



The 'Panama Papers'

KPMG Forensic and Tax Controversy

—

9 June 2016



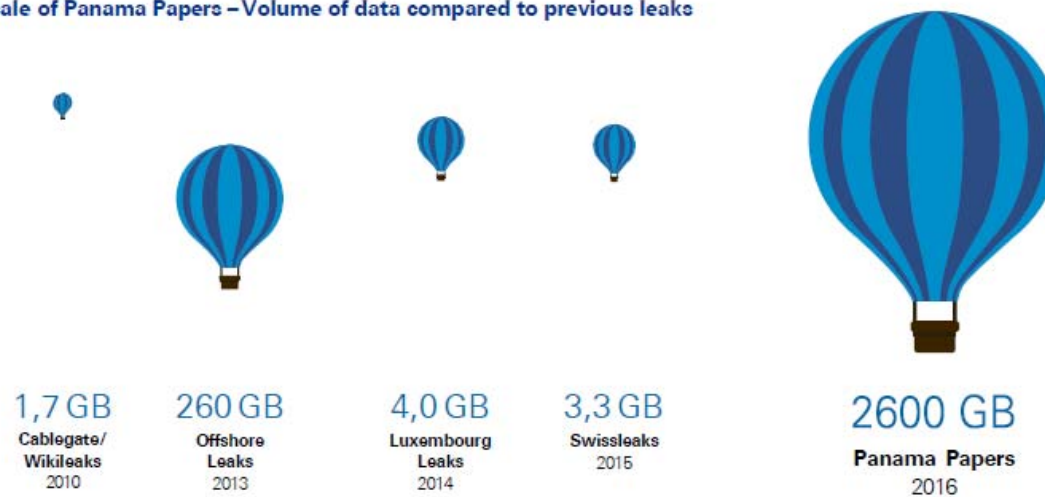
Background

What are the 'Panama Papers'?

The **'Panama Papers'** represents **one of the largest data leaks** in history.

The documents purportedly from the database of the **world's fourth biggest offshore law firm, Mossack Fonseca**, have already named **current and former world leaders**, well **over 100 politicians and public officials**, as well as prominent **entertainers and athletes, and alleged criminals**.

Scale of Panama Papers – Volume of data compared to previous leaks

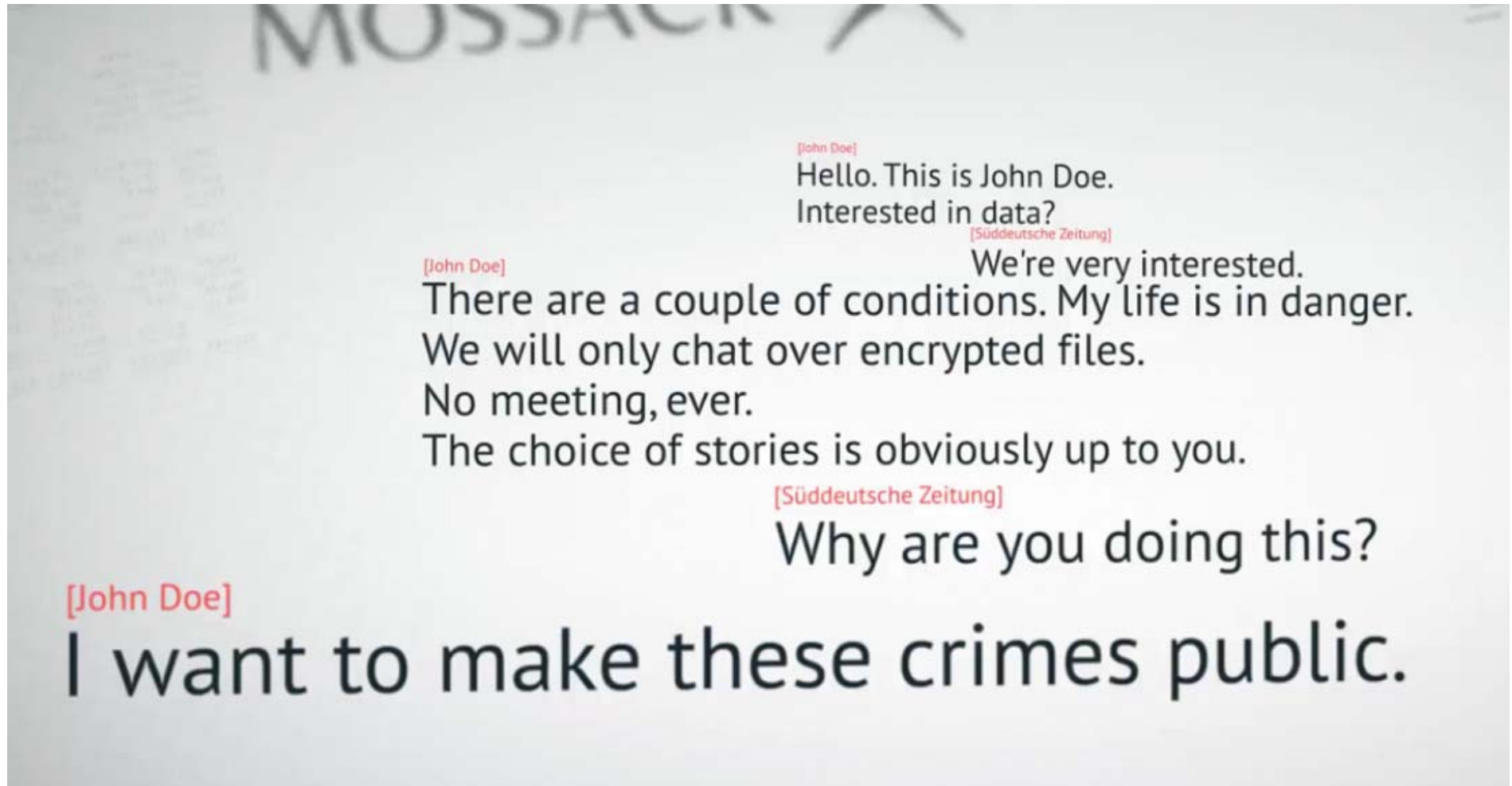


Background

Who has been named?



Leaked by an internal whistle-blower

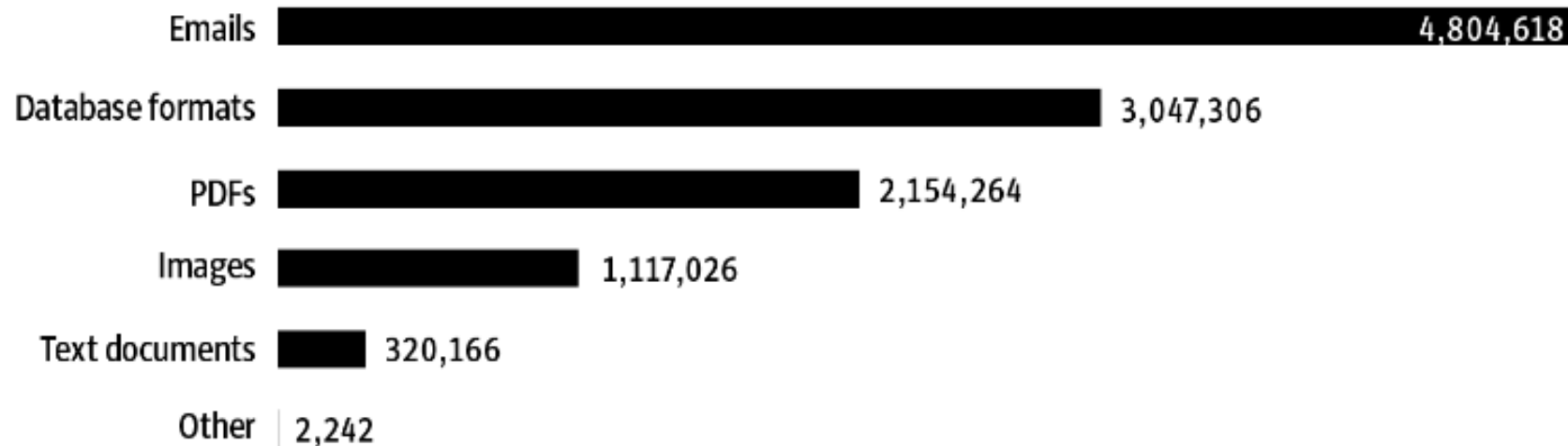


Source: <http://panamapapers.sueddeutsche.de/articles/56febff0a1bb8d3c3495adf4/>

What is the data in the 'Panama Papers'?

The structure of the leak

The 11,5 millionen contain the following file types



Source: <http://panamapapers.sueddeutsche.de/articles/56febff0a1bb8d3c3495adf4/>

Ease of set up of offshore companies

- US\$1,000 to set up a shell company
- “Benefits” may be considered “red flags” to regulators
- Who are you doing business with?

Advantages of Opening Offshore Company in BVI:

- ✓ Low set up costs and annual maintenance.
- ✓ Fast incorporation process. Normally completed in 7-10 business day.
- ✓ No requirements of a minimum paid up capital.
- ✓ No requirements for accounting, reporting, filing and auditing.
- ✓ Highest level of privacy protection, anonymity and confidentiality.
- ✓ Information of shareholders, directors and beneficial owners is not part of any public record.
- ✓ ZERO TAX on any kind of income.
- ✓ FREE shipping to you via Fedex/DHL/UPS.

Source: <http://www.financial-guardian.com/Company/bvi-company/>

Implications?

FINANCE & ACCOUNTING

The Market Punished “Panama Papers” Firms to the Tune of \$230 Billion

by Curt Nickisch

MAY 16, 2016

Panama Papers: ATO investigating more than 800 Australian clients of Mossack Fonseca

April 4, 2016



Neil Chenoweth

Investigative Reporter

[View more articles from Neil Chenoweth](#)

[Follow Neil on Twitter](#)

Panama Papers: About 80 serious Australian criminals named in leaked documents, ATO says

By political reporter [Stephen Dziedzic](#)

Updated 21 Apr 2016, 5:19pm

money → tax

Panama Papers reveal George Soros' deep money ties to secretive weapons firm

MAY 17, 2016 6:03PM



Advertise

Australians identified in Panama Papers could be up for criminal charges: ATO

May 12, 2016

Be the first to comment



Important to recognise not all illegal

Please read the statement below before searching

There are legitimate uses for offshore companies and trusts. We do not intend to suggest or imply that any persons, companies or other entities included in the ICIJ Offshore Leaks Database have broken the law or otherwise acted improperly. Many people and entities have the same or similar names. We suggest you confirm the identities of any individuals or entities located in the database based on addresses or other identifiable information. If you find an error in the database please [get in touch with us](#).

☐

I have read and understood the terms

SUBMIT

Source: ICIJ website prior to searching list of published individuals and entities

Worst case scenarios:

Parties linked to Arms Deals, Tax evasion, Fraud, Bribery and Drug trafficking.



Government & Regulatory response

What has been the local regulatory response?



Local

- The Commissioner of Taxation has recently reminded taxpayers of the consequences of concealing assets offshore and failing to declare income in Australia.
- The ATO has stated that it will conduct investigations into offshore activities. It will work co-operatively with the AFP, ASIC, ACC and AUSTRAC to corroborate data and strengthen its intelligence.
- Additional funding of \$679 million recently announced to establish a new Tax Avoidance Taskforce to crack down on multinational tax avoidance.
- To date ATO has identified over 800 individual taxpayers of interest

What has been the global regulatory response?

Global

- A special project meeting of the Joint International Tax Shelter Information and Collaboration (JITSIC) Network took place on 13 April 2016 at the OECD in Paris to discuss opportunities for obtaining data, co-operation and information-sharing in light of the Panama Papers.
- Participants from 49 delegations, including international and regional tax organisations, committed to continued international co-operation in order to tackle offshore tax evasion and work towards a fairer and more transparent international tax system at the 10th meeting of the OECD Forum on Tax Administration in May.
- Each tax administration will follow up in accordance with its own domestic laws and regulations as well as the information-sharing agreements respective governments have in place with each other.





Corporate response

What has been the Corporate response?

Corporates should now be:

- Taking steps to understand their risk exposure to the Panama Papers and what would constitute a “red flag”
- Considering the reputational and regulatory risks that shell companies can pose.
- Considering if changes need to be made to their risk profile relative to shell companies on a go-forward basis.
- Ensuring roles and responsibilities for investigating, addressing exposure to the Panama Papers and briefing the board/ senior management are clear.
- Ensuring there is a plan for informing regulators of the investigative plan.
- Considering how to screen customers and third parties for potential exposure.



Prevent future risk and exposures

1. Tax compliance issues

- The focus is to identify individuals or corporations abusing the tax system.
- Holding wealth or generating income offshore is not, in and of itself, evidence of any illegal behaviour. The majority of taxpayers who use offshore jurisdictions do so for legitimate reasons and fully comply with their disclosure requirements.
- In today's global world, where money and assets can be moved internationally with relative ease, there is concern over some countries, particularly those that offer increased levels of privacy and/or low levels of taxation. The perception is that the jurisdiction is being used to hide wealth illegally so as to evade taxation or that it is part of a complex, but legal, international structure that facilitates the avoidance of tax.
- In conducting investigations and reviews the ATO will use their coercive information gathering powers to interview relevant people and access premises.
- There is likely to be follow-on investigations and inquiries to those commenced as a result of the Panama Papers.

2. Bribery and corruption risk

New false accounting offences

Part 10.9 Accounting Records was inserted into the ***Criminal Code 1995 (Cth)***, and came into operation on 1 March 2016. It introduced the following offences, with substantial penalties attached.

1. Intentional false dealing with accounting documents

Companies or individuals that intentionally conceal illegitimate payments by making, altering, or destroying accounting records, or by failing to make or alter accounting records that are required by law to be made or altered.

2. Reckless false dealing with accounting documents

Companies or individuals that are reckless in relation to matters that conceal illegitimate payments by making, altering, or destroying accounting records, or by failing to make or alter accounting records that are required by law to be made or altered.



Individual offenders face:

- Intentional false dealing: 10 years imprisonment and/or fine of \$1.8 million
- Reckless false dealing: 5 years imprisonment and/or fine of \$900,000

Corporate offenders face:

- The greatest of:
 - Fines up to \$18 million for intentional false dealing, and \$9 million for reckless false dealing;
 - Three times the benefit gained from the conduct for intentional false dealing, and 1.5 times for reckless false dealing; or
 - Ten percent of annual turnover for intentional false dealing, and five percent for reckless false dealing.

Prevent future risk and exposures

Bribery and corruption risk

The challenges:

1. Australia has a number of regulators policing ABC, not just one like the DoJ in US or the UK Serious Fraud Office.
2. Australia has not had a recent successful prosecution resulting in anyone going to jail for bribery and corruption.


[Home](#) | [About us](#) | [News](#) | [Our cases](#) | [Publications](#)

The SFO investigates and prosecutes serious or complex fraud, bribery and corruption.

Ponzi fraudsters sentenced to a total of 21 years | The role and remit of the SFO

Here are the current top ten FCPA enforcement actions of all time:

1. **Siemens** (Germany): \$800 million in 2008.
2. **Alstom** (France): \$772 million in 2014.
3. **KBR / Halliburton** (USA): \$579 million in 2009.
4. **BAE** (UK): \$400 million in 2010.
5. **Total SA** (France) \$398 million in 2013.
6. **VimpelCom** (Holland) \$397.6 million in 2016.
7. **Alcoa** (U.S.) \$384 million in 2014.
8. **Snamprogetti Netherlands B.V. / ENI S.p.A** (Holland/Italy): \$365 million in 2010.
9. **Technip SA** (France): \$338 million in 2010.
10. **JGC Corporation** (Japan) \$218.8 million in 2011.

Note: 8 of these 10 of these companies are not US firms!

3. Third party risk

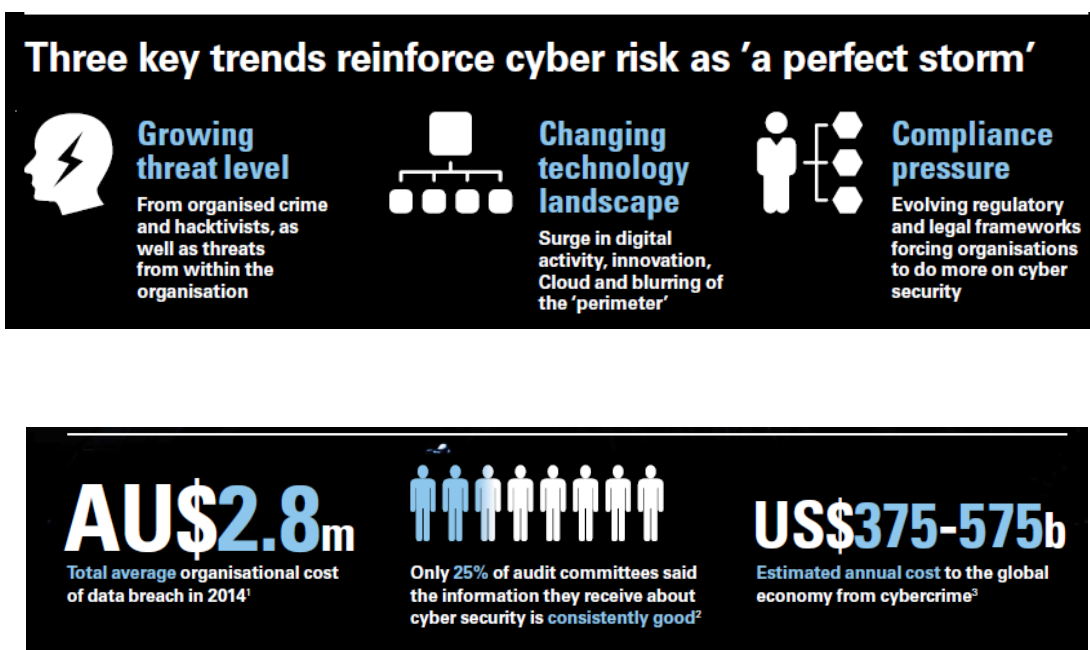
One of the top challenges organisations experience is the identification and mitigation of risks in relation to doing business with third parties, including agents.

1	Auditing third parties for compliance
2	Variations in country requirements-data privacy etc.
3	Difficulty in conducting due diligence over foreign agents/third parties
4	Lack of internal resources
5	Difficulty in identifying & assessing risk
6	Cultural/language issues

Source: Global Anti-Bribery and Corruption Survey, KPMG International, 2015

4. Data security and protection

The perfect storm: we are seeing more and more investigations into security breaches and loss of sensitive and critical-value data



Proactive due diligence

- Protect against data breaches and cyber losses:



Perimeter defenses



Broaden the scope of cyber security activities to include insiders



Know and secure your critical-value data



Proactively implement an insider threat mitigation program

Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The views and opinions contained in the presentation / paper are those of the author and do not necessarily represent the views and opinions of KPMG, an Australian partnership, part of the KPMG International network. The author disclaims all liability to any person or entity in respect to any consequences of anything done, or omitted to be done.



Questions



Natalie Faulkner

Director

KPMG Forensic – Sydney

Ph: (02) 9335 7716

E: nfaulkner1@kpmg.com.au

Ross Hocking

Director/ Special Counsel

KPMG Law – Melbourne

Ph: (03) 8663 8651

E: rhocking@kpmg.com.au

kpmg.com.au

kpmg.com.au/app



© 2016 KPMG, an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

Liability limited by a scheme approved under Professional Standards Legislation.

The information contained in this document is of a general nature and is not intended to address the objectives, financial situation or needs of any particular individual or entity. It is provided for information purposes only and does not constitute, nor should it be regarded in any manner whatsoever, as advice and is not intended to influence a person in making a decision, including, if applicable, in relation to any financial product or an interest in a financial product. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

To the extent permissible by law, KPMG and its associated entities shall not be liable for any errors, omissions, defects or misrepresentations in the information or for any loss or damage suffered by persons who use or rely on such information (including for reasons of negligence, negligent misstatement or otherwise).