



After losing the support of the majority of the Members of Parliament (MPs), Tan Sri Muhyiddin Yassin had tendered his letter of resignation as the Prime Minister on 16 August 2021 to the Yang Di-Pertuan Agong (YDPA), together with the resignation of the entire cabinet. In the media statement by the National Palace, the YDPA had appointed Muhyiddin as the caretaker Prime Minister pursuant to Article 40(2)(a) and 43(2)(a) of the Federal Constitution pending the appointment of a new Prime Minister. The appointment had been gazetted on 16 August 2021 to notify that Muhyiddin shall be charged with the responsibility in respect of all departments of the Federal Government and the subjects for which the departments are responsible until the appointment of the other Ministers in the Cabinet.

The position of a ‘caretaker’ or ‘interim’ Prime Minister is not provided for under the Federal Constitution, but rather it is a convention that came from the Westminster parliamentary system. The appointment of a Prime Minister is pursuant to Article 43, which does not differentiate between a ‘permanent’ or a ‘caretaker’ Prime Minister. Since there is no such position under the Federal Constitution, a caretaker Prime Minister technically holds the same power as that of a permanent Prime Minister. However, although not expressly provided for, there are conventions that recognize certain limits to the powers that may be exercised by a caretaker Prime Minister. Muhyiddin was appointed as a caretaker Prime Minister by the YDPA on the understanding that he had lost the majority support of MPs and that he will only hold the position of the Prime Minister until a new Prime Minister is appointed among the other MPs. Premised on this understanding, it would therefore be improper if Muhyiddin could exercise the full powers of a permanent Prime Minister during his appointment as a caretaker Prime Minister. A caretaker Prime Minister is expected to maintain the status quo by continuing to implement policies already decided by the previous government. He shall not introduce new legislation or decide on new policies during his term as the caretaker Prime Minister. In addition, like a permanent Prime Minister, the caretaker Prime Minister will remain answerable to the Parliament.

Can the caretaker Prime Minister appoint a caretaker cabinet to assist him with the day-to-day affairs of the government? Technically, there is nothing in the Federal Constitution that would prevent him from doing so. The appointment of a caretaker cabinet would be pursuant to the same legal basis as the appointment of a permanent cabinet. However, Muhyiddin may have to exercise restraint and appoint a much smaller cabinet by prioritizing essential ministerial portfolios, due to his temporary and limited powers.

Who has the Majority?

Although there is no time limit for Muhyiddin to remain in the position of caretaker Prime Minister, it is understood that a new Prime Minister ought to be appointed as soon as possible. Since the YDPA had

expressed that an election should not be held at the time being due to the Covid-19 pandemic, the appointment of a new Prime Minister will have to be done by a show of support of the MPs. The Prime Minister must command support from the majority of the MPs, as per the Federal Constitution. However, the Constitution is silent on how the majority may be proven. It was earlier reported that MPs had been asked to submit a statutory declaration to the Speaker of the House of Representatives with the name of the MP they nominate as the Prime Minister, which will then be submitted to the YDPA. A political leader had also been quoted that the YDPA had decreed for the new Prime Minister's majority to be proven in Parliament. These two processes are clearly different from the process in February 2020 where the YDPA called all political party leaders to the palace to ascertain the MP with majority support, which turned out to be Muhyiddin at that time.

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