



AmCham

OFAC's Sanction on Hong Kong & National Security Law

AmCham Temperature
Survey Findings

August 2020



Introduction

Following the introduction of a Hong Kong National Security law by Beijing authorities, the US government has reacted strongly by passing the Hong Kong Autonomy Act and issuing Executive Order 13936.

To gauge how these developments have impacted business, AmCham asked its diverse set of member companies for their views in a temperature testing survey, to which 154 members (13% of overall membership) responded between August 7 and August 11.

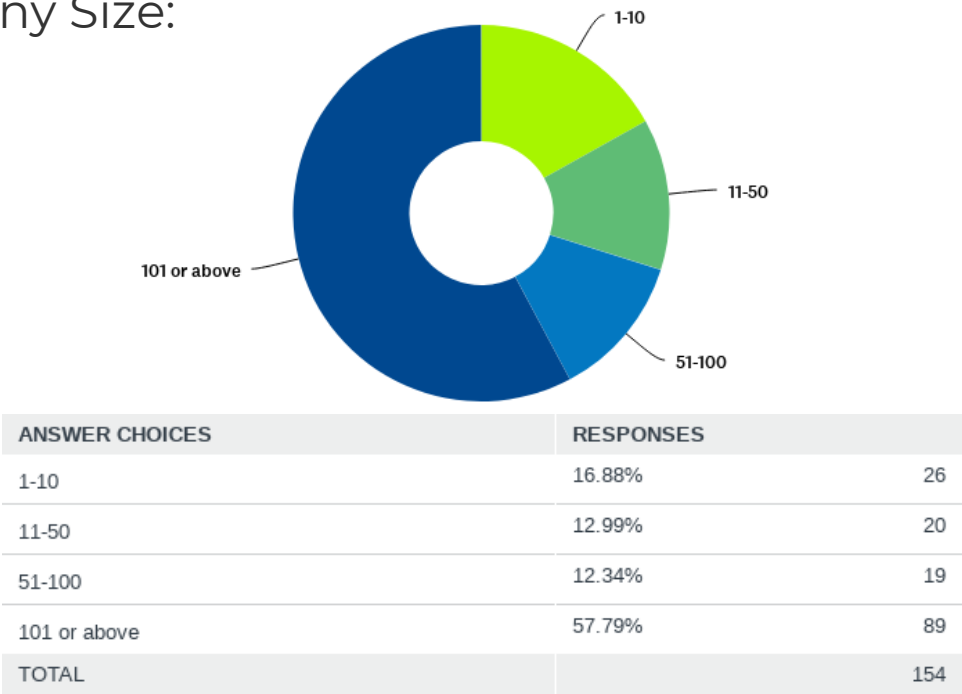
Further breakdown of data is unavailable, while selected unattributable comments are extracted for members' reference. Comments may have been edited for brevity and clarity.

This survey is not intended to be a scientific instrument, but rather a temperature test of members' sentiments.

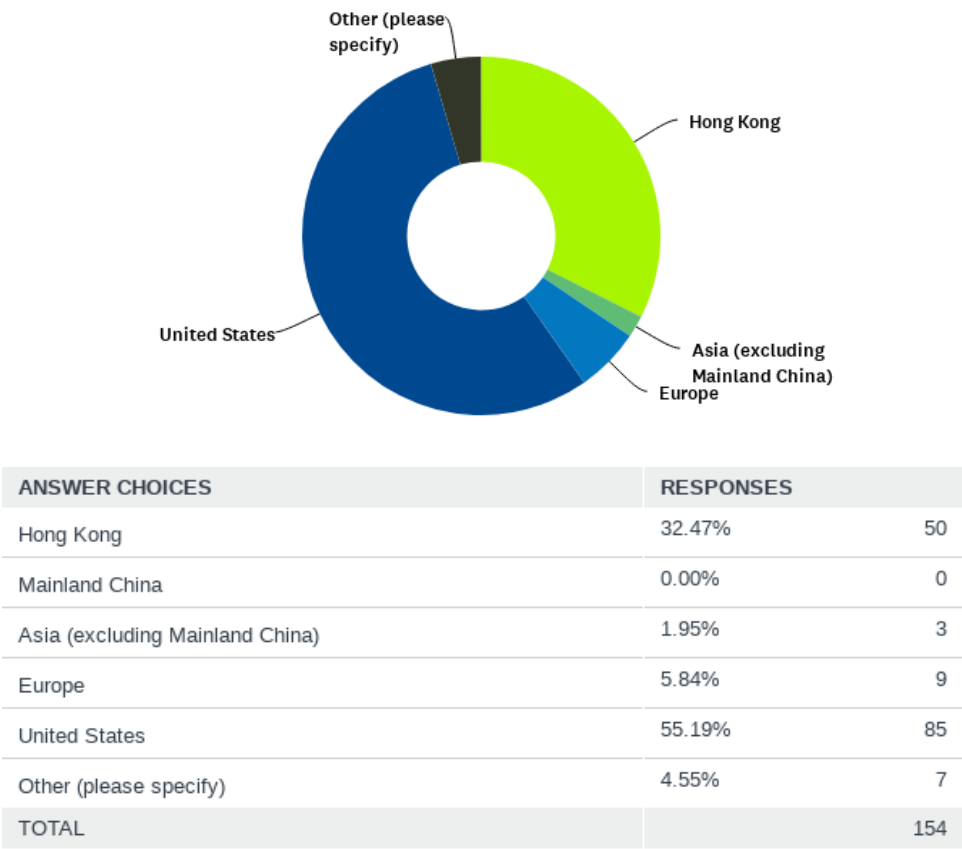
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Demographic Information (Q1-3)

Company Size:



Location of Company Headquarters:



Other responses include: Canada, Australia, Bermuda

Company Industries

ANSWER CHOICES	RESPONSES	
Accounting and auditing, tax consultancy	1.30%	2
Administrative support, HR	1.30%	2
Architecture and engineering	0.65%	1
Arts, entertainment and recreation	0.65%	1
Construction	1.30%	2
Education and training	5.84%	9
Electricity and gas supply	0.65%	1
Financial services	11.69%	18
Food and beverage	0.65%	1
Import and export trade	5.19%	8
Insurance	3.25%	5
Legal services	6.49%	10
Non-profit organizations	3.90%	6
Public administration	0.00%	0
Publishing	1.30%	2
Real estate activities	1.95%	3
Retail trade	9.09%	14
Scientific research and development	1.95%	3
Telecommunications and IT	9.09%	14
Tourism and hospitality	0.65%	1
Transportation	7.14%	11
Water supply; sewage, waste management and remediation activities	0.00%	0
Wholesale	1.30%	2
Other (please specify)	Responses 24.68%	38
TOTAL		154

Other responses include:

- Chemical industry, supply chain technology, consulting, manufacturing, graphic design, medical devices, apparel and footwear, pharmaceuticals, healthcare, global mobility management, relocation & moving.

Q4: In what ways, if at all, has your company been impacted by recent US reactions to the NSL (i.e. HKAA & EO 13936)? (Choose all that apply)

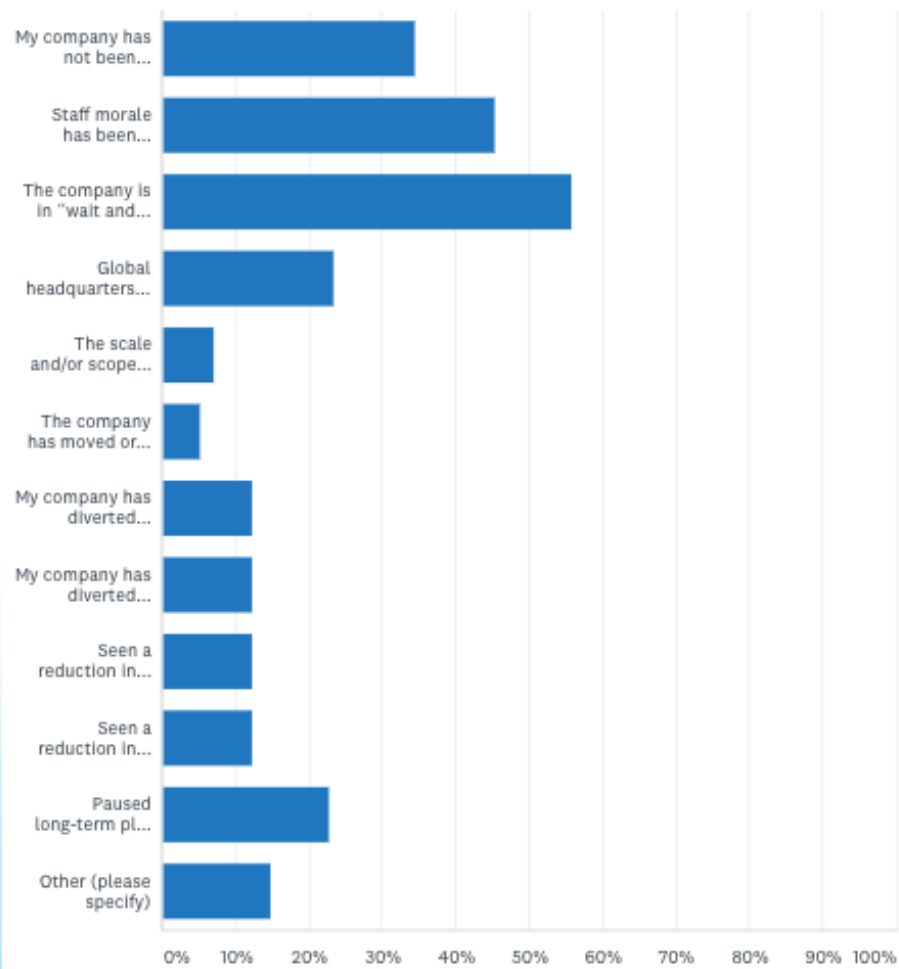
Though over 50% of companies are in a “wait and see” mode, the most significant immediate impact seems to be on staff morale. On the other hand, some companies have seen an increase in business activities. See comments below.

A significant uptick in the amount of inquiries by local HK-based manufacturers/traders regarding the impact of the HKAA/EO on their business here, particularly the possibility that 232, 301, Antidumping/ CVD duties against Chinese goods will now be applied to goods of HK origin

Immediate impact is none, but given uncertainty, much is being expended to analyse and prepare for what might be coming.

The Trump administration seems to be determined to provoke China in the lead-up to the election, and this is a lot more dangerous than the NSL in HK.

The new OFAC export controls are a significant issue for the tech industry as they fear diminishing access to US technology and IP that has driven their HK operations.



ANSWER CHOICES	RESPONSES	
My company has not been impacted by the NSL and recent developments	34.42%	53
Staff morale has been impacted	45.45%	70
The company is in "wait and see" mode	55.84%	86
Global headquarters is asking questions and may be considering changes to the Hong Kong footprint	23.38%	36
The scale and/or scope of company operations in Hong Kong has been impacted	7.14%	11
The company has moved or removed certain tasks/job roles outside of Hong Kong	5.19%	8
My company has diverted resources to produce or implement back-up plans	12.34%	19
My company has diverted resources to seek guidance and/or ensure compliance	12.34%	19
Seen a reduction in business and/or customer interest	12.34%	19
Seen a reduction in investor interest in Hong Kong	12.34%	19
Paused long-term plans for investment or business development in Hong Kong/China	22.73%	35
Other (please specify)	14.94%	23
Total Respondents: 154		

Q4: In what ways, if at all, has your company been impacted by recent US reactions to the NSL (i.e. HKAA & EO 13936)? (Choose all that apply)

Other comments (continued)

Too early to say on exact impacts. Given designations by OFAC on Friday night, the prospect of further sanctions further impact will become clearer in due course.

A renewed interest in shifting production and operations out of HK to other S.E. Asian countries - both manufacturing and services.

We have seen a slow-down in in-bound Hong Kong work but more enquiries in outbound work.

Caught between a rock and a hard place. Potential Mainland and HK clients aren't keen on working with an American. Potential American clients aren't keen on working with someone in Hong Kong. Concerns over either real or imagined political or data/information risks. Frankly impossible to do anything right now, until there is clarity.

Important note: some companies reported that NSL has brought positive impact to their business

Negative sentiment about long term prospects of HK as a business center though in reality, there has not been material business impact.

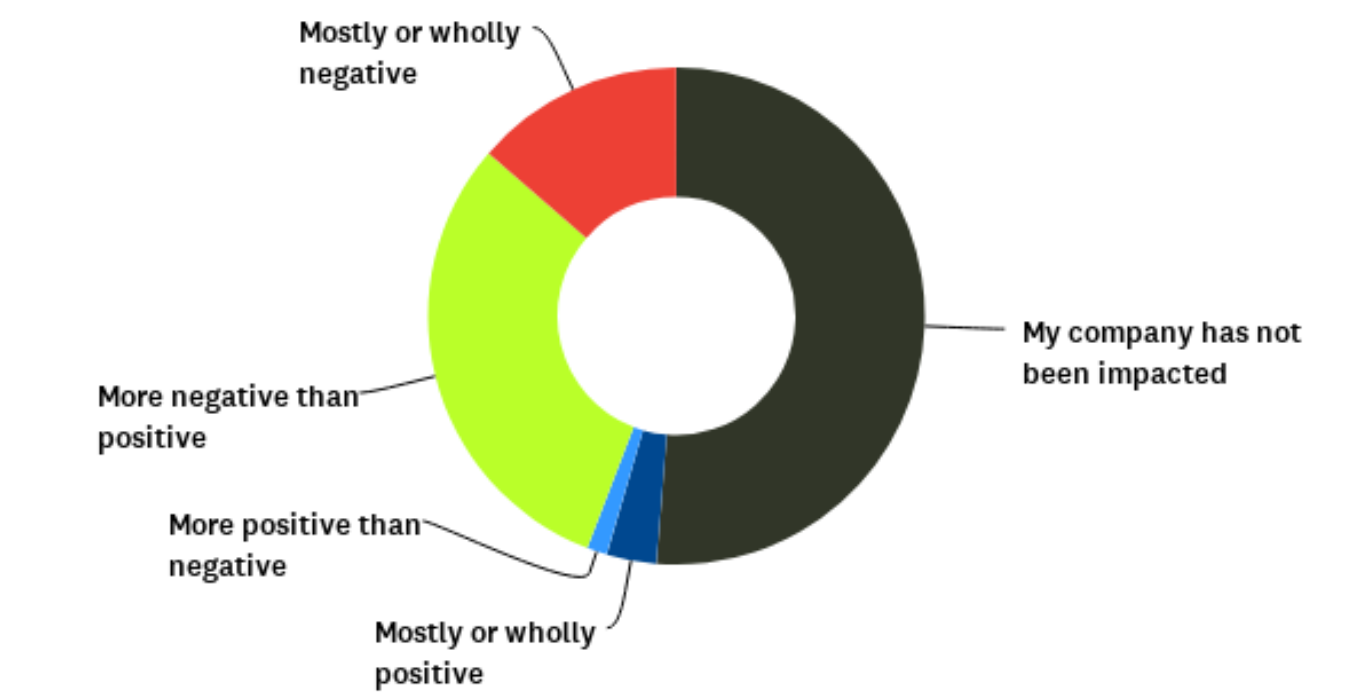
In fact, the increased stability (reduced protests, the latest COVID wave and chilling effect of the NSL) may prove to be positive for business after the current 'letting' is over.

Demand for legal services has increased.

By reducing the violent protests and uncertainty brought on by the protests, the NSL has positively helped internal planning and operations and has produced much greater business activity from clients.

We believe that the passing of the bill is good for HK and will stabilize the business environment.

Q5: If your company has been impacted by the HKAA and the EO 13936, how would you describe the impacts?



ANSWER CHOICES	RESPONSES	
My company has not been impacted	51.30%	79
Mostly or wholly positive	3.25%	5
More positive than negative	1.30%	2
More negative than positive	30.52%	47
Mostly or wholly negative	13.64%	21
TOTAL		154

Q6: Which of the following are your top concerns about the Hong Kong-related US sanctions under HKAA and EO 13936? (Choose all that apply)

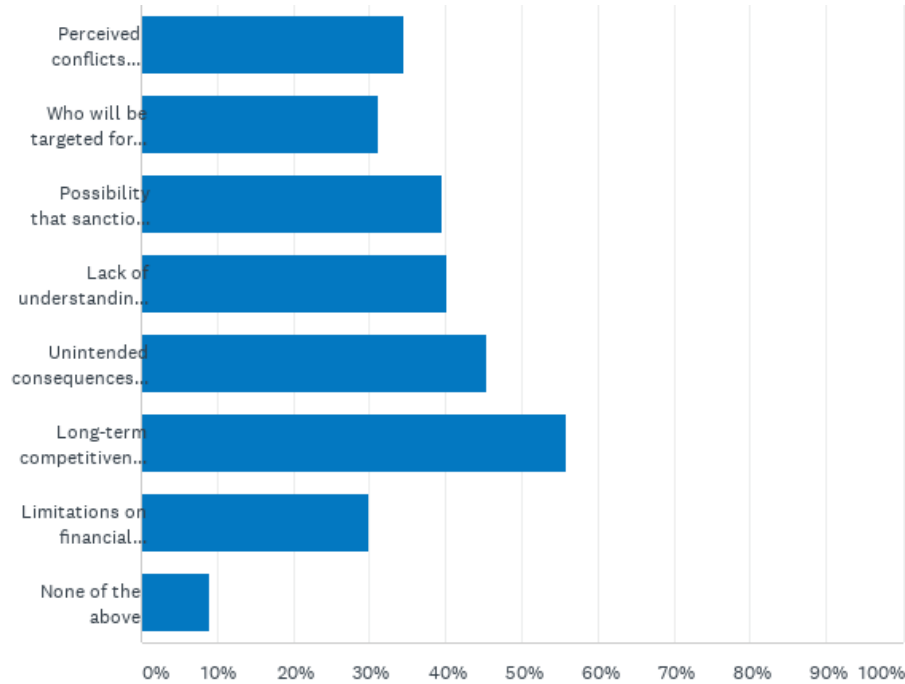
Members showed concerns for their specific industries but also for the general business environment and competitiveness of Hong Kong.

China does not react well to outside pressure so the intended consequences of the US sanctions will likely backfire and hurt HK more than help.

Funding requirements could be affected if US financial institutions are prevented from doing business in HK or US banks pull back on their own initiative.

The direct impact is non-existent unless systemic sanctions are imposed on the financial sector. Rather, the short-term impact is 'reputation risk' of being in HK.

Limitations on financial services and US connectivity would likely occur in the most extreme case, but they need to be factored in for a worst case scenario.



ANSWER CHOICES	RESPONSES	
Perceived conflicts between the NSL and OFAC sanctions	34.42%	53
Who will be targeted for sanctions	31.17%	48
Possibility that sanctions may impact customers and operations in Hong Kong or limit our ability to interact with counterparts in Hong Kong	39.61%	61
Lack of understanding about what happens when someone is sanctioned and ambiguity on the timeframe on imposing sanctions leading to insufficient time for business preparedness and compliance	40.26%	62
Unintended consequences on specific sectors	45.45%	70
Long-term competitiveness of US companies in Hong Kong and the region	55.84%	86
Limitations on financial services or connectivity to the United States	29.87%	46
None of the above	9.09%	14
Total Respondents: 154		

Potential retaliation from Chinese authorities on US companies operating in HK and China.

Is there a de minimis amount for the sanctions? Will businesses run afoul of the law serving sanctioned persons a meal?

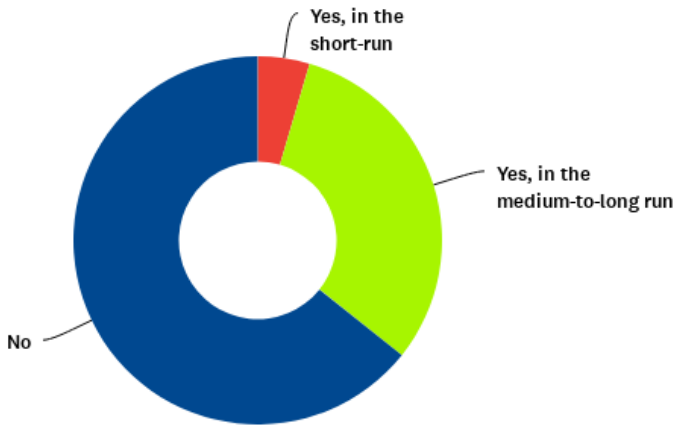
Can I perform advisory services for start-ups seeded by the Hong Kong Government? What data and information could be considered sanctionable?

Uncertainties over availability of / lead time to deliver products to HK due to changes to Export Administration Regulations.

Q7: In light of the HKAA and the EO 13936, will your company consider moving capital/assets/staff/business operations? Why or why not?

Close to 65% of companies have not considered relocating out of Hong Kong in light of US’ responses.

For some, Hong Kong retains advantages that provide good reason to stay; for others, the costs of moving are currently too high. Some companies remain speculative. A few comments noted that the National Security Law, rather than the HKAA / EO 13936, was the main consideration.



ANSWER CHOICES	RESPONSES	
Yes, in the short-run	4.55%	7
Yes, in the medium-to-long run	31.17%	48
No	64.29%	99
TOTAL		154

Hong Kong is our core market.

Hong Kong has an advantage given its proximity to China.

Our main Asian operations are elsewhere. **HK is mainly a hub to host talent and some back offices.**

It may be that **Hong Kong will be more like a Mainland city, but that still has its advantages.** However, **businesses will have to adapt to those changes.** The consideration is whether the HKAA and EO 13936 will be more negative to Hong Kong than to other mainland cities in which case, there’s a competitive disadvantage to do business in Hong Kong.

Still assessing the impact of NSL, and waiting to see what will happen in coming months after US elections.

The impact of HKAA is very unclear at the moment. We won’t move if there is as little impact as we are projecting.

Too much uncertainty to execute and pay for execution costs. Long term relationships will be severed with major impacts if corporate decisions are made (collateral damage).

Our operations are not affected and **client activity has increased.**

Too tricky to make an exit from Hong Kong during COVID. Only staying for now because of movement inconvenience and to wind up personal issues.

Very concerned about NSL impact on education, **US sanctions are not really high impact.**

Perception of increased detention risk.

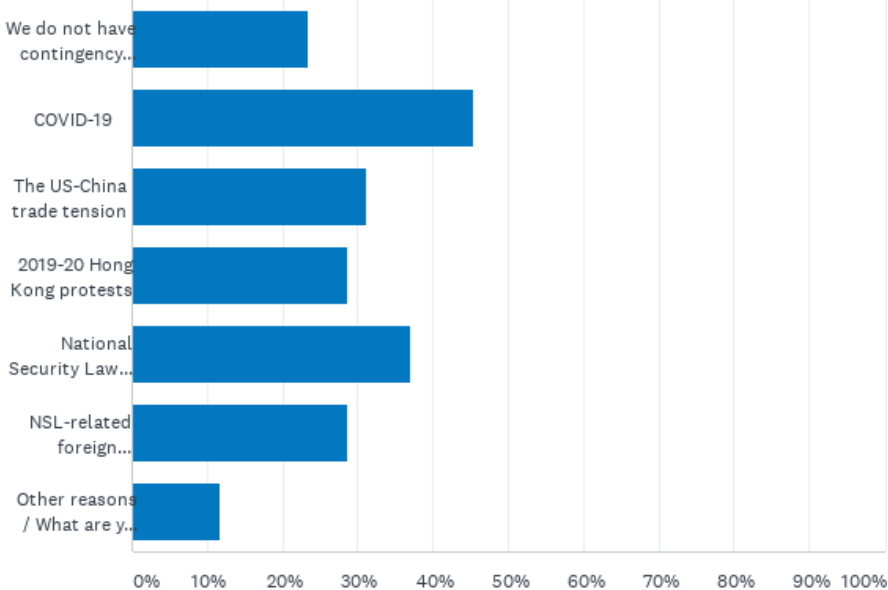
The HKAA and EO 13936 aren’t what’s driving our shift of our staff out of Hong Kong. It’s the targeting of US citizens by HK police for speech and actions that up until now have been considered protected and routine.

Moved capital as we don’t trust authorities here to honour integrity of banking and financial system. Certainty moved data and information out of HK.

Nowhere else in Asia can replace HK with its USD liquidity, capital markets, talent, etc.

Q8: If you or your company have developed or are developing contingency plans, what are they, and what are the major reasons for doing so? (Choose all that apply)

Nearly half of the respondents cited COVID-19 as a major reason for developing contingency plans, followed by the NSL and the US-China trade tension. Some have already put their contingency plans into operation; but other respondents think business conditions have improved.



Standard practice of developing / reviewing / keeping current BCPs based on changes in business environment.

Travel restrictions; locally, regionally and internationally as a result of COVID and other geo-political factors.

Wholesale takeover of HK by the CCP, including muzzling of the free press, freedom to object to China's political system, violence from the crazies on all sides, etc. Contingency: more hiring overseas and in China itself.

Have stopped doing certain functions what we did before NSL. Also concerned about working with international chambers of commerce and other trade/professional organisations as this is liable to be a target under NSL.

Relocation / departure from HK is the contingency plan.

ANSWER CHOICES	RESPONSES	
We do not have contingency plans	23.38%	36
COVID-19	45.45%	70
The US-China trade tension	31.17%	48
2019-20 Hong Kong protests	28.57%	44
National Security Law (NSL)	37.01%	57
NSL-related foreign responses (e.g. revocation of Hong Kong's special status under US laws, passing of the Hong Kong Autonomy Act, Hong Kong-related US sanctions, suspension of extradition agreements)	28.57%	44
Other reasons / What are your contingency plans? (optional)	11.69%	18
Total Respondents: 154		

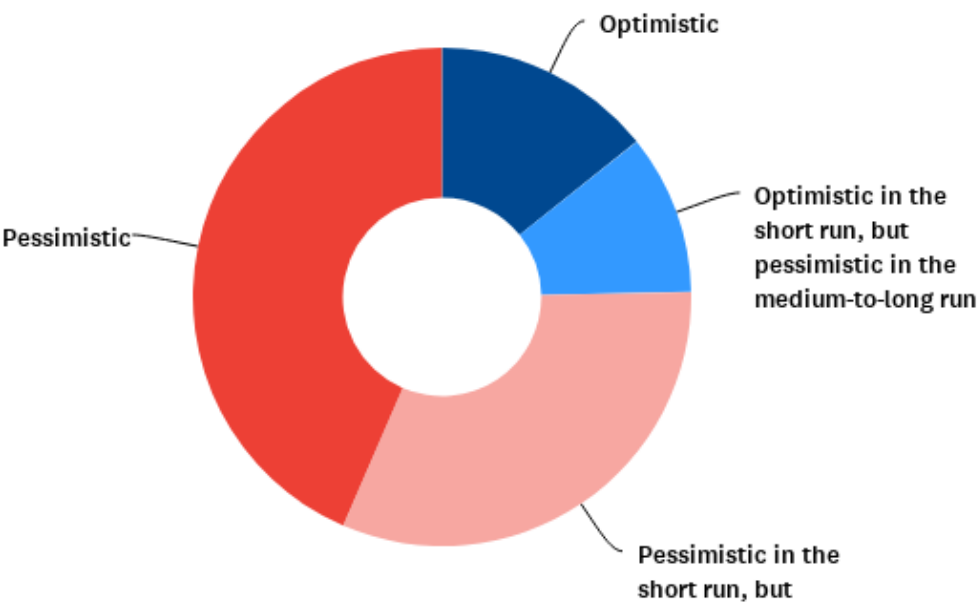
I'm a sole proprietor so my contingency plan is to pack up and leave. I've had this contingency plan for 2 years; putting it in motion now, only delayed due to COVID. NSL and HKAA just made it even clearer that exit is required.

We can deal with the protests, the NSL, and COVID, but the US-China-HK decoupling and public press commentary on both sides is not professional or diplomatic and hurts the private sector's ability to be credible.

No need for contingency plans as business conditions have improved.

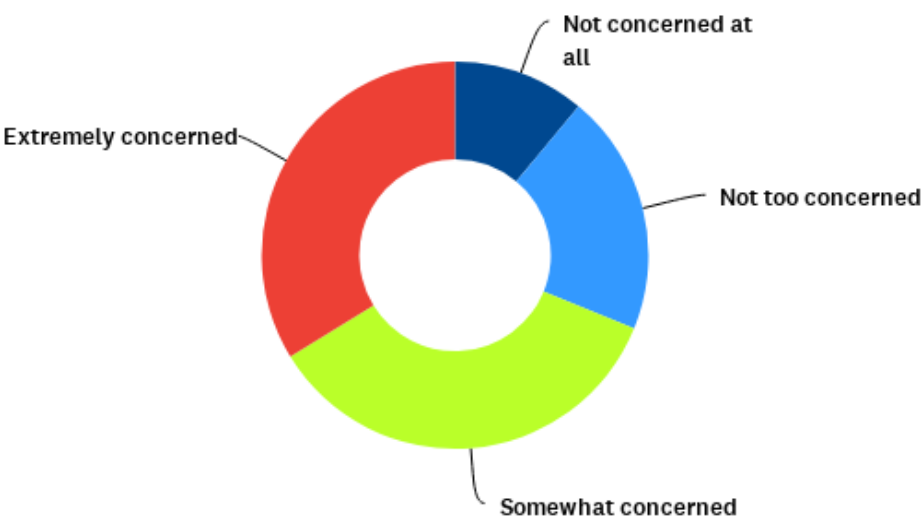
We've long had contingency plans for the most extreme of cases, but so far, we don't see any need to elevate our risk assessment for our business in Hong Kong. HK has handled COVID-19 better than most US cities, and we are optimistic the NSL may be good for helping business get back to normal.

Q9: Overall, which of the following statements best describes how you feel about business prospects in Hong Kong?



ANSWER CHOICES	RESPONSES	
Optimistic	14.29%	22
Optimistic in the short run, but pessimistic in the medium-to-long run	10.39%	16
Pessimistic in the short run, but optimistic in the medium-to-long-run	31.82%	49
Pessimistic	43.51%	67
TOTAL		154

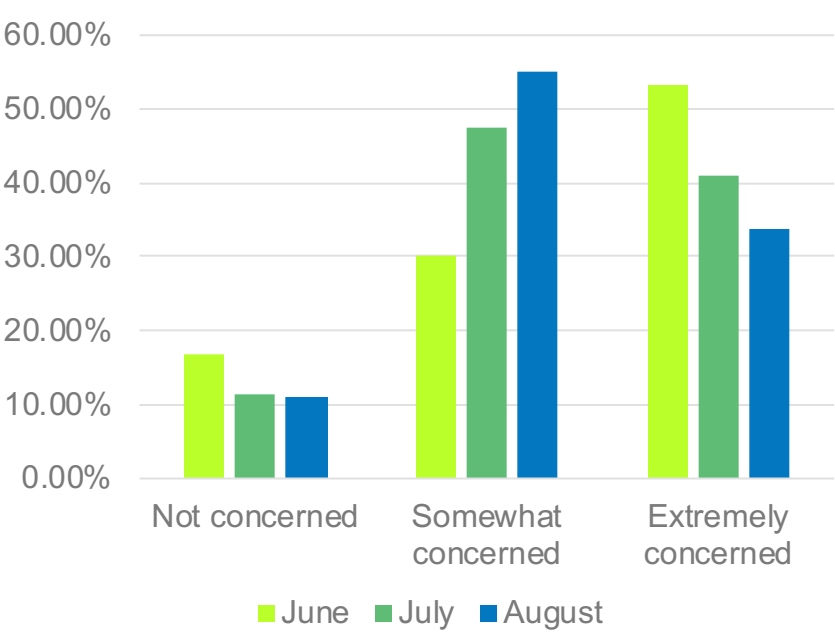
Q10: How concerned are you about the NSL?



ANSWER CHOICES	RESPONSES	
Not concerned at all	11.04%	17
Not too concerned	20.13%	31
Somewhat concerned	35.06%	54
Extremely concerned	33.77%	52
TOTAL		154

The percentages of respondents who were “not concerned” or “extremely concerned” have decreased over time, and now most respondents consider themselves “somewhat concerned” about the NSL.

(Note: the answer choices were different in the June survey. This chart on the right does not distinguish between “not too concerned” and “somewhat concerned”.)



Q11: Now that more details about the NSL have unfolded, are you more or less concerned about the NSL compared to one month ago? And why?

Figure 1

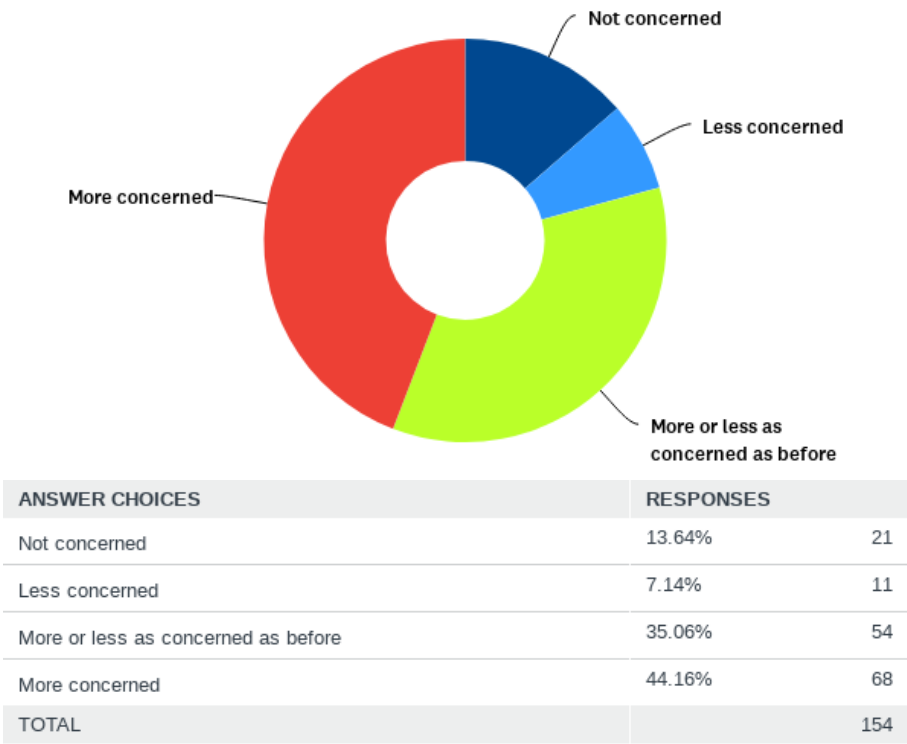
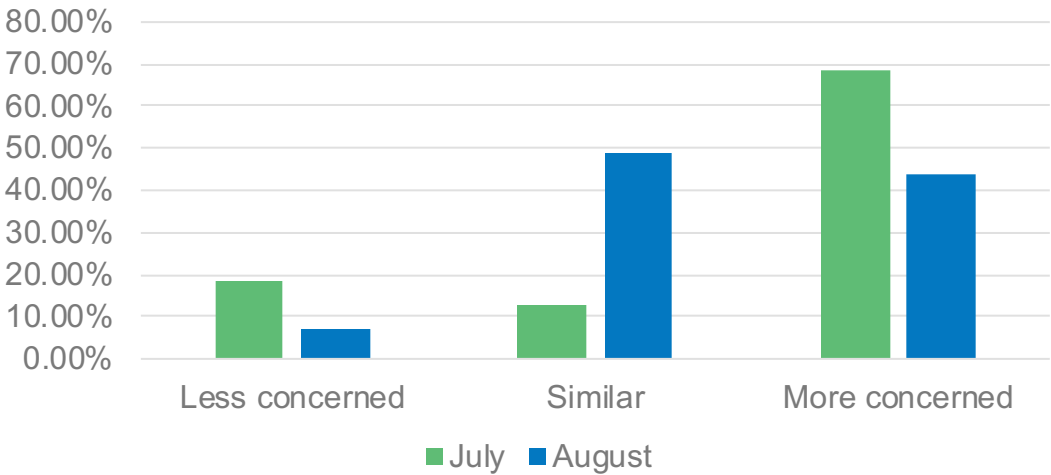


Figure 2



Only 7% have become less concerned, while 44% have become more concerned. Some noted that government guidance was helpful. The enforcement of the National Security Law, particularly regarding foreigners, seems to be one important factor. (Figure 1)

In general, members are more concerned about the NSL compare to one month ago, though opinions are less polarized in August compared to July. (Figure 2)

Note on Figure 2: the “similar” option includes both ”not concerned” and “more or less as concerned as before”. See comments on next page.

Q11: Now that more details about the NSL have unfolded, are you more or less concerned about the NSL compared to one month ago? And why?

What our members say:

NSL is operating as expected. **We are much more concerned by the unreasonable, mistargeted and disproportionate response by the US.**

It was extremely helpful to have the Financial Secretary, HKMA and the SFC make **public assurances** to the industry.

We don't plan to partake in the four outlawed activities.

Guidance from financial regulators has helped. But it doesn't address all concerns and the **potential conflict with US sanctions is a material near-medium term issue.**

Business seems to be going on as usual with no direct impact but it is concerning to see some of the news headlines of arrests or other small actions.

Let's wait and see more about the implementation and enforcement of the NSL.

The jury is out – **enforcement will be the key.** The government's issuance of arrest warrants for non-residents of Hong Kong was somewhat concerning.

NSL is weakly defined. With such a politically driven business environment, innovation and creativity would be severely damaged.

The HK government's actions regardless of the NSL is seen as a direct result of it. As always, very bad publicity.

It is now clear that peaceful advocacy can constitute a crime under the NSL; it is not targeting only a "small group of violent offenders".

We have seen new developments every week around how the authorities implement the NSL. What is more worrying is **whether companies will self-censor what they are doing to avoid possible consequences of the NSL.**

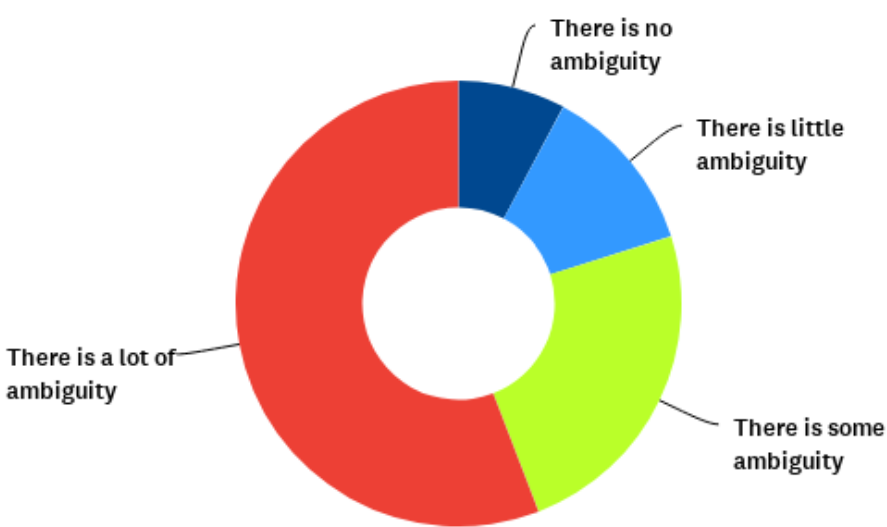
Today it was announced that Jimmy Lai has been arrested. What is next?

What qualifies as a crime is still uncertain, and enforcement appears very aggressive. There is no way to know if you are breaking the law.

Q12: As more details have been announced since the passing of the law, how much ambiguity do you think exists regarding the scope and enforcement of the NSL?

About 80% of responses acknowledged at least “some ambiguity”, but respondents have shown different emphases.

For some, ambiguity is the norm for PRC law and within expectations. For others, they are concerned about the chilling effects of such ambiguity. See comments below.



PRC laws are intentionally drafted with some ambiguity. Accordingly, some ambiguity is expected. We have operated with PRC laws for the past 25 years, so this is no different.

I can't think of one security law that has no ambiguity. All governments will use the security laws to their benefit when needed.

The ambiguity exists in order to give the Hong Kong and central governments maximum flexibility in its use; thus the ambiguity is intentional and political or extra-legal.

There is abiding ambiguity in the substantive crimes but less ambiguity in enforcement.

The ambiguity of the contents of the NSL per se doesn't super surprise me. I am more concerned with the enforcement.

Additional clarifications on collusion and impact on free press will be helpful to reassure the foreign business community.

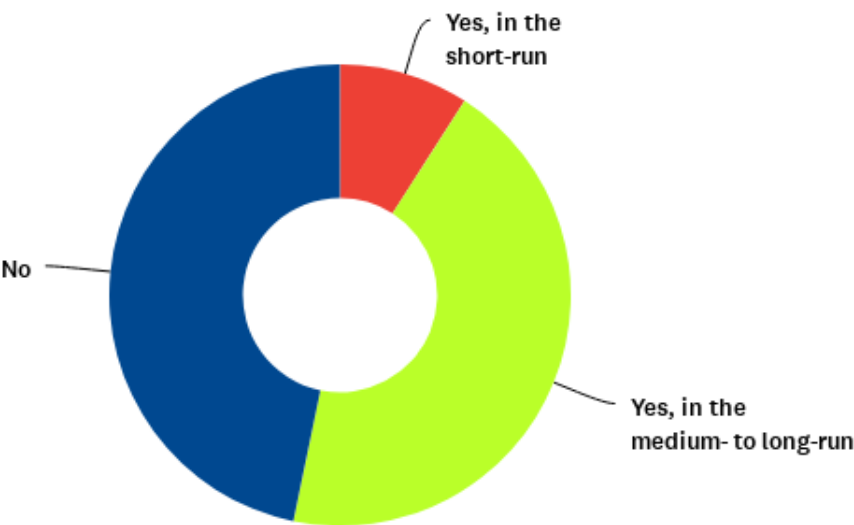
No trust in how the law is enforced or will be enforced.

The law gives the government and China considerable latitude and is causing fear among the citizens.

Until they charge foreigners in HK there is ambiguity – are work permit holders going to be caught up in the enforcement of the NSL if they try their best to follow the rules while a guest in a foreign country?

The ambiguity is intentional to force people to imagine what the red lines are and not to go near them.

Q13: As more details have been announced since the passing of the law, will you personally consider leaving Hong Kong?

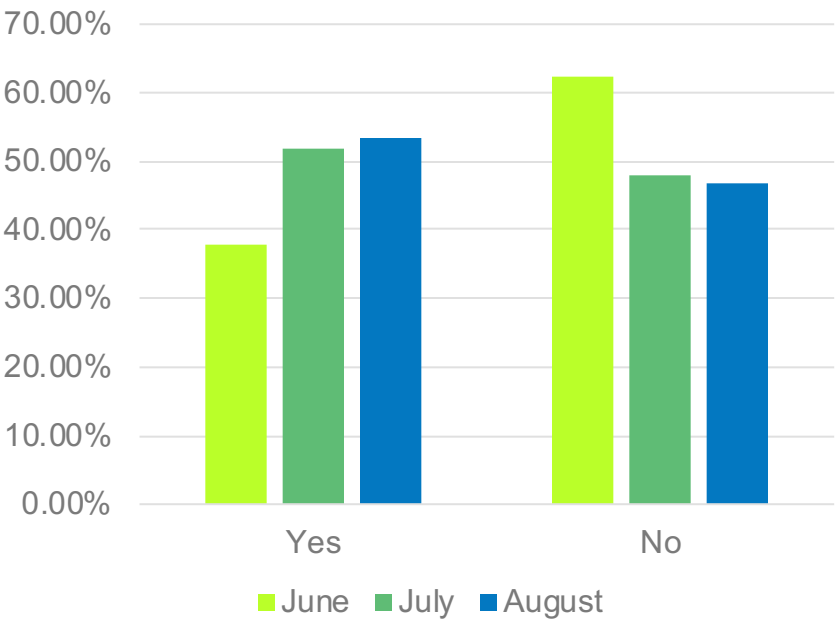


ANSWER CHOICES	RESPONSES	
Yes, in the short-run	9.09%	14
Yes, in the medium- to long-run	44.16%	68
No	46.75%	72
TOTAL		154

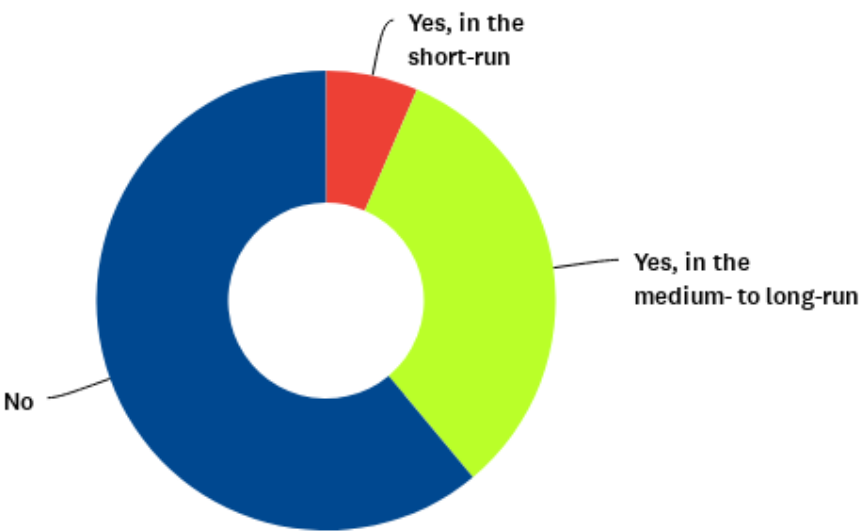
The proportion of members considering personally leaving Hong Kong has increased.

However it should be noted that over 80% of members who considered leaving are thinking about the **medium- to long-run**.

(Note: the June survey does not capture this distinction.)



Q14: As more details have been announced since the passing of the law, will your company consider moving capital/assets/business operations?



ANSWER CHOICES		RESPONSES	
Yes, in the short-run		6.49%	10
Yes, in the medium- to long-run		32.47%	50
No		61.04%	94
TOTAL			154

The trend for companies considering leaving Hong Kong has become more pronounced.

In sum, a larger proportion of individuals have considered leaving compared to companies. Of those companies considering leaving, about five-sixths are thinking about doing so in the medium- to long-run.

(Note: the June survey does not capture this distinction.)

