

What can I do when my wedding's stuck in COVID-19 limbo?

April 2020

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COVID-19 RESOURCES

The global outbreak of the novel coronavirus (COVID-19) is a public health emergency of international concern. In Singapore, the government has acted swiftly to impose restrictions. At the time of this article, all gatherings have been limited to 10 persons until 30 April 2020, and all events of 250 people or more have been suspended until 30 June 2020.

The situation is evolving rapidly and we expect these regulations to be tightened or extended. One group that has been impacted are couples with upcoming wedding celebrations, as well as other events organisers. If you are in this position, you may be wondering whether you are entitled to cancel or postpone your event, without losing your deposit, or worse, being forced to pay the full agreed price to the venue and your vendors. This article is meant to be a simple guide to navigating the process.

People keep mentioning a Force Majeure Clause. What does it mean?

The first thing you should do is review your contract with the venue or vendor to see if the contract contains a 'Force Majeure' clause.

'Force Majeure' is a common name for a clause that excuses you from your obligations, when some unforeseen event prevents or delays performance. Note that the clause may not contain the words 'force majeure'.

The effect of a Force Majeure Clause depends almost entirely on the words in the clause. For example, the contract used by a very reputable hotel in Singapore contains the following clause:

"Force Majeure

If events beyond the reasonable control of the Parties, including but not limited to, acts of God (flood, earthquake, tornado, fire, etc...) war, strikes, threats or acts of terrorism or similar acts, disease, World Health Organization travel advisory, civil disorder, curtailment of transportation facilities, make it inadvisable, impracticable, illegal or impossible to perform as originally contracted under this Contract, the affected party may terminate this Contract, without liability, upon written notice to the other party. Any deposits made shall be refunded to Client within 30 days after written notice of cancellation under Force Majeure"

A well drafted clause like the one above makes it clear that the affected couple would be entitled to cancel their wedding dinner, and have their deposit refunded.

What should I look out for?

It is likely that your contract contains a clause with different words. Thus, it is important to read your contract carefully. You should look out for the following:

1. Scope - Some clauses will list specific situations that can trigger the clause, such as "disease", "epidemic" or an event that "poses a risk to the health or safety of participants". Other contracts may not list specific examples, but use terms like "act of god" or "force majeure event". These terms are usually interpreted to mean events that are unforeseeable and unavoidable, and most lawyers would argue that they include the COVID-19 outbreak.

2. Seriousness - In the example above, the clause is generous enough to allow cancellation were the event is merely "inadvisable" or "impractical". However, if there is no such allowance, then the default position is it must be **impossible**, or **illegal**, to hold the event in the terms originally agreed.

Presently, the government restrictions prohibit gatherings above ten, before 30 April 2020. Weddings planned for this period obviously fall into the "impossible" category. However, if the wedding is planned for after the black-out period, then the issue is not clear cut.

The couple may argue that it is impossible to organize a dinner just after the black out period, given the uncertainty. However, the Courts have traditionally been very strict in interpreting Force Majeure clauses.

3. Procedure - Some contracts provide for a specific procedure to invoke the Force Majeure clause. If there is no specific procedure, the couple should inform the venue or vendor in writing.

4. Consequences - Some contracts provide for cancellation at the option of the couple. Others may provide for postponement, or a reduction in number.

Help! My contract doesn't contain a Force Majeure Clause

If your contract does not contain a Force Majeure Clause, you may still be able to cancel your contract, by relying on the doctrine of Frustration. Frustration occurs when an unforeseen event, through the fault of neither party, renders contractual obligations impossible, or radically changes the party's principal purpose for entering into the contract. In terms of COVID-19, a wedding or event may be said to be frustrated on the basis that the law has been changed, rendering the planned event illegal.

The difference between frustration and force majeure is that the scope and effect of a force majeure clause depends strictly on the contract. In contrast, the Court has greater discretion to decide whether a contract has been frustrated, and correspondingly, the parties have greater scope to argue that a contract has, or has not, been frustrated.

When a contract is frustrated, it is essentially cancelled. Neither party needs to do anything more for the other. There is no need to pay any sums set out in the contract. If deposits have already been paid, a refund or partial refund may be obtainable.

What should I do? Do I need to pay to engage a lawyer?

The doctrine of frustration and force majeure is complex, and there are serious consequences if misapplied. If a couple cancels a wedding without legal basis, they may be liable to the hotel and the vendors for their losses, which may include the full costs payable under the contract.

For this reason, we would recommend speaking to your venue provides and vendors first, to see if a suitable compromise can be reached. Many venue providers and vendors are understanding enough to reach a sensible compromise that would benefit all parties. There is no need to rush to engage a lawyer.

However, if you are unable to reach a compromise, we recommend obtaining legal advice on whether the current COVID-19 situation constitutes a force majeure event within the scope and ambit of the relevant clause, or alternatively, a frustrating event given your individual circumstances.

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