COVID-19: Parliamentary discussions on Swiss federal act to legitimise emergency decrees – what is in it for Life Sciences companies?

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Since February 2020, the Federal Council has issued various ordinances on its own initiative to take the measures necessary to manage the outbreak of the COVID-19 pandemic in Switzerland. In the upcoming autumn parliamentary session (7 to 25 September 2020), Swiss Parliament will decide on the legal framework allowing the continuation and legitimation of the emergency measures taken.

Emergency measures still in place

As part of a constantly evolving set of ordinances, Ordinance 3 on Measures to Combat the Coronavirus (the "COVID-19 Ordinance 3") includes provisions of interest for the Life Sciences industry establishing the emergency measures currently in place. Of particular relevance in the present context are chapter 2 – which includes provisions regarding the maintenance of capacities in the healthcare sector – and chapter 3 on the provision of healthcare services.

These provisions establish inter alia (a) notification duties relating to stocks of essential medical goods, their procurement, allocation and distribution, (b) simplifications in the marketing authorisation procedure for and import of medicinal products used in the treatment of COVID-19 patients, as well as (c) authorisations for the marketing of medical devices that are not certified based on the applicable legal standards, provided that such devices are used for preventing and combating the novel coronavirus. The COVID-19 Ordinance 3 also establishes the basis for reimbursement by the Swiss state of molecular-biological and serological analyses performed on patients according to the criteria defined by the Federal Office of Public Health.

Having been set up by the Federal Council based on its emergency legislative powers, all these emergency measures are time-limited and are scheduled to expire, e.g. the COVID-19 Ordinance 3 on 13 September 2020. In order to avoid termination of the legislative powers, the Federal Council has prepared the COVID-19 Act transferring the emergency legislation into ordinary legislation.

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Proposed COVID-19 Act

On 12 August 2020, the Swiss Federal Council submitted its proposal for an urgent federal act establishing the rights of the Federal Council in the management of the COVID-19 pandemic in order to mitigate its effects on society, economy and authorities (the "COVID-19 Act").

In essence, the COVID-19 Act will grant the Federal Council the power to issue ordinances on the subject matters already covered within the COVID-19 Ordinance 3 (cf. above). These delegations of authority related to the provision of healthcare services, forming the central part of the legislative project (cf. the Federal Council's dispatch concerning the COVID-19 Act of 12 August 2020, p. 27), are all subject of art. 2 of the COVID-19 Act.

Need for action?

Provided that Swiss Parliament approves the COVID-19 Act, companies currently already benefiting from the exceptions and simplifications related to medicinal products and medical devices under the COVID-19 Ordinance 3 should be able to continue doing so. Hence, instead of the looming expiry of these measures the companies concerned can continue their efforts based on the emergency measures, possibly until the end of 2021 as the scheduled expiry date of the COVID-19 Act.

On the other hand, companies not yet benefiting from the emergency measures may evaluate their added value for their own business, taking into account the measures' extended applicability and parliamentary legitimisation.

No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this Legal Update.

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