



Declaration of State of Emergency in Japan

9 April 2020

Executive summary

- On Tuesday 7 April, Prime Minister Abe declared a one-month state of emergency, covering seven prefectures: Tokyo, Osaka, Saitama, Kanagawa, Chiba, Hyogo, and Fukuoka;
- This is not the same as a “lockdown”, since neither the Japanese government nor local governments have the powers to ensure compliance;
- Prime Minister Abe hopes infections will peak in around two weeks’ time if social interactions decrease by around 80%;
- Requests for closure of non-essential businesses cannot be enforced, but prefectural governors can “name and shame” businesses refusing to comply.
- The government is keen to limit economic damage. Accordingly, the definition of “essential” activities and businesses is wide, including commuting to work and allowing restaurants to stay open.
- Experts question whether the state of emergency and associated measures will be sufficient to slow the spread of COVID-19 in Japan, due to lack of enforcement measures and questions about compliance.

State of emergency declaration

In an unprecedented step, Japanese Prime Minister Shinzo Abe officially declared a state of emergency on Tuesday 7 April in an attempt to deal with the rapid rise of COVID-19 cases in Japan. The declaration became effective at midnight on the same day, and will be in place for 29 days, coming to an end on Wednesday 6 May – just after Japan’s Golden Week holiday period.

The state of emergency covers seven prefectures: Tokyo, Osaka, Saitama, Kanagawa, Chiba, Hyogo, and Fukuoka. Prime Minister Abe requested that people stay at home as much as possible in order to prevent infections rocketing to an estimated 80,000 cases within a month. Abe asked people who do have to go out to avoid crowded areas, wear masks, and practice social distancing to protect their own lives and the lives of others.

The decision to implement a state of emergency came after a sharp rise in cases over the past two weeks, with Tokyo seeing a concerning rise in infections that had no known path of infection.

Tokyo Governor Yuriko Koike had requested that residents stay inside for all but necessary activities for the two weekends preceding the declaration, but concern about the COVID-19 outbreak continued to grow, as did the average number of new cases each day. On the Friday before the declaration, Tokyo Governor Koike explained how Tokyo would respond if a state of emergency was declared, perhaps nudging Abe to make the declaration. The Prime Minister found himself under increasing pressure to take this step before the outbreak got out of hand. He met a group of officials to discuss the implementation of a state of emergency two days before the declaration.

Legal basis

The state of emergency was declared on the basis of the *Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness Response*, which was enacted in 2012 to tackle new infectious diseases such as H1N1. The *Act* was revised on 13 March 2020 so that it could be applied to COVID-19 and to provide a legal basis for Abe's declaration. The government then established a Special Novel Coronavirus Taskforce, a prerequisite under the law before a state of emergency could be declared.

The legislation stipulated that the Prime Minister could declare a state of emergency only once the disease was deemed "rampant", to the point where it posed a "considerable impact" on lives and the economy. This criterion was deemed to have been met once cases started reaching the triple digits in Tokyo alone, with 143 cases reported on Sunday 5 April. The first day of the state of emergency, Wednesday 8 April, saw a new high of 144 cases in Tokyo and was the first day that nationwide infections exceeded 500 new cases in one day.

The declaration of a state of emergency gives governors of the designated prefectures greater legal authority to take measures they deem necessary to limit further spread of infection. They may request that residents stay home, except for when carrying out "essential tasks", which includes not just shopping for essentials but also working. They may also request the temporary closure of certain types of businesses.

Unlike the more restrictive measures taken in many countries, such as France, Germany, Australia, and South Africa, Japan's state of emergency does not

constitute a full “lockdown”. It might be called a “soft lockdown” in the sense that the government can only issue *requests* to residents and businesses – the state of emergency does not give prefectural or national government the legal right to impose penalties on those who do not comply. “Requests” by prefectural governments are, however, widely understood to mean “demand”, with a strong expectation that people should comply. Prime Minister Abe has also spoken of seeking the cooperation of the police to request that people remain inside, though he did not elaborate on what this would mean in practice.

Should the number of COVID-19 cases continue to surge, prefectural governors would have the powers to requisition land for the construction of temporary medical facilities, even if a landowner were to refuse. Governors do also have the power to order suppliers of medicine and food to sell their products to the authorities.

Scope of the state of emergency

The government wishes to ensure that the state of emergency declaration does not cause unnecessary damage to economic activity. Whilst it calls for all those who can work from home to do so, some employers will expect their employees to come to their place of work. Employers who are unable to fully implement home working are asked, therefore, to have employees come to their workplaces in “shifts”, so that some are able to remain at home for part of the time.

Although the initial period of the state of emergency is just under one month, Prime Minister Abe suggested on Tuesday 7 April that this could be extended if deemed necessary by experts. He stressed that he would prefer to avoid limiting individual rights further through an extension, if possible. Conversely, the state of emergency could be extended to other prefectures if necessary.

Essential and non-essential facilities

Several types of facilities are considered non-essential and will be asked to close at some point during this month:

- Educational facilities (universities, language schools, driving schools, etc.);
- Exercise facilities (gyms, swimming pools, sports centres, etc.);
- Leisure-related facilities (museums, cinemas, venues, libraries, etc.);
- Recreational facilities (bars, nightclubs, internet cafes, karaoke, game arcades, pachinko parlours, etc.); and
- Non-essential floors of large facilities such as department stores.

Whilst these facilities cannot be forced to close, if they do not comply with a request to close, governors would be permitted to “name and shame” those that do not comply. They may also issue a stronger request for closure.

Facilities considered essential will remain open, though they may be asked to limit hours at night and on the weekend. These include:

- Medical facilities (hospitals and pharmacies);
- Grocery stores, supermarkets and convenience stores;
- Housing and accommodation facilities such as hotels;
- Barbers and hairdressers;
- Transport services (trains, taxis, buses and rental car services);
- Banks, post offices and utilities; and
- Restaurants.

Regional disparities

Whilst the national government has outlined the expected scope of business closures, there is a possibility that there will be disparities between different prefectures. For instance, hairdressers and restaurants are designated “essential” businesses by the national government, whilst Governor Koike is inclined to request that these types of business close. Koike wanted to announce the list of businesses that would be asked to close in Tokyo by Friday 10 April, and to implement this from Saturday 11 April. However, in a conference call with the seven affected prefectures on Wednesday 8 April, Minister for Economic Revitalisation Yasutoshi Nishimura asked that business closure requests be postponed for a further two weeks, highlighting again the government’s desire to limit the economic fallout of the crisis.

Prefectures other than Tokyo are expected to issue fewer requests for closures. The key reason for the disparity is the difference in each prefecture’s financial resources – the more businesses that are closed, the higher the amounts prefectural governments will have to be pay businesses in compensation. This is particularly important for the prefectures other than Tokyo, which have fewer financial resources. The prefectures are lobbying the national government for financial support to cover these additional costs, but the government has so far refused.

Public health impact

The state of emergency is expected to have some impact on reducing the pace of the spread of the coronavirus, though some experts have expressed doubts that it will be

enough. Abe had to go through a number of important steps before he could make the declaration, including the enactment of the new legislation and the compilation of a huge economic package in order to win the support of business. This meant that the declaration came too late for some. There are fears that the real number of infections could be significantly higher than reported numbers, due to the limited number of tests conducted so far.

The level of compliance with the government's requests will be a key factor in determining how effective the state of emergency will be. A TBS poll conducted between 4 - 5 April, in the days before Abe's announcement, found that 80% of those surveyed supported the declaration of the state of emergency. This suggests a large proportion of residents might seek to limit non-essential outings. However, it may not be enough to reach the government's target of cutting person-to-person contact by 80%, especially if many people continue to go out to work. The first morning after the declaration of the state of emergency saw a 35% drop in passengers on Tokyo's Yamanote train line, which tends to be extremely crowded during rush hour. Whilst there has been a reduction, the data suggest that a significant number of employees are still making their way to work each morning. Nevertheless, the areas affected by the state of emergency were quieter than usual during the first day.

Economic impact

The net economic impact is difficult to predict. At the start of the outbreak, Japan was affected by its dependence on Chinese supply chains, and by the concentration of Japanese factories and business in Wuhan and Hubei. Continued commuting and visits to places such as restaurants and hairdressers might help to limit the economic impact going forward, but it could also limit the effectiveness of the declaration in reducing person-to-person contact.

One area of concern is a planned subsidy for individuals whose income has fallen as a result of the crisis. The government announced a 300,000 yen subsidy for individuals or households that meet one of two conditions in any of the months between February and June this year; (1) household income has declined to below the yearly salary standard for tax exemption, or (2) monthly income has more than halved in comparison to the level of salary before the coronavirus pandemic. In practice, these conditions exclude a significant number of employees who cannot afford not to work, and who may, as a result, decide that they need to continue going to work or to seek additional employment to make up the financial deficit.

Post-emergency measures

Once the rate of infection has slowed to a level where it is deemed that the state of emergency is no longer necessary, the government has been clear that reviving the economy will be a key priority. Economic revival will focus in particular on the tourism, transportation, hospitality, and entertainment industries. To this end, each ministry is planning and preparing measures and campaigns to support these industries, allocating specific budgets for them in the FY2020 supplementary budget. The government is also weighing up schemes to encourage consumption, such as the issuance of coupons, and point scheme incentives administered through the My Number Card. The government believes such campaigns will contribute to the revitalisation of the economy once the COVID-19 outbreak is brought under control.

Impact on central government

A key question that arises is the impact on the way the central government works. The present crisis is without precedent, and as such most ministries are not set up to work remotely, and generally require that civil servants be at their desk. However, parts of the government have begun to adapt, with the Cabinet office implementing shifts to allow half of its officers to work from home whilst the other half are at their desks. This may prove to be the model that other ministries will go on to follow.

Diet members and their staff, on the other hand, are expected to continue working, as they must now pass the budget for the economic measures the government is planning. Nevertheless, the ruling Liberal Democratic Party (LDP) has asked for restraint in holding larger meetings and study sessions that are not considered essential in terms of the response to COVID-19. The government is also showing signs of opening up to new ways of working, with more willingness to do online meetings, which may present a new channel of engaging with government officials going forward, although the extent of this remains to be seen. In general, however, a significant impact on the activities of the government is not expected.

Conclusion

After Prime Minister Abe's decision last week to send two masks to each household in Japan - a measure widely ridiculed online as ineffectual - the declaration of a state of emergency is widely seen as a more significant and impactful measure. However, although there is a chance that the state of emergency will significantly slow the rate of infection, the compromises that are being made to limit the impact on economic activity, along with the reliance on self-restraint without enforcement, suggest that its impact might be limited. Though the impact of the new measures is unpredictable at this stage, failure to reduce outings and interactions by the 80%

figure sought by the government would pose a serious risk to public health in Japan and could still result in the capacity of the medical system being overwhelmed.

GR Japan
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