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State of Emergency in Myanmar – Answering Your Pressing Questions

Overview

The military-nominated First Vice President U Myint Swe, who is currently serving as the acting President, has declared a state of emergency for one year commencing from 1 February 2021 ("**Declaration**"), pursuant to Article 417 of the Myanmar Constitution 2008 ("**Constitution**"). The Declaration was issued after the military detained government leaders including the State Counsellor Daw Aung San Suu Kyi, President U Win Myint and other senior government officials from the National League for Democracy ("**NLD**") on early morning of 1 February 2021.

The Declaration stated that it was necessary to invoke Article 417 of the Constitution (which grants powers to declare an emergency if there are circumstances which may cause loss of sovereignty or disintegration of national solidarity) due to concerns over the alleged voting malpractice during the general elections held on 8 November 2020 ("**2020 GE**"), which the Union Election Commission ("**UEC**") has allegedly failed to address and remedy.

During this state of emergency, the legislative, executive and judicial powers of the country have been transferred to the Commander-in-Chief of Defence Services, Senior General Min Aung Hlaing, pursuant to Article 418 of the Constitution.

Notification No. 1/2021 issued by the Office of the Commander-in-Chief of Defence Services provides that the UEC will be re-constituted and following the end of the state of emergency, a free and fair multi-party general elections will be held based on the outcome of which the powers over the country will be handed over accordingly.

Frequently Asked Questions

1. Who is leading the country now?

The military-nominated First Vice President U Myint Swe is currently serving as the acting President. The executive, legislative and judicial powers over the entirety of Myanmar now rest with the Commander-in-Chief of Defence Services, Senior General Min Aung Hlaing.

Pursuant to Article 418 of the Constitution, when a state of emergency has been declared, the legislative functions of all Hluttaws (i.e. Myanmar's Parliament) and leading bodies shall be suspended and the members appointed with approval of the relevant Hluttaws are deemed to have been terminated.

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In this regard, the military has replaced the NLD government, removing NLD appointed ministers and deputies while naming replacements under the military's new administration. Some of these replacements include top officials aligned with the military, while others are former ministers and officials from the previous Thein Sein administration. This includes U Win Shein (now the Minister of Planning, Finance and Industry), who previously held the post of Minister of the then Ministry of Finance, U Aung Naing Oo (now Minister of Investment and Foreign Economic Relations), who previously held the post of Permanent Secretary of the same ministry and prior to that Director General of the Directorate of Investment and Company Administration, as well as U Than Nyein, who re-assumes his former position as Governor of the Central Bank of Myanmar.

2. Are there any border controls and/or movement controls within the country at present?

In light of the COVID-19 pandemic, it was announced on 30 January 2021 that the suspension of international flight operations in the Yangon International Airport would be extended until 28 February 2021. In addition, Myanmar's government agency in charge of air travel has announced that it has suspended all passenger flights in the country following the declaration of the state of emergency up till 30 April 2021. However, domestic flights and international relief flights are expected to still continue.

Within the country, no movement control orders specific to the Declaration have been issued to date although most townships in Yangon have already been placed under a "stay-home" order and the inter-state travel is already heavily restricted due to the COVID-19 pandemic. In addition, we understand that following the Declaration, entry into Nay Pyi Taw is subject to extensive security checks and a number of military cars have been patrolling the landmark locations, such as the Yangon City Hall.

3. Are essential utilities still available to the public during the state of emergency?

The restrictions to the Internet were reported in the early morning on the day of the Declaration. All broadcasts (except for the military-owned Myawaddy channel), mobile data and phone connections were disrupted, although the telecommunications networks have been largely restored in the commercial city of Yangon at time of writing.

Public transport including buses and taxis remain operational.

4. Are there protests? What should companies take note of if their employees are arrested in protests?

As at the time of writing, there are currently no widespread demonstrations and protests. Accordingly, there are few signs of extra security in Yangon beyond the military and police presence seen on 1 February 2021.

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Companies should note that participation in a riot or behaviour in a disorderly manner to cause a breach of peace or public nuisance can be an arrestable offence. In such a case, the Code of Criminal Procedure ("**CCP**") provides for detention of up to 24 hours only (exclusive of the time necessary for the journey from the place of arrest to the police station, and from there to the Magistrate's Court). However, in all cases of arrest, unless bail is granted, the Police will typically make an application under the CCP to extend the detention period of the individual in custody for up to 30 days (where the relevant offence is punishable with imprisonment of at least 7 years) or up to 15 days (where the relevant offence is punishable with imprisonment for a term of less than 7 years). Access to counsel in practice will typically be granted only after the accused has been charged.

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