

# Responding to the Panama Papers: Next Steps

Amsterdam, June 2016



Building a better  
working world

# The Panama Papers

<https://panamapapers.nl/#!>

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## What is the source?

- ▶ On Sunday, 3 April, the International Consortium of Investigative Journalists (ICIJ) broke the story globally that they had been investigating a very significant leak of documents from the law firm Mossack Fonseca in Panama.
- ▶ The source of the leak currently remains undisclosed, but it reportedly comprised more than 11.5m legal and financial documents.

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## What does this mean for institutions?

- ▶ Financial institutions may be cited in the data, having instructed Mossack Fonseca to set up offshore companies for clients, or officers of the companies may be identified in the data.
- ▶ Clients of the financial institutions may be identified in the documents leaked if they have used Mossack Fonseca's services, or there may be links to beneficial owners or other associated parties.

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## Allegations associated with the leak

- ▶ Mossack Fonseca maintains that it has broken no laws. This will be investigated over the coming months.
- ▶ Among the issues for clients identified in the documents is whether the beneficial owner(s) might have used the offshore structure or vehicle for the purpose of tax evasion, money laundering or other financial crimes.
- ▶ There have already been high-profile resignations and allegations against individuals on a global basis.

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## What are the issues?

- ▶ Whether laws have been broken will be a matter for domestic legislation, but the allegations largely centre on the legitimacy of the source of the funds, whether tax has been declared on the capital and income, irrespective of whether reporting has been correctly undertaken (e.g., US Foreign Bank Account Report (FBAR)), and whether advisor-implemented structures could trigger exposure at the advisor level, particularly failure to file Suspicious Activity Reports (SARs) for lawyers, accountants or others.

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## How are authorities reacting?

- ▶ National-level task forces have already been formed, and the British Prime Minister has announced that most of the UK's dependencies, including the British Virgin Islands and the Cayman Islands, have agreed to provide full access to information about beneficial owners for law enforcement and tax authorities.
- ▶ Tax officials from 28 nations have met in Paris under the auspices of the OECD to develop a strategy for collaborative action based on the Panama Papers' revelations. The policy of ICIJ is not to turn over leaked material.

# Understanding the issues

## Possible implications for financial institutions

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The leak – regarded as the largest of its type in history – of 11.5m documents reportedly covers almost a 40-year period and includes emails, financial spreadsheets, passports and corporate records. With regulatory, government and public scrutiny increasing following the immediate investigatory actions, institutions need to consider how best to establish a sustainable response as new information emerges.

The ICIJ has recognised that there are legitimate uses for offshore structures of the type offered by Mossack Fonseca and many other firms.

Private Investment Companies (PICs) and other small entity structures are a core aspect of the wealth structuring arrangements of many wealthy individuals. Therefore, catering to their banking and investment needs is a cornerstone of the private banking and wealth management industry.

Many of these structures are not intrinsically good or bad **per se** – consideration needs to be given to the intentions and actions of the underlying beneficial owner(s).

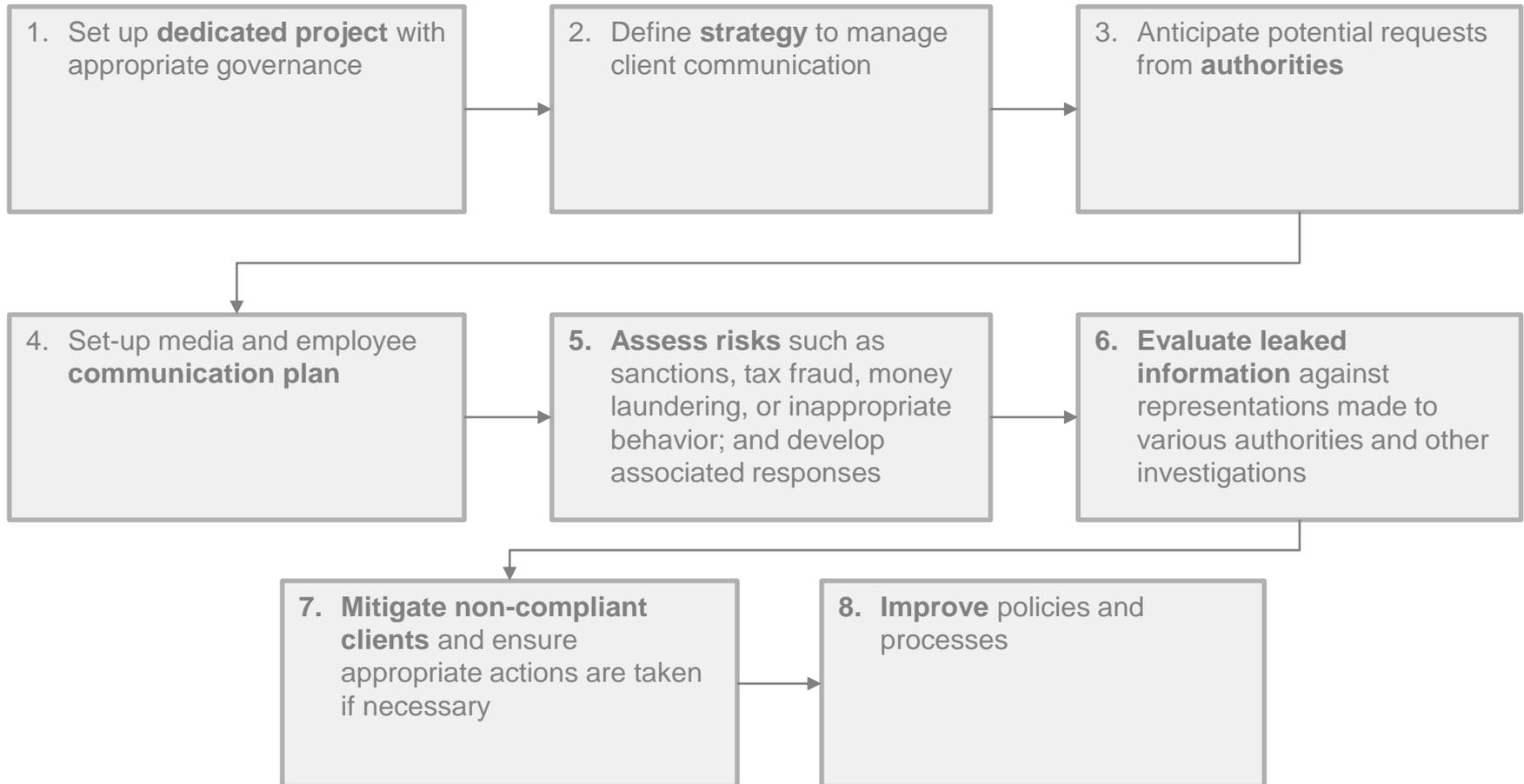
Much work in this area has been done by financial institutions over recent years – e.g., in the field of identification of beneficial ownership, exiting or risk mitigation of bearer share structures, and triage for FATCA purposes.

However, the media and political climate in relation to offshore arrangements is highly charged. **Financial Institutions therefore need to consider urgent questions of reputational risk and internal and external communication strategy, alongside immediate questions of client and regulatory risk.**

Beyond the Panama Papers, financial institutions now need to build on the extensive work already done, and **consider their long-term approach to offshore arrangements, within the framework of a global anti-evasion programme and, especially, under the developing provisions of Anti-Money Laundering (AML) regulations.**

# Responding to the Mossack Fonseca leak

We see eight main stages to developing an institution's initial response



# Why EY

## EY CAN SUPPORT YOU IN REMEDIATION AND ONGOING COMPLIANCE

- ▶ As part of our commitment to building a better working world, EY can support you in developing high standards of compliance and in advancing the global tax transparency agenda
- ▶ EY has extensive experience working with financial institutions on all aspects of their regulatory obligations in this field

### Our experience

EY has participated in numerous reviews, remediations and control enhancements relating to tax transparency. Below is a selection of our credentials.

- ▶ **Netherlands - Client acceptance and review:** for the largest trust companies in the Netherlands, we have assisted in the preparation and implementation of remediation programs adhering to internal and regulatory policy and identify potential tax evasion and aggressive tax planning
- ▶ **Swiss – US disclosures:** assisting a leading Swiss private bank in identifying and reviewing clients with US links and supporting the bank in reaching settlement with the US authorities
- ▶ **Customer tax strategy:** advising on and developing global account monitoring and KYC procedures to confirm client tax compliance
- ▶ **Netherlands - client remediations:** reviewing and remediating client accounts to comply with integrity standards
- ▶ **Senior employee tax risk:** working with industry participants in understanding the potential reputational risk arising from the tax affairs of their board members and senior management. Executives may require guidance on any open tax enquiries or issues that require resolution
- ▶ **Trust reviews:** assessing all activity carried out by trust structures to facilitate conformity to regulatory requirements and terms of trust deed
- ▶ **German – Swiss disclosures:** supporting financial institutions regarding the tax compliance of their German client bases
- ▶ **Financial intelligence platform support:** supported design of a big data technology approach to identify and advise on financial crime risk

# Trust & Corporate Services Sector team

## Netherlands

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