

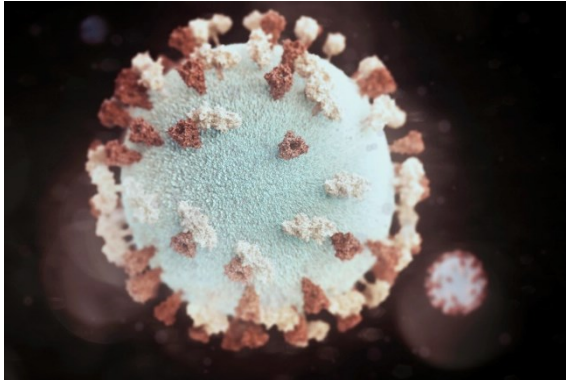


# COVID-19 Mini-series

## Episode #1 : What you need to know

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### Covid-19 Mini Legal Series

This mini-series aims at providing legal guidance and recommendations to Swiss organizations during the uncertainty relating to the spread of the new coronavirus and the recent decisions from the Swiss authorities.

While this public health threat impacts and disrupts numerous businesses and organizations whether private or public, we will provide with regular practical legal advices on specific and selected topics.

The spread of the new coronavirus around the world, known as “Covid-19”, has given rise to unprecedented measures from different countries, including Switzerland. Along with other recommendations, the Federal Council decided, on 28 February 2020, to [ban public gatherings above 1,000 people](#). While this historic decision and other restrictions seek to reduce the risk of spread of the virus, it already had a major impact on event organizers (mainly concerts and major industry meetings) as well as on other industries. Employers and industry players have to deal with remote working solutions, adaptation of travel and health policies, review of their supply chain, face contracts cancellation and assess contractual breach and remedy, as well as public health and medical care. In our Covid-19 Mini-series, we will discuss key topics and provide practical guidance and advice.

In this episode, we discuss about the Swiss Federal Act on Epidemics, how the federal or cantonal governments can impose restrictive measures and what the consequences might be for organizations.

### Q.1 Which general provisions does the Federal Act on Epidemics contain?

A.1: The **Swiss Federal Act on Epidemics (“FAE”)** defines how to protect the population against transmissible diseases and describes which measures Swiss authorities can take to achieve this goal. Due to federalism in Switzerland, various cantonal and federal authorities can have different responsibilities under this Act, such as, *inter alia*: detect and monitor the spread of the disease, use and instruct the use of preventive measures, create financial frameworks, ensure that the population can access healthcare installations or reduce the effects of the disease.

The **Federal Ordinance** of the Federal Council on Epidemics (“**FOE**”) provides more information on the implementation of the above law. This includes: emergency plans, mandatory declaration obligations, preventive measures, mandatory vaccinations on a national level (including listing approved laboratories, use of vaccines and the roles of head cantonal physicians) and financial support.

### Q.2 Which are the authorities involved in an epidemic situation?

A.2: The **cantons** coordinate with the Confederation to achieve the purpose of the law based on: (a) conclusions from cantonal reports; (b) international guidelines; or (c) science. However, the

**Federal Council** can instruct the cantons to adopt uniform measures in case of a risk for the public health, including providing emergency plans (art. 77 Epidemics Act). It can decide to involve the Swiss army to support cantons, such as for hospitals to have more staff and logistics support.

The **Federal Office of Public Health** (“FOPH”) is competent for providing [information to the population](#). The **Federal Department for Foreign Affairs** (“FDFA”) is responsible for liaising with Swiss individuals abroad, in particular to provide them consular protection where necessary (see [this page](#)).

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### Q.3 When does a situation of epidemics occur and what does it mean?

A.3: The law does not define what an epidemic. According to the FOE, in case of emergency and in order to protect the population against transmissible diseases, the FOPH must develop an emergency plan that should be developed by the cantons. In case an emergency plan is issued, the FOPH and the cantons must publish such plan and disclose it to the public in an appropriate manner (see the 2018 [pandemic plan for influenza](#)). On the FOPH’s provides three different categories and defines what “outbreak”, “epidemic” and “pandemic” situations are (access [those definitions](#)).

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### Q.4 What measures can Swiss authorities take to protect the population?

A.4: Authorities can provide recommendations and can impose restrictions on a national level, which require the support of the canton to be implemented. Measures can be imposed and, where necessary, cantons can use coercive power for individuals to respect those measures (art. 32 FAE).

The FAE includes various measures to protect the population, from regulating information systems to imposing restrictions and using public and private organizations to cooperate. Those rules and measures can include any element which can achieve assistance, prevention, treatment and population protection, such as, *inter alia*:

- obligations for healthcare institutions to declare cases (art. 4 ss FOE);
- travel restrictions (schools, workers, foreigners), and measures for transportation of individuals or goods, such as providing travel information, be subject to medical checks, etc. (art. 49 FOE), including for airports to cooperate for entry and exit at the border (art. 56 FAE);
- regulating availability and access to therapeutic products (art. 60 ss FOE);
- informing the public through public institutions, authorities and physicians (art. 68 FAE);
- national vaccination plans (art. 32 FOE).

Failure to comply with some of these measures may result in sanctions, even criminal. We will discuss sanctions and criminal aspects of this regulation in a subsequent topic.

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### Q.5 Can companies claim for reimbursement if there is a loss resulting from a decision of an authority to restrict their activities?

A.5: The law does not grant specific provisions for companies to claim for damages caused as a result of a decision taken from a Swiss authority. Public and private organizations should assess their financial risks through their contractual arrangements with third parties, including, where applicable, their suppliers or insurances to minimise their risks and losses.

With regards to the current epidemic, the **Federal Department of Economic Affairs, Education and Research** (“EAER”) is assessing the situation and the **Federal Department of Culture** invited professional organizations to discuss solutions after the Federal Council decided to ban events with more than 1,000 attendees. As this question cannot be answered in a simple and short manner, we will discuss this important topic in a separate episode.

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***The content of this newsletter does not constitute legal advice and may not be relied upon as such. Should you seek advice with regard to your specific circumstances, please contact us directly.***