

The Pandora Papers: Mitigating Your Risks

International Alert
10.07.2021

On October 3, 2021, the International Consortium of Investigative Journalists (ICIJ) [announced the results](#) of its analysis of the "Pandora Papers," a set of 11.9 million records leaked from 14 services companies. The documents reportedly contain information not previously public about the beneficial owners, officers, directors, and shareholders of entities registered in the British Virgin Islands, Seychelles, Hong Kong, Bahamas, Belize, Panama, and other jurisdictions known for their corporate and bank secrecy protections.

The Pandora Papers leak is the latest and largest in a series of leaks reported by the ICIJ, beginning with the Panama Papers in 2016. According to the ICIJ, the leaked documents relate to "the creation of shell companies, foundations and trusts; the use of such entities to purchase real estate, yachts, jets and life insurance; their use to make investments and to move money between bank accounts; estate planning and other inheritance issues; and the avoidance of taxes through complex financial schemes."¹

The accumulation of significant wealth, as well as the decision to take steps to minimize tax burdens, including using offshore trusts, is not inherently problematic or illegal. However, the current political and social climate can be expected to trigger greater scrutiny of wealth, its sources, and efforts to protect it. And prior experience with the Panama Papers and other ICIJ leaks suggests that entities and individuals identified in the leaked documents, as well as those who interact with the subjects of the leaked documents, can expect increased scrutiny from government regulators, media, and the public. Companies should be proactive in addressing these increased risks, as discussed below.

Background

According to the ICIJ, the data that is now part of the Pandora Papers arrived "in a jumble of files and formats – even ink-on-paper."² Among the files are copies of passports, bank statements, tax declarations, company incorporation records, real estate contracts, due diligence questionnaires, emails, spreadsheets, images, slide shows, audio files, and video files.³

As of this writing on October 7, 2021, the complete set of primary source documents has not been made publicly available, although the ICIJ said that it will begin to release additional data. In the meantime, the ICIJ has made available the names of offshore companies used by more than 50 politicians on its "[Power Players](#)" feature. The ICIJ also released the names of the 14 offshore services providers, and their affiliates, from which the documents came. The ICIJ reported that it plans to incorporate data from the Pandora Papers into its [Offshore Leaks database](#), a publicly available resource that allows users to search for people, companies, and addresses connected to offshore entities.

According to the ICIJ, certain files date back to the 1970s, but most of the files that have so far been reviewed by the ICIJ and its partners were created between 1996 and 2020. The files reportedly include information on more than 300 former and current politicians and world leaders, including Jordan's King Abdullah II, the Czech Republic's Prime Minister Andrej Babis, Kenyan President Uhuru Kenyatta, Gabonese President Ali Bongo, Congolese President Denis Sassou-Nguesso, Cote d'Ivoire's Prime Minister Patrick Achi, Ruler of Dubai Mohammed bin Rashid Al Maktoum, the Dominican Republic's President Luis Abinader, Ecuador's President Guillermo Lasso, Lebanese Prime Minister Najib Mikati, Montenegro's President Milo Đukanović, Princess Lalla Hasnaa of Morocco, former U.K. Prime Minister Tony Blair, the families of Azerbaijani President Ilham Aliyev and Chilean President Sebastián Piñera, and associates of both Pakistani Prime Minister Imran Khan and Russian President Vladimir Putin. The Pandora Papers also reportedly include information on the offshore holdings of billionaires, athletes, and celebrities.

Of the roughly 330 current and former public officials identified as ultimate beneficial owners in the Pandora papers, 38 were from Ukraine and 19 were from Russia. Latin America also featured heavily, with public officials from Colombia (11), Honduras (11), Brazil (9), and Venezuela (8) identified by the report.

In terms of beneficial owners overall (without regard to government official status), the ICIJ [reported](#) that the U.K. (3,936), Russia (3,694), China (1,892), Argentina (1,448), and Brazil (1,407) are the countries with the largest numbers of beneficial owners mentioned in the Pandora Papers.

Delaware, Florida, Nevada, South Dakota, and Texas were the states where the most trusts were settled within the U.S. In addition, the Pandora Papers identified more than 700 companies with beneficial owners connected to the U.S.

Addressing Potential Repercussions of the Pandora Papers

There are various legitimate reasons for establishing offshore companies and trusts and inclusion in the Pandora Papers does not establish wrongdoing by named individuals or entities. However, experience with the Panama Papers and similar leaks has shown there are risks for both corporations listed in the Pandora Papers and for corporations transacting with entities and individuals listed in the Pandora Papers. These risks include but are not limited to commercial and reputational risk, civil litigation risk, and investigation and possible enforcement risk related to public corruption, money laundering, economic sanctions, tax evasion, and other violations. Indeed, officials in Australia, Brazil, Bulgaria, Germany, India, Ireland, Mexico, Pakistan, Panama, Paraguay, Spain, Sri Lanka, the U.K., and the U.S. have announced publicly that they will conduct inquiries into the Pandora Papers data. The ICIJ's previous leak of the Panama Papers resulted in significant regulatory engagement, including prosecutions, dawn raids, and subpoenas. In the years following the 2016 leak, prosecutors [raided the offices of law firm Mossack Fonseca](#) in connection with bribery investigations and [searched the offices of Deutsche Bank](#) in connection with a money laundering probe. [Australian](#) and [U.K.](#) authorities announced investigations into Mossack Fonseca clients, and the leak ultimately led to the closure of Mossack Fonseca. [According to the ICIJ](#), governments recouped more than \$1.3 billion as a result of investigations flowing from the Panama Papers leak. Parties with actual or potential touchpoints to the Pandora Papers leak should therefore consider developing a cohesive plan to address specific risks the Pandora Papers might pose. Specifically:

- **Mitigating Risk as a Named Party.** Companies, trusts, and individuals named in the Pandora Papers, or have reason to believe they will be linked to those who have been or will be named, should create a proactive strategy to anticipate potential repercussions from negative publicity and regulatory scrutiny. Such a strategy should contemplate, among other things, a review of all tax reporting obligations and preparation for a potential Internal Revenue Service (IRS) audit inquiry. In addition, the strategy should prepare for potentially more aggressive enforcement actions and should include the development of a process for responding to subpoenas and search warrants. The strategy should anticipate how the company will address media inquiries and client or business partner concerns. Companies should also specifically anticipate inquiries from financial institutions and counterparties. A plan to address inquiries should include the preservation and collection of relevant documentation, including those supporting decisions as to company structure and incorporation and information on beneficial ownership.
- **Identifying and Mitigating Risk from Existing Interactions with Named Parties.** Companies should develop an approach to investigate whether they interact with any entities or individuals named in the Pandora Papers. If a company identifies interactions with a named party, the company should consider what additional steps are appropriate to address associated risks, which could include risk of corruption, money laundering, and tax evasion. What steps the company takes, if any, will depend on the nature of the increased risk identified. Inclusion in the Pandora Papers does not establish that misconduct occurred, and the company may determine that prior due diligence and related steps taken were sufficient. However, companies may seek additional documentation and representations from counterparties or clients depending on the risks posed in light of the newly surfaced information. And in some cases, further steps, including investigating potential legal violations involving those parties and exiting relationships entirely, may be warranted.

Proactive Measures to Mitigate Future Risks

Even parties that are not named or that have not identified interactions with parties named in the Pandora Papers should consider certain proactive measures to help mitigate future risks.

- **Unnamed Services Providers.** Given the renewed focus by regulators around the globe regarding the practices of "offshore" service providers, including law firms, banks, and trust companies, companies providing such services should consider whether it is necessary to conduct a review of their internal procedures and practices to ensure compliance with applicable law and remediate any gaps identified. Among the procedures that may require a heightened review are those that focus on a company's Know-Your-Customer (KYC) process.
- **Integrating Pandora Papers Information into Screening.** Regardless of current interaction with those named in the Pandora Papers, companies should develop a plan to integrate information from the Pandora Papers into third party screening processes and regularly monitor the information that is released by the ICIJ. As with the Panama Papers, we anticipate that many due diligence providers will incorporate Pandora Papers information into their own databases or research protocols. In addition, if a company's payment system enables such configuration, it could consider proactively inputting information from the Pandora Papers so that the system flags any named party prior to onboarding.

For more information, please contact:

[Leah Moushey, lmoushey@milchev.com](mailto:lmoushey@milchev.com), 202-626-5896

[Ian A. Herbert, iherbert@milchev.com](mailto:iherbert@milchev.com), 202-626-1496

[Ann Sultan, asultan@milchev.com](mailto:asultan@milchev.com), 202-626-1474

[Kathryn Cameron Atkinson, katkinson@milchev.com](mailto:katkinson@milchev.com), 202-626-5957

¹ICIJ, "[Pandora Papers: An offshore data tsunami](#)"

²*Id.*

³*Id.*

The information contained in this communication is not intended as legal advice or as an opinion on specific facts. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. For more information, please contact one of the senders or your existing Miller & Chevalier lawyer contact. The invitation to contact the firm and its lawyers is not to be construed as a solicitation for legal work. Any new lawyer-client relationship will be confirmed in writing.

This, and related communications, are protected by copyright laws and treaties. You may make a single copy for personal use. You may make copies for others, but not for commercial purposes. If you give a copy to anyone else, it must be in its original, unmodified form, and must include all attributions of authorship, copyright notices, and republication notices. Except as described above, it is unlawful to copy, republish, redistribute, and/or alter this presentation without prior written consent of the copyright holder.