

A Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions

**Prepared by Latham & Watkins LLP
for the Pro Bono Institute**

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FOREWORD

This Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions goes back to an initiative of the Pro Bono Institute and Latham & Watkins to make information about global *pro bono* legal services accessible. The first edition of the survey published in 2005 covered 11 jurisdictions, mostly in Europe. The 2012 edition covers over 70 jurisdictions in Europe, Asia and the Pacific region, the Americas, Africa and the Middle East. As the interest in global *pro bono* has grown, and this survey with it, the conversation about global and international *pro bono* has shifted. Whereas the focus just a few years ago was on issues of permissibility and compatibility with the local legal system, the focus today is decidedly practical: *pro bono* has gained in acceptance and the question is how, not whether, *pro bono* representations can be undertaken. The developments have been profound and exciting.

The survey is part of an ongoing effort, shared by many law firms, organizations and corporate legal departments, to promote and stimulate the growth of *pro bono* representation globally and in international settings. Its purpose is to serve as an introductory resource for law firms, private practitioners, in-house lawyers and NGOs seeking to engage or learn more about the culture and provision of *pro bono* in their own or other countries. The chapters describe, for each jurisdiction, what access-to-justice or publicly funded legal aid programs exist, what unmet needs for legal representation remain, what perceptions or culture shape the discussion of *pro bono*, and what professional-conduct laws and rules provide the framework for *pro bono* representation.

In 2012, lawyers from Latham & Watkins' 30 offices around the globe have updated all prior chapters and added chapters covering nearly 30 new jurisdictions. We consider the survey to be a work in progress and welcome your feedback and comments to help us improve future versions (please direct your requests to: Gianni.DeStefano@lw.com). While we have worked, to the extent possible, with local counsel and NGOs to provide information that is both current and accurate, we note that the situation in many of the jurisdictions is fluid, and that errors and omissions are unavoidable. The survey is therefore a work in progress in this sense as well and we invite your comments.

We owe a debt of gratitude to Esther Lardent and Tammy Taylor of the Pro Bono Institute, with whom we have collaborated on this project. The survey is the effort of a large team, involving not only many lawyers at Latham & Watkins, but also local law firms and practitioners, in-house lawyers and NGOs around the globe. We are grateful for their contributions and their time.

August 2012

Gianni De Stefano and Wendy Atrokhov

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THANKS

The Pro Bono Institute and Latham & Watkins would like to thank the following contributors to this survey:

NGOs: Canadian Bar Association (Canada) – Free Legal Advice Centres (UK) – MANS (Montenegro) – Mizan Law Group for Human Rights (Jordan) – the Peace Institute (Slovenia) – PILnet (China) – ProVene foundation (Uruguay) – Public Interest Alliance Centre (Ireland) – Public Interest Law Clearing House of Victoria (Australia) – Red Pro Bono (Mexico)

Local counsels: AF Mpanga Advocates (Uganda) – ALMT Legal (India) – Altenburger (Switzerland) – Amna Akbar (Pakistan) – Vincent Berger (International) – Bech-Bruun (Denmark) – M. & M. Bomchil (Argentina) – Cariola Diez Perez-Cotapo (Chile) – Delphi (Sweden) – Dittmar & Indrenius (Finland) – Ehecopar (Peru) – Ferrere (Paraguay) – Gómez Pinzón Zuleta Abogados (Colombia) – Maria Khan (Pakistan) – Kinstellar (Czech Republic, Slovakia, Serbia) – Luthra & Luthra Law Offices (India) – Mannheimer Swartling (Sweden) – Marxer & Partner Rechtsanwältin (Liechtenstein) – McCarthy Tétrault LLP (Canada) – MMAKS Advocates (Uganda) – Morais Leitão, Galvão Teles, Soares da Silva (Portugal) – Picón Seguros y Servicios Financieros (Uruguay) – Naureen Shah (Pakistan) – Shalakany Law Office (Egypt) – Sharkawy & Sarhan (Egypt) – Sorainen (Latvia) – Stibbe (Belgium, Luxembourg, the Netherlands) – Szecskay Attorneys at Law (Hungary) – Tilleke & Gibbins (Thailand) – Zammit & Associates (Malta)

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Last, but not least, each individual, both in law firms and legal departments, active in *pro bono* representations to address the unmet legal needs of those with limited means.

PRO BONO PRACTICES AND OPPORTUNITIES IN JAPAN

Providing legal assistance to the indigent is an important value in the Japanese legal tradition. Yet, compared to the United States and certain other countries, there is a different understanding and approach to fulfilling this public interest component of the legal profession. In Japan, there is no statutory mention of the term “*pro bono*.” Instead, the public interest cause is expressed through terms such as “human rights” and “social justice.”¹ These ideals are specifically set forth as the mission of each and every practicing attorney.²

Legal aid has been, and remains, the traditional and primary means of providing legal services to the indigent in Japan. Bar associations and the government play a large role in administering the legal aid system. In addition to legal aid, certain large multinational law firms in Japan, both foreign and domestic, engage in a limited amount of *pro bono* work.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN JAPAN

A. The Legal Profession

According to a survey conducted by Japan Federation of Bar Associations (the “**JFBA**”)³, as of March 2011, there were 30,485 lawyers (*bengoshi*) in Japan, 5,115 of which are female. Geographical distribution of lawyers is skewed: 15,076 lawyers are registered in Tokyo, making it one attorney for 908 residents, while 26 out of 47 prefectures have one lawyer for more than 10,000 residents; and 2,158 lawyers work in Japan’s 10 biggest law firms, while 8,114 are solo practitioners. The number of in-house lawyers has sharply increased over the past several years, from 122 in 2005 to 588 in 2011. Other than the lawyers (*bengoshi*) described above, there are 359 registered foreign lawyers (*gaikokuho-jimu-bengoshi*),⁴ 2,850 judges and 1,816 prosecutors employed by national, prefectural or other governmental subdivisions.

At the most basic level, the Japanese Constitution, which was adopted in 1946, guarantees the protection of certain fundamental human rights, such as freedom of expression and freedom of religious belief. In addition, the Attorney Act, enacted in 1949, provides that the mission of lawyers (*bengoshi*) in Japan must include the protection of fundamental human rights and the realization of social justice. The JFBA was established in 1949 pursuant to the Attorney Act as the controlling body overseeing the nation’s attorneys, instead of the government’s Ministry of Justice, freeing the profession from governmental influence and potential conflicts of interest.⁵ As the national bar association, the JFBA has self-regulatory powers, such as the ability to formulate its own rules and regulations and the power to discipline its members.⁶ This autonomy enables the JFBA to achieve its two-fold objectives of governing matters related to the supervision and guidance of its members,⁷ and acting “as a source of protection of fundamental human rights and the realization of social justice.”⁸

The independence of the JFBA, protection of fundamental human rights, and achievement of social justice continue to be the core ideals under which practicing attorneys in Japan operate today.

B. Legal Aid

Currently, state-sponsored legal aid is provided through Japan Legal Support Center (“**JLSC**”), which was established in 2004 under the Comprehensive Legal Support Act, which was also enacted in 2004.⁹

¹ Attorney Act, Law No. 205 of 1949, art. 1, no. 1., available at <http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=02&re=02&new=1>. “An attorney is entrusted with the mission of protecting fundamental human rights and achieving social justice.”

² *Id.*

³ See White Paper on Attorneys issued by JFBA, <http://www.nichibenren.or.jp/library/en/about/data/WhitePaper2011.pdf> (last visited Jun. 27, 2012)

⁴ Registered foreign lawyers (*gaikokuho-jimu-bengoshi*) are lawyers qualified outside Japan who have practiced for three or more years outside Japan and have satisfied additional conditions, including registration with the JFBA.

⁵ See JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/about/us.html> (last visited Jun. 10, 2012).

⁶ See JAPAN FEDERATION OF BAR ASSOCIATIONS, http://www.nichibenren.or.jp/en/about/judicial_system.html (last visited Jun. 10, 2012). Members of the Bar include all licensed attorneys from any of the 52 local bar associations throughout the country.

⁷ See Attorney Act, Law No. 205 of 1949, art. 45, no. 2., available at <http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=02&re=02&new=1>.

⁸ *Articles of Association*, JAPAN FEDERATION OF BAR ASSOCIATIONS, available at <http://www.nichibenren.or.jp/library/en/about/data/articles.pdf>.

⁹ See JAPAN LEGAL SUPPORT CENTER, http://www.houterasu.or.jp/en/about_jlsc/history.html (last visited Jun. 27, 2012).

The objective of legal aid under the Comprehensive Legal Support Act is to create a society in which the provision of information and support necessary to settle civil and criminal disputes can be received nationwide, through (i) improved access to information, (ii) development of civil legal aid, (iii) securing systems of court-appointed defense counsel and court-appointed attorneys for victims, (iv) improvement of assistance to victims, and (v) strengthening coordination between, *inter alia*, the national government, local governments, local bar associations, JFBA and lawyers.¹⁰ The Comprehensive Legal Support Act stipulates that it is the responsibility of the national government to establish and implement comprehensive measures for the implementation of legal support and systems, observing the objectives thereof, and to provide capital to the JLSC.¹¹ The Comprehensive Legal Support Act provides rules and regulations for the administration of the JLSC, and delegates to the Japanese Minister of Justice the responsibility for appointing the president of JLSC. The various activities of the Center are generally aimed at expanding access to legal services, including comprehensive legal aid services in both civil and criminal matters.¹²

As to civil legal aid, the JLSC offers support to indigents through legal consulting without charge, loans for attorney's fees for preparation of documents to be submitted to the court, and loans for attorney's fees for legal representation in civil trials, including family-related cases and administrative cases. Loans extended by the JLSC for attorney's fees are ultimately forgiven if the recipient is a welfare recipient at the time of application and remains a welfare recipient at the repayment date. Foreign nationals lawfully residing in Japan may also receive assistance through the civil legal aid system.¹³

As to criminal legal aid, prior to indictment, suspects under detention for offences punishable by death, life imprisonment, or imprisonment for a term longer than 3 years who are indigent are entitled to request the appointment of court-appointed defense counsel.¹⁴ If indicted, regardless of the gravity of the alleged offence, the defendant is entitled to court-appointed defense counsel if he/she is indigent.¹⁵ A defense counsel appointed prior to indictment will generally be reappointed as trial counsel.¹⁶ If a defendant is indicted for an offence punishable by death, life imprisonment or imprisonment for a term longer than three years and there is no defense counsel, a court will appoint a defense counsel, regardless of whether it is requested by the defendant.¹⁷ In each of the foregoing cases, all legal fees and expenses for the court-appointed defense counsel are paid from public funds through the JLSC. Foreign nationals may also receive assistance through the criminal legal aid system regardless of their status of residence.¹⁸

According to a report published by the JLSC in 2011, the number of civil legal aid cases has consistently increased and the figure has doubled during the last 5 years.¹⁹ Because the requirements for asking for court-appointed counsel prior to indictment were relaxed in 2009, appointment of court-appointed counsel prior to indictment has also increased.²⁰

C. Additional Aid Provided by JFBA and Local Bar Associations

Certain types of legal services for the indigent are not covered by the JLSC. Thus, JFBA and local bar associations still play important roles in providing legal services in such areas.

The duty attorney system is one of the legal services provided by JFBA and the local bar associations. This system was created to protect the rights of criminal suspects prior to indictment, who are detained

¹⁰ See Comprehensive Legal Support Act, arts. 2-7, English translation of which is available at <http://www.houterasu.or.jp/cont/100167450.pdf> (last visited Jun. 27, 2012)

¹¹ *Id.* at art. 8.

¹² See http://www.houterasu.or.jp/en/about_jlsc/operations.html (last visited Jun. 27, 2012)

¹³ See *supra* n.9 (in Japanese only),

http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html (last visited Jun. 27, 2012)

¹⁴ See CODE OF CRIMINAL PROCEDURE art. 37-2 (in Japanese only), <http://law.e-gov.go.jp/htmldata/S23/S23HO131.html> (last visited Jun. 27, 2012)

¹⁵ *Id.* at art. 36.

¹⁶ See JAPAN LEGAL SUPPORT CENTER (in Japanese only), <http://www.houterasu.or.jp/cont/100180054.pdf> (last visited Jun. 27, 2012)

¹⁷ See *supra* n.14.

¹⁸ See JAPAN LEGAL SUPPORT CENTER (in Japanese only),

http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/kokusenbengo/index.html (last visited June 27, 2012)

¹⁹ See JAPAN LEGAL SUPPORT CENTER, *Operation report*, (in Japanese only), <http://www.houterasu.or.jp/cont/100184333.pdf> (last visited Jun. 27, 2012)

²⁰ *Id.*

and not provided with, or otherwise eligible under, the legal aid regime to receive assistance from a court-appointed attorney. The goal of this system is to ensure that those detained are sufficiently informed of their rights. When requested by a suspect under detention, the duty attorney, who is a defense attorney appointed by a local bar association, will immediately visit the suspect's place of detention and attend suspect interviews in order to inform the suspect of his or her rights, including, for example, the right to remain silent and the right to deny depositions drafted by investigators. JFBA provides duty attorney services to criminal suspects, regardless of nationality or visa status of such suspect. If the suspect is a foreign national, an interpreter accompanies the attorney. The first consultation with a duty attorney is free of charge. Interpreting fees are likewise free and borne by the local bar associations.²¹ If a suspect wishes to receive further assistance, the suspect may appoint the duty counsel as his or her defense attorney at his or her own expense.²²

There are some areas of Japan where the number of attorneys is extremely low relative to the population. While the JLSC provides services in some of these areas, the JFBA, local bar associations, and regional federations of bar associations also operate JFBA and bar-funded law offices in rural areas that may not otherwise be covered. In addition, in June 2008, JFBA began providing economic support aimed at encouraging attorneys to settle in areas with a shortage of attorneys.²³

II. *PRO BONO* IN JAPAN: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

Although the term *pro bono* is not yet widely used in Japan, it has been Japanese legal tradition to value activities towards public interest, including legal assistance to the indigent. Practicing attorneys in Japan traditionally provided *pro bono* work such as duty attorney, free legal counseling, activities to protect children's rights, activities to promote equality of both sexes and activities to promote foreigners' rights.²⁴

The primary channels through which *pro bono* (whether or not so called) opportunities can be found in Japan are the local bar associations. The 52 local bar associations in Japan typically have committees in charge of various areas of *pro bono* work. Practicing attorneys are required to register with one of the local bar associations,²⁵ and the local bar associations usually encourage practicing attorneys to participate in *pro bono* work. In some of the more progressive districts, such as Tokyo, and in 8 of the 52 other districts, local bar associations have adopted rules requiring their members to perform mandatory public interest service.²⁶ In other regions, practicing attorneys typically voluntarily participate in *pro bono* activities under arrangement by local bar associations.²⁷

For instance, the Daini Tokyo Bar Association, one of the three local bar associations in Tokyo, with some 4,000 members, compels its members to perform public interest activities, such as civil legal aid work or acting as court-appointed or duty attorneys for criminal suspects and defendants, at least once a year. If the attorney does not comply, he or she can face consequences, including admonition, publication of their names as noncompliers, and paying up to ¥50,000 in penalties per year.²⁸

Certain local bar associations expressly define what kind of activities qualify as public interest activities. Bar associations that define public interest activities more narrowly and specifically are generally more effective than those that simply define them as "activities done without asking for

²¹ JFBA collects special dues from its members in order to financially support this system. See JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/about/activities/justice.html> (last visited Jun. 10, 2012).

²² See JAPAN FEDERATION OF BAR ASSOCIATIONS (in Japanese only), http://www.nichibenren.or.jp/activity/criminal/reforming/kokusen_touban.html (last visited Jun. 27, 2012).

²³ See *supra* n.21.

²⁴ See *Brochure* (in Japanese only), <http://www.moj.go.jp/content/000077622.pdf> (last visited Jun. 27, 2012)

²⁵ See JFBA Attorney Act, art.8, <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=01&dn=1&co=01&x=0&y=0&ky=%E5%BC%81%E8%AD%B7%E5%A3%AB%E6%B3%95&page=14> (last visited Jun. 27, 2012).

²⁶ For examples, see DAINI TOKYO BAR ASSOCIATION (in Japanese only), <http://niben.jp/admission/public.html> (last visited Jun. 27, 2012) and TOKYO BAR ASSOCIATION (in Japanese only), http://www.toben.or.jp/message/libra/pdf/2004_05/2004_05_04.pdf (last visited Jun. 27, 2012).

²⁷ See, e.g., OKINAWA BAR ASSOCIATION, http://www.okiben.org/modules/public/index.php?content_id=27 (last visited Jun. 27, 2012).

²⁸ See DAINI TOKYO BAR ASSOCIATION, *Rules regarding Public Interest Activities of Members* (in Japanese only), <http://niben.jp/admission/public/kisoku2.pdf> (last visited Jun. 27, 2012).

payment.” For example, the Daini Tokyo Bar Association defines, among others, activities as a duty attorney, certain legal consulting organized by the local bar association, and activities for indigents and vulnerable groups as public interest activities.²⁹ Activities at committees of local bar associations are also commonly regarded as public interest activities,³⁰ although some bar associations weigh such committee activities more heavily than public interest activities in general.³¹ In effect, the range of the activities considered as public interest activities in Japan is often broader in scope than activities understood to be “*pro bono* activities” in the United States and certain other countries.

The JFBA and local bar associations are also generally open to expanding their areas of public interest activities. For example, the Daini Tokyo Bar Association has set up a counseling service to handle children’s problems through which individuals can seek advice on issues, such as bullying and corporal punishment. Among the attorneys actively contributing to these local bar association-led, public interest activities are those from large law firms, and large law firms often publicize their participation in such activities.³²

In addition to local bar association activity, a number of law firms have also contributed their services to the community on a *pro bono* basis. Because there are still many cases that fall outside of local bar association activities and JLSC-provided services, *pro bono* services by private law firms are generally aimed at filling this gap. For example, some multinational Western law firms with local branch offices in Japan have also engaged in public interest and *pro bono* services, including fundraising campaigns for charitable causes, working with humanitarian organizations, such as Not For Sale and Ashoka,³³ and supporting families affected by natural disasters.³⁴

B. Barriers To *Pro Bono* Work And Other Considerations

Providing *pro bono* work in Japan is generally unregulated. For example, lawyers who provide services for free are not required to pay consumption taxes. Similarly, there is no requirement for a lawyer to charge minimum tariffs.

However, there are certain barriers to *pro bono* work in Japan. Firstly, although a few *pro bono* clearinghouses were recently established in Japan (such as Service Grant,³⁵ Probonet,³⁶ and *Nimai-me-no-Meishi*³⁷), currently none of them match law firms and lawyers with *pro bono* clients. This seems to be because *pro bono* work has been traditionally arranged by JFBA and local bar associations, and demand for such a match was relatively low. As a result, compared to certain other countries it may often be difficult for practicing attorneys and law firms to find *pro bono* opportunities in Japan outside of arrangements by JFBA and local bar associations.

Secondly, only lawyers admitted in Japan may practice law in Japan (with the exception of registered foreign lawyers who may practice the law of their home jurisdiction). Because *pro bono* work in Japan usually involves Japanese law, it is generally difficult for the registered foreign lawyers, not to mention unregistered attorneys, to participate in *pro bono* work in Japan.

C. *Pro Bono* Resources

JFBA and local bar associations are currently the biggest sources for *pro bono* opportunities. Although a few *pro bono* clearinghouses were recently established in Japan, they currently focus on matching nonlawyers with *pro bono* clients.

A list of organizations that interested attorneys and nongovernmental organizations may contact to become involved includes the following:

²⁹ *Id.* at art. 2.

³⁰ *Id.*

³¹ See TOKYO BAR ASSOCIATION (in Japanese only), http://www.toben.or.jp/message/libra/pdf/2006_09/p24p25_kouekikatudou.pdf (last visited Jun. 28, 2012)

³² See, e.g., Nagashima Ohno & Tsunematsu, <http://www.noandt.com/en/practice/probono.php> (last visited Jun. 10, 2012) and Mori Hamada & Matsumoto, <http://www.mhmjapan.com/en/probono/index.html> (last visited Jun. 10, 2012).

³³ <http://www.lw.com/admin/Upload/Documents/2011-Pro-Bono-Annual-Review.pdf> (last visited Jun. 10, 2012).

³⁴ *Id.*

³⁵ <http://www.servicegrant.or.jp/>

³⁶ <http://www.probonet.jp/>

³⁷ <http://nimai-me.com/>

- Japan Federation of Bar Associations
 - Address: 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo, Japan
Phone: +81.3.3580.9741 Fax: +81.3.3580.9840
Website: <http://www.nichibenren.or.jp/en/>
- Tokyo Bar Association
 - Address: 6F Bar Association Bldg., 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo, Japan 100-0013 Phone: +81.3.3581.2201
Fax: +81.3.3581.0865
Website: <http://www.toben.or.jp/english/>
- Dai-ichi Tokyo Bar Association (Japanese only)
 - Website: <http://www.ichiben.or.jp/>
- Daini Tokyo Bar Association
 - Address: 9F, 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo, Japan 100-0013 Phone: +81.3.3581.3338
Website: <http://niben.jp/english/index.html>
- Osaka Bar Association
 - Phone: +81.6.6364.0251
Website: <http://www.osakaben.or.jp/web/english/index.php>
- Aichi Bar Association (Japanese only): <http://www.aiben.jp/>
- Japan Association for Refugees
 - Phone: +81.3.5379.6001 Fax: +81.3.5379.6002
Website: <http://www.refugee.or.jp/en/>
Email: info@refugee.or.jp
- Service Grant (Japanese only): <http://www.servicegrant.or.jp/>
- Probonet (Japanese only): <http://www.probonet.jp/>
- *Nimai-me-no-Meishi* (Japanese only): <http://nimai.me.com/>

III. CONCLUSION

The legal aid and other public interest activities led by JFBA and local bar associations function as the primary drivers of *pro bono* activities in Japan, and meet the need for free legal services for a substantial portion of Japan's indigent population. However, there are many matters falling outside of the areas covered by JFBA, JLSC and local bar associations where law firms can meaningfully contribute through their *pro bono* efforts to fill the gap. In addition, the recently established *pro bono* clearinghouses may eventually expand their coverage to matching lawyers with *pro bono* clients. While regulations on foreign lawyers restrict the conduct of *pro bono* activities which involve Japanese law to lawyers qualified in Japan, there are many ways that foreign lawyers and nonlawyers can become involved in *pro bono* work in Japan and have a meaningful and positive impact.

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