



## Preliminary report: sudden change in the political situation in Myanmar

Yusuke Yukawa

As already reported in various media reports, on February 1, 2021, many officials of National League for Democracy (NLD), including its leader Aung San Suu Kyi, were detained by the Myanmar military. This article sets out preliminary report of the sudden change in the political situation in Myanmar.

As already mentioned in various media reports, on February 1, 2021, many officials of the National League for Democracy (NLD), including its leader Aung San Suu Kyi, were detained by the Myanmar military. The military made an announcement that the national emergency was declared based on Articles 417<sup>1</sup> and 418<sup>2</sup> of the Constitution of Myanmar alleging the unfairness of the national election in November 2020, and that the acting president, appointed by the military, delegated the authority of the state's judiciary, legislature, and administration to the commander in chief of the military. It is also alleged that this measure will take place for one year, and a general election is to be held.

As of the evening of the same day, it appears that there have been no outbreaks of riots or other movements severely harming local civilians. However, the discontinuation and destabilization of communications and other factors have begun to affect the lives of citizens, and many foreign embassies have requested that people refrain from going out unnecessarily in preparation for unexpected contingencies<sup>3</sup>.

<sup>1</sup> "If there arises or if there is sufficient reason for a state of emergency to arise that 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, the President may, after co-ordinating with the National Defence and Security Council, promulgate an ordinance and declare a state of emergency. It is not clear from the press whether or not In the said ordinance, it shall be stated that the area where the state of emergency in operation is the entire Nation and the specified duration is one year from the day of promulgation."

It is not clear whether or not the coordination has been made as stipulated in the said article.

<sup>2</sup> "(a) In the matter concerning the declaration of the state of emergency according to Section 417, the President shall declare the transferring of legislative, executive and judicial powers of the Union to the Commander-in-Chief of the Defence Services to enable him to carry out necessary measures to speedily restore its original situation in the Union. It shall be deemed that the legislative functions of all Hluttaws and leading bodies shall be suspended from the day of declaration. It shall also be deemed that on the expiry of the term of the said Hluttaws, the relevant Hluttaws have been dissolved automatically.

(b) Notwithstanding anything contained in the Constitution, commencing from the day of transfer of the sovereign power to the Commander-in-Chief of the Defence Services, **it shall be deemed that the members appointed and assigned duties by approval of the relevant Hluttaws in accord with the Constitution, Self-Administered Division Leading Bodies or the members of Self-Administered Zone Leading Bodies, with the exception of the President and the Vice-Presidents, have been terminated from duty.**" (emphasis added)

<sup>3</sup> <https://mm.usembassy.gov/security-alert-military-detained-nld-party-leaders-2/>

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At present, it is extremely unclear to what extent this event will affect corporations that have already established operations or possible investments into Myanmar, due to a lack of clarity on how the military-led Myanmar government would react to investment-related matters, as well as the expected outcome of the upcoming election to be held. However, it is likely that the following issues, among others, will arise:

- Difficulties in entering into new businesses/transactions in Myanmar, due to possible sanctions to be imposed, likely on military officials, by the United States<sup>4</sup> and other Western countries;
- Impact of the above sanctions on existing transactions. Specifically, whether it is possible to suspend the ongoing transaction under current contractual arrangement, such as through a Force Majeure provision;
- Impact of changes in the Myanmar government organizations, which may affect ongoing negotiations related to permits and licenses;
- Labor-related matters caused by the difficulties in existing operations in Myanmar; and
- Preservation of existing investments.

In particular, with regard to the possible sanctions to be imposed, they could be more severe compared to those imposed by the United States until 2016, in light of the changes in the global political climate and developments in international human rights issues.

Following the above, a part of the appointments of the new ministers by the Government of Myanmar have been announced by the military-affiliated media. With regard to ministers relevant to foreign investment, it appears that the following respective persons are appointed:

- Ministry of Planning and Finance: U Win Shein
- Ministry of Investment and Foreign Economic Relations: U Aung Naing Oo

Win Shein served as the Minister of Finance under the Tein-Sein administration. In addition, Aung Aning Oo served as Permanent Secretary of the Ministry of Investment and Foreign Economic Relations under the NLD administration, and before that, as Director-General of DICA and Secretary of the MIC. He had extensive experience in introducing new Myanmar Companies Law and dealing with various foreign investments, and also has a large amount of experience communicating with international investors and communities, including our firm.

In the current unforeseeable situation, the appointment of the economic-related ministers can be viewed positively from making investors possible to communicate with the government relatively smoothly under the current extraordinary situation. We will continue to follow up on the management of Myanmar authorities relevant to foreign investments.

We will continue to update you, placing the safety of local members in our firm as our highest priority. We sincerely hope that the situation will be resolved soon, and that peaceful and safe daily lives will be restored to the people of Myanmar and the others concerned.

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<sup>4</sup> See, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/31/statement-by-white-house-spokesperson-jen-psaki-on-burma/>, for the statement issued by the White House Spokeperson.

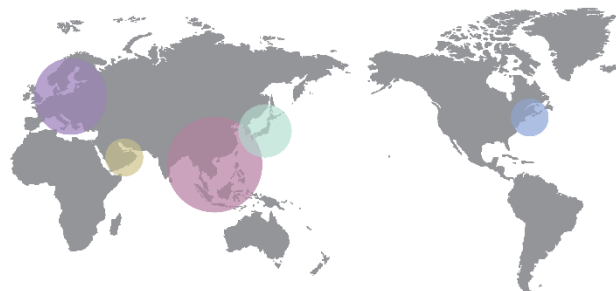


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Yusuke Yukawa graduated from Keio University (LL.B.) in 1998 and Stanford Law School (LL.M.) in 2007. He has been in Myanmar since January 2013, longer than any other Japanese attorney of a major Japanese law firm. He has a wide-range of experience and has established an impressive network comprising companies, government ministries and non-profit organizations. He was recognized as one of the leading practitioners in Myanmar by Chambers Asia-Pacific and Chambers Global.

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