European Parliament

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT A
ECONOMIC AND SCIENTIFIC POLICY

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Role of advisors and intermediaries in the schemes revealed in the Panama Papers

STUDY for the PANA Committe

EN

2017

European Parliament

DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

Role of advisors and intermediaries in the schemes revealed in the Panama Papers

STUDY

Abstract

The use of offshore entities that facilitate money laundering, tax avoidance and tax evasion undermines the fair distribution of the tax burden in onshore jurisdictions. The Panama Papers shed some light on the activities that are usually conducted in secrecy, with the disclosure of information on 213,634 offshore entities in jurisdictions such as the British Virgin Islands, Panama and the Seychelles. This analysis assesses the role of advisors (tax experts, legal experts, administrators, investment advisors) and intermediaries (law firms, accounting firms, trust companies, banks, etc.) involved in the phases of the identified decision-making cycle (advice, creation, maintenance, enforcement).

This document was prepared for Policy Department A at the request of the Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA).

IP/A/PANA/2016-05
PE 602.030

April 2017
EN

This document was requested by the European Parliament's Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA).

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ACKNOWLEDGMENTS

The author would like to thank Apostolos Thomadakis for his research support and Jorge Nunez Ferrer for his useful input.

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LINGUISTIC VERSIONS

Original: EN

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Manuscript completed in April 2017.

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LIST OF ABBREVIATIONS

AML	Anti-Money Laundering
BVI	British Virgin Islands
CDD	Customer Due Diligence
CTF	Combating the Financing of Terrorism
CRS	Common Reporting Standard
EDD	Enhanced Due Diligence
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
ICIJ	International Consortium of Investigative Journalists
KYC	Know Your Customer
MCAA	Multilateral Competent Authority Agreement
ODD	Ongoing Due Diligence
OFC	Offshore Financial Centre
PEP	Politically Exposed Persons
STDR	Service de Traitement des Déclarations Rectificatives
UBO	Ultimate beneficiary owner

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EXECUTIVE SUMMARY

Introduction

The use of offshore entities in tax havens and offshore financial centres facilitating money laundering, tax avoidance and tax evasion undermines the effort of governments in onshore jurisdictions to distribute the tax burden fairly. Ultimate beneficiary owners (UBOs) of offshore entities are often high-net-worth individuals or corporations in onshore jurisdictions, who do not disclose their offshore wealth and revenues appropriately to onshore tax authorities, making use of the opaqueness and/or secretiveness of the system.

The leaked files – known as the Panama Papers – on 213,634 offshore entities served by Mossack Fonseca, a Panama-based trust company, provided valuable information for better understanding of offshore structures. Mossack Fonseca had a market share of approximately 5 to 10% of this market and incorporated entities across 21 jurisdictions. But almost 90% of all these offshore entities were incorporated in just four jurisdictions, i.e. the British Virgin Islands, Panama, the Seychelles and the Bahamas.

The Panama Papers allowed to get a better understanding of the functioning of the offshore industry. This in-depth analysis focuses specifically on the role of the various advisors and intermediaries in the schemes revealed in the Panama Papers, and provides recommendations to encourage the actors involved to play a positive role or at least no negative role in the fight against money laundering, tax avoidance and tax evasion.

Objectives

The analysis has three key objectives:

- Identification of the **decision-making cycle** with all actors involved in the schemes as revealed in the Panama Papers.
- Review and categorise critically the **role of both advisors and intermediaries** involved in the schemes.
- Formulation of **policy recommendations** for actions to discourage advisors and intermediaries from facilitating money laundering, tax avoidance and tax evasion through offshore structures.

Decision-making cycle

Many actors are involved in the offshore structures as revealed in the Panama Papers. The decision-making cycle starts with UBOs. Even with the Panama Papers at hand, it is difficult to trace UBOs, since in many cases bearer shares, nominee shareholders or foundations are used to hide their identity. Based on the shareholders identified as private persons, EU citizens own approximately 9% of the offshore entities incorporated by Mossack Fonseca.

UBOs mandate their advisors, e.g. tax experts, legal experts, administrators and investment advisors, and intermediaries, e.g. law firms, accounting firms, trust companies and banks, often after having received advice from them toward the creation and maintenance of offshore entities. Advisors and intermediaries further ask trust companies and fiduciaries such as Mossack Fonseca to incorporate offshore entities and obtain an account from a licensed bank. Moreover, in case of an indictment a lawyer will need to be hired for the litigation.

Finally, there is an important role for public authorities in the jurisdiction where UBOs, advisors and intermediaries, and offshore entities are located. Public authorities can be responsible for company registers, regulatory and supervisory frameworks for both advisors and intermediaries, and tax authorities.

Role of advisors

UBOs in most cases require the support of advisors for the creation, maintenance and enforcement of offshore structures. Advisors must have tax, legal, administrative and/or investment expertise. In most jurisdictions professionals who provide advice are not necessarily subject to any specific (self-) regulation, though in practice advice is often provided by professionals who are or can be subject to (self-) regulation, such as lawyers, notaries, accountants and auditors. Moreover, for some activities such as incorporating offshore entities, drafting opinion letters, providing certified accounts, litigation, etc., professionals with specific qualifications are required and these qualifications differ across jurisdictions.

Role of intermediaries

Advisors who deal with offshore structures are in most cases working for intermediaries. Based on the Panama Papers, law firms, accountants, trust companies and banks are the most important types of intermediaries, whereas the Big Four accounting firms intermediated barely any offshore entities. Most activities are spread across different types of intermediaries, except for incorporating offshore entities, which is performed by trust companies and fiduciaries, and providing bank accounts, which is the exclusive activity of banks. Since many intermediaries are based outside onshore jurisdictions and in some cases are not subject to specific legislative requirements, it is very difficult for onshore jurisdictions to influence many of them, particularly trust companies.

Policy recommendations

There are many different types of advisors and intermediaries involved in offshore structures. General recommendation in their regard is that:

- Advisors and intermediaries that can be covered by (self-) regulation in the EU could be encouraged to combat money laundering, tax avoidance and evasion by stronger rules on independence and responsibility as well as obligatory reporting of tax avoidance schemes.

However, the diversity in the type and location of feeders of trust companies such as Mossack Fonseca make it challenging to substantially decrease the undesired activities using measures that target only advisors and intermediaries that provide advice. Some additional actions could involve:

- Targeting just the most essential intermediaries (trust companies and banks) could be most effective, though these are in most cases not located or represented in onshore jurisdictions.
- Onshore jurisdictions should therefore increase pressure on offshore jurisdictions to take appropriate measures, one of which could be to gradually broaden the scope of international anti-money laundering standards (AML/CFT) to also include tax avoidance, tax evasion and hiding/shielding.
- Moreover, good implementation, compliance and enforcement of AML/CFT standards are crucial. In the past many offshore entities opened bank accounts to which they were not entitled under AML/CFT requirements.
- Compliance and supervision could be substantially improved when UBO financial information and identities are automatically and spontaneously exchanged between relevant national authorities.

Overall, the Panama Papers contribute to the understanding of the offshore financial industry, but some reservations should be made. The Panama Papers provide information from only one trust company that established almost exclusively entities in a small number of offshore

jurisdictions. Moreover, information on the interaction between intermediaries and UBOs as well as the identities of most UBOs are still unknown.

1. INTRODUCTION

KEY FINDINGS

- The existence of offshore structures contributes to tax-based competition between jurisdictions.
- The Panama Papers published by the International Consortium of Investigative Journalists (ICIJ) have shed some light on offshore structures as well as the advisors and intermediaries involved.
- The 213,634 offshore entities were located in 21 jurisdictions, but the great majority were based in British Virgin Islands, Panama and the Seychelles (approximately 90%).
- The exact size of the market for offshore structures is unknown, but according to estimations Mossack Fonseca that incorporated the offshore entities had a market share of between 5 and 10%.

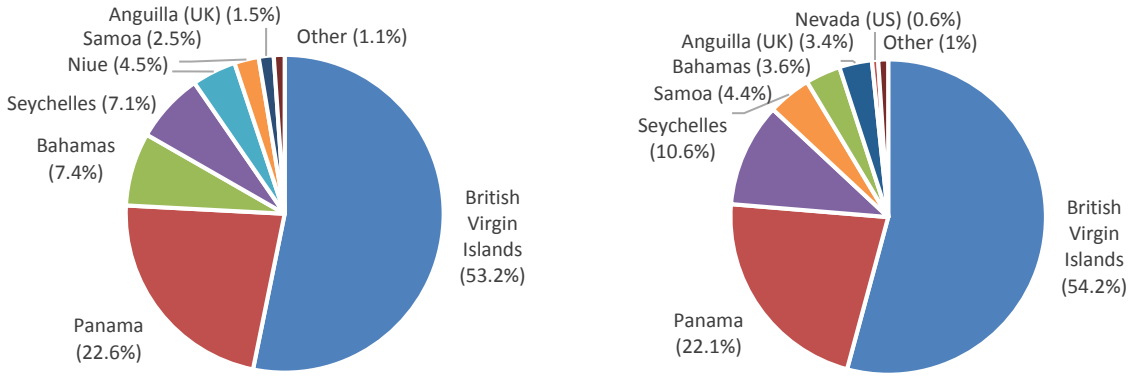
Entities in offshore financial centres (OFCs) and tax havens may facilitate money laundering, tax avoidance and tax evasion, which undermine governments' taxation policies. Entities that are often linked to private persons or corporations in onshore jurisdictions are operated in secrecy and benefit from opaqueness. Files leaked by Panama's Mossack Fonseca trust company, fiduciary and law firm shed some light on these structures, which allow third parties such as policy-makers and researchers in onshore jurisdictions to acquire more insight into the structures that are used to conduct undesirable and illicit activities.

Entities used for the undesired activities are facilitated by double-taxation agreements, preferential or zero rate tax and secrecy regimes. These arrangements are not necessarily undesired. Double-taxation agreements, for example, promote international trade as long as they indeed avoid double taxation. When they facilitate double, lower or no taxation, they contribute to international tax competition. Tax competition is attractive for jurisdictions to attract foreign investment, which may contribute to job creation and economic growth. In the case of offshore structures, however, business activities are in almost all cases not located in the jurisdiction where the entity is established. Offshore entities are nevertheless of interest to the receiving jurisdiction since they may contribute to higher (personal income) tax revenues and the development of the professional services sector. Tax competition is harmful because it allows some individuals and companies to lower their tax bill and encourages other jurisdictions to change their tax regime to remain competitive. In particular, high-net-worth individuals and corporations that have the means to use offshore structures benefit from this. In the EU, tax competition contributed to the decline of corporate income tax rates as compared to personal income and consumption tax rates in recent decades (De Groen, 2015).

The design of offshore structures has long been unclear to authorities in third countries and the public at large. For instance, offshore structures and actors were barely covered in research literature, yet their influence on society and capital flows justifies robust research (Harrington, 2016). Knowledge and awareness of offshore activities have somewhat increased in recent years with global, regional and national initiatives to enhance, among other aspects, information sharing and transparency. In addition, the disclosure of leaked files on various occasions has raised (public) awareness of the existence and magnitude of these tax schemes. The Panama Papers published by the International Consortium of Investigative Journalists (ICIJ) form one link in a chain of disclosures on undesirable tax schemes, including the Lux Leaks, Offshore Leaks and Bahamas Leaks.

Figure 1: Distribution of entities across jurisdictions

a) Total **b) Active**



Note: The figures above show the distribution of the offshore entities included in the Panama Papers across jurisdictions. The figure on the left-hand side (i.e. total) includes all the offshore entities covered in the Panama Papers, while the figure on the right-hand side (i.e. active) only considers those that were not inactivated by the time that the files were leaked. See also annex Table 5**.**
Source: Author's elaboration based on ICIJ (2016).

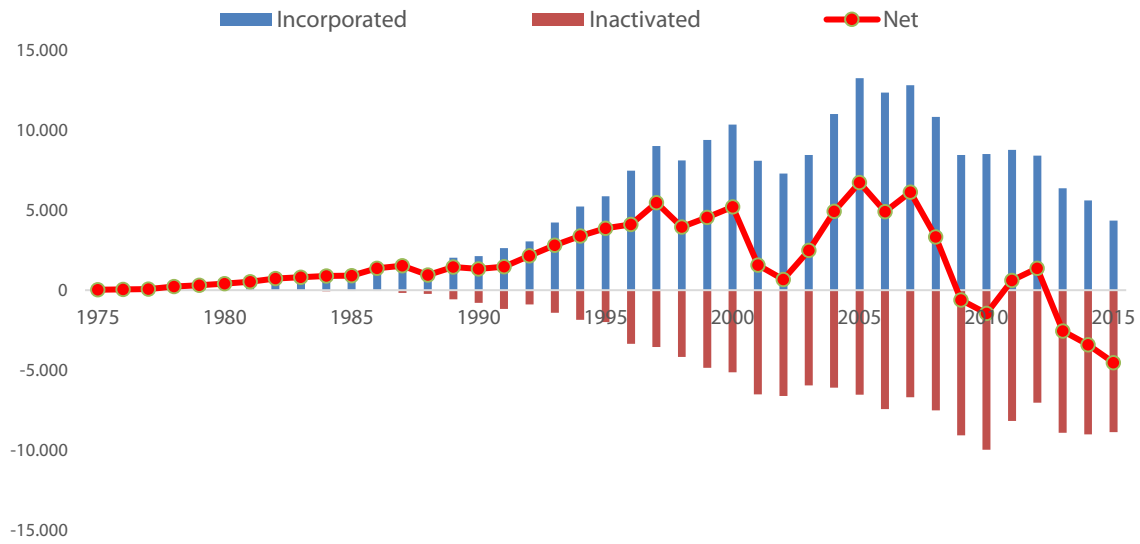
The leaked files from Mossack Fonseca contain information on 213,634 entities in 21 offshore jurisdictions around the globe (see Figure 1). It established and managed these entities between 1970 and 2015. After 2000 the number of incorporated entities surged. This may be explained by increasing globalisation and digitalisation, which make it easier to establish and maintain offshore structures. The number of active entities, however, declined substantially after the financial and economic crises, when several policy measures, including more stringent anti-money laundering standards, were adopted (see Figure 2). When the data was leaked, 55,728 entities were still active. The great majority of all entities were based in the British Virgin Islands, Panama and the Seychelles (approximately 90%).

The dataset drawn from the Panama Papers allows for assessing only the number of entities, which does not necessarily reflect the size of the activities. Zucman (2014) estimated that offshore wealth has increased substantially in recent years due to the increase in the value of existing assets and new inflows. In turn, the number of offshore clients has decreased, as the Mossack Fonseca figures show. Policy measures introduced in recent years would make engaging in offshore activities more difficult for more moderately wealthy individuals. Moreover, Mossack Fonseca represented between 5 and 10% of the global market for shell companies (The Economist, 2016), which means that the Panama Papers are not necessarily representative of the entire market.

The exact size of the market for offshore structures is unknown. Most offshore jurisdictions do not disclose the size of offshore markets, whether based on the number of entities or total assets. One of the few exceptions is Switzerland, where according to the latest available data non-residents held in total CHF 2.9 trillion (or €2.8 trillion) in securities on custody accounts in June 2015.[1] This is, however, most probably only a fraction of the almost €100 trillion in global household wealth that is held offshore. There are several estimates ranging from roughly 8% (Zucman, 2014) to over 30% (Henry, 2012) of global household wealth that could be held in offshore jurisdictions.

[1] Holdings of securities in bank custody accounts www.snb.ch/en/iabout/stat/statrep/statpubdis/id/statpub_statmon_arch#t4.

Figure 2: Establishment of entities across time



Source: Author's elaboration based on ICIJ (2016).

The remainder of this analysis focuses on the roles of the different advisors and intermediaries. In the second chapter the decision-making cycle that contributes to the establishment and maintenance of the structures that involve offshore financial centres and tax havens is assessed. In the third chapter the role and demands of the ultimate beneficiary owners (UBOs) are discussed, which are in the latter chapters used to determine the required competences for the advisors and intermediaries to serve the UBOs. In chapter four the roles of different advisors are assessed, followed by intermediaries in chapter five. In chapter six and seven the roles of banks and trust companies, respectively, are analysed, which are required for the establishment and maintenance of all entities. In chapter eight the various roles of the public authorities are addressed. Finally, chapter nine draws some conclusions on the role of the various actors in the schemes revealed in the Panama Papers and provides policy recommendations for encouraging advisors and intermediaries to play a positive or at least no negative role in the combat against money laundering, tax avoidance and evasion.

2. DECISION-MAKING CYCLE

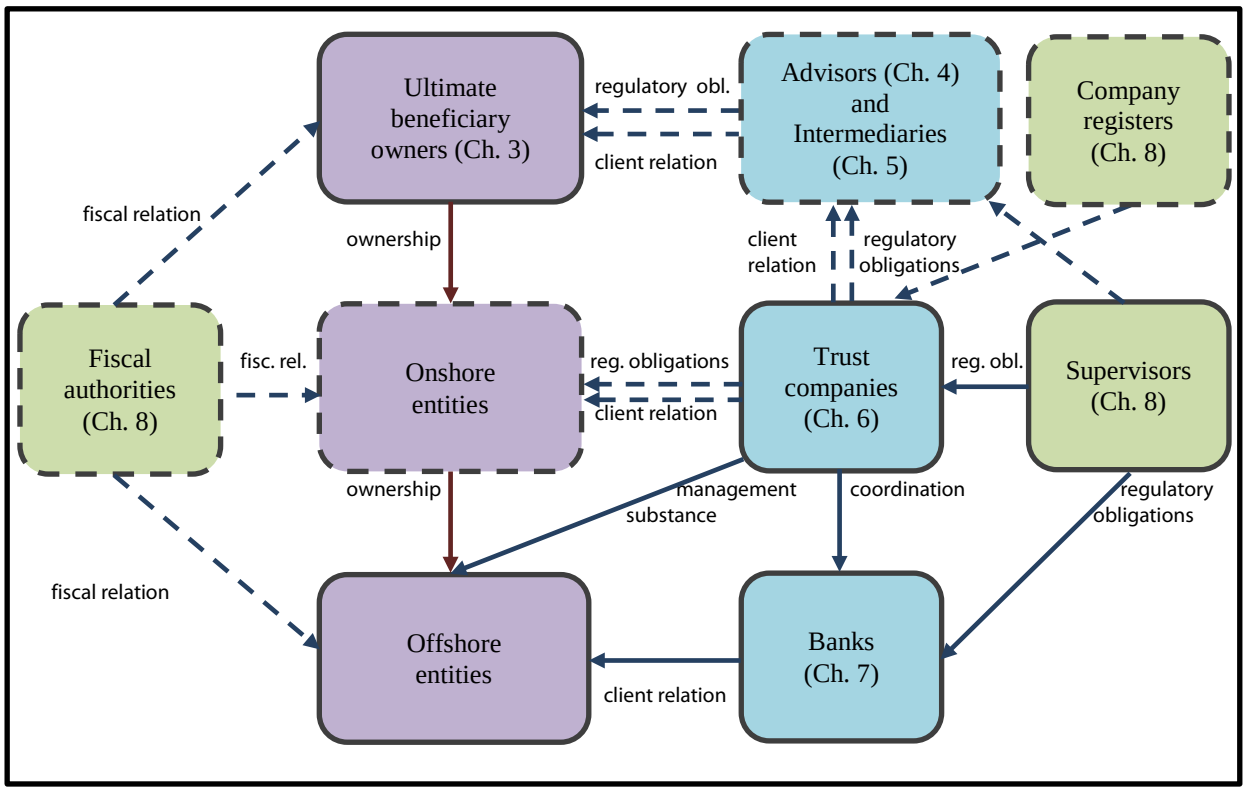
KEY FINDINGS

- A web of actors is involved in advice, creation, maintenance and enforcement regarding offshore structures, including ultimate beneficiary owners, advisors and intermediaries, trust companies, banks and public authorities.
- The offshore structures are in most cases created for high-net-worth individuals and companies. These ultimate beneficiary owners (UBOs) do, however, not always appear as the owners of the offshore entities in registers. Advisors and intermediaries advise or at least assist the UBOs in the creation and maintenance of the structures.

The Panama Papers and the limited existing literature on illicit activities in offshore financial centres and tax havens show a broad range of structures and actors. This section identifies actors that may play a role in decision-making on the creation and maintenance of offshore structures such as those revealed in the Panama Papers.

Figure 3 below provides a stylised overview of the actors involved in establishing and maintaining the offshore entities.

Figure 3: Actors involved in offshore structures



Source: Author's elaboration based on Risseeuw & Dosker (2011).

The offshore structures are in most cases created for high-net-worth individuals and companies. They are **ultimate beneficiary owners** (UBOs), although they do not necessarily appear as the owners of the offshore entities on paper. UBOs are advised or at least assisted in the creation and maintenance of offshore structures by advisors and intermediaries.

Intermediaries are the main link between UBOs and trust companies. Intermediaries can be other trust companies but also accounting firms, law firms, financial institutions and other predominantly unregulated intermediaries such as consultants that advise UBOs on offshore structures as well as manage them after incorporation. These intermediaries have in-house and external **advisors** with expertise in various fields, including law, tax, accounting and investment, to design the offshore structures.

Intermediaries and advisors request **trust companies** to create a new entity or buy an entity off the shelf (Obermayer & Obermaier, 2016). The great majority of offshore entities revealed in the Panama Papers were created in the British Virgin Islands and Panama (see Figure 1). Registration requirements for offshore entities differ across jurisdictions and types of entities (see annex Table 4). In the British Virgin Islands and Panama a trust license is required to incorporate offshore entities. Moreover, trust companies are also responsible for maintaining offshore entities. For this they need tax, legal and accounting expertise, which they hire internally or obtain from other intermediaries such as law firms and accounting firms. In the case of Mossack Fonseca experts were mainly hired internally.

In order for offshore entities to be active, they require a bank account, which can only be provided by licensed **banks**. Accounts are arranged by the intermediary or trust company, which is in some cases a bank or owned by a bank. For Mossack Fonseca bank accounts were the only service that it could not deliver in-house.

Finally, **public authorities** in the jurisdictions where UBOs, intermediaries and offshore entities are located can be responsible for company registers, tax authorities and supervision of various institutions (trust companies, banks, etc.).

Tax authorities in the jurisdiction where the UBO is based are supposed to collect tax from the UBO. The intermediary and advisors can be located in the jurisdiction of either the UBO or offshore entity or a third jurisdiction. Whether they are supervised or (self-) regulated depends on the jurisdiction and type of intermediary. Jurisdictions where offshore entities are located often do not have company registers and there is no requirement to declare tax, while the trust company always requires a licence in the country where the entity is incorporated.

When supervisors or tax authorities prosecute one of the various actors involved in offshore structures, other advisors might be attracted. For example, lawyers might be hired for the court defence and auditors for validating statements.

3. ULTIMATE BENEFICIARY OWNERS

KEY FINDINGS

- Foundations, bearer shares or nominee directors/shareholders in combination with proxies are used to both avoid that the UBOs both appear in registries and remain in control of the offshore entity.
- UBOs are responsible for the mandate to advisors and intermediaries to create offshore structures.
- The offshore structures cited in the Panama Papers are set-up for a broad range of motives, including: undesirable but legal tax planning, aggressive tax avoidance, illegal tax evasion, hiding and shielding assets, money laundering and crime financing.
- Most of the offshore structures that are created with the motive to avoid or evade taxes or hide or shield assets need to preserve as much as possible of the assets and/or revenues, while for structures created for money laundering or crime financing acceptance or coverage of the funds is more important.
- For most entities in the Panama Papers the shareholder was not disclosed and when it was disclosed it was in several cases owned by other offshore entities or by intermediaries.
- When considering the entities of which all the shareholders are identified as private persons and whose country of residence is published, the largest share of owners are based in China, Hong Kong, United Arab Emirates, Russia, Singapore, Switzerland, Taiwan and Brazil.
- EU citizens own approximately 9% of the offshore entities set up by Mossack Fonseca - around four times the share of owners based in North America. Most European private shareholders seem to be based in the United Kingdom, followed by Cyprus and France.

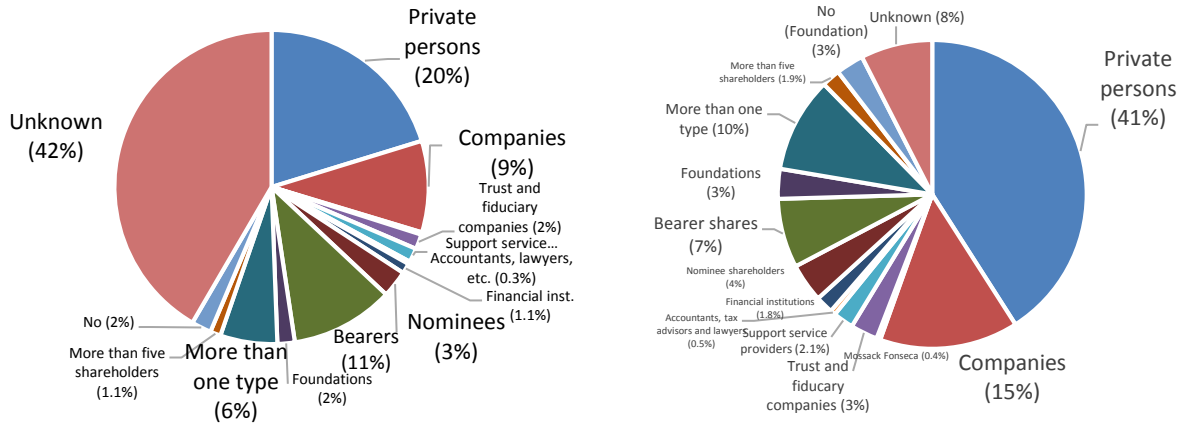
This chapter focuses on ultimate beneficiary owners (UBOs). More specifically, it focuses on the types of UBOs, the motivation for setting up offshore structures and where they are based.

3.1. TYPES OF UBOS

Offshore structures are created for ultimate beneficiary owners (UBOs). Who these UBOs are is relatively difficult to track for most offshore structures cited in the Panama Papers. Nevertheless, it is of course important to know the identity of UBOs when the offshore entities are used for illicit activities. In order to hide their identity UBOs use foundations, bearer shares or nominee directors/shareholders in combination with proxies to both avoid appearing in registries and remain in control of the offshore entity (Obermayer & Obermaier, 2016). Thus for many offshore entities the Panama Papers do not include information on shareholders, or ultimate owners are kept anonymous behind nominee and bearer shares or foundations (see Figure 4). There is, however, a great difference between all offshore entities in the dataset (60% unknown or anonymous) and the entities that were still active in 2015 (25% unknown or anonymous).

Figure 4: Types of shareholders (share of entities)

a) Total **b) Active**



Note: The figures above show the types of shareholders expressed as share in total or active entities. The figure on the left-hand side (i.e. total) includes all the offshore entities covered in the Panama Papers, while the figure on the right-hand side (i.e. active) only considers those that were not inactivated by the time that the files were leaked. See also annex Table 10.
Source: Author's elaboration based on ICIJ (2016).

Most identified owners of entities are private persons, most of whom, according to journalists collaborating within the ICIJ network, are probably high-net-worth individuals (Obermayer & Obermaier, 2016). The remaining entities are owned by companies, intermediaries and trust companies (including Mossack Fonseca). It is unclear whether these entities are also the UBOs or function as middlemen or part of a more complex corporate structure.

3.2. PURPOSE OF OFFSHORE STRUCTURES

The entities in tax havens or offshore financial centres are used for multiple reasons. Structures cited in the Panama Papers show a broad range of motives for the use of offshore entities. Distinctions between undesirable but legal tax planning, aggressive tax avoidance, illegal tax evasion, money laundering and crime financing can be drawn:

- **Tax avoidance:** Many offshore entities are used to lower effective tax rates in an often undesired but legal manner. In addition to avoiding (corporate) income tax, entities are used to avoid other types of tax such as inheritance and savings tax (Nordea, 2016). There are many different ways in which companies and individuals lower their tax bill without breaching any laws. For example, taxes can be lowered by establishing an entity in a country that has double taxation agreements with many other jurisdictions, including jurisdictions where business activities and owners are based (Van den Berg et al., 2008). In some cases tax is avoided by shifting revenues to different income categories; royalties and interest income are in most cases subject to lower tax rates than corporate income, which makes it interesting to use intragroup arrangements for intellectual property rights and loans.
- **Tax evasion:** High-net-worth individuals and companies also use offshore entities to lower their tax bill illegally. UBOs from EU member states have, for example, created entities in secretive jurisdictions outside the EU to evade taxes on their savings in Luxembourg and Switzerland – they were still required to pay the taxes but because they were based outside the EU they escaped scrutiny (Obermayer & Obermaier, 2016). Moreover, Nordea could also not rule out that offshore structures are being used for tax evasion. A large minority of customers had credit cards issued from offshore accounts that seem to be used for private consumption (Nordea, 2016).
  Many offshore entities in the Panama Papers are suspected of being used for tax evasion, but it is difficult to be certain without recourse to tax return forms.

Nevertheless, it is unlikely that UBOs create complex and in some cases expensive offshore structures simply to declare income to tax authorities. After the Panama Papers were released many tax authorities launched inquiries to see whether their country's taxpayers were involved. French tax authorities, for instance, found that 1,284 of their taxpayers used offshore structures incorporated by Mossack Fonseca. The majority of these taxpayers had used the temporary STDR service to get clean. French tax authorities are investigating the remaining 560 taxpayers. The amounts of unpaid taxes and fines can be substantial. For France alone taxpayers involved in the Panama Papers already owed tax authorities €1.2 billion in taxes and fines (AFP, 2016).

- **Hiding and shielding assets:** UBOs may also hide or shield assets from other entities than tax authorities (creditors, heirs, etc.). For example, corporations, politicians and businessmen in jurisdictions with a weak rule of law or who are involved in legal battles may use offshore structures to avoid the risk of losing their assets (Obermayer & Obermaier, 2016).
- **Money laundering:** UBOs also use entities in secrecy havens to launder money that has been obtained from illegal activities. For instance, the Panama Papers suggested that some offshore entities are being used to launder drug money, i.e. offshore entities profit from the crime and are used by UBOs for private consumption and to borrow money (Obermayer & Obermaier, 2016).
- **Crime financing:** Offshore entities are also used to enable crimes, such as corruption and terrorist/war financing. For example, Siemens, a German industrial conglomerate, used offshore structures to run slush accounts that were used to bribe government officials in Latin America (Obermaier et al., 2016). Saipem, an Italian energy firm, used shell companies incorporated by Mossack Fonseca to channel $275 million (approximately €250 million) in bribes to win more than $10 billion (approximately €9 billion) in contracts to build oil and gas pipelines in North Africa (Fitzgibbon, 2016).

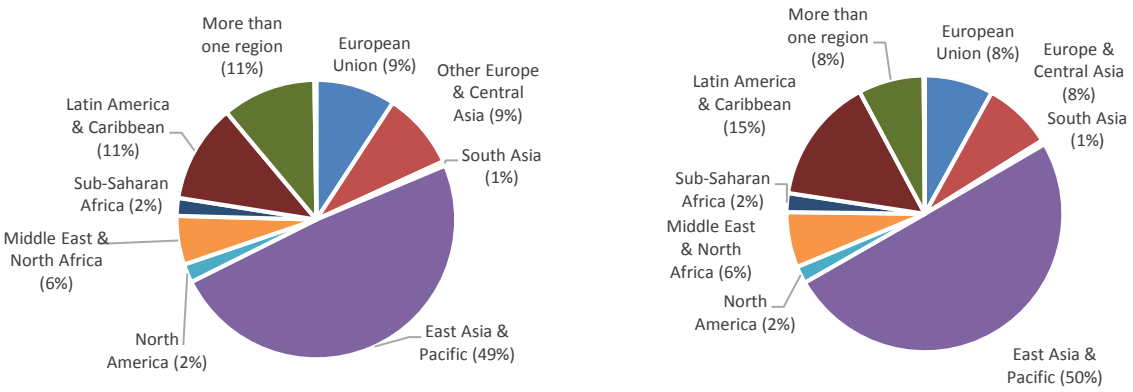
The main objective of most UBOs is thus to preserve as much as possible their assets or revenues. This is particularly the case when they avoid or evade taxes or hide or shield assets. In turn, when offshore structures are used for money laundering or crime financing, it is more important that the funds are either being accepted or not uncovered. The costs related to creating and maintaining the offshore structures are in those cases of lesser importance.

3.3. LOCATION OF THE UBOS

Given the locations of shareholders who could be identified as private persons, most UBOs seem to be based in East Asia and Pacific. For most (60%) of the entities incorporated by Mossack Fonseca, the shareholder was not disclosed; when it was disclosed, it sometimes (14%) included many entities that seem to be held by other entities in other jurisdictions or by intermediaries. When considering the 20% of entities of which all the shareholders are identified as private persons and whose country of residence is published, the largest share of owners are based in China, Hong Kong, United Arab Emirates, Russia, Singapore, Switzerland, Taiwan and Brazil. The share of owners based in the European Union is 8 to 9% – relatively small – though that is around four times the share of owners based in North America (see Figure 5). Most European private shareholders seem to be based in the United Kingdom, followed by Cyprus and France.

Figure 5: Location of identified private shareholders (share of entities)

a) Total **b) Active**



Note: The figures above show the shares of entities that are held by private persons in the respective regions. The figure on the left-hand side (i.e. total) includes all the offshore entities covered in the Panama Papers, while the figure on the right-hand side (i.e. active) only considers those that were not inactivated by the time that the files were leaked. See also annex Table 10.
Source: Author's elaboration based on ICIJ (2016).

4. ROLE OF ADVISORS

KEY FINDINGS

- UBOs do not necessarily have to hire someone to manage their wealth or optimise their tax planning. In practice, however, many UBOs that use offshore structures receive advice from one or more professions.
- To take a well informed decision UBOs need advice on legal, tax, accounting and investment issues. Advisors and intermediaries play a pivotal role in information-gathering, evaluation of options, decision-making and/or creation of offshore structures.
- UBOs do not necessarily need separate advisors for all relevant aspects. Many advisors and intermediaries provide advice on several aspects. Wealth managers, for instance, mostly have a background in law or accounting, but also cover other aspects, such as legal, tax, and investment issues.
- In most cases there are no legal requirements for the professionals that are providing advice, though in practice (self-) regulated professionals (lawyers, auditors, etc.) or intermediaries (accounting firms, law firms, banks, etc.) are often involved.
- Tax advisors, legal experts, administrators and investment advisors play an important role in facilitating offshore structures (advice, creation, maintenance and enforcement).
- Tax advisors, administrators such as accountants, and investment advisors can play a significant role in the design of offshore structures but are more difficult to cover with regulation since they are in most jurisdictions currently not protected.
- Legal advisors can play an important role in all the phases of the decision-making cycle. In most jurisdictions most legal advisors are covered by special legislation but the requirements may differ substantially across jurisdictions.

Whether potential UBOs actually use offshore structures depends on multiple factors: i) they need to be aware of the possibilities of offshore structures; ii) they need to be able to set up the offshore structure; iii) the potential benefits must be high enough to cover the initial and operational costs; iv) the perceived reputational and legal risks must be acceptable; and v) they must encounter no ethics-based objections.

UBOs do not necessarily need to hire someone to manage their wealth or optimise their tax planning. In practice, however, many UBOs that use offshore structures receive advice from one or more professions. UBOs may ask for this advice or be proactively approached by an advisor (Sikka & Hampton, 2005). Advisors and intermediaries often play a pivotal role in information-gathering, evaluation of options, decision-making and/or creation of offshore structures. In this study a clear distinction is made between the intermediaries and advisors, which are often working for an intermediary.

Table 1: Roles of advisors in offshore structures

Roles	Required	Advisors							
		Tax	Legal			Administration			Investment
			General	Lawyers	Notaries	General	Accountants	Auditors	
Advise									
Tax		X	X	X	X	X	X		
Investment									X
Opinion letters				X				X	
Creation									
Incorporation	X								
Domiciliation	X								
Statutes				X	X				
(Nominee) Directors		X	X	X	X	X	X		
Nominee shareholders			X	X		X	X		
Bank accounts	X			through third party accounts	through third party accounts				
Maintenance									
Management		X	X	X		X	X		
Administration						X	X		
Auditing statements								X	
Tax reports		X					X	X	
Enforcement									
Representation				X					

Source: Author.

To take a well informed decision UBOs need advice on legal, tax, accounting and investment issues. In most cases there are no legal requirements for the professionals that are providing this kind of advice, though in practice (self-) regulated professionals (lawyers, auditors, etc.) or intermediaries (accounting firms, law firms, banks, etc.) are often involved. Moreover, UBOs do not necessarily need separate advisors for all relevant aspects. Many advisors and intermediaries provide advice on several aspects. Wealth managers, for instance, mostly have a background in law or accounting, but also cover other aspects, such as legal, tax, and investment issues (Harrington, 2016).

This chapter discusses the roles of various advisors involved in the set-up of offshore structures (Table 1).

4.1. TAX EXPERTS

Broadly speaking, three roles require tax expertise: i) preparing tax returns (compliance); ii) advising on tax positions (planning); and iii) representation in tax disputes (enforcement). The last, especially when it concerns representation before tribunals and courts, is often exclusively performed by lawyers, and therefore is discussed in the section below (Roxan et al., 2017).

Regarding tax planning and compliance, when UBOs do not possess the required tax expertise, they can hire internal tax experts, accountants, auditors, and other external tax preparers or a mix of internal and external experts (Klassen et al., 2015).

Tax strategy is likely to be more aggressive when more money is spent on tax advice. The type of tax advisor also seems to have an impact on tax planning aggressiveness, including the use of tax havens. Companies with internal experts are relatively more aggressive in tax planning than are companies with an auditor responsible for tax declaration. Among auditors, the Big Four accounting firms seem in general to be the least aggressive. Other types of advisors are as aggressive as companies with internal experts (Klassen et al., 2015).

It may be difficult for governments to combat undesired practices targeting tax experts, which in most jurisdictions is not a protected profession. In the few jurisdictions where tax advice is legislated, such as Germany, legislation general restricts only tax advice related to

national systems. Although tax advice is not regulated in most jurisdictions, some tax advisors are subject to regulation and/or self-regulation, e.g. lawyers, trust companies, banks and accounting firms.

However, lawyers and other legal professionals, e.g. notaries, and accountants are also covered by international anti-money laundering and combatting the financing of terrorism (AML/CFT) standards. They need to perform customer due diligence (CDD), such as the specific activities[2] banks must perform for real estate transactions (see also chapter 6.2). Moreover, they also need to report suspicious transactions regarding the specific activities to the financial intelligence units (FIUs) or self-regulatory organisations, except those that are covered by professional secrecy provisions (FATF, 2012).

4.2. LEGAL EXPERTS

Legal expertise is required for the design, creation, maintenance and enforcement related to offshore structures.

Deep knowledge about legal systems of the onshore and offshore jurisdictions is essential to designing the most optimal offshore structure. There are many offshore jurisdictions, each with its own specialisation. For example, the British Virgin Islands is known for its low-cost offshore entities used for a single purpose, such as opening a bank account in the name of a company instead of a private person. Offshore entities in the Cook Islands target the higher end of the market with more expensive structures for asset protection trust, which protect assets from creditors, public authorities and lawsuits (Hager, 2013).

In addition, expertise is required to comply with legislation in various jurisdictions. This includes incorporation and registration requirements but in many cases also legal provisions that allow UBOs to be kept secret, assets to be protected and control to be ensured. This will in many cases entail the hiring of nominee directors and shareholders. These directors and shareholders must be ignorant of the offshore entity (Ryle & Candea, 2013). Legal experts can also act as nominee directors and shareholders themselves (Plattner et al., 2013).

Carrying out most legal expertise does not require a registered or licensed professional, though most intermediaries are likely to hire lawyers or other self-regulated professionals for advice. There are, however, some tasks, such as registration of offshore entities, which can only be performed by lawyers working for licensed trust companies or fiduciaries. In addition, representation of UBOs in court is in most cases also restricted to lawyers.

4.2.1. Lawyers

It is evident that a lawyer, i.e. advocate, barrister, attorney, counsellor, solicitor or chartered legal executive, can be involved in various stages of the decision-making cycle. Lawyers carry out roughly three activities: they provide legal advice, prepare legal documentation and represent clients. As such, lawyers can be involved in all four stages recognised in the decision-making cycle (advice, creation, maintenance, enforcement).

The responsibilities and privileges of lawyers are legislated at national level. Requirements often restrict the activities of a lawyer to, for instance, legal services and acting in the client's best interest. In turn, their correspondence with the client is confidential and they have some exclusivity in representing clients. The scope of confidentiality and exclusive representation varies among jurisdictions. For example, in many jurisdictions, confidentiality provisions do not cover criminal activities in which the lawyer is involved (Roxan et al., 2017).

[2] The following activities are covered: real estate transactions; managing funds (money, securities, other assets) MIRA

Lawyers can work on a stand-alone basis or collectively with other lawyers in a law firm. They are in most cases supported in their work by non-lawyers and trainees.

4.2.2. Notaries

Depending on registration requirements, notaries can play an important role in incorporation and processing changes in records. In particular, notaries may draft and record the founding documents for limited liability companies. Additionally, they must manage any share transfers or management changes and keep notarised records and make them available to authorities (OECD, 2001).

Misusing notaries can result in schemes of fraud that are more difficult to detect and investigate. According to the Financial Action Task Force (FATF), notaries are supposed to report suspicious transactions when they engage in on behalf of clients, e.g. buying and selling of real estate properties. The customer due diligence and record-keeping requirements apply to a list of designated intermediaries including both lawyers and notaries.

The responsibilities and privileges of notaries are, like those of lawyers, determined at national level. In some jurisdictions, notaries are lawyers that have a special authority or, while in others they are non-lawyers that have followed a dedicated training to become notary. The main difference between (normal) lawyers and notaries is that notaries perform a public service, while lawyers are supposed to act in the client's best interest.

Notaries can, like lawyers, work on a stand-alone basis or collectively with other notaries in a notary firm or with lawyers in a law firm. Non-notaries and trainees often support notaries in their work.

4.3. ADMINISTRATORS

Administrative expertise is important for maintaining offshore structures. While most offshore entities are not required to employ a registered accountant or auditor, most intermediaries are likely to hire accountants and/or auditors.

4.3.1. Accountants

Accountants are responsible for preparing financial accounts and often also tax returns, whether for companies or individuals. The accountant is hired by the company or individual for which the financial accounts are prepared. Expert accountants are able to combine knowledge of the client's financial positions with accounting and tax expertise for the purpose of tax planning.

Accountants are in most jurisdictions not a protected profession, i.e. everyone can call him or herself an accountant irrespective of qualifications. However, most jurisdictions have organisations of professional accountants, which in most cases demand that their members have certain professional qualifications. Moreover, these professional bodies often also have code-of-conduct guidelines, business principles, and/or ethics codes as part of an effort to ensure accountants work in the interest of their clients and the public at large. Enforcement of these various forms of self-regulation are often relatively weak. Hence, the probability of being prosecuted is often low and any sanctions are mild (Roxan et al., 2017).

4.3.2. Auditors

Auditors are responsible for examining company financial accounts. They prepare and examine financial accounts, advise and provide opinion letters on offshore financial constructions, and request trust companies such as Mossack Fonseca. The auditor works for an independent company that has no attachment to the audited company.

Auditors are in general responsible for verifying the financial accounts of entities that have an audit requirement. The offshore entities established in the main Panama Papers jurisdictions (British Virgin Islands, Panama and the Seychelles) do not have an audit requirement (see annex Table 4). However, when the offshore entities are consolidated in parent enterprises they might nevertheless have to be audited. Moreover, supervisors in some jurisdictions require banks and other financial intermediaries to audit some of their processes, such as anti-money laundering procedures.

Auditors assess the accuracy of financial statements. They control the processes and procedures of the audited entities. Various requirements must be met in order to avoid conflicts of interest between auditors and clients and ensure that auditors act independently. These restrictions vary across jurisdictions. In the EU the share of other services (tax advice, consulting, etc.) that an auditor is allowed to provide as well as the exchange of information with other professionals are restricted. Independence and responsibility requirements for auditors are increasingly stringent.

In 2014 the most recent EU directive that further restricts the possibility for accounting firms to provide other services to audit clients was adopted. Previously, regulatory requirements did not prevent accounting firms from selling tax avoidance schemes to audit clients and then attesting the resulting transactions when auditing the same clients (Sikka, 2015). Requirements for auditors are not the same in all jurisdictions (see Roxan et al. (2017) for a comparison of various jurisdictions in and outside the EU).

Tax-specific industry expertise of external audit firms plays a significant role in tax avoidance (McGuire et al., 2012). Hogan & Noga (2015) found that companies that reduce or eliminate tax services provided by their auditor pay on average more taxes in the long term.

Auditors also need some tax expertise to review the so-called ‘tax provision’, i.e. the income tax expense in the corporation’s financial statements. However, tax provision is not the actual taxes paid during that year. It rather estimates the total taxes over the life of the firm related to the current year’s activities.[3]

Auditors are in some cases also asked for their professional judgment of offshore structures. They can provide their professional opinion in the form of so-called ‘opinion letters’, which are granted by both auditors and lawyers. The auditor’s opinion provides UBOs and intermediaries some certainty that the structures to avoid tax and debt are legal, but if they would nevertheless prove illegal, the opinion letter would serve as evidence that the UBO and intermediaries acted in good faith. This is an important argument to lower or even entirely waive government penalties (Harrington, 2016).

4.4. INVESTMENT ADVISORS

UBOs use offshore structures mainly to preserve a maximum of revenue and assets. The assets of offshore entities are used to organise their wealth, including art, jewellery, property, yachts, etc. (Cabra & Hudson, 2013). The need for investment advice is less acute when offshore structures are used for luxury goods. But offshore structures are also used as tools to organise wealth through investment in shares, debt securities and derivatives. Even though investment strategies might be rather conservative – preserving rather than increasing wealth – the investment advisor may play an important role.

[3] Auditing the provision estimates requires extensive knowledge of both tax law and generally accepted accounting principles (GAAP).

5. ROLE OF INTERMEDIARIES

KEY FINDINGS

- Advisors involved in offshore structures are in most cases working in intermediaries.
- Law firms, accountants, trust companies and banks are the most prevalent types of intermediaries.
- Law firms and accounting firms facilitate offshore structures, but since many of them are based outside the onshore jurisdiction and in some cases are not subject to specific legislative requirements, it is hard to cover them with regulation and supervision in onshore jurisdictions.
- The requests for the offshore entities are predominantly from intermediaries based in non-EU European and central Asian countries (33%) as well as East Asia and the Pacific (23%). EU intermediaries are responsible for about 19%, or about 39,700, of the entities that Mossack Fonseca has established.
- Intermediaries play a pivotal role in the design and set-up of offshore structures. Accounting firms, law firms and banks are the main sellers of the offshore structures.
- The role of the Big Four accounting firms in intermediating offshore entities through Mossack Fonseca has been rather limited.

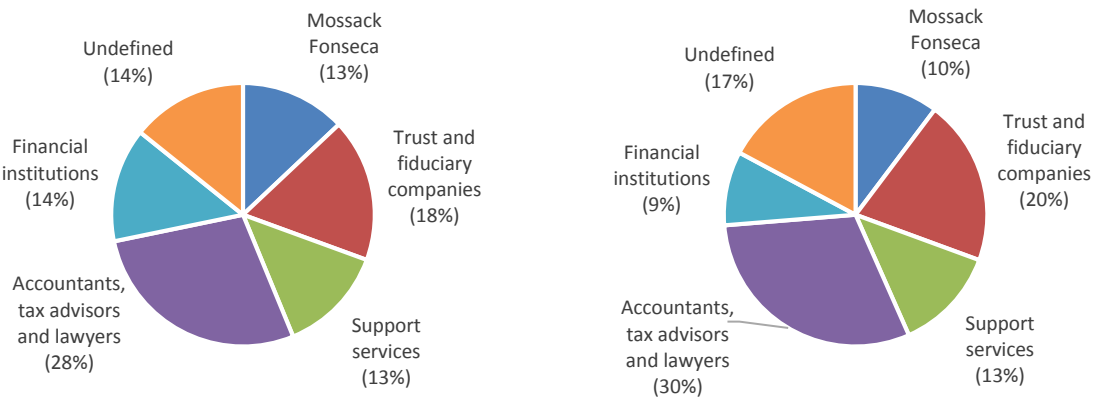
The Panama Papers reflect no dominant group of intermediaries feeding trust companies. Mossack Fonseca itself was in most cases responsible only for establishing and maintaining offshore entities, while designing the structure and contact with UBOs was performed by other parties.

In total there were 14,074 intermediaries identified in the database composed by ICIJ (2016), of which 2,696, or 19%, are located in the EU. This includes many types of professional service companies that have been in direct contact with Mossack Fonseca. Hence, these intermediaries are not necessarily in direct contact with UBOs. In some cases the intermediaries were in contact with other intermediaries that were in turn in contact with UBOs. For example, a UBO was in contact with a bank that was in contact with a lawyer that was in contact with Mossack Fonseca (Obermayer & Obermaier, 2016). Based on a mapping exercise of intermediaries responsible for about 86% of the entities, other trust and fiduciary companies as well as companies that provide support services to trust companies form the most important group demanding the creation of offshore entities. This is followed by accountants, tax advisors, lawyers and consultants who are responsible for about a third of the established offshore entities. Banks, other financial institutions and wealth managers are responsible for about a sixth of the entities (this group's share has declined substantially in recent years, with banks exiting the market because of regulatory and societal pressures).

Many intermediaries seem to be based in other jurisdictions than those of UBOs. Most intermediaries are based in tax havens and financial centres; in the case of the EU the great majority of intermediaries is based in the United Kingdom, Luxembourg and Cyprus (ICIJ, 2016). Most of these intermediaries have demanded fewer than 10 offshore entities, while the largest ones have ordered a couple of thousand offshore entities. To account for this difference in entities demanded per intermediary, in the remainder of this analysis the importance of the types of intermediaries is determined based on the number and share of intermediated entities.

Figure 6: Intermediaries bringing in clients (share of intermediated entities)

a) Total **b) Active**



Note: The figures above show the different types of intermediaries that have demanded offshore entities from Mossack Fonseca as share of offshore entities. The figure on the left-hand side (i.e. total) includes all the offshore entities covered in the Panama Papers, while the figure on the right-hand side (i.e. active) only considers those that were not inactivated by the time that the files were leaked. See also annex Table 8.
Source: Author's elaboration based on ICIJ (2016).

The requests for the 213,634 entities are predominantly fed to Mossack Fonseca from intermediaries based in non-EU European and central Asian countries (70,704 intermediated entities or 33%) as well as East Asia and the Pacific (49,013 or 23%). EU intermediaries are responsible for about 19%, or about 39,700, of the entities that Mossack Fonseca has established (see annex Table 6). This share is roughly similar to the share of intermediaries.

The offshore entities consist for the largest share of trust and fiduciary companies as well as companies that support these companies (see Figure 6). Hence, about 13% of the entities seem to be directly intermediated by companies and agents of Mossack Fonseca, which offers offshore entities from offices in over 30 jurisdictions[4] in over 20 jurisdictions (ICIJ, 2016). Other trust and fiduciary companies and support service companies account for approximately 31%. They seem to have outsourced (part of) the incorporation of entities in certain jurisdictions to Mossack Fonseca. Accountants, tax advisors, lawyers and consultants are jointly responsible for about another 28% of intermediated entities. Financial institutions and private wealth managers are responsible for about 14% of the entities. Financial institutions primarily include banks and to a lesser extent asset managers and insurers. The remaining 14% of the entities was demanded by small intermediaries that have not been categorised based on entity name or parent company.

Intermediaries play a pivotal role in the design and set-up of offshore structures (see Table 2). Past investigations in large bankruptcy cases in the US, such as Enron and WorldCom, showed that accounting firms, law firms and banks are the main sellers of these schemes (Sikka & Hampton, 2005). This seems to be the case as well for the high-net-worth individuals who were the main clientele of intermediaries cited in the Panama Papers.

[4] Mossack Fonseca offices as of 17 January 2017 (www.mossfon.com/contact-our-offices/).

Table 2: Roles of intermediaries in offshore structures

Roles	Required	Intermediaries			
		Law firms	Accounting firms	Banks	Trust companies
Advice					
Tax		X	X	X	X
Investment				X	
Opinion letters		X	X		
Creation					
Incorporation	X				X
Domiciliation	X				X
Statutes		X			X
(Nominee) Directors		X	X	X	X
Nominee shareholders		X	X		X
Bank accounts	X	through third party accounts		X	
Maintenance					
Management		X	X	X	X
Administration			X		
Auditing statements			X		
Tax reports			X	X	X
Enforcement					
Representation		X			

Source: Authors.

This chapter discusses the role of law firms and accounting firms. Banks and trust companies are singled out and discussed separately in Chapters 6 and 7, respectively, since they are essential to the creation and maintenance of offshore entities.

5.1. LAW FIRMS

The Panama Papers show that a large number of law firms have been involved as legal service providers. More specifically, law firms are in many jurisdictions involved in the incorporation of offshore entities and are in direct contact with UBOs that act through these intermediaries (OECD, 2001).

Law firms can play a significant role in the development, marketing and implementation of special tax products created by tax experts. This form of collaboration can include identification, research and analysis of key legal and tax issues, as well as issuance of opinion letters supporting the sale of tax products (US Senate, 2003).

In some cases law firms and trust companies such as Mossack Fonseca perform customer identification for banks. Hence, the bank may outsource customer due diligence (CDD) as long as the third party that performs it has the appropriate measures in place (FATF, 2012).

Professionals hired by law firms consist primarily of lawyers, notaries and other legal professionals. Law firms are as such often organised as collectives of legal professionals. Applicable (self-) regulation is therefore primarily based on legislation applicable to legal professionals.

5.2. ACCOUNTING FIRMS

Traditional accounting firms provide mainly accounting and auditing services, which have been supplemented with consulting services, such as those related to taxation, owing to pressure on the margins of traditional accounting and auditing activities. Supplementary services allow accounting firms to add more value for clients and enhance their earnings and

profitability (Sikka & Hampton, 2005),[5] although these services are often restricted when the accounting firm is auditing the financial statements of a company (see chapter 4.3.2).

The role of accounting firms in the schemes revealed in the Panama Papers consisted primarily of advice and maintenance, since the offshore entities did not have an audit requirement and Mossack Fonseca itself provided the administrative services. Accounting firms thus provided mainly tax planning and tax compliance services. Moreover, they may also have provided opinions when clients were worried about potential future litigation (Sikka & Hampton, 2005).

Accounting firm staff consists primarily of professional accountants, auditors, legal and tax experts.

5.2.1. Big Four accounting firms

The Big Four accounting firms (Deloitte, EY, KPMG and PwC) operate in hundreds of cities around the world, including more than 80 offices in offshore tax havens which do not impose taxes or require companies to submit audited financial reports. Besides auditing and accounting, the Big Four play an important role in the tax advice industry. They earn around $28 billion (€25.5 billion[6]) from tax work globally, or around 19% to 26% of total revenue in 2015. Between a third and a half of the Big Four's tax-related work concerns compliance, while the remainder concerns tax planning.

Most of the tax advice aims to reduce the tax bill, which is possible through legal tax planning. It is unclear where the Big Four firms place the limit in the aggressiveness of their advice. It is clear that they have not always been conservative and have advised strategies that did not hold up in court. However, before a British House of Commons committee in 2012, Big Four representatives claimed that they no longer recommended some schemes, particularly those whose recommendation led to their losing court cases. Moreover, the firms have internal guidelines on the practices they consider acceptable. They all mentioned that they do not recommend structures that will clearly facilitate tax evasion. But they do recommend structures that have only a 50-50 chance of being successfully defended in court (HC, 2013), which is illustrated by lost court cases.[7, 8, 9, 10]

The Big Four accounting firms have also advised clients to use offshore structures. The Big Four's role in the Panama Papers is, however, limited. In the dataset, only 321 (of which 43

[5] Of the three, consulting is the highest margin activity and includes profitable engagements such as restructuring organisations, shifting income across jurisdictions or time, or reclassifying the tax treatment of transactions.

[6] Based on the annual turnover in 2015 and annual average exchange rate of $1 to €1.11.

[7] PwC suggested in 1999 a leveraged partnership between Canal Corporation (formally known as Chesapeake) and Georgia Pacific, a competitor that wanted to buy Canal Corporation's largest subsidiary Wisconsin Tissue Mills (Weinman, 2011). PwC helped Canal Corporation to structure its transactions in a way that was supposed to save it millions of dollars in tax payments. However, the tax authorities ruled: "…PwC crossed over the line from trusted adviser for prior accounting purposes to advocate for a position with no authority…and imposed $36 million fine for substantial understatement of income tax" (US Tax Court, 2010).

[8] EY participated in devising tax avoidance schemes to help Walmart reduce its tax obligations by approximately $230 million in four years (Wall Street Journal, 2007). EY's role as a secrecy provider was exposed in the best possible way in correspondence between EY and Walmart: "…we think the best course of action is to keep the project relatively quiet…if a broader group of people are knowledgeable about these strategies, there just seem to be too many opportunities for it to get out to the press of financial community…" (EY, 1996).

[9] KPMG's role as a secrecy provider was unveiled by an investigation of the US Senate Permanent Subcommittee in 2002. In particular, it found that KPMG invested substantial resources in developing and implementing potentially abusive and illegal tax shelters, provided substantial fees to several major banks and investment advisory firms in return for the provision of investment services in potentially abusive or illegal tax shelters sold by KPMG and implemented a number of measures to conceal its tax shelter activities from tax authorities and the public.

[10] During 2003-04 Deloitte was involved in the design of a scheme in order to avoid paying payroll tax and national insurance contributions on employees' bonuses for the London office of Deutsche Bank (worth around £91 million). To do that, shares were loaded in offshore structures in the Jersey and Cayman Islands, in an effort to meet British rules for restricted shares (shares that are not subject to deductions for income tax). It was convicted by Britain's highest court, the Supreme Court, in 2016 (Bray, 2016).

are still active), or 0.15%, of the total number of entities were identified as intermediated by one of the Big Four firms. Given their much larger market share, this seems to confirm previous research that the Big Four clients are less aggressive in their tax planning than those of other accounting firms (Klassen et al., 2015). The low share in intermediated entities may also be the result of the Big Four's use of trust companies other than Mossack Fonseca. Intermediated entities in the Offshore Leaks and Bahamas Leaks together totalled 3,622, or 1.3% of all entities – a substantially higher share (ICIJ, 2016; Schumann, 2017). Though overall the Big Four share in the latter two leaks was low.

That the Big Four firms are involved in the creation of offshore structures for illicit means is nevertheless surprising given their codes of ethical and responsible conduct (Sikka, 2015).

6. ROLE OF BANKS

KEY FINDINGS

- Unlike most other intermediaries, banks, as providers of banks accounts, are essential to offshore entities.
- The banks are involved in four broad activities: providing and managing offshore structures; delivering bank accounts to offshore entities; providing other financial products; and correspondent banking.
- Banks are one of the main intermediaries referring or providing offshore entities to their customers. The Panama Papers show that more than 500 banks incl. subsidiaries of EU-based banks, were involved in about a tenth of the offshore entities that were incorporated by Mossack Fonseca.
- In the aftermath of financial crisis and growing regulatory oversight there was a sharp decline in the offshore entities intermediated by banks since 2008. In recent years the banks have barely intermediated any new offshore entities from Mossack Fonseca.
- Banks are subject to globally defined minimum standards for AML/CFT, which allows for effective measures to combat money laundering.

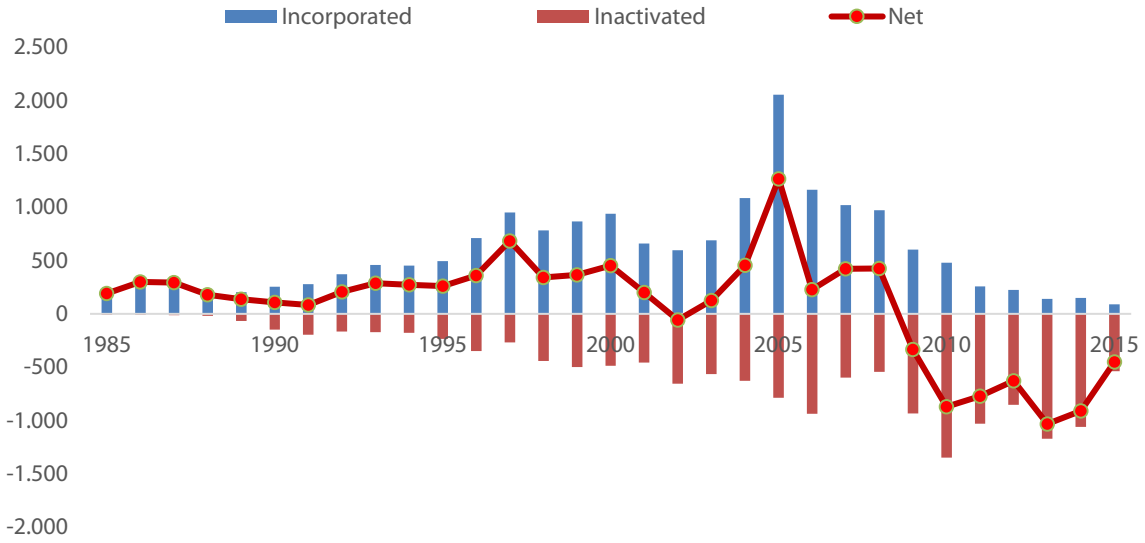
Banks play an important role regarding offshore entities. In total, more than 500 banks have been dealing with Mossack Fonseca. The banks are involved in four broad activities: i) providing and managing offshore structures; ii) delivering bank accounts to offshore entities; iii) providing other financial products; and iv) correspondent banking (Obermayer & Obermaier, 2016).

6.1. ADVISING AND MANAGING OFFSHORE STRUCTURES

The Panama Papers show that banks were involved in about 9% of the offshore entities that were incorporated by Mossack Fonseca. Some in this 9% were also clients of subsidiaries of EU-based banks (HSBC, Société Générale, etc.). Hence, the offshore structures were primarily advised and managed by the private banking units and family offices of (large) banks in financial centres such as Luxembourg and Switzerland (Nordea, 2016). These units often delivered their services across national borders to high-net-worth individuals (Heinzle et al., 2013).

Banks provide their customers financial products and services, including tax advice. Knowledge of the client's financial situation allows them to identify and promote tax planning strategies (US Senate, 2005; OECD, 2008, 2009). In addition to the fees the activities might generate, banks might prefer clients that are aggressive tax planners because of the higher cash flows this may generate to service their debt (Kim et al., 2010). In turn, banks could prefer clients that are not aggressive, since tax strategies might lead to earnings uncertainties (Rego & Wilson, 2012; Hasan et al., 2014) and being associated with facilitating aggressive tax planning entails reputational and regulatory risks (Nordea, 2016; US Senate, 2005; OECD, 2009). These reputational and regulatory risks have surged in the aftermath of the crisis, with more critical public opinion and regulatory requirements. This is also reflected in a sharp decline in the offshore entities intermediated by banks since 2008. In recent years the banks have barely intermediated any new offshore entities from Mossack Fonseca (see Figure 7).

Figure 7: Establishment of entities intermediated by banks across time



Source: Author's elaboration based on ICIJ (2016).

The intermediation of offshore structures might be aggravated through spill over of advice from one client to another. Banks may transmit information collected from or for one borrower to another (Ivashina et al., 2009). The same is applicable to other intermediaries such as accounting and law firms (Brown, 2011; Brown & Drake, 2014; McGuire et al., 2012).

6.2. BANK ACCOUNTS

In principle, all offshore entities require bank accounts for international financial transactions, which can only be provided by licensed banks. The bank accounts are required to make payments to the trust company for the management of the offshore entity, among other actions.

Banks need to comply with anti-money laundering and combatting the financing of terrorism (AML/CFT) standards for knowing their customers (KYC). More specifically, they need to know the identity of their clients, i.e. beneficial owner of the accounts, as well as the origin of the funds (Michel, 2013). The Financial Action Task Force (FATF) sets the global standards for AML and CFT, which are implemented in almost all jurisdictions across the globe, including the main offshore centres cited by the Panama Papers (British Virgin Islands, Panama and the Seychelles). The standards were issued in 1990 and have been expanded and strengthened several times since then (1996, 2001, 2003 and 2012).

The AML/CFT follows a risk-based approach that requires banks to perform additional checks when there is a higher risk of money laundering or terrorist financing. On politically exposed persons (PEPs) and their relatives, for example, checks in addition to normal customer due diligence (CDD) should always be performed to ensure that they are not engaging in corruption. When they cannot perform the required checks banks should not engage in or cease the client relationship. Suspicious transactions and related information should be reported to the national financial intelligence units (FIUs).[11] Moreover, banks should report transactions whose funds they suspect are proceeds of criminal activity (FATF, 2012).

[11] See Scherrer (2017) for an assessment of the functioning of the FIUs.

The main weaknesses of the AML/CFT standards seems to be implementation and enforcement at both jurisdiction[12] and bank levels. Focusing on the bank level, the investigation into the private banking activities of Nordea showed that the bank did not comply with internal guidelines or regulatory requirements in Luxembourg. More specifically, it did not classify customers in the appropriate high-risk category, and the subsequent enhanced due diligence (EDD) reporting was incomplete. The EDD requirements include, for instance, collecting information on the source of the funds and the purpose of the accounts. Moreover, due diligence needs to repeated regularly and reassessed. This so-called 'ongoing due diligence' (ODD) was, however, not systemically conducted. The information was in many cases not up to date according to the internal investigation of the bank (Nordea, 2016). Similar implementation and enforcement problems were indicated by a former compliance officer of the German Berenberg Bank that testified for the PANA Committee.[13]

In some cases banks outsource the CDD to third parties such as Mossack Fonseca. The bank remains in those cases responsible for the CDD and needs to ensure that the party that executes the CDD uses the appropriate measures. The bank needs to ensure that the third party complies with the requirements and that the information is made available to the bank as requested (FATF, 2012). The Panama Papers showed several cases in which Mossack Fonseca did the CDD and the process was not compliant.[14]

Additionally, lawyers and notaries have so-called 'third party accounts'. These dedicated accounts should shield sums other than fees received from clients and expenses from the funds of lawyers and notaries. These accounts seem in at least a couple of cases to have been used to facilitate offshore entities.

Finally, the emergence of new virtual currencies that are connected to the conventional monetary system create a potential alternative to the conventional bank account for making money transfers (Unger, 2017). This might make a bank account no longer essential for transactions in the international financial system. Hence, virtual currencies like Bitcoin and Ethereum, which can be used for transactions and exchanged in conventional currencies such as the euro and US dollar, could be such an alternative to bank accounts.

6.3. OTHER FINANCIAL PRODUCTS

Banks can also provide other financial products to facilitate offshore structures. They can take positions in financial transactions such as lending, structured finance and underwriting. This distinguishes banks from other service providers such as law firms and accounting firms, which provide professional services for a time-determined fee (OECD, 2008; Donohoe, 2015).

These financial products may also be part of tax planning for the offshore structure. Banks have expertise in developing and implementing complex structured financing transactions for their clients. The schemes often make use of financial instruments such as loans, repurchase agreements and derivatives, which can be provided by banks (OECD, 2008). Sales of financial products allow banks to earn additional fees, which are in general higher for complex products than for plain vanilla transactions.

6.4. CORRESPONDENT BANKING

Some banks have a global presence, which enables them to route payments through various entities across multiple jurisdictions (OECD, 2009). But banks that are not present in all

[12] See FATF-GAFI.org for the degree of implementation of the AML/CFT standards in the various jurisdictions.
[13] Testimony of Katrin Keikert, former compliance officers and Berenberg Bank in the third public hearing of the European Parliament's PANA Committee on "The role of lawyers, accountants and bankers in Panama Papers" on 9 February 2017.
[14] See Obermayer & Obermaier (2016) for some concrete examples.

jurisdictions across the globe can also process cross-border payments. For these payments correspondent banks are essential: they form a chain between the sender's bank and receiver's bank (Erbenová et al., 2016).

The banks engaged in the transaction are subject, at minimum, to the regulations in both the country of the sender's bank and that of the receiver's bank. In addition to AML/CFT requirements, these regulations might include economic and trade sanction, anti-bribery and tax evasion regulations (Erbenová et al., 2016). The AML/CFT standards require banks that engage in correspondent banking to perform CDD on its own client and to ensure that CDD is performed on the other bank's client. Moreover, both banks should have appropriate AML/CFT controls in place, be vigilant and make sure each understands its respective responsibilities (FATF, 2012).

The number of correspondent banks has decreased substantially in recent years. Enhanced regulatory requirements and supervisory scrutiny have increased compliance costs and potential reputational risks, which has made it less attractive for banks to engage in correspondent banking (KPMG, 2011). Withdrawal of correspondent banks from the market can lead to serious disruption of financial and cross-border flows (trade finance, remittances, etc.) (Erbenová et al., 2016).

Since international organisations do hard limited means to fight illegal financial flows, soft-law instruments such as blacklisting are used. Hence, the FAFT maintains a list of non-cooperative jurisdictions to discourage banks from dealing with (correspondent) banks in those jurisdictions. Given the importance of the financial flows enabled through correspondent banking for the functioning of most economies, the list might potentially be an effective tool for intensifying pressure on jurisdictions to become more transparent and thus discourage the facilitation of tax havens. If not well implemented, however, it may be counter-productive, since the list includes jurisdictions with a non-cooperative stance toward potential new clients (Masciandaro, 2016).

7. ROLE OF TRUST COMPANIES

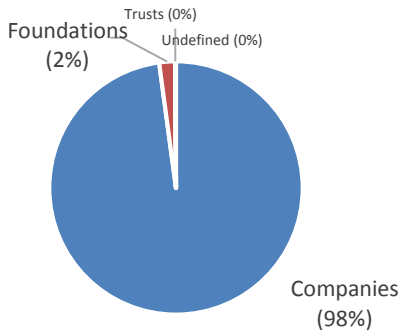
KEY FINDINGS

- Trust companies are responsible for coordinating the creation and maintenance of offshore companies, trusts and foundations. In the case of the Panama Papers, the trust companies were almost exclusively responsible for international business companies.
- The size of the trust companies seems to be the main determined of the range of services, types of customers, and coverage of jurisdictions. Smaller trust companies offer, in general, a limited range of services and number of jurisdictions. They rely relatively more on non-corporate clients from nearby jurisdictions, while larger trust companies are relying more on corporates and financial institutions.
- Mossack Fonseca, with a market share of between 5 and 10%, is among the largest trust companies in the industry. They also offer a wide range of services.
- The main services trust companies like Mossack Fonseca offer are domiciliation, management services and administrative services for third parties.
- In most jurisdictions a special license must be obtained to offer trust or fiduciary services. Trust companies can be stand-alone or owned by other types of service companies such as law firms or banks. Mossack Fonseca is a law firm and licensed trust company in several jurisdictions.
- Trusts are hard to target for policy-makers in onshore jurisdictions, owing to the companies' limited physical presence and the limited information available to the policy-makers.

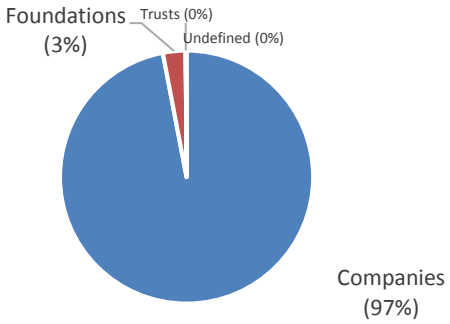
Trust companies are responsible for coordinating the creation and maintenance of offshore companies, trusts and foundations. In the case of the Panama Papers, the trust companies were almost exclusively responsible for international business companies (see Figure 8). Trust companies act on behalf of the ultimate beneficiary owners (UBOs), but their direct clients are in most cases the intermediaries discussed in the previous chapters, e.g. other trust companies, lawyers, accountants, banks, etc.

Figure 8: Types of entities established

a) Total



b) Active



Note: The figures above show the entities included in the Panama Papers. The types of entities have been determined based on the name of the entity. Total includes all the offshore entities covered in the Panama Papers, while active only considers those that were not inactivated at the time that the Panama Papers were leaked. See also annex Table 5.
Source: Author's elaboration based on ICIJ (2016).

The services that trust companies deliver vary broad. Based on a study on the Dutch trust sector, Van den Berg et al. (2008) find that the size of the trust companies seems to be the main determined of the range of services, types of customers, and coverage of jurisdictions. Smaller trust companies offer, in general, a limited range of services and number of jurisdictions. Moreover, the smaller trust companies also rely relatively more on non-corporate clients from nearby jurisdictions. In turn, the larger trust companies are relying more on corporates and financial institutions as clients.

Administrative and management services are the main income sources. Administrative service fees seem more important for the larger trust firms, while management and personal directors' fees are more important for smaller trust companies. For most trust companies domiciliation fees are only a small percentage of revenue. Trust companies also generate some revenue by providing legal and other support services (Van den Berg et al., 2008). Mossack Fonseca, with a market share of between 5 and 10%, is among the largest trust companies in the industry (The Economist, 2016). They also offer a wide range of services.

In most jurisdictions trust companies must possess a special license in order to offer trust or fiduciary services. Trust companies can be stand-alone or owned by other types of service companies such as law firms or banks. Mossack Fonseca is a law firm and licensed trust company at the same time (e.g. licensed trust company in the British Virgin Islands[15] and Panama,[16] a fiduciary in the Seychelles[17]).

Trust companies and business service providers are also covered by international AML/CFT standards. More specifically, they need to perform customer due diligence (CDD) when they execute specific tasks[18] for clients such as incorporating entities (see also chapter 6.2). In addition, trust companies also need to report suspicious transactions concerning these specific tasks to financial intelligence units (FIUs) (FATF, 2012).

The main services trust companies like Mossack Fonseca offer are domiciliation, management services and administrative services for third parties. In principle, trust companies themselves conduct these activities, while others can be outsourced to other professional service providers (banks, law firms, accountants firms, etc.).

- **Domiciliation:** Trust companies provide a physical premises with a postal address or postal box and, if required, office space and staff (Lugard, 2012). They also take care of required procedures for incorporating offshore entities. These entities can be purchased off the shelf or newly established and tailor-made for the client. In both cases trust companies arrange the necessary registrations, which may involve the company register, central bank, social security and tax authority. There are large differences in the incorporation requirements. Depending on the jurisdiction, it may involve other professional service providers such as accountants, lawyers and notaries.
- **Management services:** Trust companies take care of the management of offshore entities for third parties. This may mean that the trust company itself rules the entity or controls it through appointed nominee shareholders and directors for third parties (Lugard, 2012). In general, the more secretive and specific the offshore entity is supposed to be, the higher the fees.
- **Administrative services:** Administrative services are the main activity for most trust companies. They include providing legal advice and services, tax advice, declarations

[15] BVI Financial Services Commission - Class I Trust Licences - Registered Agent Status.
[16] Superintendency of Banks of Panama - Directory of Trust Companies.
[17] Seychelles Financial Services Authority – Fiduciary (International Corporate Service Provider [ICSP] and Foundation Services Provider [FSP]).
[18] The following activities are covered: incorporating legal entities; acting as director or secretary of entity or other legal persons; providing domiciliation; acting as trustee; and acting as nominee shareholder (FATF, 2012).

and related services as well as taking care of the administration, drafting and checking of financial statements (Lugard, 2012). Trust companies execute these services in-house or outsource them to other professional providers.

In addition to domiciliation, management and administrative services, Mossack Fonseca offers yachts and airplane registration, intellectual property legal advice, asset management, trust services and virtual office space rental. Moreover, it has subsidiaries that provide real estate services, bank accounts, telephone connections, fleet management and payroll services (Obermayer & Obermaier, 2016).

In order to identify the structures, onshore jurisdictions need information on activities and beneficiary owners. In most jurisdictions this information is available in company registers. In secretive tax havens and offshore financial centres, company registers and authorities typically do not have the information necessary for identifying beneficiary owners, or do not share it.

It is difficult for authorities in onshore jurisdictions to obtain information on offshore entities through trust companies. Trust companies do not always have UBO information. Even when they do, it remains relatively hard to target trust companies, because the latter often do not have a physical presence in the jurisdiction of the UBOs, advisors and intermediaries, and in some cases not even in the jurisdiction of the offshore entities. Moreover, if there is an office, the administration need not always be maintained there (OECD, 2001).

8. ROLE OF PUBLIC AUTHORITIES

KEY FINDINGS

- Public authorities in the jurisdictions where UBOs, advisors and intermediaries, and offshore entities are located play an important role in allowing the offshore structures to exist.
- Public authorities are responsible for the regulatory and supervisory framework as well as taxation. Most of these regimes are in essence national in nature.
- Governments in some jurisdictions may be inclined to create legislative regimes that allow for secrecy, opaqueness and/or preferential tax treatment, in combination with a strong rule of law and political stability because they benefit from the tax haven and/or offshore financial sector (e.g. tax revenues, registration fees, development professional services sector).
- In some tax havens and offshore financial centres entities do not need to be registered in a company register at all. In others, the entities are registered but not their beneficiary ownership and control information. These secrecy regimes can be reinforced with laws that prohibit banks, lawyers, accountants and others from disclosing any information on ownership and control to public authorities. Advisors and intermediaries risk civil and criminal sanctions when they breach these secrecy laws.
- The role of tax authorities in offshore jurisdictions is limited. The main jurisdictions in the Panama Papers do not charge corporate income and dividend tax at all or only charge tax on income generated in the jurisdiction. Offshore entities in general do not employ any staff, which means that they also do not have to pay any labour-related tax. The tax authorities in the offshore jurisdictions do not necessarily need information on the activities of offshore entities.

Public authorities, via regulation, company registers, tax law and supervision, play an important role in the existence of tax havens and offshore financial centres. In fact, these centres can only exist when governments create the necessary conditions. In particular, governments create legislative regimes that allow for secrecy, opaqueness and/or preferential tax treatment, in combination with a strong rule of law and political stability (Harrington, 2016).

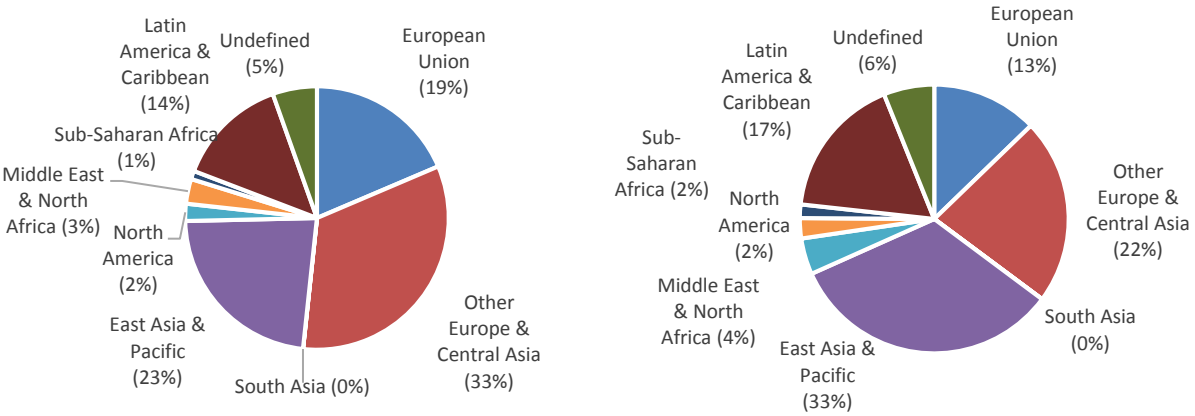
Governments in some jurisdictions may be inclined to fulfil these conditions because they benefit from the tax haven and/or offshore financial sector. The government receives corporate and personal income tax and/or registration fees in return for the incorporation of entities in their jurisdiction (Obermayer & Obermaier, 2016). Moreover, the economy at large may also benefit from the development of the professional services sector. Hotels, restaurants, airports, airlines, taxis and courier services may also benefit from trust company customers who often visit the jurisdiction in which the entities are located (Van den Berg et al., 2008).

In many jurisdictions, company registers either do not exist or contain insufficient information. In particular, beneficiary owners behind entities in most jurisdictions do not necessarily need to be disclosed and governments lack the capacity to retrieve the information when an entity is suspected of illegal activities (OECD, 2001).

Hence, in some tax havens and offshore financial centres entities do not need to be registered in a company register at all. In others, the entities are registered but not their beneficiary ownership and control information (bearer shares, nominee shareholders, nominee directors, foundations, letters of wishes, etc.). This is the case in the British Virgin Islands, Panama and the Seychelles, which were home to most of the offshore entities cited by the Panama Papers. In some centres the secrecy regime is reinforced with laws that prohibit banks, lawyers, accountants and others from disclosing any information on ownership and control to public authorities. Advisors and intermediaries risk civil and criminal sanctions when they breach secrecy laws (OECD, 2001).

Figure 9: Location of intermediaries (share of intermediated entities)

a) Total **b) Active**



Note: The figures above show the shares of entities that have been demanded by intermediaries in the respective regions. The figure on the left-hand side (i.e. total) includes all the offshore entities covered in the Panama Papers, while the figure on the right-hand side (i.e. active) only considers those that were not inactivated by the time that the files were leaked. See also annex Table 6.
Source: Author's elaboration based on ICIJ (2016).

The role of tax authorities varies widely between onshore and offshore jurisdictions. On the one hand, tax authorities in offshore centres have difficulty connecting the profits of offshore entities with UBOs. Many jurisdictions require reporting of overseas assets and activities of controlled foreign corporations. But when UBOs know that it will *de facto* be impossible for the tax authority to identify the connection with the offshore entity, they may choose not to report this information to the onshore tax authorities.

On the other hand, the role of tax authorities in offshore jurisdictions is limited. The main jurisdictions in the Panama Papers do not charge corporate income and dividend tax on any entity (British Virgin Islands) or charge tax only on income generated in the jurisdiction (Panama and the Seychelles). Offshore entities in general do not employ any staff, which means that they also do not have to pay any labour-related tax. This means that tax authorities in the offshore jurisdictions do necessarily need information on the activities of offshore entities, which in the case of the British Virgin Islands, Panama and the Seychelles they did not request. Nevertheless, the OECD's initiative to harmonise reporting standards and automatic exchange of information, and the EU's initiative to come up with a list of jurisdictions that are non-cooperative in combatting money laundering, tax avoidance and tax evasion, may induce offshore jurisdictions to cooperate.

Governments can also influence the behaviour of advisors and intermediaries involved in offshore structures (see Figure 9 for location of intermediaries). They can regulate and supervise advisors, intermediaries and activities as well as control company registries. Hence, most intermediaries, such as auditors, lawyers, banks, asset managers and in some cases accountants and tax advisors, as well as trust and fiduciary services, need to register or obtain a license/certificate to operate. These advisors and intermediaries are regulated and supervised by either government or professional bodies. The legislation differs across jurisdictions. In turn, private wealth managers and family offices are in many cases not bound by specific legislation or requirements of professional bodies. Governments are further responsible for the FIUs that receive and analyse reports of suspicious transaction (Scherrer, 2017).

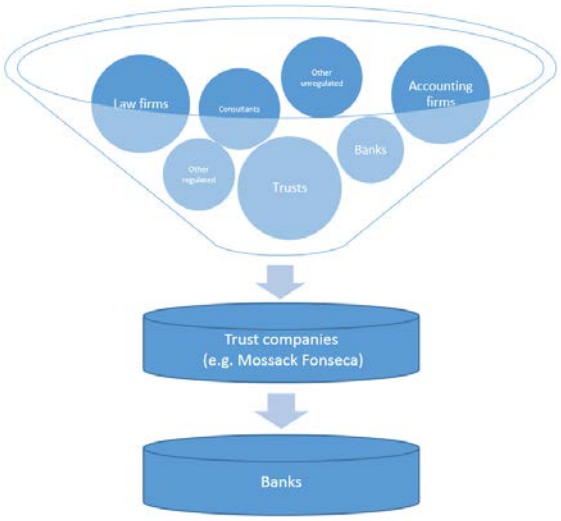
9. CONCLUSIONS & POLICY RECOMMANDATIONS

KEY FINDINGS

- There are many different intermediaries involved in providing advice on offshore structures, which makes it challenging to enhance the combat against money laundering, tax avoidance and tax evasion through these intermediaries.
- Targeting only the most essential intermediaries (trust companies and banks) for the creation and maintenance of offshore structures could be most effective, as long as such intermediaries also have locations in the onshore jurisdictions.
- Broadening the scope of international AML/CFT standards could be used to target intermediaries and, particularly banks, active in offshore jurisdictions. Additionally, correspondent banking and extraterritorial taxation could be used to encourage offshore jurisdictions to cooperate.

The Panama Papers show that at least some advisors and intermediaries break the law by facilitating money laundering, tax avoidance and tax evasion. In this study the role of advisors and intermediaries in the schemes revealed in the Panama Papers has been assessed in order to find ways to encourage them to combat tax avoidance, tax evasion and money laundering.

Figure 10: Intermediaries involved in offshore structures as revealed in Panama Papers



Source: Author's elaboration.

The structures unveiled in the Panama Papers are often complex and show that there is a more or less uniform decision cycle that, based on information disclosed on 213,634 entities, involve many types of intermediaries that provide advice and ask[19] trust companies to create offshore structures on behalf of UBOs. The main intermediaries are other trust companies, law firms, accounting firms and banks (see Figure 10). In addition, there are many other types of intermediaries, such as consultants and management and service companies. Some intermediaries are regulated, such as trust companies and banks, but the majority is either

[19] About a tenth of the entities for which the owner was located in the EU owned an intermediary. It is unclear to what extent the entities are empty and for sale or held for clients. In the latter case a prohibition of holding assets by regulated intermediaries, e.g. law firms, accountants, banks, trust companies, etc., should be considered to make it more difficult to hide the UBOs.

partially self-regulated or not under a dedicated regime at all (law firms, accounting firms, etc.).

Some of these unregulated intermediaries, however, hire advisors who are subject to (self-) regulation, such as lawyers, notaries and auditors (see Table 3). Independence and responsibility standards that apply to the conduct of these advisors and intermediaries could be strengthened by amending existing ones. More ethical conduct could result via hard law on responsibility and independence, as well as via obligatory reporting of tax avoidance, as is the case since 2014 in the UK. But one could also consider soft law via guiding principles or oaths for the professions. This already exists for bankers, and in some jurisdictions for lawyers (see Roxan et al. (2017) for additional recommendations for strengthening independence and responsibility provisions).

In turn, advisors and intermediaries such as banks could implement measures to encourage UBOs to comply, for example, by making it easier for UBOs to comply with tax legislation. The information that banks have about the financial position of their clients makes them potentially important parties for ensuring tax compliance. Banks can, for instance, provide their clients tax reports that ease the preparation of tax returns for UBOs (Nordea, 2016). It is, however, questionable whether this will have much impact.

Table 3: Advisors hired by the main intermediaries

(Main) Intermediaries	Advisors							
	Tax	Legal			Administration			Investment
		General	Lawyers	Notaries	General	Accountants	Auditors	
Law firms	X	X	**X**	**X**				
Accounting firms	X	X	**X**	**X**	X	X	**X**	
Banks	**X**	**X**						**X**
Trust companies	**X**	**X**	**X**		**X**	**X**		

Note: Intermediaries and advisors subject to (self-) regulation are indicated in **bold** and respective rows and columns are highlighted in grey.
Source: Authors.

Targeting UBOs' advisors and intermediaries is unlikely to make offshore structures disappear. The past has shown that advisors and intermediaries will come up with alternative solutions when requirements are tightened. For example, the Savings Tax Directive that was introduced to ensure that all EU citizens pay tax on their savings was circumvented by establishing entities in third countries that held the accounts of EU legal persons. However, higher transaction costs will make it less attractive to participate in these undesired activities.

In fact, when measures target only EU advisors and intermediaries, many advisors and intermediaries remain unaffected, because so many of the intermediaries that provide advice and establish the structures are based outside the EU. Among the EU entities owned by private persons, less than 10% of their UBOs used an intermediary in their home country; another 50% used an intermediary in another EU member state and the remaining 40% used an intermediary in a third country (see Figure 11). Therefore, additional measures targeting non-EU intermediaries should be considered in order to effectively combat undesired practices.

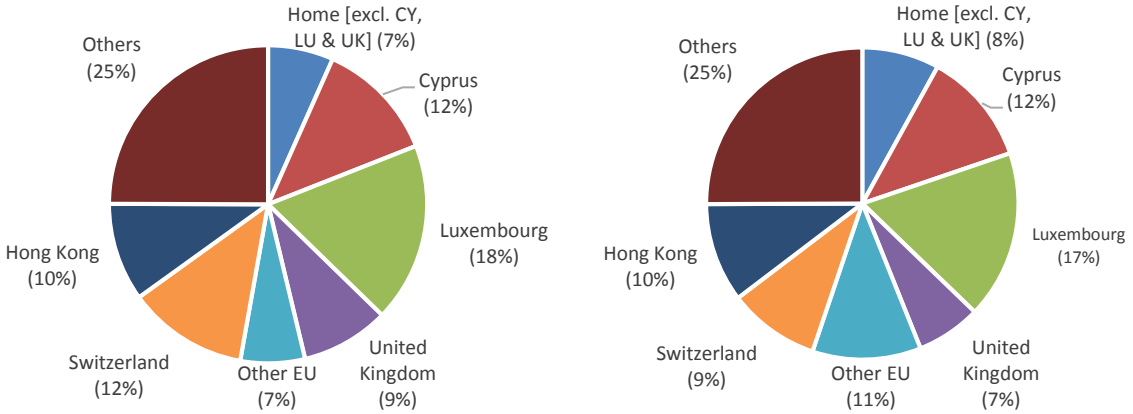
To complete the decision-making cycle, offshore entities require two types of intermediaries: trust companies and banks. All offshore entities need to be incorporated and managed, and they all need a bank account, though the latter can change in the event of virtual currencies or the use of other commodities. Trust companies are often located only in offshore jurisdictions and thus might be rather difficult to cover with onshore legislation. This might be easier with banks that, through subsidiaries, branches and/or correspondence banking, are connected to the EU banking system. Offshore jurisdictions are, however, unlikely to

cooperate as long as they benefit from facilitating offshore structures. The EU could encourage third jurisdictions to change, for example by including such jurisdictions in the EU list of uncooperative tax jurisdictions[20] and imposing appropriate sanctions.

A more constructive approach would be to update international AML/CFT standards, which are adopted by almost all relevant jurisdictions around the globe. In recent decades these standards have gradually been broadened to currently target banks and some activities of legal professions and trust companies; they are an effort to combat money laundering, proliferation of weapons of mass destruction, and terrorist financing. This scope could be broadened to other undesired activities that threaten the integrity of the international financial system and for which offshore entities are used, i.e. tax avoidance, tax evasion and hiding assets. Experiences of adopting AML/CFT standards in recent years show that they can significantly discourage financial institutions from participating in the offshore finance industry. Moreover, some post-Panama Papers investigations of banks showed that due diligence processes to operationalise AML/CFT standards contained shortcomings: in many cases offshore entities had not been subject to the appropriate scrutiny for high-risk clients. More importance should therefore be granted to the implementation, compliance and enforcement of the standards.

Figure 11: Location of intermediaries serving EU citizens (share of entities)

a) Total **b) Active**



Note: The figures above show the location of the intermediaries that demanded the offshore entities for their clients as share of entities. The figure on the left-hand side (i.e. total) includes all the offshore entities covered in the Panama Papers, while the figure on the right-hand side (i.e. active) only considers those that were not inactivated by the time that the files were leaked. See annex Table 12.
Source: Author's elaboration based on ICIJ (2016).

Enforcing legislation requires knowledge of UBOs and possession of financial information on offshore entities. This information should therefore be collected in company registers and automatically exchanged between tax administrations around the globe. There were no shareholder names (person or company names) available for about 60% of the entities included in the Panama Papers. The OECD's initiative for a global Common Reporting Standard (CRS MCAA) and Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) are important for arranging the automatic exchange of information based on the same definitions. Although most tax havens and offshore financial centres have already committed to both the CRS and Multilateral Convention, it remains to be seen whether they will be implemented in the coming years.

[20] The Council's Code of Conduct Group is currently supported by the European Commission in identifying jurisdictions that are not cooperating on tax matters. Taking appropriate action to discourage intermediaries from facilitating undesired practices and allowing the automatic exchange of UBOs and tax relevant information could be made conditions for not being considered uncooperative.

Moreover, a group of private persons will be hard to target using the initiatives of onshore jurisdictions. Such a group either lives in multiple jurisdictions using, for example, double passports or makes use of investor visa programmes that allow for obtaining a residence permit in exchange for an investment in a jurisdiction (Harrington, 2016). The latter may also explain the great number of private persons residing in Cyprus and the United Kingdom who own offshore entities (see annex Table 11). Taxing the income and wealth of non-resident citizens, as the US does under FATCA, could partially address this. Hence, FATCA might also be the main reason that there relatively few US citizens among shareholders.

This analysis has tried to shed some light on the role of advisors and intermediaries involved in the schemes revealed in the Panama Papers. This has been challenging, since the papers provided only documents recorded by Mossack Fonseca, which in most cases did not correspond directly with the UBOs. Moreover, the literature on many other jurisdictions and the functioning of parties in direct contact with UBOs is fairly limited. In addition, these schemes involve primarily offshore entities in the British Virgin Islands, Panama and the Seychelles and one trust company, Mossack Fonseca, whereas many more jurisdictions and trust companies facilitate money laundering and tax avoidance and evasion. The role of intermediaries in such schemes is not necessarily the same as that of those cited in the Panama Papers. Other measures might be required to discourage intermediaries from facilitating undesirable activities. Follow-up policy research in these areas could result in additional measures to combat illicit practices.

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ANNEX

Table 4: Main requirements for establishing offshore entities

General	British Virgin Islands	Panama	Seychelles
Company Type	International Business Company (IBS)	Sociedades Anonima (SA)	International Business Company (IBS)
Corporate legislation	IBC Act 2004	Panama Supreme Court of Justice (Law 32 of 1927)	IBC Act 1994
Incorporation			
Minimum paid up capital	$1	No	No
Minimum shareholders	1	1	1
Bearer shares	Immobilised	Yes	Yes
Nominee shareholders	Yes	Yes	Yes
Directors	1	3	1
Nominee directors	Yes	Yes	Yes
Minimum annual tax / license fee	$350	$250	$100
Annual return filing fee	N/A	$350	N/A
Registration			
Physical address	No	No	No
Registered office	Yes	No	Yes
Registered agent	Yes	Yes	Yes
Managers/directors	No	Yes	No
Legal owners	No	No	No
Officers	No	No	No
Publicly accessible	No	No	No
Annual requirements			
Audit requirement	No	No	No
Requirement to file accounts	No	No	No
Corporate income tax	No	No	No
Tax on dividends	No	No	No
Requirement to file annual tax return	No	No	No

Source: Author's elaboration based on information retrieved from Bethel Finance Offshore Incorporation and Sovereign Management & Legal (2017).

Table 5: Offshore entities by jurisdiction and type

Jurisdiction	Types of entities				Total	*o/w active*
	Companies	Foundations	Trust companies	Undefined		
Anguilla (UK)	3,252	0	0	1	3,253	*1,868*
Bahamas	15,897	0	3	15	15,915	*2,005*
Belize	130	0	0	0	130	*98*
Costa Rica	67	0	0	11	78	*74*
Cyprus	***75***	***0***	***0***	***1***	***76***	***27***
United Kingdom	***148***	***0***	***0***	***0***	***148***	***103***
Hong Kong (SAR China)	452	0	0	0	452	*153*
Isle of Man (IAJ UK)	8	0	0	0	8	*0*
Jersey (IAJ UK)	39	0	0	0	39	*0*
Malta	***28***	***0***	***0***	***0***	***28***	***28***
Nevada (US)	1,259	0	0	1	1,260	*355*
Niue	9,599	0	0	12	9,611	*14*
New Zealand	47	0	0	0	47	*26*
Panama	43,928	4,335	2	95	48,360	*12,320*
Ras Al Khaimah (UAE)	2	0	0	0	2	*2*
Singapore	1	0	0	0	1	*1*
Seychelles	15,139	27	0	16	15,182	*5,934*
Uruguay	52	0	0	0	52	*6*
British Virgin Islands	113,612	1	0	35	113,648	*30,207*
Samoa	5,307	0	0	0	5,307	*2,473*
Wyoming (US)	37	0	0	0	37	*34*
Total	**209,079**	**4,363**	**5**	**187**	**213,634**	**..**
o/w EU28	*251*	*0*	*0*	*1*	*252*	*158*
o/w active	*54,050*	*1,618*	*3*	*57*	*..*	*55,728*

Note: The table shows the entities included in the Panama Papers. The types of entities have been determined based on the name of the entity. The results for the jurisdictions in the European Union are presented in **bold**. The entities are considered active at the moment that the activities were not terminated when the Panama Papers were leaked in 2015.
Source: Author's elaboration based on ICIJ (2016).

Table 6: Intermediaries by region and type (number of entities)

Region	Type of intermediaries						Total	*o/w active*
	Mossack Fonseca	Trust and fiduciary companies	Support service providers	Accountants, consultants, tax advisors and lawyers	Financial institutions and wealth managers	Und.		
European Union	**8,348**	**4,599**	**5,370**	**9,607**	**6,803**	**4,991**	**39,718**	**7,119**
Other Europe & Central Asia	3,457	21,727	9,117	14,766	16,003	5,634	**70,704**	12,484
South Asia	0	0	0	4	2	11	**17**	6
East Asia & Pacific	4,849	7,601	10,418	14,507	3,001	8,637	**49,013**	18,459
North America	534	20	213	2,023	404	1,309	**4,503**	2,430
Middle East & North Africa	24	67	421	4,694	390	908	**6,504**	1,358
Sub-Saharan Africa	0	576	338	885	245	152	**2,196**	910
Latin America & Caribbean	9,660	1,033	1,058	10,117	1,292	6,198	**29,358**	9,567
Undefined	852	1,976	1,280	3,165	1,781	2,567	**11,621**	3,395
Total	**27,724**	**37,599**	**28,215**	**59,768**	**29,921**	**30,407**	**213,634**	**..**
o/w active	5,726	11,328	7,115	16,911	5,072	9,576	..	55,728

Note: The table shows the entities included in the Panama Papers. The types of intermediary have been determined based on the name of the entity, which has been matched with key words and lists of the (largest) intermediaries, i.e. accounting, lawyers and banks. Moreover, the types for the intermediaries considered by Schumann (2017) and with more than 100 entities intermediated have been determined based on web searches. The entities are considered active at the moment that the activities were not terminated when the Panama Papers were leaked in 2015.
Source: Author's elaboration based on ICIJ (2016).

Table 7: Intermediaries by member state and type (number of entities)

Member states	Type of intermediaries						EU28	*o/w active*
	Mossack Fonseca	Trust and fiduciary companies	Support service providers	Accountants, consultants, tax advisors and lawyers	Financial institutions and wealth managers	Und.		
Austria	0	0	2	2	2	18	**24**	*2*
Belgium	0	4	7	10	0	33	**54**	*2*
Bulgaria	0	0	45	0	0	5	**50**	*13*
Croatia	0	0	0	1	0	2	**3**	*1*
Cyprus	0	1,538	1,796	1,026	17	98	**4,475**	*1,154*
Czech Republic	1,550	0	1	0	0	16	**1,567**	*482*
Denmark	0	0	0	2	1	8	**11**	*2*
Estonia	0	0	806	4	0	65	**875**	*257*
Finland	0	0	0	2	0	63	**65**	*3*
France	0	0	34	31	8	159	**232**	*33*
Germany	0	0	4	40	135	62	**241**	*70*
Greece	0	0	39	79	1	94	**213**	*40*
Hungary	0	603	0	96	0	55	**754**	*142*
Ireland	0	121	1	22	8	35	**187**	*16*
Italy	0	0	0	212	0	130	**342**	*8*
Latvia	0	0	4	1,354	5	10	**1,373**	*300*
Lithuania	0	0	0	4	0	27	**31**	*0*
Luxembourg	4,119	1,540	1,013	1,472	5,742	1,171	**15,057**	*1,284*
Malta	0	16	200	229	0	156	**601**	*305*
Netherlands	0	14	14	19	27	100	**174**	*31*
Poland	139	0	6	1	0	12	**158**	*11*
Portugal	0	0	67	85	1	49	**202**	*42*
Romania	0	0	2	1	0	2	**5**	*3*
Slovak Republic	0	0	0	0	0	0	**0**	*0*
Slovenia	0	0	0	17	0	5	**22**	*15*
Spain	0	0	266	511	48	287	**1,112**	*119*
Sweden	0	0	0	26	0	22	**48**	*6*
United Kingdom	2,540	763	1,063	4,361	808	2,307	**11,842**	*2,778*
EU-28	**8,348**	**4,599**	**5,370**	**9,607**	**6,803**	**4,991**	**39,718**	..
o/w active	*1,269*	*850*	*1,410*	*2,013*	*663*	*914*	..	*7,119*

Note: The table shows the entities included in the Panama Papers. The types of intermediary have been determined based on the name of the entity, which has been matched with key words and lists of the (largest) intermediaries, i.e. accounting, lawyers and banks. Moreover, the types for the intermediaries considered by Schumann (2017) and with more than 100 entities intermediated have been determined based on web searches. The entities are considered active at the moment that the activities were not terminated when the Panama Papers were leaked in 2015.
Source: Author's elaboration based on ICIJ (2016).

Table 8: Intermediaries by region and type (number of intermediaries)

Region	Type of intermediaries						Total
	Mossack Fonseca	Trust and fiduciary companies	Support service providers	Accountants, consultants, tax advisors and lawyers	Financial institutions and wealth managers	Und.	
European Union	**7**	**140**	**181**	**592**	**149**	**1,627**	**2,696**
Other Europe & Central Asia	6	412	274	416	343	1,025	**2,476**
South Asia	0	0	0	2	2	8	**12**
East Asia & Pacific	6	35	344	680	153	1,683	**2,901**
North America	3	5	21	122	54	536	**741**
Middle East & North Africa	1	4	18	84	15	301	**423**
Sub-Saharan Africa	0	20	20	23	12	89	**164**
Latin America & Caribbean	31	52	83	700	103	2,190	**3,159**
Undefined	36	59	65	241	91	1,010	**1,502**
Total	**90**	**727**	**1,006**	**2,860**	**922**	**8,469**	**14,074**

Note: The table shows the entities included in the Panama Papers. The types of intermediary have been determined based on the name of the entity, which has been matched with key words and lists of the (largest) intermediaries, i.e. accounting, lawyers and banks. Moreover, the types for the intermediaries considered by Schumann (2017) and with more than 100 entities intermediated have been determined based on web searches.
Source: Author's elaboration based on ICIJ (2016).

Table 9: Intermediaries by member state and type (number of intermediaries)

Member state	Type of intermediaries						EU28
	Mossack Fonseca	Trust and fiduciary companies	Support service providers	Accountants, consultants, tax advisors and lawyers	Financial institutions and wealth managers	Und.	
Austria	0	0	2	1	1	12	**16**
Belgium	0	2	4	4	0	26	**36**
Bulgaria	0	0	3	0	0	4	**7**
Croatia	0	0	0	1	0	2	**3**
Cyprus	0	13	26	39	2	33	**113**
Czech Republic	1	0	1	0	0	8	**10**
Denmark	0	0	0	1	1	7	**9**
Estonia	0	0	1	1	0	7	**9**
Finland	0	0	0	2	0	10	**12**
France	0	0	3	10	3	83	**99**
Germany	0	0	3	11	3	50	**67**
Greece	0	0	8	16	1	44	**69**
Hungary	0	1	0	1	0	9	**11**
Ireland	0	4	1	4	1	26	**36**
Italy	0	0	0	4	0	46	**50**
Latvia	0	0	3	5	1	2	**11**
Lithuania	0	0	0	1	0	1	**2**
Luxembourg	2	67	31	82	88	128	**398**
Malta	0	5	5	16	0	18	**44**
Netherlands	0	2	8	7	3	30	**50**
Poland	1	0	2	1	0	8	**12**
Portugal	0	0	2	8	1	20	**31**
Romania	0	0	1	1	0	2	**4**
Slovak Republic	0	0	0	0	0	0	**0**
Slovenia	0	0	0	1	0	3	**4**
Spain	0	0	6	46	3	137	**192**
Sweden	0	0	0	4	0	18	**22**
United Kingdom	3	46	71	325	41	893	**1,379**
EU-28	**7**	**140**	**181**	**592**	**149**	**1,627**	**2,696**

Note: The table shows the entities included in the Panama Papers. The types of intermediary have been determined based on the name of the entity, which has been matched with key words and lists of the (largest) intermediaries, i.e. accounting, lawyers and banks. Moreover, the types for the intermediaries considered by Schumann (2017) and with more than 100 entities intermediated have been determined based on web searches.
Source: Author's elaboration based on ICIJ (2016).

Table 10: Shareholders by region and type (number of entities)

Region	Type of shareholders														Total
	Private persons	Companies	Mossack Fonseca	Trust and fiduciary companies	Support service providers	Accountants, consultants, tax advisors and lawyers	Financial institutions and wealth managers	Nominees	Bearers	Foundations	More than one type	More than five shareholders	No (Foundations/Trusts)	Unknown	
European Union	**3,991**	**873**	**3**	**285**	**119**	**54**	**211**	**149**	**649**	**6**	**165**	**0**	**0**	**2**	**6,507**
Other Europe & Central Asia	3,861	1,746	0	1,683	366	94	318	3,246	472	349	3,330	0	0	2	**15,467**
South Asia	232	7	0	1	1	0	1	0	3	0	1	0	0	0	**246**
East Asia & Pacific	21,180	2,030	235	352	179	94	96	243	157	0	2,962	0	0	7	**27,535**
North America	933	279	1	69	12	13	21	9	9	3	26	0	0	1	**1,376**
Middle East & North Africa	2,440	201	1	22	27	12	43	18	70	3	64	0	0	0	**2,901**
Sub-Saharan Africa	894	2,453	1	108	164	19	287	86	60	8	73	0	0	0	**4,153**
Latin America & Caribbean	4,939	9,368	189	336	1,997	233	1,001	1,389	375	2,614	902	0	0	2	**23,345**
More than one region	4,706	3,114	78	424	218	56	275	796	20,907	826	4,624	0	0	102	**36,126**
More than five shareholders	0	0	0	0	0	0	0	0	0	0	0	2,309	0	0	**2,309**
Unknown	94	36	2	5	1	1	2	12	5	2	395	0	4,368	88,746	**93,669**
Total	**43,270**	**20,107**	**510**	**3,285**	**3,084**	**576**	**2,255**	**5,948**	**22,707**	**3,811**	**12,542**	**2,309**	**4,368**	**88,862**	**213,634**

Note: The table shows the entities included in the Panama Papers. The types of intermediary have been determined based on the name of the entity, which has been matched with key words and lists of the (largest) intermediaries, i.e. accounting, lawyers and banks. Moreover, the types for the intermediaries considered by Schumann (2017) and with more than 100 entities intermediated have been determined based on web searches.
Source: Author's elaboration based on ICIJ (2016).

Table 11: Shareholders by member state and type (number of entities)

Member states	Type of shareholders												Total
	Private persons	Companies	Mossack Fonseca	Trust and fiduciary companies	Support service providers	Accountants, consultants, tax advisors and lawyers	Financial institutions and wealth managers	Nominees	Bearers	Foundations	More than one type	Unknown	
Austria	30	6	0	0	0	0	0	0	2	1	0	0	**39**
Belgium	102	5	0	1	0	0	0	0	10	0	1	0	**119**
Bulgaria	49	0	0	0	1	0	0	0	2	0	1	0	**53**
Croatia	13	0	0	0	0	0	0	0	0	0	0	0	**13**
Cyprus	634	244	1	184	51	11	29	126	29	2	59	1	**1,371**
Czech Republic	85	3	0	1	0	0	2	0	5	0	1	0	**97**
Denmark	24	0	0	0	0	0	0	0	2	0	1	0	**27**
Estonia	33	5	0	0	0	0	1	0	2	0	0	0	**41**
Finland	16	0	0	0	0	0	0	0	2	0	0	0	**18**
France	407	12	0	0	0	0	0	0	17	0	3	0	**439**
Germany	99	6	0	0	0	1	0	1	7	0	0	0	**114**
Greece	138	6	0	0	0	0	0	0	16	0	2	0	**162**
Hungary	60	1	0	0	0	0	0	0	21	0	2	0	**84**
Ireland	35	9	0	4	1	0	0	1	1	0	8	0	**59**
Italy	244	15	1	0	0	0	0	1	124	0	7	0	**392**
Latvia	45	0	0	0	0	0	0	0	0	0	0	0	**45**
Lithuania	12	4	0	0	0	0	0	0	1	0	0	0	**17**
Luxembourg	156	226	1	18	11	16	95	0	350	1	9	0	**883**
Malta	116	27	0	35	10	13	3	1	0	0	3	0	**208**
Netherlands	73	32	0	0	1	0	4	0	1	0	3	0	**114**
Poland	39	3	0	0	0	2	1	0	4	1	3	0	**53**
Portugal	47	10	0	0	3	1	0	0	0	0	1	1	**63**
Romania	47	6	0	0	0	0	0	0	2	0	0	0	**55**
Slovak Republic	23	1	0	0	0	0	0	0	0	0	0	0	**24**
Slovenia	10	1	0	0	0	0	0	0	0	0	0	0	**11**
Spain	232	23	0	1	2	1	3	0	29	0	5	0	**296**
Sweden	39	3	0	0	0	0	0	0	1	0	2	0	**45**
United Kingdom	1,131	223	0	41	39	9	73	19	20	1	25	0	**1,581**
More than one MS	52	2	0	0	0	0	0	0	1	0	29	0	**84**
EU-28	**3,991**	**873**	**3**	**285**	**119**	**54**	**211**	**149**	**649**	**6**	**165**	**2**	**6,507**

Note: The table shows the entities included in the Panama Papers. The types of intermediary have been determined based on the name of the entity, which has been matched with key words and lists of the (largest) intermediaries, i.e. accounting, lawyers and banks. Moreover, the types for the intermediaries considered by Schumann (2017) and with more than 100 entities intermediated have been determined based on web searches.
Source: Author's elaboration based on ICIJ (2016).

Table 12: Location of intermediaries serving EU citizens (number of entities)

Shareholders (Member states)	Intermediaries (areas)								Total
	Home (excl. CY, LU & UK)	Cyprus	Luxembourg	United Kingdom	Other EU	Switzerland	Hong Kong	Others	
Austria	3	0	1	6	1	9	6	4	**30**
Belgium	2	1	41	0	0	18	21	11	**94**
Bulgaria	10	2	4	2	4	12	0	12	**46**
Croatia	1	0	0	0	2	7	1	1	**12**
Cyprus	..	376	0	23	130	10	2	85	**626**
Czech Republic	22	8	0	4	3	10	6	31	**84**
Denmark	0	0	7	3	0	2	5	6	**23**
Estonia	22	2	0	3	0	6	0	0	**33**
Finland	1	0	4	1	0	1	2	4	**13**
France	16	2	41	49	2	124	64	87	**385**
Germany	4	0	12	3	6	12	33	26	**96**
Greece	9	35	10	7	5	31	6	24	**127**
Hungary	22	1	4	0	0	8	9	16	**60**
Ireland	6	2	2	9	0	2	4	10	**35**
Italy	15	0	11	5	13	23	35	138	**240**
Latvia	4	0	5	12	5	10	1	6	**43**
Lithuania	0	0	0	1	2	6	1	2	**12**
Luxembourg	..	0	130	4	3	7	3	6	**153**
Malta	53	3	2	15	1	5	3	15	**97**
Netherlands	3	4	3	1	3	5	23	24	**66**
Poland	11	1	1	2	2	2	13	7	**39**
Portugal	5	0	6	4	4	8	7	10	**44**
Romania	0	7	4	3	8	9	0	15	**46**
Slovak Republic	0	0	2	1	2	0	1	4	**10**
Slovenia	13	1	1	0	0	0	5	3	**23**
Spain	32	3	7	14	10	50	22	78	**216**
Sweden	2	0	3	0	2	3	15	11	**36**
United Kingdom	..	24	38	524	44	86	94	296	**1,106**
More than one MS	0	3	6	6	12	5	2	15	**49**
EU-28	**256**	**475**	**345**	**702**	**264**	**471**	**384**	**947**	**3,844**

Note: The table shows the entities included in the Panama Papers. The types of intermediary have been determined based on the name of the entity, which has been matched with key words and lists of the (largest) intermediaries, i.e. accounting, lawyers and banks. Moreover, the types for the intermediaries considered by Schumann (2017) and with more than 100 entities intermediated have been determined based on web searches.
Source: Author's elaboration based on ICIJ (2016).

CAT: QA-01-17-384-EN-C (paper)
CAT: QA-01-17-384-EN-N (pdf)

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ISBN 978-92-846-0957-4 (paper)
ISBN 978-92-846-0956-7 (pdf)

doi: 10.2861/778809 (paper)
doi: 10.2861/721854 (pdf)

Publications Office

Role of advisors and intermediaries in the schemes revealed in the Panama Papers