



Litigation ADVISORY ■

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The Panama Papers: Are You at Risk?

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The recent document breach of unprecedented size (2.6 terabytes) from the Panamanian law firm Mossack Fonseca—known as “The Panama Papers”—poses various significant risks to corporations, private organizations, individual investors and celebrities worldwide who have had the misfortune of being named in the data breach. The risks include far-reaching and protracted government investigations, new federal legislation or regulatory action, and potentially even prosecution for various transactions. Many of those named may face the stigma, through negative media reporting, of simple association with the Panama Papers, irrespective of the facts surrounding their involvement, and could confront the difficult situation of attempting to prove a negative to the public and to government officials.

On May 9, a searchable online database of over 200,000 entities affiliated with the Panama Papers will be made public, magnifying the reputational and legal risk to countless parties who engaged in otherwise legitimate offshore business. The publication of the database means that companies and individuals named in the data breach should prepare for any of the following scenarios:

- Notifications from U.S. federal government agencies or state attorneys general regarding fact-finding inquiries or full investigations.
- Increasing attention, including potential legal action, from foreign sovereign governments with jurisdiction over alleged transactions.
- Media inquiries and speculation, including social media activity, which may rapidly damage corporate or personal reputations.
- Shareholder or investor activism driven by concern over allegedly hidden transactions.

Background

On April 3, 2016, a collective of journalists from 76 countries, the [International Consortium of Investigative Journalists \(ICIJ\)](#), began publishing stories based upon 11.5 million documents covering 40 years that were apparently taken from the Panamanian law firm [Mossack Fonseca](#) and were originally provided to the German newspaper *Süddeutsche Zeitung*. The ICIJ intends to publish on May 9, 2016, a searchable database with information on more than 200,000 offshore entities named in the documents. Mossack Fonseca reportedly has more than three dozen branches in more than 25 countries, including London, Hong Kong, the Bahamas, Las Vegas and Miami. The firm is known for providing

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offshore incorporation services and has more than 500 individuals associated with it, often working through affiliates and franchises. The ICIJ has stated that Mossack Fonseca worked with over 14,000 banks, law firms and other entities to establish companies, foundations and trusts.

[According to the ICIJ](#), upon the “careful release of basic corporate information” on May 9, “users will be able to search through the data and visualize the networks around thousands of offshore entities, including, when available, Mossack Fonseca’s internal records of the company’s true owners.” The May 9 release apparently will not include emails (*The Economist* reports there are nearly 5 million), bank account and transactional records, or other data.

U.S. Government Prosecutors Actively Investigating Panama Papers

[Bloomberg reported](#) that the U.S. Department of Justice is “looking into whether the documents might provide evidence of wrongdoing for new cases or existing ones,” and prosecutors in the “tax, fraud and money-laundering units are reviewing news reports based on the documents.” Separately, the [Washington Post reported](#) that the U.S. Attorney for the Southern District of New York recently directly contacted the ICIJ via email, seeking access to the 11.5 million documents because the office had “opened a criminal investigation regarding matters to which the Panama Papers are relevant.” And [NBC News reported](#) that senior law enforcement officials have apparently “said that the initial focus will be identifying illicit activity by American citizens and corporations.” The Southern District has “jurisdiction over a wide range of international cases ... because individuals and companies often launder illicit funds through New York banks.”

NBC also reported that the U.S. government has “taken part in two global meetings about the Panama Papers to plan how to use the huge trove of leaked documents to catch criminals – and urged Americans to come clean now before illegal activity is discovered... [D]iscussions in Paris and Washington between IRS and Treasury officials and their counterparts from around the world are the first evidence of U.S. involvement in the growing international coalition eager to analyze and use the data.” The IRS participated in a “special project meeting” in Paris of the Joint International Tax Shelter Information and Collaboration network about the Panama Papers. “According to media reports, the documents contain information on potentially thousands of U.S. citizens and firms that have at least an indirect connection to offshore accounts affiliated with Mossack Fonseca.” At the April meeting of the World Bank and International Monetary Fund, “bankers and finance ministers from the world’s 20 largest economies sent a warning to tax havens saying they would ramp up efforts to punish governments that continue to hide billions of dollars in offshore accounts. ‘We need to act to deal with tax shelters and the problem of [an] international tax system permitting havens to develop,’” said U.S. Treasury Secretary Jacob Lew.

Assessing Risk of Investigation and Reputational Damage and Future Regulatory Action

As the Panama Papers database is published and news organizations around the world continue to publish investigative stories, the future promises an environment in which any number of authorities—including the IRS, the Treasury Department’s Office of Foreign Assets Control (OFAC) and Financial Crimes Enforcement Network (FinCEN), congressional committees, the Securities and Exchange Commission (SEC), and the Justice Department’s tax, fraud, money laundering and national security prosecutors—will all seek to exercise jurisdiction and make inquiries with named parties, both in the U.S. and elsewhere around the world. Legitimate transactions could be at first considered to be associated with sanctions evasion, tax evasion or money laundering, among others.

Other ramifications of the Panama Papers will likely include regulatory action by the Treasury Department and the IRS, SEC and FinCEN that could impact either the availability or the legitimate utility of offshore entities and related transactions. Similarly, as the scope and impacts of the Papers' contents develop, the U.S. Congress will likely see a need to act and respond. Further, those individuals and entities named will also likely have to tackle the spotlight of press inquiries directed to their employees and institutions. Finally, with the Panama Papers only being the most recent example of the significant value of privately held data, individuals and entities may seek to proactively protect their own databases and documents from "copycat" attempts to breach information systems.

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