

Legal requirements and mandatory due diligence by Swiss firms wishing to engage in foreign trade with medicinal products from Switzerland

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Index

1.	Purpose and scope.....	3
2.	Basics	3
3.	Interpretation.....	3
3.1	Legal framework conditions in Switzerland.....	3
3.1.1	Therapeutic products act.....	3
3.1.2	Ordinance on Establishment Licences	4
3.2	Falsified medicinal products	4

3.3	Control of specific weaknesses in international trade	5
3.3.1	Trading partners.....	5
3.3.2	Proof of the quality of the goods traded.....	6
3.3.3	Storage	6
3.3.4	Transport	6
3.3.5	Recall.....	6
4.	Changes to the previous version.....	7
5.	Appendixes	7

1. Purpose and scope

Within the framework of the international trade in medicinal products, a key role is played by firms trading abroad with medicinal products, i.e. without the goods entering the territory of the country in which the firm concerned has its registered offices. In order to reduce the risks inherent to falsified medicines and to guarantee the safer supply of medicinal products to patients, it is also important for such a business model to ensure that it is always possible to prove that the quality of the medicines being traded is guaranteed throughout the entire distribution chain.

Switzerland is one of the few countries that make it mandatory for this type of business activity to be licensed. Firms that trade out of Switzerland with medicinal products and without these products ever entering Switzerland therefore require an establishment licence granted by Swissmedic, in accordance with Swiss legislation on therapeutic products (Therapeutic products act, TPA, art. 18, para. 1, letter c)¹. These firms are regularly inspected.

This technical interpretation outlines in more details the legal requirements and due diligence for holder of an establishment license for foreign trade.

2. Basics

- Therapeutic products act (Heilmittelgesetz, HMG), art. 18 §1, lit. a and c, art. 18 §4, art. 21
- Ordinance on establishment licenses (Arzneimittel-Bewilligungsverordnung, AMBV) art. 12, §1 lit. a and d
- I-SMI.RL.02 Description, harmonisation and steering of the Swiss GMP/GDP inspection system for medicinal products, ch. 5.5

3. Interpretation

3.1 Legal framework conditions in Switzerland

3.1.1 Therapeutic products act

Like all activities in connection with medicinal products that require licences, the conditions and valid due diligence requirements within the framework of obtaining an establishment licence for trading abroad are based on the provisions of the therapeutic products act. In addition to general due diligence, the licence holder must in general carry out all that is required in accordance with the current status of science and technology in order to avoid endangering the health of humans and animals (art. 3, TPA). This applies not only to the manufacturing and the distribution of ready-to-use medicinal products but also for the manufacturing of active pharmaceutical ingredients and semi-finished medicinal products.

Since manufacturers of medicinal products must comply with the recognised rules for good manufacturing practice (GMP) (art. 7, para. 1, TPA) and guarantee the quality of goods purchased throughout the entire supply chain, this requires firms that only distribute or broker active pharmaceutical ingredients or semi-finished medicinal products to guarantee the compliance and quality of the goods they acquire and deliver (e.g. GMP-compliant manufacturing in the case of active pharmaceutical ingredients) and to document them for the manufacturers. For certain medicinal products, trade abroad is moreover prohibited (art. 21, TPA).

¹ The import followed by the unchanged re-export of medicinal products is different from this business model. In that case, it should be noted that having medicinal products stored in customs or bonded storage is already considered to be importing (art. 18, para. 4, TPA) and thus requires an import licence from Switzerland plus more extended due diligence (art. 18, para. 1, letter a and art. 28, TPA).

3.1.2 Ordinance on Establishment Licences

The Ordinance on Establishment Licences (ELO) specifies the legal requirements regarding due diligence and states that the holders of licences for trading abroad need to operate an effective system to guarantee the pharmaceutical quality of medicinal products (art. 12, para. 1, letter a), to document the relevant processes clearly (art. 12, para. 1, letter d, ELO) and to guarantee the safe trading with medicinal products and the traceability of the purchasing and sales of medicinal products.

The result of these obligations on the part of the licence holders is that they:

- a. Collect and preserve documents that are appropriate for proving the pharmaceutical quality of the medicinal products procured.
- b. Collect and preserve documents that provide at least the delivery date, quantity, batch number and precise description of the medicinal product plus the name and address of the supplier and recipient.
- c. Must forward all information relevant to quality of the products to the recipient and/or the supplier.
- d. In all cases, inform the recipient regarding the original manufacturer and the original batch number of the goods delivered and confirm that the information on the package has been verified and is correct.
- e. Immediately inform the competent authority and the MAH (if licensed) of any medicinal products they identify as falsified or suspect to be falsified. This is not only applicable for products they purchase, but also for products they are offered and which they suspect to be falsified.
- f. Have in place an effective procedure for any recalls of medicinal products needed.

It is the duty of the responsible person to ensure that there is close, expert supervision within the firm and that safety and product integrity is maintained at any time.

In the international environment, a strengthening of the requirements within the framework of fighting falsified medicinal products is taking place. In 2013 revised Guidelines for the good distribution practice of medicinal products came into force in Europe. These guidelines have been integrated into the legal provisions in Switzerland. For trade with active pharmaceutical ingredients, section 17 of the EU GMP Guide Part II includes specific provisions for brokers.

3.2 Falsified medicinal products

Falsified medicinal products constitute a particular threat to the health of consumers and are considered to be a scourge by the international community. Not only is their trading prohibited, of course, but licence holders have the particular duty to identify falsified medicines and to avoid – or, using the appropriate measures, to prevent – them from reaching the legal sales channels.

Basically, all types of medicinal products can be falsified. From experience, however, the following categories are particularly liable to be counterfeited:

- Expensive medicinal products such as oncological medicines and those against the HI virus (AIDS).
- Medicinal products that are also used as "lifestyle drugs" and have a wide user base: for example erectile stimulants, slimming products, anabolic steroids.
- Medicinal products that have already appeared in the form of counterfeits in other European countries.

If such medicinal products are offered on the market at particularly low prices or if their origin is unclear, particular care is necessary. This also applies with regard to products offered from countries or regions with less stringent official controls and thus known to lead to a greater risk of falsified medicinal products in circulation. This should also be taken into account by licence holders when selecting and examining sources of supply.

3.3 Control of specific weaknesses in international trade

The vulnerability of international trade in medicinal products with regard to falsification is well known. Swissmedic therefore considers it to be essential for firms located in Switzerland and trading abroad with medicinal products to strictly comply with the legal requirements, to carry out their due diligence and to take the necessary measures to minimise the risks inherent to trading in medicinal products. Below, we indicate specific measures that can be taken by Swiss firms trading abroad to minimise the risk of falsified medicines, plus issues that are particularly worthy of note. These aspects are also examined within the framework of official inspections in accordance with art. 19, TPA.

3.3.1 Trading partners

The entitlement for trading partners (suppliers and purchasers) to handle medicinal products must be proven and regularly checked. The procurement and transmission of medicinal products must be designed in such a way that the products are protected against manipulation by unauthorised third parties and that falsified medicines are prevented from entering the legal distribution chain. Checking trading partners is particularly important if the goods are not obtained from the original manufacturers or from their official trading partners but from a broker or another trader of medicinal products. A supplier must be able to prove its status as an officially approved wholesaler or manufacturer of medicinal products. Obtaining goods from a supplier unable to provide a wholesale or manufacturing licence from the competent medicinal product control authorities is only reliable if proof can be provided that the supplier's place of business does not require an official permit to trade in medicinal products. In this case, the supplier must be able to provide an equivalent form of proof that the principles of good distribution practice for medicinal products are complied with. Here, similar approaches as those for proving GMP compliance on the part of foreign manufacturers of active pharmaceutical ingredients and / or ready-to-use medicinal products are applied (see Swissmedic information sheet ZL000_00_014d_MB).

Such forms of proof include:

- An up-to-date confirmation, signed by the responsible person, that the firm is an approved manufacturer or wholesaler of medicinal products according to national law **and**
- A GDP certificate (original or copy), no more than 3 years old, or a valid wholesale licence (copy), or a copy of a report from an audit carried out by the supplier or a third party (no more than 3 years old), or a copy of an inspection report (no more than 3 years old) by an inspectorate from a foreign health authority.

This documentation should be available on site for each transaction. Depending on the language, consideration should be given to gather authentic translations of the documents.

Particular precautionary measures are also necessary if ready-to-use medicines are brought back from retail trade into international trade. This is only possible in exceptional cases for which full evidence can be provided, in accordance with international standards, that the goods were appropriately handled at all times and falsified medicines can be excluded

3.3.2 Proof of the quality of the goods traded

The licence holder must carry out appropriate checks on the quality of the goods traded and be able to provide proof thereof in a suitable form. Such proof can be, for example, based on certificates from the original manufacturer containing details of the quality of the goods and confirming compliance with internationally recognised GMP requirements during manufacturing. These controls of the quality aspects of the active pharmaceutical ingredient or the formulated medicinal product should however also take into consideration the correctness of the primary container, its labelling, the packaging, the shelf life or the secondary packaging. Section 17.20 of the EU GMP Guide Part II, for example, states that brokers must maintain complete traceability and retain documents relating to the identity of the goods and of the original manufacturer, purchase orders, bills of lading, receipt documents, plus authentic analysis certificates, manufacturer's batch number and information regarding retest and expiry dates. The controls should be documented and the documents should be available on site for each transaction.

3.3.3 Storage

Storage premises used for the intermediate storage of the goods traded or during their transport must be qualified for storing medicinal products. Written proof thereof has to be available on request.

3.3.4 Transport

The transport conditions for each incoming and outgoing delivery of medicinal products must be appropriate throughout the entire transport chain and the relevant proof must be available.

This includes the following measures:

- a. Agreements must be concluded with the suppliers and recipients, specifying that the conditions must be respected and be fully documented during transport and during any intermediate storage.
- b. For products subject to mandatory cold chain conditions, it must be possible to prove that the cold chain remains unbroken. It must be possible to provide the corresponding protocols for incoming and, if applicable, outgoing deliveries.
- c. The means of transport must be qualified and the transport processes validated. The storage conditions during the transport must be described in full and documented.
- d. The transport chain must be protected from risks of falsification.
- e. The transport companies used must be assessed by the person ordering the transport regarding their suitability for guaranteeing the transport conditions required. The specific conditions and measures to guarantee safe transport must be laid down in the agreements.

3.3.5 Recall

The rapid recall of goods delivered must be possible at all times. This can be carried out on the initiative of the supplier; otherwise, it is the duty of the licence holder to carry out a recall in the case of doubts regarding the quality, safety or efficacy of the goods traded. This also applies in the case of suspected falsified goods. The licence holder's procedures must be specified in detail in a standard operating procedure, and must include providing information to the competent medicinal product control authority rapidly.

4. Changes to the previous version

- Counterfeit medicinal products was replaced by Falsified medicinal products
- Ch. 3.1.2.: Clarification with regard to the verification of information on the package and regarding the duty to inform the competent authorities
- Ch. 3.3.1 and 3.3.2.: Clarification that the documentation should be available for each transaction on site to provide full evidence on the controls performed

5. Appendixes

- None