

NARRATIVE REPORT ON PANAMA



PART 1: NARRATIVE REPORT

Overview and background

Panama ranks at 12th position on the 2018 Financial Secrecy Index, with a high secrecy score of 76.6 but a small global scale weighting (0.27%). Coming within the top twenty ranking, Panama remains a jurisdiction of particular concern.

Long the recipient of drugs money from Latin America, plus ample other sources of dirty money from the U.S.A. and elsewhere, it is one of the oldest and best known tax havens in the Americas. In recent years it has adopted a hard-line position as a jurisdiction that refuses to co-operate with international transparency initiatives.

In April 2016, in the biggest leak ever, 11.5 million documents from the Panama law firm Mossack Fonseca revealed the extent of Panama’s involvement in the secrecy business. [The Panama Papers](#) showed the world what a few observers had long been saying: that the secrecy available in Panama makes it one of the world’s top money laundering locations.¹

In *The Sink*, a book about tax havens, a U.S. Customs official is quoted [as saying](#):

“The country is filled with dishonest lawyers, dishonest bankers, dishonest company formation agents and dishonest companies registered there by those dishonest lawyers so that they can deposit dirty money into their dishonest banks. The Free Trade Zone is the black hole through which Panama has become one of the filthiest money laundering sinks in the world.”²

Panama has over 350,000 secretive International Business Companies (IBCs) registered: the third largest number in the world after [Hong Kong](#)³ and the [BVI](#).⁴ Alongside incorporation of IBCs, Panama is active in forming tax-evading foundations and trusts, insurance, and boat and shipping registration. Violation of financial secrecy is [punishable by prison](#).⁵

A [report](#) by the Panama banking supervisor in 2012 highlights Panama’s heavy focus on the Americas,⁶ particular South America:

Panama’s offshore sector is intimately tied to the Panama Canal, which (along with its strategic position between North and South America) has made it a gateway and entrepôt for international trade. There are strong similarities between Panama and other leading tax havens like Hong Kong, Singapore and Dubai. On paper at least, Panama has the largest shipping fleet in the world, greater than those of the US and China combined.

Rank: 12

Chart 1 - How Secretive?

77
Secrecy Score

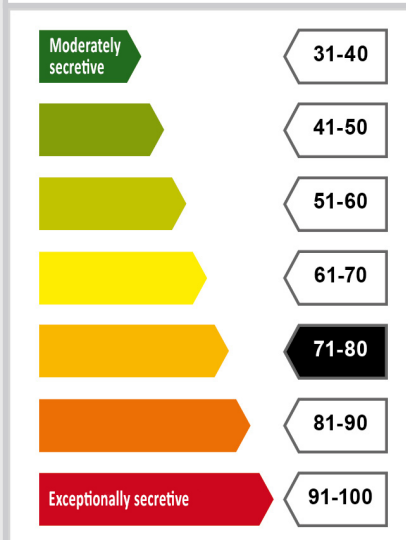
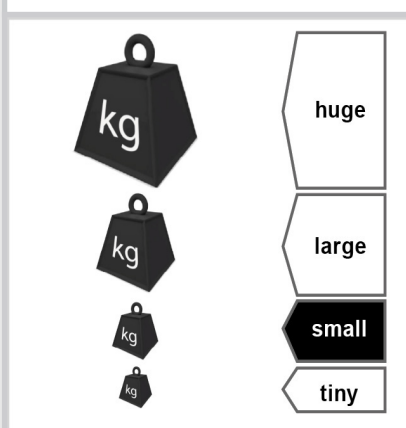


Chart 2 - How Big?



Panama accounts for less than 1 per cent of the global market for offshore financial services, making it a small player compared with other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.

Full data on Panama is available here: www.financialsecrecyindex.com/database.

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History: how Panama became a secrecy jurisdiction

An [in-depth investigation](#) by U.S. journalist Ken Silverstein in *Vice Magazine* in 2014 – focusing on the law firm Mossack Fonseca 16 months before the Panama Papers came out – explains in colourful language how Panama itself came into being, with U.S. help:

“In 1903, the administration of Theodore Roosevelt created the country after bullying Colombia to hand over what was then the province of Panama. Roosevelt acted at the behest of various banking groups, among them J. P. Morgan & Co., which was appointed as the country’s official ‘fiscal agent’.”⁷

the canal opened in 1914.

The secrecy jurisdiction emerged shortly afterwards. As an [academic study](#) summarises:

“The history of Panama as a tax haven started . . . when it began to register foreign ships to help Standard Oil escape US-American taxes and regulations. Offshore finance followed in 1927, when Wall Street interests helped Panama introduce lax company incorporation laws, which let anyone start tax-free, anonymous corporations, with few questions asked. The development of Panama offshore, however, took place in the 1970s. Panama



This had happened [as a result of](#) a covert operation approved by the Roosevelt administration to foment an armed rebellion to wrest Panama away from the then politically fragile Colombia.⁸ Roosevelt achieved this goal with the help of William Cromwell, a well connected U.S. Republican lawyer who was legal council for JP Morgan’s railroad interests. The Administration’s key objective was to ‘liberate’ Panama for the purposes of securing rights over the Panama Canal. The result was the [Hay-Bunau-Varilla Treaty](#) of November 1903, establishing permanent U.S. rights to a Panama Canal Zone several miles wide, stretching across the isthmus.⁹ Panama became independent that same month. The U.S.-backed project to build a canal through Panama, connecting the Atlantic and Pacific Oceans for trade, went ahead, and

adopted the familiar tax haven model, based on the three pillars of tax havens: the tax exempt company, bank secrecy laws, and competitive incorporation laws, adopting Swiss-style banking secrecy, abolishing currency controls and setting up tax exempt companies.”¹⁰

From the very beginning the shipping registry was designed in classic offshore style: minimal taxes, regulations and disclosure requirements, in order to attract foreign shipping owners who wanted to escape these things in their home jurisdictions (This has been a *leitmotif* of the offshore system from the outset: affording maximum privileges to the owners of capital that would allow them to trample on workers’ rights, tax payments, and disclosure.) The Panama registry reportedly provided offshore

escape routes from the outset. [As one account](#) put it:

“The first transfer of ships to Panama’s register in 1922 involved two US passenger ships wishing to serve alcohol to passengers during Prohibition. More followed as shipowners sought to avoid higher wages and improved working conditions secured through US legislation.”¹¹

Over the years, however, many Panamanians agitated for the canal zone to come under full Panamanian control, amid a long history of political instability which deterred most offshore activity. Panamanians finally got what they wanted in the 1970s. The U.S. State Department [describes](#) how the U.S. public was slowly persuaded to accept the loss of sovereignty, with the help of the Hollywood actor John Wayne, and warnings from Secretary of State Henry Kissinger that “If these [Canal] negotiations fail, we will be beaten to death in every international forum and there will be riots all over Latin America.” The signing of two treaties happened in 1978:

“The first, called *The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal*, or the *Neutrality Treaty*, stated that the United States could use its military to defend the Panama Canal against any threat to its neutrality, thus allowing perpetual U.S. usage of the Canal. The second, called *The Panama Canal Treaty*, stated that the Panama Canal Zone would cease to exist on October 1, 1979, and the Canal itself would be turned over to the Panamanians on December 31, 1999. These two treaties were signed on September 7, 1977.”¹²

While this was happening, a nascent offshore banking centre was starting to emerge, and legislation was put in place to facilitate it, with copious help from Wall Street operatives. [Silverstein’s article summarises](#):

“Laws attracted a long line of dirtbags and dictators who used Panama to hide their stolen loot, including Ferdinand Marcos, “Baby Doc” Duvalier, and Augusto Pinochet.

When Manuel Noriega, commander of the Panama Defense Forces, took power in 1983, he essentially nationalized the money-laundering business by partnering with the Medellín drug cartel and giving it free rein to operate in the country. Noriega reliably

supported American foreign policy in the region—and for years the CIA had him on its payroll—but the US lost patience when he opposed American efforts to topple the leftist Sandinista government in neighboring Nicaragua. That helped lead to the 1989 invasion of Panama that ousted Noriega and returned to power the old banking elites, heirs of the J.P. Morgan legacy.”¹³

Most activity in Panama related to shipping, rather than offshore banking, for many years. Deposits in the banking sector began to surge, however, from almost nothing in 1970 to around US\$50 billion in 1980 amid a surge in world oil prices and huge flows of Eurodollars through the offshore system ([p8](#)), then deposits in Panama banks fell again to under \$15 billion amid the Latin American debt crises and the political crises in Panama. They grew steadily after that.

Yet Panama trusts and foundations, whose assets are generally not reflected in this data (see below), are likely to be equally if not more important.

In 2014, [Vice Magazine summarised](#):

“Today, Panama’s financial laws remain extraordinarily lax. Foreign firms can bring unlimited amounts of money into the country without paying taxes, and an IMF report earlier this year said that of 40 recommended steps countries should take to combat money laundering and terrorism financing, Panama had fully implemented only one. In September, the *New York Times* reported that cronies of Russian president Vladimir Putin had funnelled money offshore through shell structures in Panama.

“When it comes to money laundering, we offer full service: rinse, wash, and dry,” said Miguel Antonio Bernal, a prominent local lawyer and political analyst. ‘You can go to any law firm in the city, from the smallest to the biggest, and open up a shell company with no questions asked.’”¹⁴

Around the same time [The Economist observed](#), sardonically, of a particular episode when Colombia was seeking to get more information out of Panama:

“In one of the most remembered scenes

of the film *Casablanca*, police chief Louis Renault orders the close of Rick's Cafe when he is "shocked, shocked" to learn that there was gambling going on in the establishment. Seconds later a waiter presents Renault with his winnings from roulette.

Panama was similarly shocked when Colombia last week included the neighbouring country on its list of tax havens, after the Central American nation failed to meet a deadline to sign a bilateral tax information exchange agreement."¹⁵

This was almost certainly the result of Panama courting Colombian drugs money (although it is also heavily used as a [tax haven by Colombia's wealthy elite](#)). Of course, money from Mexican drugs cartels, and from many other sources, continues to flow into this jurisdiction, with a deliberate lack of attention from Panama's authorities, egged on by the offshore financial centre.

The shipping registry, providing a 'flag of convenience,' is arguably Panama's most important offshore offering. A BBC report describes what is effectively a 'registry for sale' with a see-no-evil policy:

"Luis Fruto, representative of the International Transport Workers' Federation (ITF) in Panama, says the country turns a blind eye to its "responsibilities in order to acquire higher registration" ... International legal requirements insist that countries operating open registries inspect vessels, comply with international regulations and investigate accidents and corruption. But critics say that Panama cuts corners in all these tasks, putting maritime workers at risk. Indeed, accidents involving Panamanian-registered ships are high."¹⁶

A private adviser told TJN in 2014 that Panama was taking what he called a "F*** You" approach to international co-operation:

"Panama remains a big hole, the biggest hole, and a really serious problem."

IMF reports are littered with criticisms of Panama. For instance, the [IMF's latest February 2014](#) report noted, in unusually blunt language:

"Panama is vulnerable to money laundering (ML) from a number of sources including

drug trafficking and other predicate crimes committed abroad such as fraud, financial and tax crimes. It is a country with an open, dollarized economy and, as a regional and international financial and corporate services centre, offers a wide range of offshore financial and corporate services. It is also a transit point for drug trafficking from South American countries with some of the highest levels of production and trafficking of illegal drugs in the world. These factors put the country at high risk of being used for ML. Although the authorities have not conducted a risk assessment, they attribute the largest sources of ML to drug trafficking and other predicate crimes committed abroad."¹⁷

The Panama Papers

The [Panama Papers](#) leak, in April 2016, released 11.5 million records from the Panama law firm Mossack Fonseca, covering a 40-year period. It had set up 214,000 entities – many of them in other jurisdictions – for clients in more than 200 countries and territories around the world.¹⁸ Clients included 140 public officials of whom 12 were heads of state, as well as numerous celebrities and criminals. The [president of Iceland resigned](#) within two days;¹⁹ 15 months later [Nawaz Sharif resigned as prime minister of Pakistan](#) after the Supreme Court voted unanimously to disqualify him.²⁰ [A year on](#), nearly 150 audits, investigations, prosecutions and arrests had occurred or were underway in nearly 80 countries.²¹

Ramón Fonseca and Jürgen Mossack, the firm's founders, [denied wrongdoing](#), the firm dishing out the usual secrecy jurisdiction line that it is not its responsibility if the companies it sets up are later used for illegitimate purposes.²² [They were arrested in early 2017](#) on money-laundering charges,²³ amid [confusion](#) about whether the charges were related to a corruption scandal in Brazil or to the Panama Papers,²⁴ and [bailed](#) two months later.²⁵

There was some action from the government. It took only a month from the leak before Panama, one of the last hold-outs, [agreed to join](#) the OECD's Common Reporting Standard and start automatic exchange of tax information in 2018.²⁶ It has also [joined the OECD's Inclusive Framework](#) on BEPS,²⁷ which commits it to implementing the [country-by-country reporting component](#) of the BEPS action plan.²⁸ There are limitations to these standards: countries can choose with whom they will exchange tax information under the Common Reporting Standard, and the BEPS

action plan limits the provision of country-by-country information to the tax authorities in a multinational company's home jurisdiction, which is a much lower and less effective level of disclosure than full public reporting of this information would be.

But more importantly, these commitments can be seen for the cynical actions they are if placed next to some of Panama's other ongoing activities: like [offering passports for sale](#) so that people who are keeping their money in other jurisdictions that have signed up for automatic exchange will have their tax information sent to the authorities in their new 'country' – Panama – who are extremely likely to fail to do anything with it.²⁹

Following the leak, the Nobel-winning economist Professor Joseph Stiglitz and the anti-corruption expert Professor Mark Pieth were appointed by the president of Panama to a Committee of Experts tasked with making transparency recommendations in the wake of the scandal. Within three months [they had resigned, concerned](#) that they couldn't get a commitment from the government to make the findings public.³⁰

'I have had a close look at the so called Panama Papers and I must admit that, even as an expert on economic and organised crime, I was amazed to see so much of what we talk about in theory was confirmed in practice,' [Pieth said](#).³¹

[Stiglitz explained](#): 'It increasingly became clear that the government, with the assistance of at least some of the Panamanian members of the commission, had a purpose other than reforming the system in a transparent way. What it really wanted was to get the positive glow of an announcement while avoiding the need to make any real changes.'³²

They published [their own report](#) in November 2016, calling on the US and the EU to shut down the secrecy havens and recommending the same transparency measures that Tax Justice Network calls for, including registers of beneficial ownership of companies and property, automatic exchange of tax information, as well as whistleblower protection and a freedom of information act.³³

Meanwhile Panama's other secrecy problems remain. Criminal sanctions for breaching secrecy are still in place, as are [criminal sanctions for defamation](#),³⁴ which together constitute a serious restriction on whistleblowing and journalism. Panama has not done anything about putting beneficial ownership of companies on the public record, and even legal ownership information is only required to be kept by the company itself and its registered Panamanian

agent. A new law in 2015 (that [got Panama taken off the Financial Action Task Force's money laundering 'grey list'](#),³⁵ following the heavily critical 2014 IMF report quoted above) made it clearer that the registered agents must do due diligence on their clients, and created a new supervisory agency to regulate them. But in 2016 the Global Forum noted that some requests from abroad for ownership information remain unfulfilled (p10).³⁶

More disturbingly, an extraordinary 486,000 Panamanian companies (70% of the total) and 17,000 foundations are, says the Global Forum, 'deemed to be inactive. In these cases, the resident agent may have lost contact with the company and its owners... these SAs [companies] may continue to carry on activity outside Panama and the resident agent may have no up to date information on their owners, or any information at all' ([pp9-10; 41](#)).³⁷ This means Panama's supposedly updated mechanisms for accessing legal ownership information are incomplete, and constitutes a gigantic black hole in which tax evading and other criminal behaviour in any other country around the globe can continue to take place.

Overall, Panama remains a jurisdiction of extreme concern for TJN, and its rank at 12th position in our 2018 Financial Secrecy Index probably understates the harmful nature of Panama's offshore activity since a significant proportion – such as its shipping registry – is not covered by the IMF data that we use to construct our ranking.

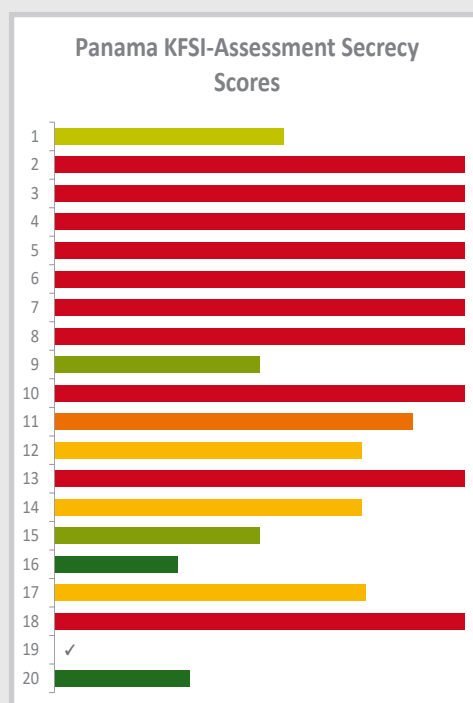
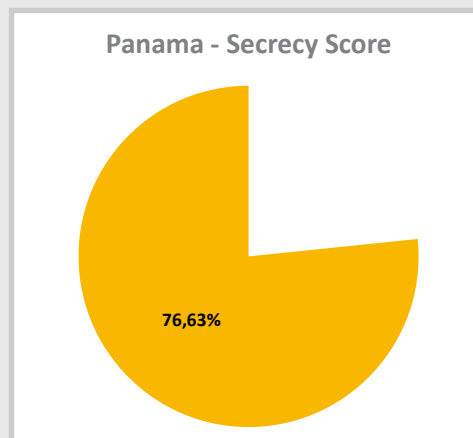
Further reading:

- The International Consortium of Investigative Journalists' Panama Papers site, with links to all the stories and the Offshore Leaks database which holds the company information, is [here](#).
- [Joseph Stiglitz and Mark Pieth's description in Vanity Fair](#) of their experience on the post-Panama Papers commission, September 2016
- [ROSC—FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism](#), IMF, Feb 2014
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- [Panama, Free-Trade Tax Haven](#), Sept 2011
- [Ken Rijnock's blog](#): Analysis and commentary on money laundering and financial crime. With endless material on Panama.
- **Interview on Panama foundations**: From [an interview](#) with an offshore provider of foundations.
- [The Law Firm That Works with Oligarchs, Money Launderers, and Dictators](#) – Vice Magazine, Dec 2014 (by [Ken Silverstein](#))

Endnotes

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PART 2: PANAMA'S SECRECY SCORE



Notes and Sources

The ranking is based on a combination of its secrecy score and scale weighting (click [here](#) to see our full methodology).

The secrecy score of 77 per cent has been computed as the average score of 20 Key Financial Secrecy Indicators (KFSI), listed on the left. Each KFSI is explained in more detail by clicking on the name of the indicators.

A grey tick indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This paper draws on data sources including regulatory reports, legislation, regulation and news available as of 30.09.2017.

Full data on Panama is available here: www.financial-secrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit www.financialsecrecyindex.com.