

ARGO ASSOCIATES

Briefing 8 October 2019

*The Endgame for Hong Kong
Protests?*

On Friday 5 October 2019, after nearly four months of increasingly violent protests, Hong Kong introduced anti-mask legislation, making it illegal for protesters to wear masks at either legal or illegal assemblies. What was more important than this legislation itself, however, was the fact that the Hong Kong government had invoked a colonial-era ordinance (from 1922) - the Emergency Regulations Ordinance - to bring it into effect. This ordinance allows the Chief Executive of Hong Kong to "make any regulations whatsoever which he may consider desirable in the public interest" and it may be invoked "on occasions of emergency or public danger." At the press conference announcing the use of the Emergency Ordinance Hong Kong's Chief Executive Carrie Lam insisted that Hong Kong was "not in a state of emergency". In practice, however, the use of such a draconian piece of legislation is tantamount to a declaration of a state of emergency, a sense that was only reinforced by the unprecedented closure of the entire Mass Transit Railway (MTR) system the following day.

The new law – following the shooting of a teenager on 1 October by police – further inflamed opinion among Hong Kong protesters, leading to a long weekend of violent protest, including damage to the MTR system, banks, shops and other facilities. Carrie Lam and her closest advisers had, in fact, reportedly been against the use of the Emergency Ordinance but pressure from the pro-Beijing political party The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) eventually forced the government to adopt it. From a pragmatic point of view some commentators have questioned whether the anti-mask legislation will achieve its objective, given that most masked protesters have been taking part in illegal assemblies and thus were already liable to arrest. In addition, police already had the legal power to demand a person remove his or her mask when having their identity checked - failure to comply could lead to a charge of obstruction of justice. The law is also being challenged in the courts.

On the assumption that the anti-mask law does not stop protests in Hong Kong what further steps can the government take? As mentioned above, the Emergency Ordinance gives the Chief Executive *carte blanche* to "make any regulations whatsoever" – these could include curfews, bans on any public assemblies, censorship of the press or the internet, and capital controls to include just a few possibilities. If none of these steps solves the problem, there are two additional options for the government under Hong Kong's Basic Law, the territory's constitution. Article 14 allows for the Hong Kong government to "ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief." The garrison in question is that of the People's Liberation Army which maintains barracks in various locations across Hong Kong. In this context it is interesting to note that the PLA made its first intervention since the beginning of the protests on the night of 6 October when the barracks in Kowloon showed a yellow warning flag to protesters.

Under Article 14 of the Basic Law the PLA must respect Hong Kong laws if they are asked for assistance; in contrast, the "nuclear option" is represented by Article 18, which states that:

In the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the Region, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region.

This means that if the NPC decides that the Hong Kong government has lost control of the situation, it can effectively suspend Hong Kong law and apply various laws that are currently applicable to mainland China only. The Chinese government will, however, be extremely reluctant to intervene directly, being fully aware that such an intervention would be bad for

Hong Kong's future economic prospects, damaging investor confidence, and leading to an exodus of capital and expertise from the city. In addition, the growing tension between the U.S. and China has made Hong Kong's separate status increasingly valuable to the latter but it has also made the city a pawn in a wider battle between the two superpowers; China will want to avoid the potential economic and political sanctions, and related fall-off in foreign investment that would be likely to accompany any heavy-handed action in Hong Kong. Nonetheless, if the Hong Kong government cannot restore order there is no doubt that the mainland government will be forced to intervene. All businesses operating in Hong Kong should have contingency plans in place to maintain business continuity, including relocation of key staff, as well as reviewing current security arrangements for their current operational locations.

Thus far, we have focused on the security situation only, but ultimately no security measures can replace a political solution to the current crisis. Emergency measures are just jamming down the lid on a boiling pan if they are not accompanied by political action. While it is difficult to conceive of serious dialogue between both sides at the moment, there may be a narrow path towards a compromise solution. Ultimately, the bottom line for China is that its sovereignty in Hong Kong must be respected; the bottom line for the more moderate wing of the protest movement is that the Hong Kong government must be more representative of the Hong Kong people and must listen to their concerns, whether these are economic or political. A proposal to restart the process towards some form of universal suffrage in Hong Kong, even if it were to be implemented over a period of several years, could be a first step towards a political solution. The recent history of Hong Kong suggests, however, that political compromises have been difficult on both sides and sources in the Hong Kong government reportedly believe that the Chinese government would no longer be willing to consider a new proposal along these lines (given the fragmented nature of the protest movement any proposal would have to come first from the Hong Kong government side).

On the assumption that no such political compromise can be reached, there are two potential scenarios for Hong Kong. The first scenario would see the use of the powers granted under the Emergency Regulations Ordinance help the government gradually bring the security situation in Hong Kong back under control without the need for intervention by the PLA, whether under Article 14 or Article 18 of the Basic Law. In this case, Hong Kong could claim to be maintaining its separate status and autonomy and argue that the basic conditions for business in the city remained unchanged. Nonetheless, without any political solution, the grievances that drive the protest movement would remain and the government would likely have to continue to enact restrictive measures to maintain security within the city. Under this scenario, businesses should plan for further (if sporadic) eruptions of protest, violence and damage to property, as well as continued issues with investor confidence and staff retention (and the potential for conflict within organizations where both local and mainland Chinese staff are employed). The second scenario that we envisage is that the Hong Kong government is unable to bring the situation under control and the Chinese government is forced to intervene. In this case – aside from the obvious physical dangers – businesses must plan for relocation of staff and business lines, dealing with capital controls, and the probability that Hong Kong will lose its separate status in a number of international forums, making it subject to new tariffs among other restrictions and costs. A considerable number of international staff in financial and professional services would leave Hong Kong and businesses would also have to consider the impact of possible sanctions on entities and individuals in government and business in both mainland China and Hong Kong.

Obviously, a short note such as this cannot cover the numerous potential issues and implications of the current situation. Please feel free to contact us if there is anything you would like to discuss further.

About Argo Associates

Argo Associates is structured around a single overriding purpose: providing our clients with the information and intelligence that will allow them to navigate acquisitions, investments, disputes, or frauds in a clear-sighted and rational way, minimizing risk and maximizing opportunities.

Information gathered may clarify the profile and background of key business people and managers; it could illuminate the operations of a company or demonstrate a history of fraud or mismanagement; or it could help our clients to assess the political situation in a given jurisdiction and how it may affect their investments or business operations.

Headquartered in Hong Kong, Argo Associates assists clients across Asia and – through international partners – globally.

Intelligence Gathering

“Intelligence” is central to making sense of the world and to decision-making. Argo Associates has developed a network of well-placed human sources across Asia and – through our partners outside Asia – globally. This network provides insights beyond what is available publicly – into leadership, operations, strategy, corruption, red flags, political connections and so on - and is supplemented by extensive research and analysis of publicly available sources – corporate filings, litigation filings, regulatory communications, media articles, social media postings and so on. In a world in which information is increasingly commoditized, high-level intelligence and analysis provides the insights that give our clients an edge over their competitors.

Fraud, Corruption and Disputes

Our intelligence-gathering techniques and in-depth research and analysis have also helped our clients uncover frauds within their operations or in those of a portfolio company or recent acquisition. Our professionals have provided numerous reports for arbitration or legal proceedings to recover the proceeds of fraud. We have also assisted clients in tracing assets globally when bringing a high-value claim against a company or individual. In high-profile disputes we have assisted a number of top law firms in gathering information, evidence and intelligence in support of their clients’ cases.

Political Risk

Our political risk work has developed naturally out of our intelligence and investigative capabilities. We see political risk as an important part of the evaluation of many investments, mergers and acquisitions, as well as a key element of commercial disputes in many markets. We have helped our clients look at political risk in a new way, not just in terms of the broad outline of potential political developments in various countries, but with a focus on the impact on their businesses. For example, will growing frictions between two countries lead to tariffs that could impact the specific sector in which a portfolio company operates? Or, how will rising protectionism in a country alter the possibility of a fair result in an ongoing commercial dispute? Frequently, politics is local as much as national and we understand the importance of drilling beneath the widely-circulated opinions to a real understanding of what is happening.

Our Founder – Jason Wright

Jason Wright is the founder and Managing Director of Argo Associates.



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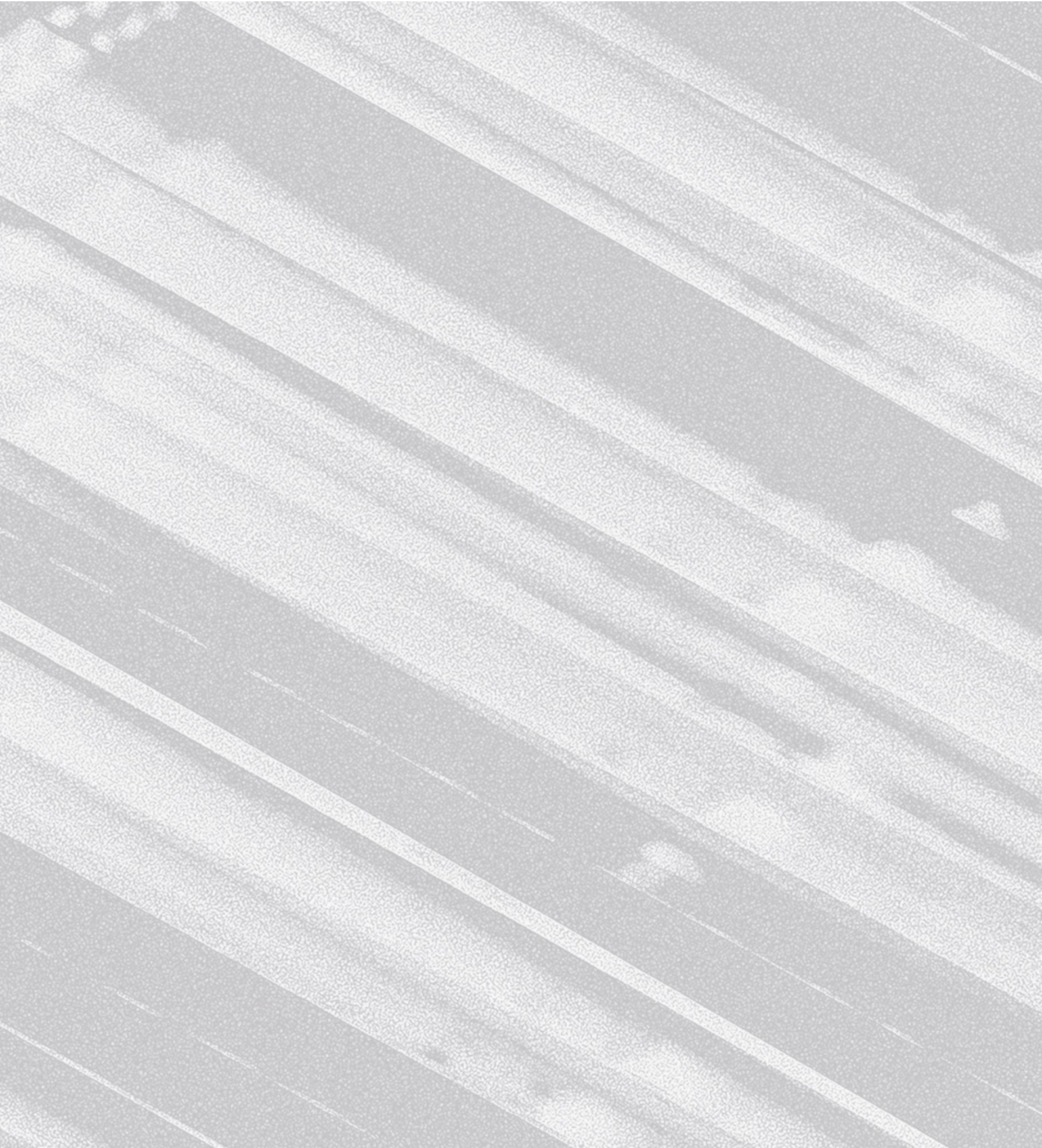
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Prior to founding Argo, he was a Managing Director in Hong Kong for Kroll, the company that created the modern investigations and intelligence sector. Before moving to Asia seven years ago he worked for Kroll in Italy for five years and then briefly in London. While assisting clients on numerous transactions, investigations and disputes in Asia and Europe, particularly for private equity funds, banks, hedge funds and special situations investors, Jason has also specialized in the analysis of political risk, whether that has involved examining the role of local politicians, regulators and other stakeholders, or broader geopolitical concerns.

Although he has managed projects across the whole Asia- Pacific region he has been particularly focused on Korea, China, and Southeast Asia, especially Indonesia, Vietnam, Malaysia and Thailand.

Jason is a scholar of St. Catherine's College, Oxford, having been awarded a Master of Arts (Oxon) in English Language and Literature, as well as a Master in State Management and Humanitarian Studies from La Sapienza University in Rome, Italy.



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