

LATIN LAWYER REFERENCE AVIATION LAW 2019

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# Panama

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JANUARY 2019

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## Regulatory

### 1 What are the primary statutory authorities for the regulation of the aviation sector in your country? Is there a specific aviation law that your country has adopted? Are there corresponding regulations?

The primary statutory authority for the regulation of the aviation sector in Panama is the Civil Aviation Authority, an independent government entity, with legal capacity and its own resources, created by Law No. 22 of 29 January 2003.

Panama enacted Law No. 21 of 29 January 2003, which regulates the Civil Aviation in Panama. Panama has also adopted the RAC Reglamento de Aviación Civil (RAC), which includes the regulations for civil aviation in Panama.

Furthermore, Panama adopted the International Civil Aviation Convention of Chicago of 7 December 1944, by means of Law No. 52 of 30 November 1959, and the Agreement Related to International Air Transportation Services of Chicago of 7 December 1944, by means of Law No. 15 of 9 November 1981.

Law No. 23 of 29 January 2003 sets out the regulatory framework for the administration of airports.

Panama has also adopted the Convention on International Interest in Mobile Equipment of 16 November 2001 of Cape Town, and its Protocol, by means of Law No. 29 of 26 March 2003.

### 2 Who is the primary aviation regulatory body in your country? How does it operate? To whom does the aviation authority report?

The primary aviation regulatory body in Panama is the Civil Aviation Authority, which operates under a General Director who is the legal representative of the Civil Aviation Authority and who is in charge of the management of the Civil Aviation Authority and exercises the powers granted by the laws and regulations to the Civil Aviation Authority. The General Director is designated by the Executive Branch and ratified by the Congress for a period of five years, which runs concurrently with the Presidential term.

The Executive Branch also designates a Deputy General Director for the same period of the General Director, who will replace the General Director in his or her absence.

The Civil Aviation Authority also has a board of directors to whom the General Director reports, chaired by the Minister of Government.

The Civil Aviation Authority ultimately reports to the Executive Branch.

### 3 Does your country extend fifth freedom rights? If so, to which countries have such rights been extended? Does your country distinguish between passenger and cargo service in this regard?

Yes, Panama does extend fifth freedom rights. Among the countries to which Panama has extended such fifth freedom rights are: the United States of America, Mexico, Costa Rica, Guatemala, Nicaragua, Aruba, Curacao, Haiti, Dominican Republic, Jamaica, Barbados, Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela, Germany, the European Union, The Netherlands, Great Britain, Russia, Switzerland, Portugal, France, Taiwan, Turkey, China, Singapore, South Korea, Qatar.

Yes, Panama does distinguish between passenger and cargo services in regards to fifth freedom rights.

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## International agreements

### 4 What bilateral or multilateral aviation agreements or treaties has your country executed and ratified?

Panama has entered into multiple bilateral and multilateral aviation agreements and treaties, as well as memorandums of understanding that have been executed between the Civil Aviation Authority of Panama and aviation regulatory bodies from other jurisdictions. The countries with which Panama has executed such agreements are: the United States of America, Canada, Mexico, Costa Rica, Guatemala, Honduras, Nicaragua, Aruba, Curacao, Dominican Republic, Jamaica, Barbados, Trinidad and Tobago, Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela, Germany, the European Union, Spain, Belgium, the Netherlands, Great Britain, Russia, Switzerland, Portugal, France, Singapore, Taiwan, Turkey, China, South Korea, the United Arab Emirates and Qatar.

## 5 Has your country executed open sky agreements? If so, with which countries?

Yes, Panama has executed open sky agreements with the United States of America, Guatemala, Dominican Republic, Chile, Paraguay and Singapore. Pursuant to Law No. 74 of 29 October 2012, our Congress approved the Open Sky Multilateral Agreement of 4 November 2010 executed in Punta Cana, Dominican Republic, with the member states of the Latin-American Commission of Civil Aviation (CLAC). The states members of CLAC are: Argentina, Aruba, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, Dominican Republic, Uruguay and Venezuela. However, Panama expressed some reservations to certain provisions related to freedom rights. This Multilateral Agreement has not yet entered into force.

## 6 Assuming that your country has ratified international aviation conventions, are these enforced by the courts of your country? In particular, do the courts routinely enforce Warsaw Convention passenger claim limits? As a practical matter, are consumer law and other national laws given more weight by the courts than international aviation conventions?

Generally speaking, in aviation matters, so far our courts have enforced and applied international aviation conventions (for instance, the Warsaw Convention) when there are matters related to claims arising from international flights.

## 7 What are the tax reporting obligations for foreign airlines under the bilateral agreements? Are foreign airlines required to make income tax and VAT filings in your country?

Foreign airlines are required to collect VAT (in Panama known as ITBMS – Tax on the Transfer of Goods and Services) on the sale of air tickets (for the international and local transport of passengers) made within the Republic of Panama. Generally, bilateral agreements do not exempt foreign airlines from the payment of VAT. However, the international and local transport of freight and goods is exempt from payment of VAT. The VAT tax rate is 7 per cent of the air ticket price, including any charges for accessory services related thereto and other taxes imposed.

Our tax code treats the income earned from the air transport of passengers and goods as taxable income, regardless of the nationality or domicile of the entity rendering the service (the airline). The income tax is calculated at the rate of 25 per cent of the net taxable income. In addition, branches of foreign airlines have to pay a dividend tax at the rate of 10 per cent of the net taxable income produced in Panama minus any income tax paid in Panama. If no dividends or funds are remitted by the branch to its head office, the branch is still required to pay such dividend tax, which is calculated as part of its annual income tax return.

Our tax code exempts foreign airlines from the payment of income tax, so long as the country of incorporation of such foreign airline also provides a similar exemption to Panamanian airlines by virtue of the principle of reciprocity. This exemption is generally stipulated in bilateral agreements pursuant to which Panama agrees to exempt from income and other taxes (such as the dividends tax) the airlines of the other nation, provided the other nation does the same with Panamanian airlines. Treaties for the avoidance of double taxation also include income tax exemptions for aircraft used in international transportation.

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## Airline start-up and operation

### 8 Has your country sought to specifically regulate the carbon emissions of airlines?

Yes, Panama regulates carbon emissions of airlines through Law 21 of 29 January 2003 (Civil Aviation Law), Law 41 of 1 July 1998 (Environmental Law) as well as Book XIX of Civil Aviation Regulations of Panama (RACP).

### 9 What are the requirements to start up and operate a passenger or cargo airline in your country?

In order to start up and operate a foreign passenger or cargo airline in our country it is necessary to obtain an Exploitation Certificate and an Operation Certificate, both issued by the Civil Aviation Authority.

The following documents have to be filed with the Civil Aviation Authority at the time of applying for an Exploitation Certificate and an Operation Certificate:

- A copy of the designation of the foreign airline issued by the aviation authorities of its jurisdiction, which must be sent to Panama through diplomatic channels.

- A summary of the operations to be carried out to and from Panama.
- A power of attorney granted to a local law firm or lawyer in Panama to represent the airline before the Civil Aviation Authority in the process of obtaining the approval to operate in Panama.
- Name, trade name and legal address of the airline.
- Copy of the constitutional documents of the airline's branch that will operate in Panama, as registered in the Public Registry of Panama (in order to operate in Panama, the foreign airline must register a branch in Panama).
- Certificate of good standing and certificate of incumbency of the branch issued by the Public Registry of Panama.
- Copy of the passport of the legal representative of the branch that will represent the airline before the Civil Aviation Authority in Panama.
- Specification and description of the air services to be performed by the airline (proposed routes, frequencies, itinerary, tariffs) and the air traffic rights to be exercised.
- Certified true copy of the Exploitation Certificate or equivalent issued by the air authorities from the airline's jurisdiction.
- If at the time of application the route or routes are being operated by other airlines, the applicant would have to provide the Civil Aviation Authority with an analysis or study of the potential clients (passengers and/or cargo) that the airline would provide services to.
- Certified true copy of the Operation Certificate or equivalent issued by the air authorities from the airline's jurisdiction.
- A copy of the (i) Technical Certification, (ii) Operations Manual, (iii) Flight Manual, (iv) Maintenance Programme, (iv) MEL (Minimum Equipment List) of the aircraft that will be operated, (v) OpsSpecs, (vi) Maintenance Contracts, (vii) Airport Security Plan to be carried out in Panama, (viii) the terms, conditions, limitations and specifications approved for the operation of the routes requested, (ix) Management Programme of Dangerous Goods, (x) Operational Manual, (xi) Security Plan.
- Copy of the contract with an FBO (Fixed Based Operator).
- Description of the aircraft (model, registration marks, etc) to be operated, stating the title pursuant to which the airline will operate the aircraft (if it is owned by the airline or leased).
- Description of the capacity of the aircraft and number of seats to be offered.
- Payment to Civil Aviation Authority of charges for the exploitation certificate (US\$500)

#### Civil Aviation Authority Clearance Certificate.

Except for item 12 of the list above, all documents issued in a foreign country must be duly legalised with the Apostille (1969 Hague Convention) or authenticated by the Consul of Panama at the place of issuance. Any documents issued and written in a language other than Spanish, must be accompanied by official translations into Spanish.

The evaluation process of the application for an Exploitation Certificate involves a public hearing according to local laws and subject to the provisions of international conventions in force.

In addition to the abovementioned requirements for the granting of an Exploitation Certificate, the airline shall pay the corresponding fees and charges set by the Civil Aviation Authority. In addition, pursuant to article 86 of Law 21 of 2003, the Civil Aviation Authority may require the posting of a bond for the purpose of securing the obligations of the airline to governmental authorities in Panama. The amount of such bond may be for a maximum of 30 per cent of the estimated taxes, fees and charges applicable to two months of operation of the airline.

Once the Civil Aviation Authority grants the exploitation and operation certificates, the airline should meet the following requirements before starting operations:

- evidence of having liability insurance;
- airline fares to be applied; and
- a bond or surety under the terms established by the regulations, unless an Air Transport Agreement or other rules exempt the airline from this requirement.

Please note that the Exploitation Certificate has a validity of three years, and may be extended indefinitely for the same period of time. The Operation Certificate is issued without an expiration date.

## 10 Is ownership of a local airline offering cabotage services restricted to national investors?

Yes, ownership of local airlines offering cabotage services is restricted to national investors. The law requires that at least 60 per cent of the issued and outstanding capital in a local airline offering cabotage services, be owned by Panamanians.

Executive Decree No. 542 of 24 November 2005 further explains that the issued capital of such local airlines must be represented by nominative shares in the name of Panamanians. The Executive Decree further provides that the effective control of the airline must be exercised by Panamanians, and for such purposes: (i) at least 60 per cent of the shares with the right to

vote must be nominative shares in the name of Panamanians, (ii) the right to vote of such shares must be effectively exercised by Panamanians, (iii) the board of directors or similar administrative body must be composed, in its majority, by Panamanians, and (iv) the domicile or principal place of business of the airline must be in Panama.

## **11 What insurance requirements apply for airlines formed or operating in your country?**

Airlines formed or operating in our country are required to hire insurance for liability to third parties on the ground, to crew members, to passengers, and in general, to any person who may suffer damage as a result of the airline's operation.

## **12 What are the primary national airlines in your country? Are they publicly or privately owned or a combination of both?**

The primary national airlines in our country are:

- Compañía Panameña de Aviación, SA (Copa Airlines), whose parent company Copa Holdings, SA is listed and publicly traded on the New York Stock Exchange). Copa Airlines is engaged in both cabotage and international air transport, and is the largest air carrier in Panama. Copa Airlines is based in Tocumen International Airport in Panama.
- Air Panama, which is privately owned, and is the second largest air carrier in Panama. Air Panama is engaged in both cabotage and international air transport, and is based in Marcos A Gelabert International Airport.

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## **Airport operations**

### **13 Are airline fares determined freely or are tariffs imposed on airlines for passenger fares?**

Airlines fares are determined freely by airlines.

### **14 Is the operation of airports handled by private or public bodies? Who are the specific operators of airports in your country?**

Law 23 of 29 January 2003 (which sets the regulatory framework for the administration of airports in Panama), provides that the government may incorporate companies, wholly owned by the government of Panama, for the purpose of operating airports, as is the case of Tocumen International Airport, the main and largest international airport in Panama.

There are other airports operated by the Civil Aviation Authority.

### **15 Do airport operators collect landing fees? What are their other primary sources of income?**

Yes, airport operators collect landing fees. Their primary sources of income are landing fees, lease rentals (for office space, commercial establishments, among others), concession fees for the sale of goods and services to airlines and passengers, among others.

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## **Code-sharing and frequent flyer programmes**

### **16 Who designates service providers at the airport?**

Generally, the airport's administrator designates service providers.

### **17 Are code-sharing and marketing arrangements permitted in your country?**

Yes, code-sharing and marketing arrangements are permitted in Panama.

## 18 What is required for them to be approved?

All code-sharing and other collaboration agreements between airlines must be previously authorised by the Civil Aviation Authority.

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## Airspace

### 19 Are frequent flyer programmes regulated in your country?

Frequent flyer programmes are not specifically regulated in Panama. General commercial and consumer protection laws apply to them.

### 20 Who regulates airspace in your country?

The Civil Aviation Authority is in charge of organising and regulating the airspace in Panama.

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## Merger control

### 21 Do airlines pay over-flight airspace fees?

Yes, airlines must pay over-flight airspace fees.

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## Aircraft registration

### 22 Do mergers, acquisitions or combinations of airlines in your country fall within the general merger control regime or are they subject to sectorial review? Which authority reviews combinations of airlines?

Yes, mergers and acquisitions of airlines fall within the general merger control regime.

As a threshold matter, it should be noted that there is no mandatory pre-merger control in Panama for the approval of mergers or other forms of business combinations. That said, Law 45 of 2007 (the Antitrust Law), establishes a voluntary notification process for potential mergers or economic concentrations with the Authority of Consumer Protection and Defence of Competition (the ACODECO). If prior verification for the economic concentration is sought and approved, the economic concentration cannot be subsequently challenged (anti-trust immunity).

However, airlines must notify the Civil Aviation Authority of any changes related to (i) the management and the control of the airlines, (ii) the stockholders and the percentage of stock ownership, (iii) amendments to the constitutional documents, or (iv) any amendment of the operations manuals or technical information.

Collaboration agreements between airlines must be pre-approved by the Civil Aviation Authority of Panama.

### 23 How are aircraft registered in your country?

Aircraft must be registered with the Aeronautics National Registry of the Civil Aviation Authority (which is the office in charge of registering licenses granted to aeronautical personnel, airworthiness certificates, operation and exploitation certificates, registration certificates, technical contracts, among others) in order to operate with the Panamanian nationality.

Aircraft must be operated by Panamanians (Panamanian entities with at least 51 per cent of its shares in the hands of Panamanian nationals, in the case of international transport, and at least 60 per cent of its shares in the hands of Panamanian nationals, in the case of cabotage). Alternatively, foreign owned aircraft may be registered in Panama provided they are leased to a Panamanian national who exercises exclusive control over the operation of the aircraft.

The following are the main requirements to be met for the registration of aircraft in Panama:

- Completing and filing an application form by owner or operator of aircraft.
- Submitting the bill of sale or title document evidencing ownership of aircraft in the name of owner. In case the owner of the aircraft does not meet the nationality test, a lease to a Panamanian national must be included. All documents must be translated to Spanish and subsequently recorded at the Public Registry of Panama.

- Appraisal of aircraft by an official of the Civil Aviation Authority. Payment of appraisal duties.

The Civil Aviation Authority charges for the performance of such appraisal, as follows:

VALUE OF THE AIRCRAFT ACCORDING TO APPRAISAL (US\$)	APPRAISAL FEES (per aircraft appraised)
Up to \$10,000	\$0.0050 per each \$1 or fraction thereof
From \$10,000.01 up to \$100,000	\$0.0033 per each \$1 or fraction thereof
From \$100,001 up to \$1,000,000	\$0.0030 per each \$1 or fraction thereof
From \$1,000,001 up to \$5 million	A flat fee of \$3,500
From \$5,000,001 up to \$10 million	A flat fee of \$7,500
From US\$10million .01 onwards	A flat fee of US\$10,000

- Certificate of airworthiness (to be issued by Civil Aviation Authority upon presentation of the certificate of airworthiness from a prior registry or manufacturer, and inspection of aircraft by inspectors appointed by Civil Aviation Authority).
- Evidence that aircraft is not registered anywhere else and that it is free from recorded liens.

In addition to filing evidence of title with the Civil Aviation Authority, the title in favour of the owner must also be recorded at the Public Registry of Panama. If the owner is a foreign entity, a lease agreement to a Panamanian entity (that meets the nationality requirements) for the operation of the aircraft must also be recorded at the Public Registry of Panama.

The Public Registry of Panama is a central office in which titles, mortgages and leases on aircraft are recorded, in order to make these documents effective against third parties.

Title and lease documents may be executed in English and governed by foreign law. However, the signatures must be authenticated by a notary public and legalised by a Panamanian consul or pursuant to the Apostille (1961 Hague Convention Abolishing the Requirements of Legalisation for Public Documents). To register documents at the Public Registry of Panama, the same must be translated to Spanish by an official translator in Panama and transcribed into notarial deed by a Panamanian notary public. Such notarial deed is then filed to the Public Registry of Panama to accomplish its recordation.

The duties applicable to the recordation of the title evidence at the Public Registry of Panama will be based on the value of the aircraft, as determined by an appraisal performed by officials of the Civil Aviation Authority (officials usually base their appraisal on blue book values and, in case of new aircraft, on the values quoted by the aircraft manufacturers), and are calculated at the rate of US\$250 for every US\$100,000 or fraction thereof, with a cap at US\$4,200, plus a fixed fee of US\$100.

Duties applicable to the recordation of leases at the Public Registry of Panama are calculated at the rate of US\$1.50 for every US\$1,000 or fraction thereof of the total lease rentals, plus a fixed fee of US\$100. In the case of aircraft leases that may be characterised as financial leases, the applicable recordation duties are calculated on the total lease rentals as follows: (i) US\$90 for the first US\$30,000 in lease rentals, and (ii) from US\$30,001 and up, US\$30 for each US\$10,000 or fraction thereof of lease rentals, plus a US\$20 flat duty.

## 24 How are the aircraft registered in your country encumbered?

Owners may grant mortgages over their Panamanian registered aircraft. In order for aircraft mortgages to be effective against third parties they must be recorded at the Public Registry of Panama. For such purposes, the agreement may be executed in English (with the signatures duly authenticated by a notary public and legalised by a Panamanian Consul or pursuant to the Apostille (1961 Hague Convention Abolishing the Requirements of Legalisation for Public Documents)), and translated to Spanish by an official translator in Panama. Such document would have to be further transcribed into notarial deed by a Panamanian notary public, and such notarial deed must then be filed with the Public Registry of Panama to accomplish its recordation.

The recordation duties applicable to aircraft mortgages are calculated at the rate of US\$2.50 for each US\$1,000 or fraction thereof of the total principal amount secured by the mortgage, with a cap at US\$51,250, plus a flat duty of US\$100.

Aircraft mortgages may also be registered with the Cape Town International Registry, following the rules of the Convention on International Interest in Mobile Equipment of 16 November 2001 of Cape Town and its Protocol.

## 25 What are common aircraft financing techniques used in your country?

Some of the most common aircraft financing techniques used in Panama are loans or syndicated loans which are secured by, inter alia, mortgages over the aircraft, shares pledges over the shares in the entity owner of the aircraft, security assignments (generally governed by foreign law), among others.

Another technique for aircraft financing is by means of financial leases. The financial lease would be registered at the Public Registry of Panama in order to become effective vis-à-vis third parties, as previously explained.

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## Data privacy

### 26 How do data privacy rules apply to airlines?

The political Constitution provides that all personal information and documents are confidential and inviolable, and such information may only be given to a competent authority pursuant to an order. This constitutional mandate is applied to all data, information and documents collected by airlines.

### 27 Has your country adopted rules regarding the advance delivery of PNR (passenger name record) information to authorities?

Yes, our country has adopted rules regarding the advance delivery of PNR information to authorities.

### 28 Are computer reservation systems (CRSS) regulated in your country? If so, how?

No, CRSS are not regulated in Panama. However, certain aviation services agreements have provisions related to conduct codes that govern the CRSS.





**Roy C Durling**  
Arias, Fábrega & Fábrega

Roy Carlos Durling joined Arias, Fábrega & Fábrega in 1991 and became a partner in 2001.

Mr Durling is a member of the firm's executive committee and head of the firm's business and corporate law group, where he brings his many years of experience in asset-based financing to advising international clients on their investments in Panama.

A versatile lawyer with skills in a wide range of corporate and commercial law areas, Mr Durling regularly counsels local and international clients in the fields of ship finance; mining, oil and gas; banking and finance; capital markets; corporations; doing business and multinationals in Panama; international business transactions; and aviation.

Mr Durling has a Juris Doctor from Cornell University and a Bachelor of Arts from Georgetown University.

Bar admission: Panama and New York.



**Sofía Cohen**  
Arias, Fábrega & Fábrega

Sofía J Cohen joined Arias, Fábrega & Fábrega in 1999 and became a partner in 2017.

Having served in the Civil Aviation Authority of Panama, Ms. Sofía J. Cohen brings an abundance of experience in corporation and regulatory matters for aviation and other transportation modes; transportation accident claims and aviation law to her legal practice in the aviation field.

2010:

- Chief Negotiator of the Delegation of the Republic of Panama at the ICAO Third Air Services Negotiation Conference (ICAN/2010);
- Chief Negotiator of the Air Services Agreement with United Arab Emirates
- Represented the Republic of Panama at the General Assembly of International Civil Aviation Organization (ICAO).

Then:

- 2009–2010: Deputy General Director of the Civil Aviation Authority of Panama;
- 1992–1994, 1999: Director of Air Transportation of the Civil Aviation Authority of Panama.
- 1990–1991: Assistant District Attorney.

Ms Cohen has a Master of Business Law from Latin American University of Science and Technology and an LLB from Santa Maria La Antigua University

### **Regulatory experience**

Sofía J Cohen heads the Regulatory Work Practice Group, serving the needs of clients affected by myriad highly technical, industry-specific and ever increasing business regulations.

Ms Cohen is well regarded for her in-depth knowledge of the laws affecting regulated industries and for her experience and skills in dealing with regulatory agencies.



## **Pilar Castillo**

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Pilar Castillo joined Arias, Fábrega & Fábrega in 2010 and became partner in 2017.

As an active member of ARIFA's aviation legal team, Ms Pilar Castillo represents leasing companies and investors in the most complex transactions, as COPA, the Panamanian airline, expands its fleet of international transport based in Tocumen International Airport.

Ms Castillo has an LLM from Fordham University and an LLB from Santa María La Antigua University.

In 2016, Ms Castillo was accepted as an IAWA member (International Aviation Women's Association).



Established in 1914, Arias, Fábrega & Fábrega has been at the forefront of the legal profession, advising leading international financial institutions and multinational corporations, as well as some of the largest companies in Panama, for over 100 years.

Our legal teams organised in 30 practice areas led by truly specialised lawyers, offer our clients comprehensive and integrated legal services with a multidisciplinary approach. Our legal practice covers capital markets, banking and finance, mergers and acquisitions, corporations, regulatory work, government contracts, trade, competition and antitrust, real estate, environmental matters, employment relations, trust and estate planning, litigation, taxation and intellectual property.

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