

September 16, 2021

Via Email

International Consortium of Investigative Journalists
1710 Rhode Island Avenue NW, 11th Floor
Washington DC 20036 USA

Attn:

Dear Ms. Medina and Ms. Struck:

I am reaching out on behalf of the Government of Panama (“Panama Government”) with respect to an apparent investigation being conducted by the International Consortium of Investigative Journalists (“ICIJ”) involving law firms with an office in Panama. To the best of our knowledge, the ICIJ has not yet contacted anyone affiliated with the current government regarding this investigation. However, the Panama Government has become aware of the ICIJ’s outreach to others. The purpose of this communication is to initiate a dialogue with the ICIJ regarding the investigation and any subsequent publication, as well as to provide critical facts regarding the efforts of the Panama Government in recent years.

We understand that you, in collaboration with other media outlets, are working on an investigation into offshore finance with the intention of publishing the results in a number of countries. Before proceeding, you should be aware that prior media coverage initiated by the ICIJ utilized a false and defamatory term (*i.e.*, the “Panama Papers”) that caused a great deal of damage to Panama. The Government of Panama is determined to act so that this falsehood not be repeated by the ICIJ or any other media outlets.

First and foremost, this communication should not be interpreted or understood to be an attempt to prevent the ICIJ from investigating and publishing articles on important topics of the day. The Panama Government respects the role played by journalists and freedom of speech, in general, and the work conducted by the ICIJ, in particular. The Panama Government further recognizes the value of ICIJ’s work for investigative journalism on a global scale. With this communication, the Panama Government hopes to foster a dialogue that will ensure that the ICIJ has the opportunity to gather accurate information as part of that work.

Having said that, it is important to note the significant, negative impact the ICIJ caused by branding its prior reporting as the “Panama Papers.” The subject matter of that series of articles was an alleged scandal related to the Mossak Fonseca law firm, which had very little to do with Panama or the Government of Panama. Nonetheless, the ICIJ’s use of that title for its articles had massive negative consequences to the country that persist even today. Even now, five years after the publication, most global references to Panama are also related to the “Panama Papers,” even

though the vast majority of the alleged scandal related to offshore corporations, banks and clients outside of Panama. The fact that the law firm in question had offices in Panama, and that the term was appealing, provided no justification for using it in the articles. That choice had profound and irrecoverable repercussions in terms of the country's reputation, economy, foreign direct investment, and loss of jobs for Panamanians.

The facts did not justify the use of that defamatory title for the ICIJ's articles five years ago, and certainly the facts do not justify using that defamatory title or anything similar to it in any subsequent publications. Panama, and Panamanian corporations, only account for 0.27% of the offshore corporations registered worldwide. Nonetheless, Panama became the name associated with offshore corporations and money laundering as a result of the ICIJ's defamatory branding effort. Moreover, Panama is not the top destination for tax structuring or tax havens, as clearly stated by multiple publications, including Tax Justice Network. In fact, less than 0.37% of international transfers originating from Panama go to high-risk jurisdictions. Nonetheless, as a result of the ICIJ's use of the term "Panama Papers," the global media immediately began to associate Panama with tax havens.

Moreover, while the Mossak Fonseca law firm may have had their headquarters in Panama, it is the Panama Government's understanding that the transactions at issue in the ICIJ's investigation were enabled through various branch offices and offshore corporations in forty (40) locations worldwide. Thus, the services at issue in the ICIJ's investigation related to other jurisdictions, including some of the most important economies worldwide. But, nonetheless, the ICIJ branded its investigation and its articles as the "Panama Papers," and that defamatory brand has persisted. Panama is now in the grey list related to tax and money laundering unlike any of the top tax structuring destinations or main offshore corporate registries worldwide. Again, this is further evidence of the damage caused to Panama by the ICIJ's improper brand.

Given that the ICIJ appears to be considering further publications addressing subject matters similar to the prior investigation, the Panama Government felt it was important to provide you with facts that further demonstrate that any such publications should not focus on Panama and certainly should not use any terms like the "Panama Papers." This is a defamatory and disparaging brand and contrary to facts such as those described below.

Since 2015, the Panama Government has made fighting tax evasion and money laundering a significant priority and has taken concrete steps to showcase that commitment. As an example, just last year, the Panama Government suspended 395,415 out of 762,709 corporations and foundations off its registry. No other country has ever suspended more than 50% of their corporations and foundations in a single act. This alone is a clear demonstration of the Panama Government's commitment to ensure transparency and reduce the risk of companies on its registry for illicit or tax avoidance purposes.

Moreover, the Panama Government has put in place a legal framework that addresses the types of concerns previously raised in the ICIJ's investigation, including:

- it is mandatory for law firms acting as a resident agent to identify and verify the Ultimate Beneficial Owner ("UBO");

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- Panamanian Tax Authorities share the tax information of foreign citizens with their originating jurisdiction;
- the Panama Government empowered a superintendent to supervise law firms on a regular basis, request UBO information, and apply sanctions when the information is not provided immediately; and,
- the Panama Government recently set up a special anti-money laundering taskforce that has shown tremendous results including in obtaining high profile indictments and significant asset forfeitures.

The Panama Government recognizes that while there is still work to be done, it has taken concrete steps to monitor and enforce offshore finance activities. Whatever perception the ICIJ had of Panama in 2016 – in terms of due diligence requirements and supervision of law firms – it is nothing like the Panama of today. The Panama Government hopes the ICIJ fully understands that it has doubled down on its efforts for a more transparent international tax system in full collaboration with the international community, including the World Bank, FATF, and OECD

Again, the Panama Government fully supports investigative journalism and wants the ICIJ to understand that it believes any enterprise that avails itself of money laundering or tax evasion should be the subject of an investigation and brought to justice. However, the significant effort and resources that Panama has devoted to repairing its image from the prior defamatory branding could be undermined by any additional articles that use alleged misconduct by one or a small number of law firms to portray Panama as the source of any wrongdoing or portray Panama as an environment in which that type of conduct is condoned.

The purpose of this communication is to (1) provide you the above facts about the efforts of the Panama Government and (2) begin a dialogue before ICIJ publishes another article. In the course of that dialogue, Panama Government representatives will be made available to you to provide a detailed perspective of the current framework in Panama, list of concrete steps and actions that the Panama Government has taken, and the complete picture of the country's current situation. The Panama Government does not seek to suppress the ICIJ's publication but only to ensure that the ICIJ has accurate information before publication.

I look forward to hearing from you to begin that dialogue. The ICIJ's choice of the "Panama Papers" as the brand for its prior publications resulted in the country being perceived as an enabler of allegedly improper conduct. It was extremely damaging. Any future publications that reinforce that false perception or defamatory moniker will have devastating consequences for Panama and its people. This time the damage could be unsurmountable for a country barely recovering from the pandemic with one of the hardest hit economies in the region. We hope our engagement with you will prevent that from happening.

We request that you provide a copy of this letter to any other media outlets participating in your investigation so that those outlets can make appropriate determinations regarding the content

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of any potential publications. This should include the BBC, Le Monde, The Guardian, The Washington Post, and Westdeutscher Rundfunk.¹

Very truly yours,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP



J. Erik Connolly

¹ My firm has been retained in connection with this matter in the event that the ICIJ or other media organizations publish a defamatory article or articles and a lawsuit on behalf of a government official needs to be filed against the ICIJ or other media organizations in the United States. Neither my firm nor I are acting in a political or quasi-political capacity.