restless because they are fearing for their remuneration. Since the



trade fair construction company owes its services under the contract while there is no clarity, however, this may lead to time and/or personnel shortages without the exhibitor in turn waiving anything.