



Force Majeure - Planning for the Unexpected

The events of the past two years, from September 11 to SARS, have dramatically impacted meetings and focused a spotlight on a clause in hotel contracts known as "Force Majeure." In past years, it was a boilerplate clause, quickly skimmed and forgotten. Now, it is recognized as a critically important clause that can prevent a meeting from becoming a financial disaster in the event of unforeseen circumstances.

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The term, Force Majeure, is a French term literally meaning a supervening force – in other words, circumstances beyond anyone's control. It is also commonly known as an "Acts of God" or "Impossibility/Impracticality of Performance" clause. When any of the conditions specified in the clause occur, one or both of the parties will be excused from further performance under the contract.

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This clause has been traditionally triggered by natural disasters, such as fires, earthquakes and floods. Now, it must be expanded to cover situations that weren't even considered until recently, such as acts or threats of terrorism, war, or disease. The clause should also address a situation in which a meeting *could* be held, but it would be impractical to do so, as well as "partial impossibility" – a situation in which the meeting could be held but with greatly reduced scope or attendance.

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The issue is very complex, as Mr. Seely demonstrates in this hypothetical scenario. "Suppose a bomb attack closes the Los Angeles airport. Your event is in Pasadena, which is served by both Los Angeles and Burbank airports. There is no question that it is possible for attendees to reach the meeting through Burbank or other airports within driving distance. However, more than half the registered attendees and exhibitors cancel, citing the fear of flying. In this case, there is little or no chance that the Force Majeure clause would help, unless loss of attendance due to fear caused by a disaster is specifically stated in the Force Majeure clause."

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As a consequence, Mr. Seely emphasizes that the Force Majeure clause now should be considered to be every bit as negotiable as rooms, rates and dates. "The Force Majeure clause may be drafted to contract or expand traditional coverage of the provision, based on the negotiations between the planner and the facility."

Although it can be written many ways, a Force Majeure clause covers a wide scope of issues that can be subject to negotiation. Negotiable elements include:

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- Government regulation
- Threats of terrorism or similar acts
- Governmental travel advisories
- Strikes (other than those involving the Hotel's employees or agents)
- Civil disorder
- Curtailment of transportation facilities

- Any other cause beyond the parties' control
- Provision to waive fees if the Group proceeds with the meeting
- Fire, flood and earthquake are universally accepted provisions of the clause

Mr. Seely cautions that he presents the following clause for educational purposes only and to demonstrate how the sample Force Majeure provision is made up of many, potentially critical, negotiable elements or parts. It is not intended to be legal advice – you should consult a qualified attorney for advice about your specific situation.

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SAMPLE FORCE MAJEURE CLAUSE

Force Majeure - The parties' performance under this Agreement is subject to acts of God, war, government regulation, threats or acts of terrorism or similar acts, governmental travel advisories, disaster, strikes (except those involving the Hotel's employees or agents), civil disorder, curtailment of transportation facilities, or any other cause beyond the parties' control, making it inadvisable, illegal or impossible to perform their obligations under the Agreement. Either party may cancel the Agreement for any one or more of such reasons upon written notice to the other. In the event Group decides to hold its Meeting despite such circumstances, the Hotel shall waive any fees related to a reduced-sized Meeting (including any room attrition fees, function space rental, food and beverage attrition fees) and shall offer the Group's guests any lower room rate offered to guests during the contracted dates.

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The proper function of the Force Majeure clause is to address the consequence of events beyond the control of either party, making it exceedingly difficult, inadvisable, impractical or impossible to continue with the event as originally planned. The clause is not designed to, and does not operate as, an excuse to cancel a meeting because it is no longer convenient or no longer economically desirable.

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Every organization hopes that it will never have to invoke Force Majeure. However, when needed, a well-drafted clause will insure that one disaster doesn't create another for your organization.

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Special Thanks

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