Effects of the drastic Measures to combat the Corona pandemic for golf professionals
(Status March 17, 2020, 5:00 p.m.)

The current situation of comprehensive restriction of private and public everyday life cannot be compared with anything we have experienced in recent decades: The resulting standstill of golfing in all its facets naturally hits the members of the PGA of Germany particularly hard. The following is an attempt to give an overview - based on the current situation in the afternoon of 17 March 2020 - of the legal questions that arise, especially for independent pros.

As soon as there is any news on the topics listed below or other relevant topics, we will of course continue to keep you informed.

A note in advance: This is above all the time to solve this all-sided difficult situation in the best possible way in consultation - for example with the golf club or the golf students. Possible state aid is to be expected, but will take its time. What can now be regulated should therefore be tried to be regulated.

I. Initial situation

1. Forced closure of golf courses to combat the corona pandemic

Between 14 and 16 March 2020, the first federal states already issued regulations on restrictions in public life, which largely restricted leisure activities and forced the closure of golf courses. On the evening of 16 March 2020, the Federal Government and the Federal States adopted "Guidelines for a uniform procedure for the further restriction of social contacts in public life in view of the corona epidemic in Germany".

According to these guidelines, inter alia, "the practice of sport on and in all public and private sports facilities, swimming pools, gyms and similar establishments" and "meetings in clubs and other sports and leisure facilities" are will be temporarily prohibited. This means that all sports activities are to be discontinued on the facilities concerned and not only sporting competitions but also individual instruction as well as group and team training on golf courses are prohibited. In other words, it is likely that golf courses will not be allowed to be used for playing or practising anywhere in Germany. Indoor facilities are also affected by the state-imposed closures.

At present, the regulations available to date usually provide for closure until the end of the Easter holidays, but they can be extended if necessary.

With regard to the first state-imposed restrictions, there were some statements, for example on Bavaria, which still did not consider playing on golf courses or teaching on a golf course to be prohibited. Due to the purposes pursued with the drastic restrictions on public life, we do not share these assessments, especially since the federal and state governments have now finally decided together that no more leisure activities should take place outside of one's own living quarters. Without doubt, golf lessons are generally a leisure activity.

Violations of the prohibitions already issued or to be issued are, according to § 75 para. 1 of the Protection against Infection Act (IfSG), a criminal offence punishable by imprisonment for up to two years or a fine. If the violation leads to the spread of corona or the pathogens, a prison sentence of up to five years may even be imposed (§ 75 para. 3 IfSG).

As the guidelines adopted on 16 March 2020 are legally guidelines that must be implemented by the individual federal states or administrative districts and independent cities, it is currently not possible to conclusively assess when exactly which restrictions are in force in which federal state or administrative district or
independent city. If in doubt, please enquire with the local authorities and, if possible, have their opinion confirmed in writing or by e-mail.

As far as the authorities are still informed on request that private golf lessons are permitted, this can quickly become obsolete and may not comply with the local legal situation for one day or even just a few hours.

2. Travel restrictive recommendations/measures, border closures

Travel not only abroad, but even within Germany is currently discouraged as a matter of principle; it should no longer exist for the time being. It cannot be ruled out that in Germany, too, there could be direct measures restricting travel, such as a curfew. Overnight stays for tourist purposes should also no longer exist within Germany. In addition, border closures are increasingly taking place. This means that, insofar as it is currently still possible to leave Germany, re-entry is not reliably guaranteed. Several states have already imposed curfews. It is not possible to estimate if/when, for example, international air traffic might be suspended.

II. Effects on golf lessons (individual lessons as well as group and team training) if golf lessons are prohibited

Note: Possible regulations in general terms and conditions (AGB) for the case of impossibility cannot be considered in the following. If regulations have been made in AGB, it must be checked whether they are effective.

1. Current impossibility of performance for the pro

At present it is/will be impossible not only for the individual pro, but for every pro to give golf lessons in Germany. Otherwise, he would violate a prohibition issued on the basis of a law and be liable to prosecution. This means that objective impossibility in the sense of § 275 paragraph 1 German Civil Code (BGB) exists. Not only is it currently not allowed to give lessons, it is also legally not allowed to do so.

2. Effects of impossibility on the pros' claim for remuneration

If instruction cannot be provided due to objective impossibility, there is no claim to remuneration in this respect (§ 326 paragraph 1 sentence 1 BGB). Already paid remuneration can be reclaimed by the student or the facility/club (§ 326 paragraph 4 BGB).

In this case, it is of course advisable to avoid the reimbursement of fees already paid by agreeing on a postponement of the lessons (possibly with a concession as a bonus for waiving the reclaim), but not their cancellation. It could also be considered to settle currently impossible, but basically booked training nevertheless now and to grant a discount for this.

All these measures are exclusively aimed at maintaining liquidity and can therefore only partially offset any loss of profits. In the current situation, however, maintaining the company's own business should take priority over generating profits.

3. Postponement of hours already booked

It is of course possible to postpone hours that have already been booked. In this respect, there is currently uncertainty as to when golf lessons may be given again. Legally, it should also be noted that the student or the course/club may have the right to withdraw from the contract (§ 326 paragraph 5 BGB). A "forced postponement" is not possible, notwithstanding any effective regulations of the general terms and conditions.
We therefore strongly recommend that you contact the students or the facilities/clubs and, if possible, find an amicable solution.

4. **Lease payment or usage fee for the golf club or golf course**

All user fees such as a lease or usage fees are agreed in principle for the possibility of use without it being important that the use actually takes place. The current situation, that golf courses can temporarily not be used at all for giving golf lessons due to governmental restrictions, has certainly not been considered in the drafting of any contract, as it was hardly imaginable until now. Restrictions on the possibility of using golf courses, for example through tournaments, which are frequently provided for in contracts, concern significantly fewer restrictions.

Whether and to what extent the payment for using the Range / Course will lapse or be reduced in this situation is currently difficult to assess.

We recommend that, if possible, an amicable settlement be reached here.

III. **Effects on golf travel**

**Note:** Any provisions in General Terms and Conditions (AGB) for the current situation cannot be considered below. If regulations are made in AGB, it must be checked whether they are effective.

1. **The Pro himself is a tour operator of a package tour**

If the pro himself is a tour operator of a package tour, i.e. he offers at least two travel services (e.g. hotel accommodation and golf lessons) in combination, the following applies essentially:

According to § 651 h paragraph 4 sentence 1 No. 2 BGB, the tour operator can withdraw from the contract before the start of the trip ("cancel the trip") if he is "prevented from fulfilling the contract due to unavoidable, exceptional circumstances". He must declare the withdrawal immediately after becoming aware of the reason for withdrawal. Based on this, from our point of view at the moment, with a travel period until the middle or end of April, any golf trip where Pro is the organiser himself can certainly be cancelled "immediately", i.e. without culpable hesitation. Because the current situation is both unavoidable and exceptional.

However, it should be noted that the tour operator has no claim to the agreed price in the event of cancellation of the trip (§ 651 h paragraph 4 sentence 2 BGB). The pro would therefore have to refund the amounts already paid to the participants and, of course, would have to deal with the service providers (hotels, airlines, golf courses) commissioned by him. Here he runs the risk that these service providers - especially if it is not a risk area - will not agree to a refund of payments already made.

If individual participants withdraw from the trip, the tour operator loses its claim to the travel price of these participants. Although he may in principle demand reasonable compensation (§ 651 h paragraph 1 BGB), there is no claim to compensation if "unavoidable, extraordinary circumstances occur at or in the immediate vicinity of the place of destination which significantly impair the performance of the package tour or the transport of persons to the place of destination" (§ 651 h paragraph 3 BGB). If, for example, a facility in Spain, which has extensive initial restrictions, is intended as a travel destination, the pros' claim for compensation in the event of cancellation by the participants should therefore be ruled out in principle. This would be different in the case of Portugal, for example.

2. **The Pro has signed a contract with a tour operator**

There is the danger that, depending on the specific contract, the pro has no claim to remuneration from the tour operator and will have to repay remuneration already received. In this respect, however, it is particularly important which regulations have been made in the relationship between Pro and tour operator and for what reason a trip does not take place.
In general, it should be assumed in the case of golf holidays that, as a result of the teaching not being provided and the circumstances that caused this, fees already received will have to be repaid or a promised fee will not have to be paid. In view of the current crisis, it is advisable to contact the contractual partner and, if possible, find an amicable solution to the mutual problem. In particular, a postponement of planned trips could be conceivable here:

3. Postponement of golf holidays

A “forced postponement” of a golf trip is not possible. However, a postponement of the trip to a later date is possible by mutual agreement.

IV. Short-time work in golf schools

If a pro employs at least one employee, the application for short-time working allowance is considered. State-ordered closures of operations constitute an unavoidable event within the meaning of the regulations on short-time work compensation. For information on short-time work, please refer to the special information provided at https://www.sonntag-partner.de/kontakt/covid-19-aktuelle-sonderinfos/ (only in German available). There you will also find information on tax issues such as the reduction of advance payments to income tax or other issues that affect you as an employer, for example, continued payment of remuneration.

It is at least conceivable that the regulations on short-time work compensation could be supplemented in the short term to the effect that so-called solo self-employed persons, such as golf instructors who do not employ their own staff, could also apply for short-time work compensation.

V. Compensation for loss of earnings under the IfSG and other regulations

If the competent authority has imposed a “quarantine” on a pro in accordance with § 30 Infection Protection Act (IfSG) or if he is subject to a ban on professional activity as a dropout, suspect of infection, suspect of illness or other carrier of pathogens in accordance with § 31 IfSG, a self-employed person is also entitled to compensation for loss of earnings in accordance with § 56 IfSG from the federal state. This compensation for loss of earnings is generally granted on the basis of one twelfth of the monthly income from employment (profit determined in accordance with the general regulations for determining profit under the income tax law).

The wording of the compensation provision of Section 56 IfSG does not concern officially ordered plant closures. Whether or to what extent this regulation can and will be applied has not yet been clarified.

VI. Liability for the illness of golf students

A liability of the pro for the illness of golf students should only be possible in exceptional cases. For example, cases could be considered where the pro knew that he was either infected or could have been infected, for example, due to previous stay in a risk area or contact with an infected person or a person returning from a trip, and still gave lessons. In the case of an illness of a golf student caused by the pro, a criminal liability at least for negligent bodily injury would certainly come into consideration.

VII. Other public aid

Individual federal states have already announced packages of measures, others will certainly follow. In particular, it will be possible to obtain loans; hardship funds are also to be set up.
What this means in detail, we will summarize for you as soon as possible. Current possibilities are already

- Reduction of advance income tax payments on request
- For own employment / for own employees: Application for reduced hours compensation (see above under IV.)

The conditions under which further state aid is to be provided are currently still open. We will of course inform you as soon as possible as there is any news on this.

VIII. Recommendations

In the current situation, the exercise of the profession is simply prohibited. The following is therefore recommended:

- The corona crisis, despite all the severity and force with which it hits our society, is a temporary burden according to all expectations and knowledge. It is therefore necessary to bridge this period of loss of income as best we can and to hope for a return to normality. It is difficult to predict when this will happen again.
- Agreements with golf courses on user fees as well as with golf courses and golf students on intended / booked / already paid golf instruction services should be made with regard to the time after Corona. Postponements are preferable to final cancellations. If necessary, partial payments / advance payment for discounts etc. may be helpful in maintaining the flow of liquidity.
- Documents should be put in order and updated for any loans or other state subsidies. The "idle time" that now exists can and should be used to address all the administrative issues that are bothersome and unavoidable in everyday life.
- In addition, we will provide up-to-date information on all important news.

IX. Membership fee

Today the board of the PGA of Germany has decided on the following regulation regarding the membership fee 2020, which should help to ease the currently difficult liquidity situation.

- The collection of membership fees is suspended until 01 August 2020.
- The contribution invoice will nevertheless be sent at the end of April 2020 - but it is not due until 01 August 2020.
- All members will receive a written confirmation that the validity of the membership card will be extended until 15 August 2020. This information will also be distributed to all golf clubs.
- Members who (want to) pay their membership fee before 01 August 2020 will receive their membership card immediately.

X. Events of the PGA of Germany

The PGA will not hold any events until 19 April 2020. Further training courses will be postponed to a later date. Participants and members will be informed about the new dates as soon as planning reliability is restored.

We currently assume that normal training and further training operations will be possible again from 20 April 2020. The trainee seminars then planned will take place as things stand at present. If the situation still does not permit attendance at these seminars, we are already working on possible alternatives to enable training via online platforms.

At the moment we also assume that all tournaments and Playing Ability Tests, which are to take place from May onwards, can be held as planned.