

MYANMAR LEGAL MHM

Newsletter

In this edition of our newsletter, we provide the following legal updates:

- **Issuance of State of Emergency Declaration:** At 8 a.m. on 1 February 2021, Myanmar news agencies reported that a state of emergency had been declared across Myanmar for a period of one year, for the duration of which, all functions of government (legislative, executive and judicial) have been transferred to the Commander-in-Chief of Myanmar's armed forces.
- **Firm Update:** Update on the operation of our Yangon office.

LEGAL UPDATES

At 8 a.m. on 1 February 2021, Myanmar news agencies reported that a state of emergency had been declared. As of 1 February, the content of the declaration has not been published, but based on media reports, we summarise below our understanding of the content and basis for the declaration, as well as issues to keep in mind to maintain business continuity in Myanmar.

(1) *Summary of the details and basis of the declaration of the state of emergency*

Summary of the state of emergency declaration

According to media reports, the state of emergency was declared in response to the alleged fraud regarding voter lists in the 2020 national elections, and the Myanmar Union government's decision not to postpone opening Myanmar's parliament. The state of emergency is reported as being issued in accordance with Article 417 of Myanmar's Constitution. It is reported that, under the order, the legislative, executive and judicial powers of Myanmar's government have been delegated to the Commander-in-Chief of Myanmar's armed forces under the first paragraph of Article 418 of the Constitution, in order to undertake the measures in response to the state of emergency, including confirming the voter lists. The state of emergency applies to all of Myanmar, and is reported to last for a period of one year.

Legal basis

The Myanmar Constitution of 2008 provides for states of emergency in Chapter 11.

Article 417 provides that (i) the President may (ii) in response to events 'may disintegrate the Union or disintegrate national solidarity or that may cause the loss of sovereignty, due to acts or attempts to take over the sovereignty of the Union by insurgency, violence and wrongful forcible means' (iii) and after consultation with the National Defense and Security Council, issue an ordinance declaring a state of emergency. The ordinance issued by the President shall be expressed to have legal effect throughout the country and shall be for a period of one year from the date of its promulgation.

The first paragraph of Article 418 of the Constitution also provides that if a state of emergency is declared, the president must declare that the legislative, administrative, and judicial powers are to be transferred to the Commander-in-Chief of Myanmar's armed forces, and that as of the day when the declaration is made, the functions of all of Myanmar's legislatures shall be suspended, and the legislature shall be deemed to have been automatically dissolved.

According to media reports, this state of emergency is based on Articles 417 and 418 of Myanmar's Constitution. However, according to media reports, Vice President U Myint Swe signed the declaration on the basis of being an Acting President (rather than the President, U Win Myint). The first paragraph of Article 73 of the Constitution provides that in the event that the Office of the President falls vacant due to his resignation, death or permanent disability, or he is otherwise unable to perform his duties, the Vice President who won the second highest number of votes in the Presidential election shall perform the duties of the President as Acting President. It is possible that Vice-President U Myint Swe

Key Contacts



Julian Barendse
TEL +95-1-9253650
julian.barendse@mhm-global.com



Nirmalan Amirthanesan
TEL +95-1-9253657
nirmalan.amirthanesan@mhm-global.com



Sooksun Popun-Ngarm
TEL +95-1-9253659
sooksun.popun-ngarm@mhm-global.com



Tony Grundy
TEL +65-6593-9756 (Singapore)
tony.grundy@mhm-global.com



Takeshi Mukawa
TEL +95-1-9253652
takeshi.mukawa@mhm-global.com

has assumed the office of President and declared the state of emergency based on Article 73 of the Constitution.

It has been reported that the National Defense and Security Council proposes to hold new elections after the circumstances leading to the state of emergency are resolved. This may mean that the declaration of state of emergency may lapse before its term of one year, although the situation remains uncertain.

(2) Key considerations to ensure business continuity in Myanmar

At present, a stay-at-home order applies in Yangon due to the ongoing COVID-19 situation. In addition, further curfews and restrictions on movement may be issued due to the declaration of the state of emergency. If a contract in Myanmar cannot be performed due to such circumstances, it will be important to consider whether a force majeure clause is applicable, or alternatively, if it is possible to avoid performance of the contract on the grounds of frustration under section 56 of the Contract Act of Myanmar. We understand many businesses have already considered these options in response to the ongoing COVID-19 situation. It is important to calmly consider and respond to current events to maintain business operations.

FIRM UPDATE – OPERATIONS OF OUR YANGON OFFICE

Our Yangon office is working remotely from home from today, and we will continue normal operations for our clients. In terms of the situation on the ground, there are still buses and taxis operating on Kabar Aye Pagoda Road, in the center of Yangon near where our office is located, and it seems that for now there is a certain level of normalcy around this area. We will closely monitor the situation and update you of any developments.



Kana Manabe
TEL +95-1-9253653
kana.manabe@mhm-global.com



Atsushi Inoue
TEL +95-1-9253654
atsushi.inoue@mhm-global.com

MYANMAR LEGAL MHM

Myanmar Legal MHM Limited
Level 16, #16-01/02,
Junction City Tower
No. 3A, Bogyoke Aung San Road
Pabedan Township
Yangon, Myanmar
www.mhmjapan.com