

# The Panama Papers

Critical Issues in Determining the Future of Financial Services



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## *Here is what happened:*

On Monday, 4<sup>th</sup> April, 2016 – a group referring to themselves as the “International Consortium of Investigative Journalists” (ICIJ), as result of taking it upon themselves to have been “investigating” a Panamanian law firm called Mossack Fonseca, dumped 11.5 million documents into the public domain. The documents revealed the longstanding financial transactions dating back 40 years, of over 200,000 companies and 14,000 clients of the firm.

According to the documents themselves, and as was confirmed by a variety of international newspapers, the documents revealed the accounts of:

- 12 heads of state
- Nearly 200 politicians
- 29 billionaires on the Forbes list
- Financiers of terrorism
- Nuclear-weapons proliferators
- Numerous CIA-linked companies

More than 500 banks worldwide were implicated, including Credit Suisse, HSBC, UBS, Landesbank, and Rothschild's.

There are some notable revelations, which are important, if only because these individuals played some role in inflicting consequences on and reputational damage to small nations in the name of anti-corruption or transparency:

For instance, The President of the Transparency International's Chilean Branch – Mr. Gonzalo Delaveau - was “forced” to resign because the leaked documents revealed that he was linked intimately with at least 5 companies in the cache of documents. This hints at what we think is the underlying problem in the reportage around these leaks. There is nothing inherently wrong about managing one's financial matters through a law firm in Panama. However, Mr. Delaveau and Transparency International took such a dim view of people, attempting merely to protect their assets, attacking the reputations of perfectly good people and companies – in IFCs mostly former colonial possessions for handling transactions, which American and European firms and banks undertake without pause.

The documents also revealed that British Prime Minister, The Rt. Hon. David Cameron's father maintained an account in The Bahamas through which he oversaw his financial affairs for 40 years, without paying UK tax. Yet the reports fail to mention that this was perfectly allowable within the law at the time.

Everyone has heard of the sensationalism around the resignation of the Icelandic Prime Minister, Sigmundur Davio Gunnlaugsson. However, it is unclear whether he resigned because he was found to have accounts offshore or because he failed to declare them as Icelandic parliamentary rules - in the *Alþingi* - require.

*What does it all mean?*

We have noticed in the coverage a continuing set of mixed messaging, in respect of the characterization of International Financial Centres (IFC). First, there is the term “tax haven” – a term of paternalistic derision - which is more readily consistent with practices in London or New York and certainly a more apt description for what is available in Delaware, South Dakota, Alaska, Wisconsin, Colorado and Arizona than what could be found in Panama or any of the overtly compliant financial centres in The Caribbean. Second, nearly all the reports referring to asset protection – even after they explain that most transactions in IFCs are perfectly legal – still, they use terms such as money “hidden” offshore, or “funds out of the reach of” tax authorities; again – and irresponsibly – offering no truth to their own distinction that not everyone using IFCs are engaged in nefarious behaviour. Third, it is peculiar that the International Consortium of Investigative Journalists (ICIJ), held these documents for an entire year before releasing them. This leaves an impression of a “selective release”; particularly since with 500 banks involved, scores of Forbes listed billionaires and a number of CIA linked companies, by some miracle, not a single American was flagged for wrong doing. The reportage around the leaked documents has thus far been written clearly – with the support of the international media punditocracy - in a manner to disparage International Financial Centres (IFC), particularly in the Caribbean.

*European shame; Caribbean blame:*

We find that there are still quite serious issues left unaddressed in the vast reporting on The Panama Papers around the world. For instance, the arrival of these documents into the

public sphere is either a cybercrime or a breach of privacy or both. Whilst Mossack Fonseca - the world's fourth largest firm specializing in "asset protection" - is at the centre of the current breach of privacy, in fact Bloomberg news reported in 2015, that more than 80% of the top 100 US law firms have been the subjects of cybercrimes and so breaches of privacy.

We assert here, without fear of contradiction, that the western legal system and western democracy itself cannot withstand such breaches of privacy and survive. We argue that whilst we say that tax evasion, sanctions busting and terrorist financing are intolerable breaches of not merely the law, but the rule of law, we also argue that this constant fetish against privacy and confidentiality - from the OECD to the EU to the G20 - poses grave dangers to our way of life; particularly where the government is demanding greater secrecy whilst seeming determined to breach our rights, even as they claim their own breaches are to protect those very same rights.

Readers may observe this double-speak in the recent case of Apple against the FBI, which we say dramatized many of the issues referred to here.

*What does this mean for International Financial Centres?*

Look, again, at the coverage: In the Financial Times, Bloomberg News and even Time Magazine, aside from the attempt to generate a conspiracy of "hiding money", the American press has tried to "shoe-horn" this Panama spectacle into a debate between the 1% and the 99%, as fodder for their presidential campaigns.

In our view, this habit of witnessing criminality in the North and pointing immediately to the South will not end with the American politicians and press. At their next G20 meeting in Hangzhou - the first to be held in China - G-20 leaders, exhausted with the various stalemates in international affairs - from Syria to Russia and the Ukraine, Libya, Venezuela and South Korea, not to mention the anemic results of "Quantitative Easing" - they will have nothing concrete to "solve", save that they can pledge to eliminate International Financial Centres.

Given the attempts on the life of IFCs, we can say without fanfare, rumours of the death of financial centres are often greatly exaggerated. The unprecedented and criminal assault on the privacy of thousands of people across the globe occasioned by the Panama Papers is not the death knell of financial centers. Rather the attention now being focused provides a platform for a new and more analytical narrative of the critical relevance of these financial centres to the international financial system, capital aggregation and the global flow of business.

In fact, taking a full measure of the state of the global financial system, together with the prerogatives of the expanding state power, even by anti-statists, we believe there are two options for the future of financial centres:

Either, owing to an attitude of capitulation without raising important questions about privacy rights, constitutionalism and the rule of law, small financial centres will be crushed by their own lack of professional and institutional rectitude, in earning their place at the heart of the global financial system. They cannot claim to operate at the apex of financial management

skill and sophistication, yet refuse to cultivate and leverage a corollary sophistication in active and targeted diplomacy. They must show a demand for equal footing on a level playing field, that anticipates the primacy of law and rule-governed legitimacy rather than the current vogue of ‘do as we say not as we do’ or that ‘might is always right’.

Failing that, International Financial Centres – particularly in the Caribbean – will lose their place, if they maintain the habit of accusing each other of failing in 100% compliance with goalpost moving new rules, invented and applied selectively by those G20 nations that engage in everything the rules seek to prevent. Yet, “the rules” – whilst necessary for everyone equally – are being imposed in a one-sided fashion, with the aim not of compliance, but elimination.

This does not mean that jurisdictions should abhor rules that bring stability or transparency through cooperation in the global financial system. But smaller, nations should and must demand that all nations, particularly those that are larger and stronger – and engaged in the exact same business practices as Panama – also follow the rules they seek to impose.

The second possibility is that the business will move – apart from the current flight being seen into America’s onshore “offshore” centres (Delaware, South Dakota, Alaska, Wisconsin, Colorado and Arizona), to jurisdictions that have little reason to heed a European or American call for prudential cooperation in financial matters. And rather than being subject to a rules based system, the new global financial services regime will reflect the current stalemates in international affairs, subject to the same mistrust and recriminations, which increasingly characterises international relations today.

If International Financial Centres are to avoid this fate, they must learn the protocols of diplomatic proactivity, functioning with all the subtlety and aplomb necessary to operate at the very top of the Global financial system. This means establishing an organisation to speak to the world on their behalf, rather than defending themselves individually, always in a moment of crisis, after the global media has brazenly and falsely defined the sector and region negatively, without fear of correction.

The Panama Papers then afford IFC’s a platform to organize themselves into a potent and proactive force to speak to the world clearly and authoritatively on the critical relevance of IFC’s to global commerce and to correct the false Media narrative that Alsatia has somehow shed its London roots for Panama and the Caribbean. Such an organization must demand an equal footing on a level playing field, that anticipates the primacy of law and rule-governed legitimacy rather than that ‘might is always right’.

To paraphrase an old diplomatic saying: We shall not have the financial centres we had or the ones we hope for. Rather we shall have or not, only the financial centres for which we possess the grace and skill to negotiate.

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About the Authors:

The Hon. Mark A.G. Brantley, MP and Professor Gilbert NMO Morris met at Oxford University almost 21 years ago, and have remained friends since then. Brantley is a distinguished Barrister and is now Deputy Premier of Nevis and Federal Minister of Foreign Affairs and Aviation. Professor Morris was Professor at George Mason University, is the former Chairman of the National Investment Agency & National Bank of the Turks and Caicos Islands and is now Chairman of the Turks and Caicos Resorts Economic Council. (TCREC)