

# BENEATH A PANAMANIAN MOON: CRIMINALISING SECRECY

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The term “Panama Papers” has become a by-word for financial skulduggery. On 3 April 2016, the International Consortium of Investigative Journalists revealed that it had a cache of more than 11 million leaked files from the Panamanian law firm Mossack Fonseca. These papers disclosed details of heads of state, ministers and elected officials who had set up offshore companies to conceal bribery, arms deals, tax evasion, financial fraud and drug trafficking. The Panama Papers represented a web of deception devised to obscure ownership. Twenty years ago, secrecy was a fundamental tenet of banking and finance. Today, new regulations are being brought in to erode secrecy and promote transparency. The Panama Papers’ leak provides added impetus. The combined effect is that companies need to take a fresh look at how they do business and who they do business with.

## **The End of ‘Anonymous’ Companies**

Since the Panama Papers leak, a number of measures have been introduced to ensure greater transparency. In April, the government put forward proposals to force foreign companies buying UK property to disclose their ultimate owners. The following month, David Cameron, the former Prime Minister, hosted the first international Anti-Corruption Summit. Attendees pledged to “end the misuse of anonymous companies to hide the proceeds of corruption” and to “driv[e] out those lawyers, real estate agents and accountants who facilitate or are complicit in corruption”, with the UK government confirming that, from 30 June 2016, companies’ annual returns to Companies House must contain beneficial ownership details, via the People with Significant Control register. Meanwhile, at the

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beginning of October, Ireland's Minister of Finance, citing the Panama Papers, condemned tax evasion and promised to criminalise individuals who fail to disclose offshore accounts from 2017.

The momentum towards enforced transparency will be relentless. Some of Britain's offshore territories have even consented to exchange beneficial ownership information from their registers with each other. For wrongdoers, and those who help conceal their identities, there will be fewer places to hide.

## **Are you doing business with Bashar al-Assad?**

The fourth EU anti-money laundering directive will be fully implemented in all member states by 26 June 2017, which requires that ultimate beneficial owners (UBO) are identified. 'Who are you doing business with?' is the key question.

Organisations must ascertain and be able to evidence the UBO of those parties they are doing business with. The risks of failing to do so are vast.

The Panama Papers leak has sparked international regulators to begin investigations into money-laundering, aimed at uncovering instances where funds have been provided to the targets of sanctions and or used for terrorist financing. Do you know if you are exporting to the cousins of President Bashar al-Assad?

Certain individuals have enormous incentives to disguise their identities. And the penalties of dealing with them are severe. In September 2016, it was reported that the U.S. and Dutch authorities proposed a \$1.4 billion fine to settle allegations that the Scandinavian telecommunications company Teliasonera paid bribes to

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win business in 2007. Some of the allegations focused on a company linked to Gulnara Karimova, the daughter of former President Islam Karimov. But camouflaging identities is not a far away problem in a foreign country. As the journalist Alan Rusbridger notes, “Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks and Caicos islands remain “secrecy jurisdictions”, actively supported and managed from Britain and intimately linked with the City of London.”

## **No secret is now sacred**

The incentives to blow the whistle are enticing. Aside from offers of immunity from prosecution - available on both sides of the pond - in the US whistle blowers are also eligible for a “bounty” of 10 per cent to 30 per cent on successful enforcement of federal securities law violations.

With hacking and malware, whistleblowing is easier than it has ever been. The Panama Papers’ leak exemplifies this. The clear message is that organisations can no longer afford to operate on the basis that unsavoury details about their business can be kept secret.

## **One eye on the present and two eyes on the future**

The Panama Papers’ leak underscores the importance of developing a forward-looking, ethical compliance culture. Companies should be wary of falling into the trap that strict adherence to the law in 2016 will protect their business in 2019, or 2023. The new order is intolerant of sharp business practice. Without a proper focus on implementing an appropriate culture in which to conduct business, organisations will now face an ever-increasing risk of exposure externally and internally.

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## **Remember, remember**

Anti-corruption compliance can no longer be treated as a secondary concern. It is at the top of the political agenda and should be at the top of the corporate agenda. To stay out of the firing line, organisations need to anticipate how they can protect themselves against evolving risks. The Panama Papers' leak illustrates that the risk of wilful blindness and of failing to perform meaningful due diligence may mean that

an organisation is indirectly facilitating corruption by assisting in tax evasion and aggressive tax avoidance, corporate secrecy, or corporate and individual financial crime, such as bribery and money laundering. An approach to business which involves satisfying black letter law currently in force while ignoring unethical business practice is increasingly risky, as the consequences of disclosure are harder and harder to avoid.

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