

# **A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions**

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

**March 2016**



## Table of Contents

	Page
Foreword .....	1
Disclaimer.....	2
Thanks .....	3
Access to Justice – An Introduction .....	5
Legal Professional Privilege in the European Union.....	7
Pro Bono Practices and Opportunities in International Law .....	11
Pro Bono Practices and Opportunities in Angola.....	19
Pro Bono Practices and Opportunities in Argentina .....	27
Pro Bono Practices and Opportunities in the Republic of Armenia .....	35
Pro Bono Practices and Opportunities in Australia.....	41
Pro Bono Practices and Opportunities in Austria.....	54
Pro Bono Practices and Opportunities in Azerbaijan.....	62
Pro Bono Practices and Opportunities in Belarus.....	67
Pro Bono Practices and Opportunities in Belgium.....	72
Pro Bono Practices and Opportunities in Bolivia .....	84
Pro Bono Practices and Opportunities in Brazil.....	92
Pro Bono Practices and Opportunities in Bulgaria.....	103
Pro Bono Practices and Opportunities in Canada .....	112
Pro Bono Practices and Opportunities in Chile.....	123
Pro Bono Practices and Opportunities in China.....	131
Pro Bono Practices and Opportunities in Colombia.....	141
Pro Bono Practices and Opportunities in Costa Rica .....	147
Pro Bono Practices and Opportunities in the Czech Republic.....	152
Pro Bono Practices and Opportunities in Denmark .....	162
Pro Bono Practices and Opportunities in the Dominican Republic.....	171
Pro Bono Practices and Opportunities in Ecuador .....	175
Pro Bono Practices and Opportunities in El Salvador .....	180
Pro Bono Practices and Opportunities in England & Wales .....	183
Pro Bono Practices and Opportunities in Finland .....	193
Pro Bono Practices and Opportunities in France.....	201
Pro Bono Practices and Opportunities in Georgia .....	212
Pro Bono Practices and Opportunities in Germany .....	217



Pro Bono Practices and Opportunities in Ghana .....	228
Pro Bono Practices and Opportunities in Greece .....	235
Pro Bono Practices and Opportunities in Guatemala .....	246
Pro Bono Practices and Opportunities in Haiti.....	255
Pro Bono Practices and Opportunities in Hong Kong.....	263
Pro Bono Practices and Opportunities in Hungary .....	276
Pro Bono Practices and Opportunities in India .....	286
Pro Bono Practices and Opportunities in Indonesia .....	297
Pro Bono Practices and Opportunities in the Republic of Ireland.....	306
Pro Bono Practices and Opportunities in Northern Ireland.....	316
Pro Bono Practices and Opportunities in Israel .....	325
Pro Bono Practices and Opportunities in Italy .....	335
Pro Bono Practices and Opportunities in Japan .....	343
Pro Bono Practices and Opportunities in Jordan .....	354
Pro Bono Practices and Opportunities in Kenya.....	363
Pro Bono Practices and Opportunities in Latvia .....	373
Pro Bono Practices and Opportunities in Liechtenstein.....	381
Pro Bono Practices and Opportunities in Lithuania .....	386
Pro Bono Practices and Opportunities in Luxembourg.....	393
Pro Bono Practices and Opportunities in Malaysia.....	403
Pro Bono Practices and Opportunities in Malta .....	410
Pro Bono Practices and Opportunities in Montenegro.....	419
Pro Bono Practices and Opportunities in Morocco .....	426
Pro Bono Practices and Opportunities in the Netherlands .....	434
Pro Bono Practices and Opportunities in New Zealand.....	442
Pro Bono Practices and Opportunities in Nicaragua .....	449
Pro Bono Practices and Opportunities in Nigeria .....	452
Pro Bono Practices and Opportunities in Norway.....	460
Pro Bono Practices and Opportunities in Pakistan .....	471
Pro Bono Practices and Opportunities in Panama .....	480
Pro Bono Practices and Opportunities in Paraguay .....	484
Pro Bono Practices and Opportunities in Peru .....	489
Pro Bono Practices and Opportunities in the Philippines .....	495
Pro Bono Practices and Opportunities in Poland.....	506
Pro Bono Practices and Opportunities in Portugal .....	517
Pro Bono Practices and Opportunities in Romania .....	526



Pro Bono Practices and Opportunities in the Russian Federation.....	539
Pro Bono Practices and Opportunities in Saudi Arabia .....	548
Pro Bono Practices and Opportunities in Scotland .....	552
Pro Bono Practices and Opportunities in Serbia .....	563
Pro Bono Practices and Opportunities in Singapore .....	575
Pro Bono Practices and Opportunities in Slovakia .....	585
Pro Bono Practices and Opportunities in Slovenia .....	591
Pro Bono Practices and Opportunities in South Africa .....	598
Pro Bono Practices and Opportunities in South Korea.....	606
Pro Bono Practices and Opportunities in Spain.....	614
Pro Bono Practices and Opportunities in Sweden.....	622
Pro Bono Practices and Opportunities in Switzerland .....	630
Pro Bono Practices and Opportunities in Taiwan, R.O.C. ....	637
Pro Bono Practices and Opportunities in Thailand.....	646
Pro Bono Practices and Opportunities in Turkey.....	654
Pro Bono Practices and Opportunities in Uganda .....	663
Pro Bono Practices and Opportunities in Ukraine .....	671
Pro Bono Practices and Opportunities in the United Arab Emirates .....	680
Pro Bono Practices and Opportunities in the United States of America .....	687
Pro Bono Practices and Opportunities in Uruguay .....	697
Pro Bono Practices and Opportunities in Venezuela.....	702
Pro Bono Practices and Opportunities in Vietnam.....	708
Summary .....	716



## Foreword

This Survey of Pro Bono Practices and Opportunities in 84 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 2016 edition covers over 84 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 has shifted from issues surrounding permissibility and compatibility with the local legal system to more practical considerations regarding 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.

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. We consider the survey to be a work in progress and welcome your feedback and comments to help us improve future versions. We owe a debt of gratitude to Tammy Taylor and the late Esther Lardent of the Pro Bono Institute, with whom we have collaborated on this project.



## Disclaimer

The information contained in this survey is provided for general informational purposes only and does not constitute legal advice. These materials are intended, but not promised or guaranteed, to be current, correct, complete, or up-to-date. Transmission of the information is not intended to create, and the receipt does not constitute, an attorney-client relationship between the sender and the receiver. No user of this information should act or refrain from acting on the basis of information contained herein without seeking legal advice from counsel in the relevant jurisdiction.

This survey contains many hyperlinks to resources on the Internet. These Internet sites are not under the control of Latham & Watkins and the Pro Bono Institute and Latham & Watkins and the Pro Bono Institute are not responsible for the contents of any Internet site or any link contained on such site. These links are provided as a convenience to help you identify and locate Internet resources that may be of interest, and the inclusion of any hyperlink does not imply any recommendation, approval or endorsement by Latham & Watkins or the Pro Bono Institute of the site.



## Thanks

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

**NGOs:** Canadian Bar Association (Canada), Pro Bono Foundation (Chile), PILNet (China), Mizan Law Group for Human Rights (Jordan), Centrum Pro Bono (Poland), Center of International Law and Justice (Ukraine), Proc. Ana Laura Benavidez – Esalco (Uruguay), Fundación Pro Bono Venezuela – ProVene (Venezuela), TrustLaw, The Thompson Reuters Foundation.

**In-house legal counsel:** Caterpillar Inc., Hewlett Packard Enterprise Co., Merck & Co., Inc., Starbucks Corporation, Syngenta.

**Local counsels:** Vieira de Almeida & Associados (Angola), M. & M. Bomchil Abogados (Argentina), Dialog Law Firm (Armenia), Schönherr rechtsanwälte gmbh (Austria), Grata Law Firm (Azerbaijan), Sbh Partners (Belarus), C.R. & F. Rojas (Bolivia), Djingov, Gouginski, Kyutchukov & Velichkov (Bulgaria), McCarthy Tétrault LLP (Canada), Cariola Diez Perez-Cotapos & Cía. Ltda (Chile), Gómez-Pinzón Zuleta Abogados (Colombia), Havel, Holásek & Partners (the Czech Republic), Kinstellar (the Czech Republic, Serbia and Slovakia), Bech-Bruun (Denmark), Fundación Fabián Ponce Ordóñez (Ecuador), Arias & Muñoz (El Salvador, Guatemala, Nicaragua), Dittmar & Indrenius (Finland), BGI Law Firm (Georgia), Szecskay Attorneys at Law (Hungary), Luthra & Luthra (India), TS & Partners (Indonesia), Yigal Arnon and Co. (Israel), Kaplan & Stratton (Kenya), Sorainen (Latvia), Lampert & Partner (Liechtenstein), Stibbe (Luxembourg and the Netherlands), Zaid Ibrahim & Co. (Malaysia), CSB Advocates (Malta), CMS Reich-Rohrwig Hainz (Montenegro), Benzakour Law Firm (Morocco), Bell Gully (New Zealand), Templars (Nigeria), Wiersholm (Norway), Ferrere Abogados (Paraguay), Estudio Echeopar (Peru), Picazo Buyco Tan Fider & Santos (the Philippines), Leroy și Asociații SCA (Romania), Shepherd and Wedderburn LLP (Scotland), Janković Popović Mitić (Serbia), Dr. Neža Kogovšek Šalamon (Slovenia), Altenburger (Switzerland), Staehelin Olano Advokatur und Notariat (Switzerland), Lee Tsai & Partners (Taiwan), Weerawong, Chinnavat & Peangpanor Ltd. (Thailand), Pekin & Pekin (Turkey), MMAKS Advocates (Uganda), Avellum (Ukraine), Victoria Picón (Uruguay), Jiménez de Aréchaga, Viana & Brause (Uruguay), Vietnam International Law Firm (Vietnam)

Lead Editorial Team from Latham & Watkins LLP:

Alex Cosgrove, Gregor MacDonald, Lene Malthasen, David Ziyambi

Other contributing staff and attorneys from the 34 offices of Latham & Watkins LLP:

Christian Adams - Kazuko Ali - Harrison Armstrong - Ori Assa - Wendy Atrokhov - Alicia Back - Matthew Baumann - Timur Bayramov - Scott Becker - Juliete Boullé - Nada Boutros - Natalia Cabeza - Claire Carrega - Emily Chen - Boin Cheong - Alyssa Chi - Chloé Cluzel - Fernando Colomina - Jessica Corr - Rob Davidson - Alessia De Coppi - Manuel Deó - Antonio Distefano - Ignacio Dominguez - Samuel Duimovich - Meera El-Farhan - Kelsey Emms - James Erselius - Rosa Espín - Daphne Fernandez-Corugedo - Mathias Fischer - Margaret Fong - Aaron Friberg - Yana Georgieva - Tiziana Germinario - Sarah Ghulamhussain - Andy Halliwell - Alicia Handy - Mathias Hansen - Tiana Hertel - Trinh Hoang - Junren How - Catherine Hui - Dagmara Jastrzebska - Miles Jennings - Dhiraj Joseph - Samuel Kempsey - Edward Kempson - Joseph Kimberling - Richard Kitchen - Fabian Kunkel - William Lam - Eun-Kyung Lee - David Lee - Lore Leitner - Stephen Levy - Jennifer Lindsay - Anne Loehner - Giorgia Lugli - Clémence Mace de Gastines - Laia Marco - Abigail Marcus - Javier Martí-Fluxá - Deeptha Mathavan - Derek McKinley - James McNaught - Malorie Medellin - Vladimir Mikhailovsky - Howe Min Wee - Iqbal Mohsin - Rita Motta - Rebecca Mulvaney - Linzi Mutter - Heather Newman - Bairta Ochirova - Martha O'Connor - Olexiy Oleshchuk - Hector Paez - Alexandra Panaite - Stefan Papastefanou - Sara Pedrotti - Jamie Petenko - Janka Petocz - Olga Ponomarenko - Jonathan Pranzl - Ivan Rabanillo - Ryan Reiffert - Gonçalo Rosas - Inga Ruck - Marcela Ruenes - Mauro Saccani - Julia Samsó - Terese Saplys - Styliani Sarma - Suzana Sava-Montanari - Andreas Scordamaglia-Tousis - Sam Semey - Daniel Senger - Michael Seringhaus - Leticia Sitges - Natalie Skacelova - Hendrik Smit - Andrew Tai - Taiga Takahashi - Marta Talarek - Tommy Tan - Sylvia Taylor - Hayden Teo - Kelly Thomason-Self - Ben Thompson - Tania Toh - Graham Valenta - Stijn van Osch - Lilia Vazova - Maria Pilar Vilanueva - Kate Watlington - Laura Wimmer - Kaiyan Yeo - Sung-Kyung Yi - Eric Yiu



**LATHAM & WATKINS**<sup>LLP</sup>

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.



## Access to Justice – An Introduction

Access to justice is a vital human right and abuses of that right are a common subject for pro bono lawyers. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948 (the “**Declaration**”) includes several articles that highlight the importance of access to justice.<sup>1</sup> Article 8 of the Declaration states that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Article 10 of the Declaration states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him.” Accordingly, barriers to a fair and public hearing or to an effective remedy are contrary to human rights as described in the Declaration.

The principle of access to justice for all under international law was further strengthened on March 23, 1976 when the International Covenant on Civil and Political Rights (the “**Covenant**”) entered into force.<sup>2</sup> Article 2 of the Covenant states that each party to it will “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” The Covenant also includes the obligation to “ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State.”

The United Nations Development Program has identified these and other international agreements or declarations as components of a normative framework for access to justice in international law.<sup>3</sup> In addition to these agreements and declarations, there are also various regional human rights systems that have a history of recognizing the right to access justice.

English law has recognized the right of equal access to justice since 1495<sup>4</sup> when Parliament recognized that equality could not exist without reducing the economic barriers to justice faced by poor litigants. On the European Continent, different regions and cities began providing the services of counsel for free during the 15<sup>th</sup> and 16<sup>th</sup> centuries<sup>5</sup>, largely inspired by church courts in the Middle Ages that did not charge court costs.<sup>6</sup> In the 19<sup>th</sup> century, the right to counsel was enacted through various European national legislatures.

In 1979, the European Court of Human Rights held in *Airey v. Ireland*<sup>7</sup>, that Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (which enshrines the right to a fair trial) sometimes:

“compel[s] the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the

---

<sup>1</sup> The Universal Declaration of Human Rights, available at <http://www.un.org/en/documents/udhr/index.shtml#a10> (last visited on September 4, 2015).

<sup>2</sup> International Covenant on Civil and Political Rights, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last visited on September 4, 2015).

<sup>3</sup> UN Development Program, “Programming for Justice: Access for All,” (2005) at 45–52, available at [http://www.unicef.org/ceecis/Programming\\_for\\_Justice.pdf](http://www.unicef.org/ceecis/Programming_for_Justice.pdf) (last visited on September 4, 2015).

<sup>4</sup> 11 Hen. 7, ch. 12.

<sup>5</sup> Johnson, Jr., Earl, The Right to Counsel in Civil Cases: An International Perspective, 19 Loy. L.A. L. Rev. 341, 342 n.5 (1986).

<sup>6</sup> Klauser, Karl August & Riegert, Robert A., Legal Assistance in the Federal Republic of Germany, 20 Buff. L. Rev. 583, 584 (1971).

<sup>7</sup> 32 Eur. Ct. H.R. (ser. A) (1979).



domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case.”<sup>8</sup>

Despite all of these developments, the right to counsel provided through government legal aid is not recognized in all jurisdictions and progress still needs to be made before it can be considered an international law norm. Where it is recognized, a state’s universal access to justice program typically takes the form of the provision of *legal aid* that assists with the costs associated with legal representation and court costs. In practice, however, legal aid systems can suffer severe limitations due to budgetary constraints. This is evident even in those jurisdictions that are the most supportive of the right of access to justice. The high-profile concerns raised by The Law Society of England and Wales to the proposed cuts to the provision of legal aid in the United Kingdom<sup>9</sup> are a clear example of that. Legal aid systems are also only effective for those who are sufficiently well informed regarding the availability of these services.

In many cases, including in the US, direct support for the costs of legal representation is provided only where the relevant individual faces incarceration. Access to justice for those facing the loss of other important civil and economic rights is thus imperiled.

Where access to justice is constrained or the provision of legal aid is limited, the importance of pro bono counsel is obvious. A willingness on the part of each member of the legal profession to do some work without remuneration or reward can do much to fill the access to justice gap in their respective jurisdictions. As stated by the United States Supreme Court, “in a time when the need for legal services among the poor is growing and public funding for such services has not kept pace, lawyers’ ethical obligation to volunteer their time and skills pro bono publico is manifest.”<sup>10</sup>

Access to justice is a fundamental human right and one that pro bono lawyers in every jurisdiction need to protect and support diligently. Access to justice is particularly critical for the indigent peoples of the world, those who typically depend on support for many of their basic needs (food, housing, heating etc.), and access to justice should be seen as no less fundamental. Furthermore, access to justice without appropriate legal advice puts the claimant at an immediate disadvantage. Pro bono lawyers can do so much to correct that imbalance.

---

<sup>8</sup> See Airey, 32 Eur. Ct. H.R. at ¶ 26.

<sup>9</sup> See in particular the Law Society’s ‘Access to Justice’ campaign available at (<http://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/> (last visited on September 4, 2015)).

<sup>10</sup> Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa, 490 U.S. 296, 310 (1989).



## Legal Professional Privilege in the European Union

### INTRODUCTION

This chapter discusses whether and to what extent legal professional privilege (“LPP”) under European Union law and as defined by the EU courts (“EU LPP”) is an obstacle to in-house counsel involvement in pro bono work in Europe.<sup>1</sup> LPP is a special status granted to correspondence exchanged with a legal advisor. A document protected by LPP cannot be seized by a government authority, and its content cannot be used as evidence in proceedings. In the well-known *Akzo* judgment, the Court of Justice of the European Union (the “Court of Justice”) confirmed that, in the context of a company, in-house counsel that are employed by that company are in a fundamentally different position from “external lawyers” (as defined below) and are not sufficiently independent for their communications to benefit from LPP.<sup>2</sup>

However, it should be noted that the *Akzo* ruling is limited to investigations, most notably antitrust investigations, carried out by the European Commission (the “Commission”). Most pro bono projects will not involve issues relating to these investigations, and as such *Akzo* is not normally relevant and in fact does not generally form an obstacle to pro bono work in Europe.

The scope and limitations of the *Akzo* judgment are discussed further below, and for the reasons explained, this chapter also briefly touches upon the issue of LPP in the national EU Member States and provides some practical suggestions for dealing with LPP under EU law.

### OUTLINE OF LEGAL PROFESSIONAL PRIVILEGE UNDER EUROPEAN UNION LAW

This section sets out the main features of EU LPP (as set out in the judgment of the Court of Justice in *AM&S*<sup>3</sup> and confirmed in *Akzo*).

EU LPP only covers written communications exchanged between a company and an independent lawyer; i.e., a lawyer, registered with the Bar of an European Economic Area (“EEA”) Member State, who is not bound to the client by a relationship of employment (“external lawyer”).<sup>4</sup> EU LPP applies both to such communications themselves and to internal notes circulated within a company that reflect the content of legal advice given by the external lawyer.<sup>5</sup>

Additionally, the respective documents (communications or internal notes) must have been produced for the purpose and in the interest of the exercise of the rights of defense and must have a potential relationship to the subject matter of any subsequent procedure under Articles 101 and 102 of the Treaty on the Functioning of the EU (“TFEU”).<sup>6</sup>

However, EU LPP does not extend to pre-existing documents (e.g., internal communications among executives on business matters, notes of business meetings, commercial documents) and, accordingly,

---

<sup>1</sup> Although their situation regarding EU LPP may be similar to in-house counsel, this chapter does not discuss the situation of external lawyers not qualified in the EEA. For reference, the EEA consists of the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Iceland, Liechtenstein, and Norway.

<sup>2</sup> Case C-550/07 P, *Akzo Nobel Chemicals and Akcros Chemicals v. Commission*, 2010 E.C.R. I-8301.

<sup>3</sup> Case 155/79, *AM&S Europe v. Commission*, 1982 E.C.R. 1575.

<sup>4</sup> For the purposes of this chapter, an in-house lawyer who is registered with the Bar of an EEA and who provides pro bono services to a client to whom it is not bound by a relationship of employment is considered to be an “external lawyer”.

<sup>5</sup> Case T-30/89R, *Hilti v. Commission*, 1990 E.C.R. II-163 (Order).

<sup>6</sup> Articles 101 and 102 of TFEU relate to antitrust matters (cartels and abuse of dominance cases).



does not concern original internal business documents, even if they have been selected and copied in response to a request by external counsel who require them in order to provide legal advice on matters that may have a relationship to the subject matter of a subsequent procedure. It is, however, unclear whether EU LPP extends to such collections of copies of pre-existing internal documents when they are attached as an integral part of “preparatory documents.” In the absence of precise indications from either the EU Courts or the Commission on this specific issue, a cautious approach should be adopted in the day-to-day approach to these issues. Indeed, the Commission’s current approach to pre-existing documents that are annexed to legally privileged memoranda is not to consider them covered by EU LPP.

A refusal to produce a certain document to the Commission on the grounds that it is covered by EU LPP must be supported by evidence demonstrating that EU LPP protection is actually applicable. Parties may submit their claims to the so-called “Hearing Officer” regarding documents requested by, but withheld from, the Commission on the basis of EU LPP.

## SCOPE AND LIMITATIONS OF LEGAL PROFESSIONAL PRIVILEGE UNDER EUROPEAN LAW

It follows that the scope of EU LPP is limited to written communications between an independent lawyer and his/her client after the initiation of a *Commission administrative procedure* (most notably Commission antitrust investigations) and which are related to the procedure.

This means that the scope of and room for EU LPP are in practice quite narrow. EU LPP is limited to the enforcement of EU law through EU administrative (i.e. Commission) procedures; it has no impact on a company’s right to withhold privileged documents from private parties during litigation or other government authorities; and in-house counsel cannot be compelled to testify as to privileged matters.

Pro bono matters will not typically involve issues relating to Commission administrative procedures, and as such it is unlikely that work product may be seized by the Commission, even though it may not always be easy or sometimes possible to identify whether work done will become subject to a Commission investigation in the future.

Given the limitations of EU LPP, *post Akzo*, national LPP rules will continue to be relevant in all national administrative procedures, i.e., where national authorities investigate.

## DIFFERENCES REGARDING LEGAL PROFESSIONAL PRIVILEGE IN THE NATIONAL EUROPEAN UNION MEMBER STATES

The protection granted by the EU LPP may differ substantially from the protection granted by LPP in other jurisdictions.<sup>7</sup> Companies and in-house counsel need to be aware of these possible differences and should understand the risks they are exposed to in their jurisdictions of operation. There are commonalities but also significant discrepancies between the scope of EU LPP and LPP under national legislation/regulation.<sup>8</sup> In general terms, the scope of EU LPP is narrower than LPP under national

---

<sup>7</sup> For instance, the U.S. attorney-client privilege applies equally to in-house counsel. See, e.g., J. Brady Dugan, Jordan W. Cowman & Allison Walsh Sheedy, NEGOTIATING THE PRIVILEGE MINEFIELD: SOME DIFFERENCES BETWEEN ATTORNEY-CLIENT PRIVILEGE IN THE U.S. AND EUROPE, 6 STATE BAR OF TEXAS CORPORATE COUNSEL SECTION NEWSLETTER, (2011), with a reference to *United States v. United Shoe Machinery*, 89 F. Supp. 357, 360 (D. Mass. 1950) (“On the record as it now stands, the apparent factual differences between these in-house counsel and outside counsel are that the former are paid annual salaries, occupy offices in the corporation’s buildings, and are employees rather than independent contractors. These are not sufficient differences to distinguish the two types of counsel for purposes of the attorney-client privilege.”).

<sup>8</sup> The ECJ itself has described these discrepancies in *Akzo* (see above footnote 2), mn. 71 et seq.; a helpful overview of LPP under the different EU member states’ legislation/regulation can be found in DLA Piper’s and ECLA’s Legal Professional Privilege Global Guide, available at [http://www.dlapiperlegalprivilege.com/#handbook/world-map-section/2/c1\\_DE](http://www.dlapiperlegalprivilege.com/#handbook/world-map-section/2/c1_DE) (last visited on September 4, 2015).



legislation/regulation. This chapter focuses on two possible significant differences between EU LPP and LPP under national legislation/regulation.

## Legal Advice From In-House Counsel

As explained above, *Akzo* reaffirmed the rule (based on the judgment of the Court of Justice in *AM&S*) that EU LPP applies only to communications exchanged with external lawyers. But the Court of Justice did not consider the impact of its ruling in the context of parallel investigations by Member States.<sup>9</sup>

Whilst the general rule is that the LPP protection offered by Member States does not extend to in-house counsel<sup>10</sup>, there are some exceptions.<sup>11</sup> In Ireland and in the UK, in-house counsel benefit from the same protection as external counsel, because in-house counsel are considered to be sufficiently independent. In that sense, the UK's system is similar to the U.S. attorney-client privilege. In addition, certain countries such as Poland, Portugal and the Netherlands recognize LPP protection for communications with in-house counsel provided they are admitted to the Bar.

## Correspondence, Work Products, And Other Situations Covered

As mentioned above, *Akzo* limited the scope of EU LPP to work product created for the exclusive purpose of seeking legal advice from an external lawyer and to reproductions of the text or the content of legal advice given (in writing or orally) by an external lawyer. While the approach taken in a number of EU Member States is consistent with that of the EU,<sup>12</sup> this is not always the case. Some countries extend LPP protection to: (a) correspondence that is not made for the purposes and in the interests of the client's right of defense (e.g., Ireland and the UK); (b) communications with lawyers established outside the EEA area (e.g., Netherlands, and the UK); and (c) oral communications (e.g., Lithuania, Malta, and Portugal).<sup>13</sup> On the other hand, some EU Member States do not recognize LPP in certain situations at all (e.g., Germany in the case of internal investigation documents in the possession of the investigated company, and Estonia in the case of national antitrust investigations).

## PRACTICAL SUGGESTIONS FOR DEALING WITH LEGAL PROFESSIONAL PRIVILEGE UNDER EUROPEAN UNION LAW

The *Akzo* ruling highlights the need for companies to assess the practical measures they should take to maintain confidentiality over communications, and the circumstances in which external, rather than in-house, counsel should be instructed. As noted, pro bono matters normally do not become subject to Commission investigations, and as such the risk that work product may be seized by the Commission is not normally a problem. This Section sets out some basic practical suggestions to deal with issues relating to LPP.

---

<sup>9</sup> There have been cases of parallel investigations in the past; e.g., the so-called Marine Hoses investigation where the UK's OFT, the Commission and the U.S. DOJ have coordinated their actions, and carried out contemporaneous on-site inspections. There are likely to be more cases of this nature in the future, particularly if Member States expand the scope of criminal sanctions for infringements of antitrust laws.

<sup>10</sup> Austria, Czech Republic, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, Spain (disputed and left open by the Spanish Supreme Court), Sweden.

<sup>11</sup> Belgium, Cyprus (if admitted to the Bar), Greece, Ireland, The Netherlands (if admitted to the Bar), Poland (if admitted to the Bar), Norway, Portugal (if admitted to the Bar), and the UK.

<sup>12</sup> Following are some countries that in the case of a national antitrust investigation have an approach regarding LPP similar to the EU: Belgium, Finland, France, Hungary, Italy, Latvia, Luxembourg, Romania, Slovakia, Slovenia, and Spain.

<sup>13</sup> Similarly, the U.S. attorney/client privilege is also extended to oral communications.



## Increase In-House Counsel's Awareness

The limitations on the applicability of EU LPP to in-house counsel should not prevent in-house counsel from functioning and providing day-to-day legal advice to the company and its employees, or from providing assistance on pro bono matters in Europe. In-house counsel should simply be aware that their written documents may be disclosed in a Commission proceeding. As a result, when advice is required to be in writing, in-house counsel should be careful to use precise and accurate language that is difficult to misinterpret or quote out of context.

## Identify Documents

Internal documents covered by LPP should be immediately and unambiguously identifiable as having been prepared exclusively in order to obtain legal advice from an external lawyer in connection with matters that may have a relationship to the subject matter of a foreseeable subsequent procedure.

It should also be kept in mind that during unannounced inspections, the first port of call for officials of the Commission and Member State authorities is the place where e-mails and documents are stored on the central server, as well as the laptops and other electronic storage devices of individual executives. Electronic correspondence is therefore treated in exactly the same way as paper correspondence and will require particular attention given the extent of electronic communications in most companies and organizations today.

All legal correspondence dealing with legally-sensitive issues should be collected in separate folders and ideally kept in the office of the in-house counsel. Folders should be labeled as "*Legally Privileged – Documents used for consultation with external lawyer.*" The same recommendation applies to e-mails and electronic folders, so that they can be omitted from an electronic search. If pre-existing legally sensitive documents are organized and copied for use by external counsel, and if a copy of that collection must remain with the company, the discussions with external lawyers should be recorded by way of a brief note, mentioning the name of the external lawyer involved, the date of the discussion and the topic (in general terms). This brief note should be kept in the same folder as each of the documents/materials discussed. Finally, legal documents on sensitive issues should have limited distribution within the company.

## CONCLUSION

The *Akzo* ruling is limited to investigations, most notably antitrust investigations, carried out by the Commission. On the rare occasion that pro bono work involves some possible elements of Commission investigations this should not discourage in-house counsel from providing assistance on pro bono matters. The LPP rules in each relevant national EU Member State should also be taken into consideration. Awareness that correspondence and work products may possibly be seized by the Commission, and awareness of the matters for which external counsel may need to be involved, will substantially lower the risk of any possible future problems.

September 2015

Legal Professional Privilege in the European Union

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in International Law

### INTRODUCTION

The scope of individual access to international justice has expanded significantly over the past four decades, transcending its beginnings in the field of human rights law. Individuals may now access international justice systems for a myriad of matters, including international trade regulation, environmental law, immigration and refugee law, and labor law. This rapid expansion and increased activity of international courts and tribunals in recent years has been largely uncoordinated.

This chapter provides an introduction to pro bono in the international legal sphere. On the litigation side, pro bono initiatives in international law provide a unique opportunity for lawyers, not only to assist individuals and non-state actors in vindicating their rights but also to influence the formation of international law and precedent. There are also many opportunities for participating in international pro bono beyond litigation, including, for example, preparing research for NGOs or financing international charitable projects.

### OVERVIEW OF THE LEGAL SYSTEM: INTERNATIONAL LAW

#### The Justice System

##### Constitution and Governing Laws

International law is the set of legal rules governing international relations between public bodies, such as states and international organisations.<sup>1</sup> The legal basis for pro bono under international law can be traced back to the general principles of universal access to justice enshrined in documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Please refer to the introductory chapter of this survey, “Access to Justice – An Introduction”, for additional background information.

##### The Courts

There are a wide range of international institutions and tribunals, which can be grouped into the following categories:<sup>2</sup>

- International criminal courts tribunals (e.g., the International Criminal Court and International Criminal Tribunal for Rwanda);
- International courts for resolving disputes between treaty signatories (e.g., the International Court of Justice);
- Regional human rights bodies (e.g., the Inter-American Court of Human Rights);
- Regional economic agreement courts (e.g., the North American Free Trade Agreement (“NAFTA”) Arbitration Panel);
- Inspection panels of intergovernmental organizations (e.g., the World Bank Inspection Panel);
- International claims and compensation bodies (e.g., the Claims Resolution Tribunal for Dormant Accounts in Switzerland);

International administrative tribunals (e.g., the Administrative Tribunal of the International Labor Organization); and

Courts and Tribunals established by treaty to resolve disputes relating to that treaty (e.g., the International Tribunal for the Law of the Sea).

<sup>1</sup> See [http://ec.europa.eu/justice/glossary/public-international-law\\_en.htm](http://ec.europa.eu/justice/glossary/public-international-law_en.htm) (last visited on September 4, 2015).

<sup>2</sup> See J. Almqvist, Individual Access to International Justice: A Theoretical Study, Paper presented at the annual meeting of the American Political Science Association, Philadelphia Marriott Hotel, Philadelphia, PA (Aug. 27, 2003).



These international legal bodies can be further classified as being either purely international regimes (such as the international criminal courts) or regional regimes, also referred to as “transnational” or “supra-national” regimes (such as the European Union, the NAFTA trade regime, the African human rights regime, and the Arab League). The term “international” in this chapter refers to both purely international and regional institutions.

These legal bodies are also commonly identified by whether they are also either treaty regimes or non-treaty regimes. An example of a non-treaty body is the International Criminal Tribunal for the former Yugoslavia, which was established in 1993 through UN Security Council Resolution 808. Treaty bodies include the World Trade Organization (established in 1994 through the ‘General Agreement on Tariffs and Trade’, a multilateral treaty) or the Marshall Islands Nuclear Claims Tribunal (established in 1983 through the ‘Agreement Between the Government of the United States and the Government of the Marshall Islands’, a bilateral treaty). Ordinarily, the establishing instrument – usually a treaty or a UN resolution – is supplemented by a statute or a protocol that is the legal source of authority for the applicable international body. Furthermore, regulations are often promulgated under such statutes and protocols. Together, these treaties, regulations, resolutions and statutes contain the substantive rights of individuals with regard to such international tribunals, and the procedures that govern the implementation of those substantive rights.

### The Practice of Law

Both substantive and procedural law and practices vary dramatically from court to court, making it impossible to speak generally of rules, regulations or practices regarding attorneys’ qualifications. As one commentator has stated, “[t]he regulation of counsel who practice before international tribunals, particularly public law tribunals, is almost a complete vacuum.”<sup>3</sup> On one end of the spectrum is the Inter-American human rights system, where an advocate need not have any legal training or certification whatsoever. The rationale is to allow victims to petition the Commission and the Court directly. The same practice is used across the various quasi-judicial UN committees. At the other end of the spectrum is the Court of Justice of the European Union (“**ECJ**”), where the qualifications required to serve as representative are determined by the national law of the advocate. In September 2012, the ECJ also decided that in-house lawyers were not sufficiently independent to represent their employers before the ECJ.<sup>4</sup>

Criminal tribunals are a unique case, in that the statutes of these tribunals typically provide for legal representation as a fundamental right. If a defendant cannot afford legal representation, the tribunal will provide for the defense at no cost to the defendant. The tribunal registrars publicly invite eligible persons to submit applications and maintain lists of eligible counsel.<sup>5</sup> For example the Rules of Procedure and Evidence of the International Criminal Court provide that:

A counsel for the defense shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel for the defense shall have an excellent

---

<sup>3</sup> D. F. Vagts, *The International Legal Profession: A Need for More Governance?*, 90 *AM. J. INT’L L.* 250, 260. (“Fee arrangements between clients and lawyers are regulated very differently in different countries: can an American lawyer be paid on a contingent basis for arguing before the International Court of Justice? Do German fee schedules apply to such a case? The way in which a case is tried before an international tribunal, setting aside permanent bodies, depends greatly on the composition of the panel.”).

<sup>4</sup> *Republic of Poland, v European Commission* [2012] EUECJ C-422/11, EU:C:2012:553, ECLI:EU:C:2012:553.

<sup>5</sup> See, e.g., arts. 55 and 67 of the Rome Statute of the International Criminal Court 2002 (right to legal assistance); Rules 20–22 of the Rules of Procedure and Evidence (assignment of legal assistance and qualifications of counsel for the defense). Among the documentation requirements set by the Registrar are requirements for a certificate of good standing from a professional association of which the candidate is a member; certificate from the relevant state authority specifying criminal convictions, if any. Similar provisions, subject to some variations, exist in the Statutes and Rules of the ad hoc International Criminal Tribunals for the Former-Yugoslavia and for Rwanda and the Special Court for Sierra Leone.



knowledge of and be fluent in at least one of the working languages of the Court. Counsel for the defense may be assisted by other persons, including professors of law, with relevant expertise.<sup>6</sup>

As a matter of policy, criminal tribunals encourage representation by members of the local bar, i.e., the place where the tribunal is located.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

Given the breadth of institutions applicable to the international legal sphere, for purposes of this section of this chapter, we discuss only the European Court of Human Rights, the Court of Justice of the European Union and the International Criminal Court.

### The Right to Legal Assistance

#### The European Court of Human Rights (the “ECHR”)

The European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols (the “**Convention**”) covers a wide range of civil and political rights and currently has 47 contracting states. The ECHR has jurisdiction over those contracting states with regard to all matters relating to the interpretation and application of the Convention. The ECHR’s efficacy is largely owed to the fact that all of the contracting states allow the Court to review judgments of domestic courts and have submitted to the compulsory jurisdiction of the Court and because the Committee of Ministers of the Council of Europe oversees the enforcement of the ECHR’s judgments.

Individuals and groups can file complaints against their national governments in the ECHR alleging violations of European human rights norms.

#### The Court of Justice of the European Union (“CJEU”)

Due to the extensive protections for human rights provided under EU law, it constitutes an extensive regional human rights system. In particular the Lisbon Treaty, that entered into force on December 1, 2009, grants the Charter of Fundamental Rights of the European Union (the “**Charter**”) legally binding status.<sup>7</sup> The CJEU is the supreme court of the court of the EU, tasked with finally and authoritatively interpreting the provisions of EU law including the fundamental rights guaranteed by the Charter. Every EU country must recognise and enforce judgements of the CJEU as a matter of EU law.

Under the Lisbon Treaty individuals are now permitted to bring actions challenging EU law directly before the CJEU in circumstances where an action before that individual’s national courts is not a practical alternative.

#### The International Criminal Court (“ICC”)

The ICC is an independent, permanent court established by treaty (the Rome Statute of the International Criminal Court), joined by 123 countries (effective as of April 1, 2015). The mandate of the Court is to try individuals rather than States, and to hold such persons accountable for the most serious crimes of concern to the international community as a whole, namely the crime of genocide, war crimes, crimes against humanity, and the crime of aggression, when the conditions for the exercise of the Court’s jurisdiction over the latter are fulfilled.

Any State party to the Rome Statute can request the Prosecutor to carry out an investigation. A State not party to the Statute can also accept the jurisdiction of the ICC with respect to crimes committed in its territory or by one of its nationals, and request the Prosecutor to carry out an investigation. The United Nations Security Council may also refer a situation to the Court.

---

<sup>6</sup> Rule 22(1) of the Rules of Procedure and Evidence.

<sup>7</sup> OJ 2007, C 303, p. 1 Article 6(1) of the Treaty on European Union (“**TEU**”) provides that “[t]he Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of December 7, 2000 which shall have the same legal value as the Treaties.”



## The International Court of Justice (“ICJ”)

The Statute of the International Court of Justice is an integral part of the Charter of the United Nations (the “**Charter**”) that came into force between the signatories to the Charter on October 24, 1945. The ICJ is the principal judicial organ of the United Nations and its role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. The Court is assisted by a Registry, its administrative organ. Its official languages are English and French.

The Court may entertain two types of cases: (i) legal disputes between States (contentious cases) and (ii) requests for advisory opinions on legal questions. Only States (States that are Members of the United Nations and other States which have become parties to the Statute of the Court or which have accepted its jurisdiction under certain conditions) may be parties to contentious cases. Advisory proceedings before the Court are open solely to five organs of the United Nations and to 16 specialized agencies of the United Nations family and primarily address legal questions arising within the scope of the activities of that particular organ or agency.

## State-Subsidized Legal Aid

As further outlined in the introductory chapter of this survey, “Access to Justice – An Introduction”, countries that are signatories to the Universal Declaration of Human Rights and/or the International Covenant on Civil and Political Rights (the “**Covenant**”) have undertaken an obligation to ensure that everyone has the right to an effective legal remedy for acts that violate that person’s fundamental rights. As a minimum standard, each country has a legal obligation to provide legal aid in all circumstances in which citizens cannot afford to access the legal system for the protection of human rights protected by treaties ratified by that country.

Legal aid is granted differently depending on the jurisdiction. Its amount and conditions are often regulated in the statutes of the various courts applicable in that jurisdiction. The starting point however is typically the conditions set out in Article 14(3)(d) of the Covenant and Article 6(3)(c) of the Convention which provide for both a means test and a merits test for legal aid applications.

Certain international/regional institutions provide legal aid facilities themselves (although the level of funding is typically low). The ECHR, for example, may grant legal aid<sup>8</sup> where the President of the Chamber is satisfied that (i) it is necessary for the proper conduct of the case before the Chamber and (ii) that the applicant has insufficient means to meet all or part of the costs entailed. The legal aid granted by the court will be as a contribution towards expenses and legal fees but caps on amounts shall be applied based on the levels of legal aid available throughout the 47 contracting states of the Convention.

## PRO BONO ASSISTANCE: INTERNATIONAL LAW

### Pro Bono Opportunities

There are three significant opportunities for lawyers looking for pro bono opportunities in the international law sphere, namely: (1) partnering with NGOs or other organizations such as law school clinics; (2) partnering with UN agencies; and (3) establishing working relationships with registrars of the various international courts and tribunals. Each is described in further detail below.

#### Partnering with NGOs

Many international NGOs have well-established networks and experience with regard to representing individuals in international bodies. Still, these NGOs may be understaffed, underbudgeted or may simply

---

<sup>8</sup> Rule 100-105 of the ‘Rules of Court’ of the European Court of Human Rights (June 1, 2015).



lack expertise in a certain area of law, and may be happy to cooperate with lawyers and law firms that have the right resources and institutional knowledge. Leading international NGOs that undertake individual representation include Amnesty International, Human Rights Watch, No Peace Without Justice, the International Rescue Committee, and Interights.<sup>9</sup> Often these NGOs have a legal department, and contacting the heads of such departments may be an effective first step for individuals or organizations desiring to get involved in international pro bono. National NGOs doing international work (such as the American ACLU and other leading civil rights organizations) can be equally fruitful partnerships to explore.

### Partnering with UN Agencies

A number of UN agencies have corporate partner programs and NGO partner programs.<sup>10</sup> In fact, the partnership model is familiar and encouraged. UN agencies that may be particularly relevant to lawyers interested in forming partnerships for international pro bono legal services include the United Nations Development Program (“**UNDP**”), the United Nations Global Compact (“**UNGC**”), Principles for Responsible Investment (“**UNPRI**”), the United Nations Human Rights Commission (“**UNHRC**”), the United Nations International Children’s Fund (“**UNICEF**”) and the United Nations High Commissioner for Refugees (“**UNHCR**”).

### Providing representation before international bodies

Generally, pro bono representation before international bodies is provided in one of three capacities:

- Representation of individuals or nonstate entities, such as NGOs, before international institutions
- Representation of underdeveloped countries in disputes between States (e.g., in relation to requests for advisory opinions from the ICJ or disputes brought before the World Trade Organization Arbitration Panel)
- Intervention as *amicus curiae* (filing briefs or other supporting documentation to the court on matters of public interest)

Each of the international courts has a Registry and lawyers wishing to participate in pro bono activities in this area would be well advised to look to establishing working relationships with the Registrars of the relevant international court. Unlike many domestic courts, the Registrars of the international courts are senior staff with influence over policy, regulation, and procedures and are second in influence only to the judiciary itself. Among other responsibilities, the Registrars are entrusted with the administration of defendants’ representation (in criminal courts), with allocating and disbursing attorneys’ fees (when paid by the court), and with enforcing the attorney qualification requirements. Because Registrars also keep rosters of eligible attorneys, formally applying to be included on these rosters should be a first step for those wishing to volunteer their services.

### TrustLaw – Thomson Reuters Foundation.

TrustLaw is the Thomson Reuters Foundation’s global pro bono legal program. They connect law firms and corporate legal teams around the world with high-impact NGOs and social enterprises working to create social and environmental change. Many law firms and in-house legal teams in Argentina and Latin America have joined TrustLaw and are participating together in interesting regional or local pro bono projects.

---

<sup>9</sup> Interights has been particularly active in the field of access to justice and legal aid. In collaboration with the European commission, the Public Interest Law Institute and the Open Society Justice Initiative, Interights helped produce nine country reports reviewing access to justice and legal aid in Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia, available at [http://pilnet.org/component/docman/doc\\_download/48-access-to-justice-in-central-and-eastern-europe-country.html](http://pilnet.org/component/docman/doc_download/48-access-to-justice-in-central-and-eastern-europe-country.html) (last visited on September 4, 2015).

<sup>10</sup> See e.g., UNHCR’s partners/donors, available at <http://www.unhcr.org/pages/49c3646c296.html> (last visited on September 4, 2015).



## Historic Development and Current State of Pro Bono

There is a rich tradition of pro bono in the international legal context. A key milestone was the establishment in 1947 of the International Bar Association (“**IBA**”) which brings together lawyers and bar associations from across the globe. The IBA has consistently pushed pro bono activities amongst its members through its Pro Bono Committee.<sup>11</sup>

There are a number of potential barriers facing lawyers who desire to work with NGOs, UN bodies and international courts. Lawyers should be aware that an NGO’s ability to secure public and private funding is often contingent upon achieving high-profile successes for the organization. As such, NGOs may be weary of partnering and sharing the limelight. However, this issue may be easily addressed by the lawyer or law firm permitting the NGO to be spotlighted in the applicable pro bono representation.

Many UN bodies are headquartered in New York. Contacting these headquarters could be time consuming, given the bureaucratic nature of the UN, and not appropriate as the needs of any given program may vary from country to country. These barriers could be overcome by contacting country offices rather than UN Headquarters. For example, contacting the Rule of Law Officers or the Governance Program Officers at UNDP’s Country Offices or the Child Protection Officers at UNICEF’s Country Offices may prove more effective than contacting the Country Bureau at UNDP or UNICEF’s Headquarters.

Finally, requirements of individual tribunals or courts may also act as an impediment for lawyers or law firms seeking international pro bono opportunities. For example, as noted above, certain regional Courts require individuals practicing before them to be registered in a specific territory. The Rules of the European Court of Human Rights require that a representative acting on behalf of an applicant resides in, and is authorized to practice in, one of the 47 Contracting States.<sup>12</sup> However, it is worth noting that sometimes these same tribunals and courts may be flexible with such practice requirements. The President of the Chamber of the European Court of Human Rights, for example, has the discretion to approve other representatives.

## Pro Bono Resources

Working closely with NGOs, law firms and in-house departments can undertake a range of interesting international work. This is not limited to litigation issues, as many international NGOs are open to partnering with external lawyers and companies to help address concerns in areas such as the environment, microfinance or human rights. Set out below are some specific examples of law firms or companies that have partnered with NGOs or other organisations to provide international pro bono services:

American International Group, Inc. (AIG) in conjunction with the Iraqi Refugee Assistance Project (IRAP) received a number of awards, including the 2014 CPBO Pro Bono Partner Award, for their pioneering, collaborative effort to provide legal assistance to Afghan nationals who have aided the U.S., often as interpreters, and who are now targets of anti-American violence.

Hewlett-Packard Company in partnership with Morgan, Lewis & Bockius and the National Veterans Legal Services Program (NVLSP) provided substantive legal advice in connection with *Sabo v. United States*, a class action lawsuit brought by NVLSP alleging that approximately 4,300 Iraq and Afghanistan veterans were illegally denied disability benefits. After a partial resolution of this case granted class members expedited access to review boards, the partnership provided legal counseling for class members interested in having their claims reheard.

---

<sup>11</sup> See <http://www.internationalprobono.com/> (last visited on September 4, 2015).

<sup>12</sup> Rule 36(4) of the ‘Rules of Court’ of the European Court of Human Rights (June 1, 2015).



Baker & McKenzie worked with the UN Foundation<sup>13</sup> to provide legal assistance to the Alliance for Clean Cook Stoves,<sup>14</sup> a public-private initiative that seeks to save and improve livelihoods, empower women and protect the environment by creating a successful global market for clean and efficient household cooking solutions. The firm's work included governance issues, carbon credit agreements, intellectual property, trade issues and tariff issues. Baker & McKenzie also worked with the UN Foundation and in-house counsel from Merck,<sup>15</sup> to help mHealth Alliance<sup>16</sup> promote the use of mobile technology to improve health across the world. They helped to examine privacy issues in health accounting and account for data security whilst maintaining patient autonomy.

White & Case collaborated with Child Rights International Network<sup>17</sup> who aim to promote and protect children's rights around the world by drawing the attention of governments to their obligations under the United Nations Convention on the Rights of the Child. This project involved researching the jurisprudence of 172 countries to build a comprehensive database to help protect the next generation.

Latham & Watkins assisted the United Nations Global Compact and the Royal Institute of Chartered Surveyors to develop a toolkit that offers guidance for companies around the world in the areas of labor, human rights, anti-corruption, and the environment. Latham & Watkins also advised the Platform for International Cooperation on Undocumented Migrants (PICUM),<sup>18</sup> which promotes respect for the rights of undocumented migrants within the European Union, by providing both legal research on previous collective complaints and procedural aspects, and drafting analyses exploring the possibility of lodging a collective complaint under the European Social Charter, a Council of Europe treaty that guarantees economic and social human rights.

Other helpful links and resources can be found on the website of the Law Society of England and Wales.<sup>19</sup>

## CONCLUSION

Pro bono initiatives in international law provide a unique opportunity for lawyers to influence and learn from an evolving jurisprudence. International pro bono work provides a sense of global teamwork across offices and gives young associates the opportunity to develop the skills necessary to work in multicultural settings – a facility which can be carried over into non-pro bono practice. Encouraging international pro bono also makes sense from a business development standpoint: cases that reach international bodies are often high-profile both in the jurisdiction in which they originated and internationally, providing high visibility to the representing lawyers. Attorneys and organizations interested in getting involved with pro bono litigation or nonlitigation work should partner with country offices of UN agencies, with NGOs and/or establish working relationships with Registrars. Additionally, the Pro Bono Institute and other similar associations, such as the International Bar Association,<sup>20</sup> are good resources for those seeking guidance regarding avenues for providing pro bono services at the international level.

September 2015

---

<sup>13</sup> See <http://www.unfoundation.org/> (last visited on September 4, 2015).

<sup>14</sup> See <http://cleancookstoves.org/> (last visited on September 4, 2015).

<sup>15</sup> One of the largest pharmaceutical companies in the world: see <http://www.merck.com> (last visited on September 4, 2015).

<sup>16</sup> mHealth Alliance's goal is to maximise reliable and expedient access to accurate and comprehensive healthcare data by healthcare providers. See <http://mhealthknowledge.org/> (last visited on September 4, 2015).

<sup>17</sup> See <https://www.crin.org/> (last visited on September 4, 2015).

<sup>18</sup> See <http://picum.org/en>. (last visited on September 4, 2015).

<sup>19</sup> See <https://www.lawsociety.org.uk/Support-services/Practice-management/Pro-bono/International/> (last visited on September 4, 2015).

<sup>20</sup> IBA aims at bringing together the global community of professionals involved in pro bono legal work. See <http://www.internationalprobono.com/about/> (last visited on September 4, 2015).



Pro Bono Practices and Opportunities in International Law

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Angola<sup>1</sup>

### INTRODUCTION

Angola is a constitutional republic that, up until 1975, was under Portuguese colonial rule. Having gained independence, the country was then subject to the Angolan Civil War between MPLA (Movimento Popular de Libertação de Angola), FNLA (Frente Nacional de Libertação de Angola) and UNITA (União Nacional para a Independência Total de Angola) which ended in 2002.<sup>2</sup> Since then, the country has embarked upon constructing new constitutional foundations; it held multiparty parliamentary elections in 2008 and approved a new constitution in January 2010. Angola's most recent general elections were held in 2012 and the Electoral Manifesto and Government Program of the MLPA committed to prioritise its actions towards consolidation of peace and strengthening of democracy.

Angola is now considered a key international economic player given its vast resources of oil, diamonds and other natural resources. Due to increased foreign investment there are many social infrastructure projects.<sup>3</sup> As a country in which legal assistance programs are developing, there is a need in Angola for increased resources and state support in order to improve provision of pro bono legal services and overall access to justice.

### OVERVIEW OF THE LEGAL SYSTEM

The legal system in Angola is based on Portuguese civil law. The executive branch of government comprises the President who serves as head of state and government, the Vice President and the Ministers. The legislative branch is composed of the National Assembly, a unicameral body consisting of 220 deputies elected under a party list proportional representation system with authority to draft, debate, and pass legislation.<sup>4</sup> The President, who is both Chief of State and Head of Government, is vested with the power to appoint all senior ministers in the country, including all judicial figures.<sup>5</sup>

#### The Justice System

##### Constitution & Governing Laws

Following from a civil conflict from 1975-2002, the National Assembly of Angola approved a new Constitution of the Republic of Angola (“**CRA**”) in January 2010 which guarantees the fundamental rights and freedoms of its people.<sup>6</sup>

##### The Courts

Angola's judiciary system was recently subject to a comprehensive review and restructure as a result of the enactment of Law 2/15, of February 2, 2015. This new judicial framework established different types

---

<sup>1</sup> This chapter was drafted with the support of Vieira de Almeida & Associados.

<sup>2</sup> ANGOP - Angola Press News Agency (Angola Press), available at [http://www.portalangop.co.ao/angola/en\\_us/portal/informacoes/angola/sobre-angola/2013/4/21/History.78b9b662-b1df-4dff-b899-a4d2bd9de697.html](http://www.portalangop.co.ao/angola/en_us/portal/informacoes/angola/sobre-angola/2013/4/21/History.78b9b662-b1df-4dff-b899-a4d2bd9de697.html) (last visited on September 4, 2015).

<sup>3</sup> The Observatory for the Protection of Human Rights Defenders, available at <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/angola/angola-they-want-to-keep-us-vulnerable-human-rights-defenders-under#> (last visited on September 4, 2015).

<sup>4</sup> US Department of State: Country Report on Human Rights Practices 2014 - Angola, June 25, 2015. See [http://www.ecoi.net/local\\_link/306242/429621\\_en.html](http://www.ecoi.net/local_link/306242/429621_en.html) (last visited on September 4, 2015) (hereinafter Angola 2014).

<sup>5</sup> The Observatory for the Protection of Human Rights Defenders, available at <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/angola/angola-they-want-to-keep-us-vulnerable-human-rights-defenders-under#> (last visited on September 4, 2015).

<sup>6</sup> Constitution of the Republic of Angola (hereinafter, CRA).



of courts and other elements of a new judicial infrastructure which are yet to be implemented. There are now three levels of judicial courts in Angola: (i) the Supreme Court (*Tribunal Supremo*); (ii) the Courts of Appeals (*Tribunais da Relação*); and (iii) the Provincial Courts (*Tribunais de Comarca*).<sup>7</sup>

The High Courts of Angola, expressly recognized under the Angolan Constitutional Law, consist of the Constitutional Court (*Tribunal Constitucional*), the Supreme Court, the Court of Audits (*Tribunal de Contas*) and the Supreme Military Court (*Supremo Tribunal Militar*).<sup>8</sup> The court of final appeal is the Supreme Court with 21 seats. The Supreme Court decides questions of law and is a court of common jurisdiction as well as the highest appeal court for cases unrelated to the constitution.

The Constitutional Court functions as a high court for matters relating to judicial power and jurisdiction and performs constitutional review of legislation and government acts.<sup>9</sup>

There is also a Court of Audits which is responsible for matters related to public finances.<sup>10</sup> The Court of Audits has seven judges and began hearing cases in 2003. The Court of Audits has co-equal status with the Supreme Court and therefore no reviews of the Court of Audits decisions are performed by the Supreme Court. For questions with a constitutional nexus, the Constitutional Court may review the decisions of the Court of Audits.<sup>11</sup>

The court system in Angola has been criticised for being subservient to political direction and interference from high ranking politicians. Indeed, despite the 2010 Constitution, the President of Angola has the right to overrule any ministerial decision by Presidential decree.<sup>12</sup> The capacity of the courts is limited by a lack of human resources resulting in high legal fees, case backlogs and members of the judicial system being underpaid, overworked and more susceptible to accept bribes.<sup>13</sup>

#### Appointed vs Elected Judges

Judges of the Supreme Court are appointed by the President of Angola on the recommendation of the Supreme Judicial Council following competitive submissions by judges, public prosecutors and jurists. The President and Vice-President of the Supreme Court serve a non-renewable seven-year term of office.<sup>14</sup>

The Constitutional Court comprises 11 members appointed from among jurists and judges for a non-renewable seven-year term. The President nominates four judges, the National Assembly elects four judges, the Supreme Judicial Council elects two judges and one judge is elected by competitive submission of curricula.<sup>15</sup>

---

<sup>7</sup> Courts and Social Transformation in New Democracies: An Institutional Voice, available at <https://books.google.co.uk/books?id=9XRGDP5sMe0C&pg=PA223&lpg=PA223&dq=angola+access+to+legal+aid&source=bl&ots=x4LG5xWXvJ&sig=IrViQ0WFnElogzBKhmjAhiHF0&hl=en&sa=X&ved=0CEAQ6AEwBWoVChMlu7Co98KAxwIVB80UCh0iYQMF#v=onepage&q=angola%20access%20to%20legal%20aid&f=false> (last visited on September 4, 2015).

<sup>8</sup> CRA, Article 176.

<sup>9</sup> Id.

<sup>10</sup> Angola, supra n.2 at 31.

<sup>11</sup> Id.

<sup>12</sup> Transformation Index BTI 2014, available at <http://www.bti-project.org/reports/country-reports/esa/ago> (last visited on September 4, 2015).

<sup>13</sup> US Department of State 2013 Investment Climate Statement – Angola, available at <http://www.state.gov/e/eb/rls/othr/ics/2013/204590.htm> (last visited on September 4, 2015).

<sup>14</sup> CRA, supra n. 3. Article 181.

<sup>15</sup> CRA, supra n. 3. Article 180.



## The Practice of Law

### Education

Angola's legal education is a post-secondary program that spans five years in total.<sup>16</sup> From the existing recognized institutes and universities, Angola has three well established law schools: the *Universidade Católica de Angola*, *Universidade Agostinho Neto* and *Universidade Lusíada de Angola*.<sup>17</sup> However, the Angolan government has been engaged in increasing the number of institutions and universities across the country, including those offering legal education. Certain universities are currently engaged in initiatives aimed at increasing the number of qualified lawyers in the country.

Law students are required to pass examinations and serve an 18 month apprenticeship as a trainee working alongside qualified lawyers before being admitted to the Bar.<sup>18</sup> During the apprenticeship, trainees have limited powers and authority to practice law. Shorter apprenticeship regimes are also recognized for lawyers qualified in other jurisdictions (three months for qualified lawyers with a Roman-Germanic legal education and six months for qualified lawyers with an Anglo-Saxon legal education).

### Continuing Legal Education ("CLE") Credit for Pro Bono

The Angolan Bar Association, *Ordem dos Advogados de Angola* ("OAA") does not currently offer any CLE programs for its members.<sup>19</sup>

### Licensure

Once students graduate from law faculties, there are no further examinations required. Instead they must serve an apprenticeship with qualified lawyers (as described above) and must work on at least 15 criminal cases and 12 civil cases. At the end of the apprenticeship, trainees are required to prepare and submit to the OAA a professional ethics and conduct assignment, and their supervising lawyers are required to report to the OAA on the merits of their application to the Bar.<sup>20</sup>

### Governing Body

OAA membership is mandatory for lawyers and only lawyers and trainee lawyers admitted into the OAA may practice law.<sup>21</sup> Founded in 1996, the OAA functions as a self-regulatory body with the status of a public interest organization under Angola law. The OAA derives its status as self-regulatory from the Advocacy Law (Lei da Advocacia) of 1995 which established that the legal profession will be regulated by the Advocacy Law and the rulemaking of the OAA.<sup>22</sup> The mandates of the OAA include, inter alia, representing the interests of legal professionals, regulating the conduct of lawyers and assisting the government in legislative drafting. The OAA also maintains a comprehensive legal library of case law, commentaries and legislation, much of which is accessible online.<sup>23</sup>

---

<sup>16</sup> United Nations Office on Drugs and Crime, Access to Legal Aid in Criminal Justice Systems in Africa: Survey Report, 2011 (hereafter UNODC Survey Report 2011).

<sup>17</sup> Angola 2014, supra n. 2. at 24.

<sup>18</sup> International Bar Association Human Rights Institute Report. "Angola: Promoting Justice Post-Conflict July 2003" (hereinafter IBAHRIAngola), available at <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CC0QFjACahUKEwjPysezzyHHAhWHbhQKHecxAZo&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUId%3D8ee32437-024f-45c6-9c71-8a9c68d9b921&ei=mnC5Vc-VIIfdUefjhNAJ&usq=AFOjCNEo-NbTrwiQkuWNFZF9SC4dDO4tuA> (last visited on September 4, 2015).

<sup>19</sup> Angola 2014, supra n. 2. at 2.

<sup>20</sup> Angola 2014, supra n. 5. at 21.

<sup>21</sup> Statute of the Bar Association, Article 41.

<sup>22</sup> Lei da Advocacia (Law no. 1/95, of January 6, 1995) at art. 1, available at <http://www.oaang.org/content/lei-advocacia-1> (last visited on September 4, 2015).

<sup>23</sup> Available at <http://www.oaang.org/> (last visited on September 4, 2015).



## Demographics

The number of lawyers per capita is extremely low. Following independence in 1975, it was reported that there was one judge, one prosecutor and about 15 lawyers in the whole country.<sup>24</sup> Since then the number of lawyers has increased dramatically. According to the OAA, there are approximately 1,000 lawyers in Angola out of a population of circa 21 million.<sup>25</sup> The low number reflects the dislocation caused by the long period of civil strife which led to relatively high levels of emigration of skilled professionals.<sup>26</sup> As of October 2014, there were in the region of 300 public prosecutors in Angola.<sup>27</sup>

There continues to be a severe shortage of lawyers in Angola. Many Angolans struggle to get divorced or obtain legal assistance in a variety of civil and criminal matters due to the low number, and therefore lack of availability, of qualified lawyers. According to OAA statistics, some provinces with more than a million inhabitants have just a handful of lawyers. Lawyers tend to be concentrated in Luanda, the capital, and other large provincial centers.<sup>28</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### Right to Legal Assistance

#### In Civil Proceedings

The OAA is responsible for providing access to the law. The State is obliged to ensure that public defense is made available to individuals with insufficient financial resources to obtain their own legal representation at all jurisdictional levels.<sup>29</sup>

#### In Criminal Proceedings

The State has a constitutional duty (under Article 67(5) of the 2010 Constitution)<sup>30</sup> to provide free legal aid to defendants in criminal proceedings or to prisoners who are unable to appoint a lawyer for financial reasons.<sup>31</sup>

### State-Subsidised Legal Aid

The OAA is responsible for organizing and providing legal aid to citizens who are financially unable to hire a lawyer. All financial resources available to the OAA are funded directly by the Angolan government.<sup>32</sup>

---

<sup>24</sup> Courts and Social Transformation in New Democracies: An Institutional Voice, available at <https://books.google.co.uk/books?id=9XRGDP5sMe0C&pg=PA223&lpg=PA223&dq=angola+access+to+legal+aid&source=bl&ots=x4LG5xWXvJ&sig=IrViQ0WFnElogzBKhmjAhiHF0&hl=en&sa=X&ved=0CEAQ6AEwBWoVChMIu7Co98KAXwIVB80UCh0iYQMF#v=onepage&q=angola%20access%20to%20legal%20aid&f=false> (last visited on September 4, 2015).

<sup>25</sup> Instituto Nacional de Estatística (INE) “Resultados preliminares do censo geral – 2014”.

<sup>26</sup> Angola: Promoção da Justiça Pós-Conflito, INTERNATIONAL BAR ASSOCIATION HUMAN RIGHTS INSTITUTE (“IBA”), 23 (Jun. 2003), available at [http://www.ibanet.org/Human\\_Rights\\_Institute/Work\\_by\\_regions/Africa/Angola.aspx](http://www.ibanet.org/Human_Rights_Institute/Work_by_regions/Africa/Angola.aspx) (last visited on September 4, 2015).

<sup>27</sup> Angola 2014 supra n. 2. at 34.

<sup>28</sup> Ordem dos advogados leva serviços às áreas mais longínquas do interior. JORNAL DE ANGOLA, Aug. 9, 2011.

<sup>29</sup> CRA, supra n. 3. Articles 195-196.

<sup>30</sup> CRA, supra available at <http://www.comissaoconstitucional.ao/> (last visited on September 4, 2015).

<sup>31</sup> CRA, supra n. 3. Article 67; Law 15/95, of November 10, 1995.

<sup>32</sup> CRA, supra n. 15.



## Eligibility Criteria

### Financial Means

An indigent is required to apply for certification of inability to pay by making a statement of poverty (*atestado do pobreza*) addressed to the presiding judge to prove eligibility for legal aid.<sup>33</sup> Upon presentation of the certificate to the OAA, the OAA appoints a lawyer and pays the lawyer certain fees that have been pre-established.<sup>34</sup> However, the OAA's ability to provide such legal assistance is limited by the number of Angolan lawyers who have signed up for the program and the number of trainees (who are required by Angolan law to provide legal assistance within the scope of their limited powers and authority and their competence and experience) and the experience of such trainees.

Practitioners in the OAA program are typically in private practice and accordingly perform such legal assistance for reduced remuneration, as a public service or as a supplement to their fee-paying clients. In 2011, the Angolan government began to consider establishing a Public Defender Institute (*Instituto de Defesa Pública*) which would be staffed with full-time public defenders and receive an exclusive mandate from the government to deliver legal assistance to indigent people.<sup>35</sup> However, the process towards establishment and rollout of the Public Defender Institute throughout the country has been slow.

### Mandatory Assignments to Legal Aid Matters

Qualified lawyers are approached by the OAA when a legal aid case arises but are not obligated to accept such matters. On the contrary, trainee lawyers are required by law to provide legal aid within the scope of their limited powers and authority.

The OAA pays a reduced fee to lawyers who take on legal aid matters. In 2002, the OAA paid lawyers to provide legal services to approximately 629 clients, an increase from 614 clients in 2001.<sup>36</sup>

### Unmet Needs & Access Analysis

The Ministry of Justice and Human Rights acknowledged that access to lawyers, in particular in rural areas of Angola remains a problem. There are only 22 municipal courts for 163 municipalities and although offices of legal counsel have been established in most municipalities to increase access to justice, there remains a lack of prosecutors or judges resulting in the local police taking on such roles, despite not having received the relevant training.<sup>37</sup> Furthermore, the difficulty of applying for legal aid has resulted in the failure of a number of potential applicants to apply for legal assistance. Lawyers have also been reluctant to take on legal aid cases due to the slow pace at which cases progress and the lack of payment.<sup>38</sup>

---

<sup>33</sup> Access to Justice in Africa and Beyond: Making the Rule of Law a Reality 2007. Penal Reform International and the Bluhm Legal Clinic of the Northwestern University School of Law. Chicago, Illinois.

<sup>34</sup> Joint Executive-Decree 46/97, of November 7, 1997 and OAA Order on legal fees available at <http://www.oaang.org/content/instrutivo-sobre-honorarios> (last visited on September 4, 2015).

<sup>35</sup> Josina de Carvalho, Magistrada propõe patrocínio judiciário, JORNAL DE ANGOLA, Jan. 15, 2011.

<sup>36</sup> IBAHRI Angola, supra n. 11. at 27.

<sup>37</sup> Angola 2014, supra n. 2. at 15.

<sup>38</sup> UNODC Survey Report 2011, supra n. 9. at 11.



## Alternative Dispute Resolution

### Mediation and Arbitration

Alternative forms of mediation and conflict resolution have been taken into consideration as part of ongoing judicial and legal reforms to allow citizens access to justice without needing recourse to courts.<sup>39</sup>

### Ombudsman

Established in 2006,<sup>40</sup> the Office of the Ombudsman for Justice is a public and independent institution which protects human rights, freedoms and guarantees of citizens. It uses informal means to ensure that justice is served and that public administration operates within the law.<sup>41 42</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

Neither private attorneys nor law firms operating in Angola are required to provide pro bono legal services. However as members of the OAA, lawyers may be contacted by the OAA to volunteer to take on a state legal aid client if a case arises.

#### Legal Department Pro Bono Programs

Neither in-house lawyers nor legal practitioners employed by Angolan companies are required to participate in pro bono activities. Some pro bono programs do exist however, to which in-house lawyers contribute. For example, the Angolan Ministry of Justice and Human Rights has maintained a program with the OAA to provide free legal assistance to women who have been victims of domestic abuse.<sup>43</sup>

#### NGOs

Local NGOs have sought to provide free legal counsel in an effort to promote and defend human rights. However, NGOs are required by law to specify their mandate and areas of activity, which hinders the ability of NGOs to engage in certain types of activities such as the provision of free legal assistance, which is reserved for Angolan law qualified lawyers/trainee lawyers.<sup>44</sup>

#### University Legal Clinics & Law Students

There have been increasing efforts to implement legal aid clinic programs at Angolan universities. In 2014, the Faculty of Law at the University of Agostinho Neto established an inaugural legal aid clinic offering free legal advice in Cacuaco for the start-up of micro businesses.<sup>45</sup>

---

<sup>39</sup> Implementation of African Charter, supra n. 5. at 18.

<sup>40</sup> Law 4/06, of April 28, 2006

<sup>41</sup> The Observatory for the Protection of Human Rights Defenders, “Angola: They want to keep us vulnerable”, available at [https://www.fidh.org/IMG/pdf/angola\\_obs\\_eng\\_19\\_mars\\_2015\\_ok.pdf](https://www.fidh.org/IMG/pdf/angola_obs_eng_19_mars_2015_ok.pdf) (last visited on September 4, 2015).

<sup>42</sup> Implementation of African Charter, supra n. 5. at 9.

<sup>43</sup> Angola 2014, supra n. 2. at 27.

<sup>44</sup> Angola 2014, supra n. 2. at 18.

<sup>45</sup> International Law and Policy Institute. “Free legal aid clinic in Cacuaco, Angola,” available at <http://ilpi.org/events/free-legal-aid-clinic-in-cacuaco/> (last visited on September 4, 2015).



## Others

Recent efforts to increase resources available for pro bono work include the International Bar Association's Human Rights Institute's work with the Angolan Ministry of Justice and Angolan Secretary of State for Human Rights to improve the skills of members of the Angolan judiciary, prosecutors and lawyers in international human rights law through providing training courses.<sup>46</sup>

## Historic Development & Current State of Pro Bono

### Historic Development of Pro Bono

The United Nations Observer Mission in Angola (“**MONUA**”) began in 1997 and established a system of newly graduated trainee lawyers (*estagiários*), who represented suspects in police stations in Luanda. This system ceased when the MONUA mandate ended in 1999.<sup>47</sup>

### Current State of Pro Bono including Barriers and Other Considerations

#### Laws & Regulations Impacting Pro Bono

Efforts are being made to strengthen the legal and justice system and improve transparency to allow for more effective pro bono work. The Law on Criminalisation of Infractions Surrounding Money Laundering was passed in January 2014<sup>48</sup> in an effort to combat corruption. However, public access to government information remains limited.<sup>49</sup>

Angola, having ratified the African Charter on Human and Peoples' Rights in 1990, and formally supporting the 2004 Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, is now under an obligation to increase access to legal aid in its criminal justice system.<sup>50</sup>

Under Article 1 of the Advocacy Law, only lawyers who are registered with the OAA may practice law in Angola. According to the Advocacy Law, registration with the OAA is reserved to Angolan nationals.<sup>51</sup> The Advocacy Law permits foreign nationals, with a local law degree, to apply for registration/qualification with the OAA. However, such registration/qualification is subject to the general principle of reciprocity with other countries which ultimately impairs the ability of foreign individuals to be eligible to practice law in Angola.

## Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

### Public concerns about formal legal system

The judicial system remains institutionally weak due to political influences in decision-making processes. Public perception of corruption<sup>52</sup> and a lack of government accountability undermine the legal system's

---

<sup>46</sup> International Bar Association. “Angola Human Rights Training 2012”, available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=bd43a75-f91b-4bb2-ad1c-acf88e18fc17> (last visited on September 4, 2015).

<sup>47</sup> UNODC Survey Report 2011, supra n. 9. at 22.

<sup>48</sup> Lei 3/14, of February 10, 2014.

<sup>49</sup> Angola 2014, supra n. 2. at 20.

<sup>50</sup> African Commission on Human and Peoples' Rights. “Resolution on the Adoption of the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System (2006),” available at <http://www.achpr.org/sessions/40th/resolutions/100/> (last visited on September 4, 2015).

<sup>51</sup> Article 11 of Advocacy Law.

<sup>52</sup> Rafael Marques de Morais v. Angola, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005).



independence and reliability.<sup>53</sup> Trials at the Supreme Court have been subject to lengthy delays; in 2013, 40% of inmates were pre-trial detainees with a large proportion not having been formally charged.

Unlawful arrest and detention are serious issues, particularly in Cabinda where civil society activists are thought to often be subjected to torture or detention or in Lunda Norte which is controlled heavily by the army and private security forces.<sup>54</sup> Prisoners and their families have reported that prison officials demand bribes for their release.<sup>55</sup> While detainees have a legal right to a lawyer provided by the state, this right has frequently not been upheld.<sup>56</sup> Defense lawyers have also been under threat by government security forces under the pretext of national security, which has undermined credibility of such trials.<sup>57</sup>

## Pro Bono Resources

### Entities engaged in pro bono

Pro bono resources in Angola are limited. The non-governmental organisation Mãos Livres has advised that Angola lacks sufficient lawyers to conduct vital government functions, much less participate effectively in pro bono.<sup>58</sup> Access to justice for Angolans can be further increased through government efforts to subsidize lawyers who practise law outside Luanda and who assist those unable to afford legal advice.<sup>59</sup>

## CONCLUSION

Angola has an emerging pro bono commitment that is currently engaged in creating and institutionalising a framework to facilitate access to justice. Prospective pro bono partners should engage with local organisations to identify areas in which pro bono assistance could be provided. More lawyers and a better distribution throughout the country are needed. In the long-term, an increased focus on establishing a government-run legal aid system to assist the neediest applicants by providing free or reduced-cost legal assistance would serve to improve overall access to justice.<sup>60</sup>

September 2015

## Pro Bono Practices and Opportunities in Angola

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>53</sup> Angola 2014, supra n. 2. at 21.

<sup>54</sup> Transformation Index BTI 2014, available at <http://www.bti-project.org/reports/country-reports/esa/ago> (last visited on September 4, 2015).

<sup>55</sup> Angola 2014, supra n. 2. at 22.

<sup>56</sup> Id.

<sup>57</sup> Human Rights Watch 2014, World Report: Angola, January 2013, available at <http://www.hrw.org/world-report/2014/country-chapters/angola> (last visited on September 4, 2015).

<sup>58</sup> IBAHRI Angola, supra n. 11. at 33.

<sup>59</sup> IBAHRI Angola, supra n. 11. at 52.

<sup>60</sup> IBAHRI Angola, supra n. 11. at 53.



## Pro Bono Practices and Opportunities in Argentina<sup>1</sup>

### INTRODUCTION

The Argentine legal system has long provided a mechanism for pro bono legal services. But support in Argentina for the emerging concept of voluntary pro bono work among private lawyers and law firms began in earnest in the late 1990s and intensified as the country suffered through an economic crisis. The Argentine legal community is increasingly aware that fostering a culture of pro bono facilitates equal access to justice, bolsters democratic institutions, provides satisfying personal and professional experiences for lawyers, and is ultimately good for business. As leaders push for the development of this culture, the infrastructure supporting pro bono opportunities and the number of lawyers who perform this work in Argentina is growing. This chapter summarizes the existing regime of legal aid for persons with scarce economic resources, highlights the recent growth of the pro bono movement, and discusses ways to get pro bono work in Argentina.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

Argentina is a federal Presidential Republic and a representative democracy. The political system is formed, pursuant to the constitution,<sup>2</sup> by the three traditional branches: the Judicial, the Legislative, and the Executive.

The Legislative Branch is the Congress, formed by the House of Representatives and the Senate. The primary function of the Congress is to pass, amend, revoke, and repeal laws. The Executive Branch is made up of the President, the Chief of the Ministerial Cabinet, the Vice-President, Ministers, and other officers and directors of administrative agencies. The President is the head of the State.

The judicial power is vested in a Supreme Court and in such lower courts as Congress may constitute in the territory of the Nation. The President cannot exercise judicial functions in any case, nor can the President assume jurisdiction over pending cases or reopen those already adjudged.

National Supreme Court justices are appointed by the executive power with the consent of the Senate. All other national judges are appointed by the Council of Magistracy.

The Council is periodically constituted so as to reflect a balance between representatives of the political bodies elected in popular elections, judges, and lawyers with federal registration. It also includes other scholars and scientists as indicated by law in number and form.

The judges of the National Supreme Court and lower courts may be removed by a special jury composed of legislators, judges, and lawyers with federal registration. They can be removed for misconduct or crimes committed in the fulfillment of their duties or for ordinary crimes.<sup>3</sup> The country is divided into a Federal Capital (the city of Buenos Aires) and 23 provinces. Each province has its own governor, legislature, and judiciary.

The Argentine federal system was adopted following the United States Constitution. The National Constitution recognises rights and guarantees and sets forth the political system. Each province enacted its own constitution under the republican, representative system in accordance with the principles, declarations, and guarantees of the National Constitution.

---

<sup>1</sup> This chapter was drafted with the support of M.&M. Bomchil Abogados.

<sup>2</sup> Constitucion Nacional de Argentina, Articulo 108-114, available at <http://www.senado.gov.ar/Constitucion/judicial> (last visited on September 4, 2015).

<sup>3</sup> Constitucion Nacional de Argentina, Articulos 53 and 115, available at <http://www.senado.gov.ar/deInteres> (last visited on September 4, 2015).



The provinces have reserved to themselves all the powers not delegated to the Federal Government. Provinces determine their own local institutions and are governed by them. They elect their governors, legislators, and other provincial officers, without intervention of the Federal Government.

The Federal Congress enacts codes (civil, commercial, bankruptcy, criminal, mining, labor and social security codes) that are applicable within the entire country, while the provinces are only empowered to enact procedural rules.

After several attempts to enact a unified Civil and Commercial Code, on October 1, 2014, the Argentine Congress passed Law Number 26,994. That law created a new Civil and Commercial Code and repealed and modified several laws, including the Civil Code, the Commercial Code, and the Argentine Commercial Corporations Act Number 19,550, among others. According to Law Number 27,077, the New Civil and Commercial Code came into effect on August 1, 2015.

The new Civil and Commercial Code will introduce important changes to the Argentine legal system that will impact several aspects of civil and commercial regulations, including family law, contract law, and civil liability. One of the most important changes is the unification of the Civil and Commercial Codes into a single code. Other important changes are the elimination of the distinction between contractual and tort liability, the regulation of new contracts, and the establishment of shorter statute of limitation periods.

## The Courts

The National Supreme Court of Justice (the “**Supreme Court**”) is the highest level of the Argentine judicial system. It exercises ordinary (general) and special appellate jurisdiction, and exclusive and original jurisdiction.

General appellate jurisdiction is exercised with respect to matters previously treated by courts of first and second instance. These matters are those governed by the National Constitution and federal laws; for example, issues related to international treaties, admiralty, and maritime jurisdiction.

Special appellate jurisdiction is exercised through what is commonly referred to as *constitutional control*, since the Supreme Court has been endowed with the power to control legal rules and administrative acts.

The Supreme Court’s exclusive and original jurisdiction involves all matters related to ambassadors, ministers, and foreign consuls and those involving a province. The provincial courts are vested with general jurisdiction over matters that involve laws dictated by both national and local congresses. Moreover, alongside the aforementioned provincial courts presiding over ordinary matters, there are also provincial tribunals having jurisdiction over controversies involving federal matters (i.e., federal jurisdiction). Most courts preside over subject matter-specific issues (civil, commercial, criminal, labor, etc.).

Independent of the Supreme Court’s Office, the Office of Domestic Violence seeks to unify jurisdictional criteria for recording cases of domestic violence since these cases are handled either by family courts or civil courts depending on the local jurisdiction. Additionally, it is working on developing and organising material and human resources to produce domestic violence statistics and analysis to assess the true magnitude of the phenomenon.<sup>4</sup>

Argentine courts typically follow a written procedure that may involve any of the following stages: complaint, answer, defenses to the complaint, counterclaim, evidence stage, and final ruling; but criminal proceedings generally comprise two stages: a probable cause-type proceeding followed by an oral trial before a three-judge court.

To take part in a judicial controversy, it is necessary to instruct a registered attorney. Only registered attorneys are allowed to file written pleadings or writs before the courts.

---

<sup>4</sup> See <http://www.ovd.gov.ar/ovd/> (last visited on September 4, 2015).



## The Practice of Law

### Education

According to Law Number 23,187, Section 11, in order to practice law in Argentina, attorneys must earn a law degree from an accredited university (i.e., authorized by the Ministry of Culture and Education). Argentina does not have a standard and common system of examination after high school, thus admission to universities is strictly defined by each university. Law degree courses tend to last five to six years.

After graduation, lawyers must register before the *Colegio de Abogados* (Bar Association) of the legal district they intend to practice in.<sup>5</sup> Bar associations regulate and discipline their members by adopting and enforcing the ethical rules that govern the practice of law in their jurisdiction.<sup>6</sup> In addition to regulating their attorneys' conduct, bar associations promote and organize the provision of free legal services by their members. Some of their policies provide that their attorney members have a duty to provide free legal services. They also oversee free student legal clinics. The Buenos Aires Bar Association, for example, oversees the Consultorio Jurídico Gratuito, offered by Buenos Aires University law students. The Bar Association of Córdoba is similarly responsible for creating free student clinics for people with limited resources and developing the procedures and policies that govern these clinics.

### Licensure

In order to practice law in Argentina, lawyers must have a degree from an accredited university<sup>7</sup> to register before the relevant *Colegio de Abogados* (Bar Association). This is a barrier to foreign lawyers practicing law in Argentina. In order to practice law, foreign lawyers should obtain the recognition of their foreign diplomas at a state or private university. The recognition of diplomas is strictly defined by each university.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Argentina's Constitution and Supreme Court decisions interpreting its provisions provide that all individuals - even when they cannot afford it - have the right to a legal defense in criminal matters as well as when they are sued in civil court.<sup>8</sup>

### Civil Proceedings

In civil proceedings, people of limited resources may seek free assistance through bar associations that promote and organize the provision of free legal services by its members or through university legal clinics. Although the work performed by law students is free of charge, it is not typically categorized as pro bono in Argentina because it is not a university requirement.

Furthermore, people with limited resources are allowed to request a waiver of court fees, which vary between two to three percent of the claimed amount, depending on the jurisdiction. In consumer cases, all claimants have an exemption on court fees.<sup>9</sup>

---

<sup>5</sup> Colegios de Abogados are authorized semi-public bodies. Although these Bar Associations collect dues from their members, they are distinct from private clubs for lawyers, such as the Asociación de Abogados de Buenos Aires.

<sup>6</sup> See, e.g., "Requisitos para el ejercicio de la profesión de abogado en la Capital Federal, Jerarquía, deberes y derechos, Matrícula, colegiación." (Law No. 23,187), June 25, 1985; Código de Ética del Colegio de Abogados de Buenos Aires, approved by the General Assembly of the BA Bar Association on March 31, 1987; Colegio De Abogados de La Provincia de Córdoba, Ley No. 5805.

<sup>7</sup> Law 23,187.

<sup>8</sup> Argentine National Constitution.



## Criminal Proceeding

If a criminal defendant chooses to proceed without securing legal representation or without representing himself, a judge will appoint an official defender (*defensor oficial*) to the case.<sup>10</sup> In addition, people with limited resources with legal needs outside of the criminal system may seek free assistance through university legal clinics. Although the work performed by official defenders and law students is free of charge, it is not typically categorized as pro bono in Argentina because the former is state-funded legal aid, and as mentioned above, the latter is a graduation requirement.

## State-Subsidized Legal Aid

Subsidized legal aid is provided through the State in criminal cases; if a criminal defendant chooses to proceed without securing legal representation, an official defender (*defensor oficial*) is appointed. In these cases there are no eligibility criteria since the National Constitution states that all individuals (without any restriction based on immigration status, financial means, or merits) have the right to a legal defense in criminal matters.

In the past few years, the government has opened a number of legal-aid centres in slum neighborhoods, which provide services to assist immigrants and address the problem of lack of police action in cases of domestic violence. Five pilot centres were opened in Buenos Aires in 2008. Their activities shed light on the need to offer a wider range of services. Thirty-three more centres were eventually opened, several of them in the provinces. In addition to providing legal assistance, the centres act as mediators. They also raise awareness about new laws that expand rights in areas such as immigration, mental health, and domestic violence.

The centres work with ministries, public offices, universities, and foreign consulates, and in some cases, these institutions supply their own staff. Moreover, young people coming under the Labour Ministry's "More and Better Jobs" program work as administrative employees at some of the centres.

According to a study conducted by the National Office for the Promotion and Strengthening of Access to Justice, these centres have provided assistance in more than 152,000 cases since their creation. Nine mobile units were added in 2012 because of the overwhelming number of people seeking help.<sup>11</sup>

Assistance through bar association or law school clinics is restricted to persons with extremely limited means. More than a quarter of the clients are unemployed, with a monthly income of under \$300. Law students may not charge a fee for their services. There are also certain substantive restrictions; for example, labor or pecuniary cases are precluded.

Similar to the clinical education programs prevalent in US law schools, law students in many Argentine universities learn the practical skills of lawyering by offering free legal assistance to people with limited resources. In Buenos Aires, for example, all University of Buenos Aires law students must spend part of their final year of study providing free services either through the Consultorio Jurídico Gratuito ("**Consultorio**"),<sup>12</sup> a legal clinic supervised by law professors, or through an NGO-affiliated clinic in collaboration with the Centro de Estudios Legales y Sociales (Center for Legal and Social Studies or

---

<sup>9</sup> Law 24.240, Section 53.

<sup>10</sup> Law No. 24.946, Section 60. Though the public defender provides free legal services, a defendant who is convicted and has sufficient means at the time of sentencing must reimburse the cost of this representation.

<sup>11</sup> See [http://www.ibanet.org/PPID/Constituent/AccessToJustice\\_LegalAid/Projects.aspx](http://www.ibanet.org/PPID/Constituent/AccessToJustice_LegalAid/Projects.aspx) (last visited on September 4, 2015).

<sup>12</sup> The Consultorio is structured through commissions, each of which centres around a particular area of law, e.g., children's rights or property law. "Docentes y Alumnos Llevan Las Causas," May 14, 2007, available at <http://edant.clarin.com/diario/2007/05/14/sociedad/s-03401.htm> (last visited on September 4, 2015). See also, the description of the Consultorio program on the University of Buenos Aires' "University Extension" website, available at [http://www.uba.ar/extension/trabajos/derecho\\_patro.htm](http://www.uba.ar/extension/trabajos/derecho_patro.htm) (last visited on September 4, 2015).



“CELS”),<sup>13</sup> overseen by its legal professors. Other Argentine universities such as Universidad Católica Argentina, Universidad Torcuato Di Tella, and Universidad Nacional de Córdoba have similar clinical programs.<sup>14</sup>

This free legal assistance is only available to individuals; non-profit organisations do not qualify. This exclusion is an important gap in the legal aid regime that is being addressed by the pro bono movement.

## Mandatory Assignments to Legal Aid Matters

Bar associations regulate and discipline their members by adopting and enforcing the ethical rules that govern the practice of law in their jurisdiction. In addition to regulating their attorneys’ conduct, bar associations promote and organize the provision of free legal services by their members. Some of their policies provide that attorney members have a duty to provide free legal services.

Although lawyers and law firms may publicise that they offer pro bono work, in practice there is limited benefit in doing so since they receive pro bono cases through the Comisión de Trabajo Profesional Pro Bono en Causas de Interés Público (the “**Pro Bono Commission**”) of the Colegio de Abogados de la Ciudad de Buenos Aires (the “**City of Buenos Aires Bar Association**”), described below, or other pro bono clearinghouses. Though there is technically no ethical restriction on pro bono lawyers’ ability to collect fees, lawyers must comply with the pro bono policies of whichever clearinghouse or referring agency they work with.

## Alternative Dispute Resolution

### Mediation and Arbitration

The Argentinean legal system contemplates non-judicial dispute resolution procedures. Within the city of Buenos Aires, Law Number 26,589 and Decree 1467/2011 implement a mandatory mediation proceeding before publicly or privately appointed mediators, who are not empowered to decide cases. Instead they bring the parties together in order to reach an amicable settlement. If no agreement is reached, the plaintiff is entitled to bring the case before the courts. On the other hand, if an agreement is reached, its execution is compulsory for the parties, once the mediator’s signature is certified by the Ministry of Justice and Human Rights. After which, the parties may judicially enforce the agreement. As of today, no provincial jurisdiction has established this mechanism as mandatory, with the exception of the Province of Buenos Aires, which set forth mandatory mediation proceedings through Law Number 13,951. These proceedings have not been implemented yet, but are expected to be in force within the year. This mediation procedure is mandatory before filing any suit in the courts of the city of Buenos Aires, with the sole exception of those types of cases which are expressly excluded by Law Number 26,589 (for instance, provisional remedy cases).

### Ombudsman

The Ombudsman is an independent body created within the National Congress that operates with full autonomy: it does not receive instructions from any authority. The mission of the Ombudsman is to defend and protect human rights and other rights, guarantees, and interests defined in the Constitution and the laws of Argentina from the deeds, acts, or omissions of the administration. The Ombudsman receives complaints, investigates, and litigates in public interest matters free of charge and it also controls public administrative functions. The Ombudsman’s term of office is five years, and he may only be re-

---

<sup>13</sup> CELS is a non-governmental organisation that promotes the protection of human rights and the strengthening of the democratic system in Argentina. See <http://www.cels.org.ar> (last visited on September 4, 2015).

<sup>14</sup> See Red Latinoamericana de Clínicas Jurídicas, available at <http://www.clinicasjuridicas.org/universidades-latinoamerica.htm> (last visited on September 4, 2015). Students who participate in the NGO-affiliated clinic at the University of Córdoba work with the Centro de Derechos Humanos y Ambiente (CEDHA), available at <http://wp.cedha.net/> (last visited on September 4, 2015).



appointed once. The Ombudsman is appointed and removed by Congress with the vote of two-thirds of the members present of each House.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Bar Association Pro Bono Programs

As previously discussed, the City of Buenos Aires Bar Association's Pro Bono Commission is a bridge, largely between large law firms and pro bono clients. To a lesser extent, in-house and government lawyers have also developed pro bono programs in partnership with either the Pro Bono Commission or global law firms, particularly in larger companies.

The City of Buenos Aires Bar Association formed the Pro Bono Commission in 2000. Not to be confused with a group of lawyers offering pro bono legal work, the Pro Bono Commission is an administrative group that acts as a clearinghouse to match lawyers with pro bono clients. Potential pro bono clients must first present the Commission with a request for services, after which the Commission analyzes the request to determine if it qualifies as a matter of "public interest". If accepted, the case is circulated among registered law firms with a summary of its essential characteristics and assigned to the law firm that expresses an interest in taking the case. If several law firms are interested, the case will be assigned in accordance with the preference of the client or, in the absence of a client preference, by lottery.<sup>15</sup> In order to facilitate a positive match between attorneys and clients, and to ensure that public interest cases receive the highest quality of legal work, the Pro Bono Commission formed a network of participants consisting of many of the leading law firms in Argentina.<sup>16</sup> It also works in association with other bar associations in Latin America.

The Pro Bono Commission has traditionally emphasized disability, microfinance, NGO advice, and transparency. New focus areas also include criminal law as well as childhood and adolescence issues, health issues, and public ethics and political transparency.<sup>17</sup> A recent accomplishment that exemplifies the Commission's work is attorney participation in "Project Manuel", which has facilitated the adoption of 130 children.<sup>18</sup> Moreover, the Pro Bono Commission is currently working with several universities, such as Universidad de Buenos Aires, Universidad Torcuato Di Tella, and Universidad Austral, to promote pro bono services and foster the understanding of law as a tool for social change and developing public policies.

Recently, several in-house legal teams have joined the Pro Bono Commission. The last one to join in May, 2015 was AIG La Meridional Cía. Argentina de Seguros S.A., an important insurance company in Argentina.

#### Clearing Houses

The Pro Bono Commission has worked with TrustLaw to identify projects in which legal departments can partner with law firms and each other in matters that might be too large for any one department to handle on their own.

---

<sup>15</sup> Commission Protocols and Standards, available at <http://www.probono.org.ar/en/commission-s-protocol-and-standards.php>. (last visited on September 4, 2015).

<sup>16</sup> The network has grown over time. The participating law firms as of September 13, 2010, are: (1) Allende & Brea; (2) Baker & McKenzie; (3) Beccar Varela; (4) Brons & Salas; (5) Bruchou, Fernández Madero & Lombardi; (6) Bulló, Tassi, Estebanet, Lipera, Torassa & Asociados; (7) Cárdenas, Di Cío, Romero & Tarsitano; (8) Casal, Romero Victorica & Vigliero; (9) Del Carril, Colombres, Vayo & Zavalía Lagos; (10) Klein & Franco; (11) Llerena y Asociados Abogados; (12) M. & M. Bomchil; (13) Marval, O'Farrell & Mairal; (14) O'Farrell; (15) Pérez Alati, Grondona, Benites, Arntsen & Martínez de Hoz (h); (16) Raggio & García Mira; and (17) Zapiola Guerrico & Asociados.

<sup>17</sup> See <http://www.probono.org.ar/en/index.php> (last visited on September 4, 2015).

<sup>18</sup> See <http://www.probono.org.ar> (last visited on September 4, 2015).



For example, TrustLaw recently connected a group of law firms and corporate counsel, including Hewlett-Packard Company, with a nonprofit organization in Latin America focused on alleviating poverty in slums. The legal team collaborated to provide the organization with research on laws relating to the right to housing, forced evictions and "squatters rights". The organization used this research to create a comprehensive guide on access to housing best practices and laws in the Latin American context and to inform policy decision makers on measures to fight social exclusion in Latin America<sup>19</sup>.

Fundación Poder Ciudadano (the Argentine chapter of Transparency International) is a non-profit organisation in Buenos Aires that promotes civic participation and political transparency. Fundación Poder houses the Programa Acción Colectiva por la Justicia (the "**Collective Action Program**" or "**PAC**") which acts as the second major clearinghouse for pro bono legal work in Buenos Aires. Like the Pro Bono Commission, the PAC accepts cases that are in the public interest. It also finds matches for individual clients, provided that those individuals demonstrate that their claimed legal rights are representative of violations being committed against a larger group of individuals. The PAC maintains an internet-based network of volunteer lawyers rather than a network of law firms (although law firms can and do participate). PAC members include lawyers not only from Buenos Aires but from throughout Argentina. Lawyers in the network can take cases individually, in groups or can arrange to provide limited assistance in a particular case, such as only performing investigative work. Generally, the PAC offers flexibility and a broad range of opportunities for lawyers interested in pro bono.<sup>20</sup>

The Cyrus R. Vance Center for International Justice in New York serves as a clearinghouse for foreign attorneys to offer pro bono services in Argentina. For example, in November 2002, Shearman & Sterling assisted Fundación Poder with issues of citizenship, civic information, collective action, and democracy. It also helped Fundación Poder with its incorporation in the United States as a 501(c)(3). The Vance Center has set up a small committee of senior human rights law practitioners from Africa and Latin America. The committee, called the South-South Human Rights Steering Committee, meets by telephone on a regular basis to discuss the challenges that are common to human rights advocates in Africa and Latin America and to identify opportunities for attorneys to help.

## Historic Development and Current State of Pro Bono

The pro bono movement in Argentina was shaped in large part by the two aspects of the country's legal aid system described above. First, law students who provide free services through their university clinics do so as a requirement to graduate, rather than as volunteers. Secondly, non-profit organisations are not eligible to receive free government or student legal aid. These two unique facts presented leaders of the Argentine pro bono movement with opportunities for improving and developing a complementary system. The Buenos Aires Bar Association has been instrumental in this effort. In the late 1990s—before Argentina's financial crisis—Argentine lawyers began considering how to address these opportunities. The answer was to define the concept of pro bono and to create an infrastructure that would facilitate the performance of pro bono work and educate lawyers about the merits of pro bono. While the idea of pro bono was still in its infancy, Argentina descended into an unprecedented financial crisis, and members of the legal community came face to face with poverty and social issues. This experience strengthened the conviction among early pro bono supporters that offering free legal services was an ethical responsibility of those with the greatest access to the judicial system.

When defining the concept of pro bono, the Buenos Aires Bar Association distinguished the term from the already-existing practice of free legal aid in several important ways. First, pro bono work is not to be done out of a sense of obligation, but rather from a firm or lawyer's individual motivation or commitment to do good, and as such, should be carried out with the same quality as all paid legal work. Second, to leverage the scarce resources of practitioners in a way that ensures the greatest social impact, the Buenos Aires Bar Association treats as pro bono only those cases deemed to be in the "public interest," meaning cases

---

<sup>19</sup> See <http://www.trust.org/publications/ii?id=d54c4446-8a0c-4000-b30e-3672a1f52dd0> (last visited on 3 February 2016).

<sup>20</sup> See <http://poderciudadano.org/> (last visited on September 4, 2015).



implicating broad social issues or the rights of multiple persons. Towards that end, unlike in the free legal assistance regime, NGOs and other organisations can qualify as pro bono clients to the extent they seek assistance with issues that are in the public interest. In December 2000, the Buenos Aires Bar Association formed the Comisión de Trabajo Profesional Pro Bono en Causas de Interés Público (the Pro Bono Commission) as discussed above to further support pro bono work.

The Pro Bono Declaration for the Americas, spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched in January of 2008 by a committee of leading practitioners in Latin America and the United States. Signatories affirm that it is the duty of the legal profession to promote both a fair and equitable legal system and respect for human and constitutional rights. The Declaration calls for each signatory to commit to an average of no less than 20 hours of annual pro bono work per practicing attorney. As of April 3, 2009, 16 private Argentine law firms have signed the Declaration, as well as the Bar Association of Buenos Aires, six law schools, and one NGO (the Fundación Poder Ciudadano). This Declaration strengthened the pro bono movement in Buenos Aires.

## CONCLUSION

The pro bono movement in Argentina is part of the growing recognition within the legal community in Latin America of the importance of fostering a culture of pro bono among lawyers and law firms. On a national level, the movement is still growing and has made rapid strides. With an effective infrastructure in place, the Argentine pro bono movement is poised to continue this momentum.

September 2015

Pro Bono Practices and Opportunities in Argentina

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



# Pro Bono Practices and Opportunities in the Republic of Armenia<sup>1</sup>

## INTRODUCTION

Although, as a relatively young republic, the Republic of Armenia (“**Armenia**”) does not have a historic pro bono culture, the availability of pro bono legal services is now increasing and there is a growing tendency in the professional community to consider the provision of pro bono legal services as an integral part of a lawyer’s role. In contrast, the provision of state-funded free legal aid is well established and precisely regulated and systemized and has been expanded by the government in recent years. Significant work is still required to develop the legal infrastructure of Armenia.

## OVERVIEW OF THE LEGAL SYSTEM

### The Justice System

#### Constitution and Governing Laws

The legal system of Armenia is considered part of the Romano-Germanic legal family, meaning that its core principles are codified into a referable system which serves as the primary source of law. A precise hierarchy of legal acts (laws, regulations, decisions, etc.) is established in which the Armenian Constitution (the “Constitution”) has supreme legal force. International treaties signed and ratified by the state prevail over other legal acts (including national legal acts) except for the Constitution. Accordingly, international treaties can only be signed and ratified by Armenia to the extent they do not conflict with the Constitution.

The Constitution was adopted by a nationwide referendum on July 5, 1995. On November 27, 2005, a nationwide constitutional referendum was held which resulted in the adoption of amendments to the Constitution.

The basis for the provision of legal aid and pro bono services is established in Article 40 of the Constitution, which provides that: “Each person has the right to obtain legal aid. In cases provided by law the legal aid is provided at a free basis”. The detailed legal framework within which legal aid is provided is then created and regulated by a variety of both national and international legal acts, including international treaties, national codes, particular laws, governmental decisions and rules of ethics. Of particular importance in this regard is the national law «On Advocacy» which establishes the concept of “free legal aid” and sets out and regulates the delivery of such free legal aid by Armenian Public Defenders (see below).

#### The Courts

Article 5 of the Constitution declares that the powers of the Armenian legislature, executive and judiciary shall be separated and balanced. The powers of the judiciary are set out in Chapter six of the Constitution and, in particular, Article 92 provides for the establishment and existence of a three-tier judicial system consisting of:

- “First Instance Courts of General Jurisdiction”, which consist of the Courts of Common Jurisdiction and the Administrative Court;
- “Courts of Appeal”, which consist of the Penal, Civil and Administrative Courts of Appeal; and
- the “Court of Cassation”, which acts as the Court of Supreme Judicial Instance, in which capacity it provides rulings as to the universal interpretation and application of Armenian law (except for issues related to constitutional law falling within the jurisdiction of the Constitutional Court).

---

<sup>1</sup> This chapter was drafted with the support of Dialog Law Firm.



The Administrative Court and the Administrative Court of Appeal are both specialized courts and, accordingly, will only hear litigation of certain types and under special jurisdiction.

The Constitutional Court is responsible for supervising the constitutionality of laws and other legislative instruments. It is the highest legal body for constitutional review in the country and is separate and independent not only from the legislature and the executive, but also from the judiciary and, as such, falls outside the three-tiered judicial system described above. The Constitutional Court delivers official interpretations of the provisions of the Constitution in the framework of the concrete cases.

The Constitution also contains a number of provisions safeguarding the independence of the judiciary including provisions guaranteeing the independence of the Armenian courts, provisions creating and guaranteeing the functioning of the Council of Justice and provisions confirming the process of judicial appointments (ensuring that it remains free from the risk of political influence). The Council of Justice is an independent body established under the Constitution consisting of nine elected judges and two legal scholars appointed by the President of Armenia. Its responsibilities include proposing lists of candidates for judicial appointments for Presidential approval and initiating disciplinary measures against judges.

A judge is a person who is appointed to hold the position of the president of the Court of Cassation, of the president of the Chambers or judges, as well as of the judge of the Court of first instance and of the Court of appeal or of the president of the court, according to conditions provided by Armenian law.

## The Practice of Law

### Education

The legal profession in Armenia is comprised of state-licensed attorneys (called “**advocates**”) and unlicensed lawyers (called “**jurists**” or “**lawyers**”). Only advocates are allowed to represent clients in courts (judicial representation) including defending them in criminal matters. Advocates also have certain special privileges and rights, especially in respect of confidential information and concerning civil, administrative and penal proceedings (as to which see further below). Jurists/lawyers provide a broad range of legal services to the public.

Note, there are no specific rules or requirements relating to the provision of pro bono services.

### Licensure

Advocates are subject to stricter regulation than jurists/lawyers. In addition to the requirements for a jurist/lawyer set out below, they must successfully complete the Armenian School of Advocates (the “**School of Advocates**”) and obtain a practice license from the School of Advocates. To obtain such a license, the advocate must study at the School of Advocates and pass qualification exams organized by the qualification commission of the Armenian Chamber of Advocates (the “**Chamber**”).

Information in respect of all advocates must be recorded in the register of advocates maintained by the Chamber and advocates must pay membership fees to the Chamber.

### The Role of Foreign Lawyers (as applicable)

Foreign advocates (lawyers) may act as advocates in Armenia in accordance with (i) the law “On Advocacy”, (ii) the Charter of the Chamber and (iii) the “Rules of conduct of advocates” promulgated by the Chamber, except for the cases provided by specific international agreements. A foreign advocate acts in Armenia on the basis of the license delivered by the appropriate advocacy body of the foreign country and on condition of receiving a certification of the Chamber according to the procedure provided by its Charter. The procedure of obtaining the certificate as well as the suspension of such certificate (particularly in case of violation of the provisions of the mentioned acts and rules) are established by the Board of the Chamber.

### The Role of In-House Counsel

Advocates and lawyers may be employed as, and may provide legal assistance in their capacity as, in-house counsel in any Armenian company, bank or other legal entity and will continue to be subject to the requirements and oversight described in parts (a) and (b) above.



**Demographics: Number of Lawyers per Capita; Number of Legal Aid Lawyers per Capita.**

Armenia has a very centralized population and governing system. The large majority of both lawyers and advocates act in the capital, Yerevan. According to Chamber's data, there were 1,580 advocates in Armenia as of 20 July, 2015, of which 41.1% were female. As lawyers/jurists are not licenced or registered by anybody, there are no official statistics for lawyers/jurists in the country.

**Legal Regulation of Lawyers**

There are several legal acts concerning and regulating advocates and their activities, the most important of which are the laws "On Advocacy" and the appropriate decisions of the Board of Chairman of Courts and decisions of the Constitutional Court. A number of international laws are also applicable, including certain regulations and decisions of the European Court of Human Rights. Armenian judicial decisions and precedent also have an important impact on the legal profession and regulates a large variety of legal relationships. Finally, the Chamber, having the role of a regulatory body, has provided a number of relevant internal, local rules and regulations regulating advocates.

**LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES**

**The Right to Legal Assistance**

The right to legal assistance is guaranteed under Article 20 of the Constitution as a basic right. Accordingly, all citizens have the right to legal assistance and, in certain cases provided by law, citizens may be eligible for state-financed legal assistance. Armenia is also party to the Council of Europe and party to the European Convention on Human Rights; therefore the guarantees of legal aid implied in Article 6 thereof (regarding the right to a fair trial) are also applicable.

Under Article 10 of the Armenian Code of Criminal Procedure all citizens have the right to receive legal aid in accordance with the procedures set forth therein. If requested by a suspect or defendant, or if required in the interests of justice and/or under Armenian law or applicable international agreements, the court hearing the relevant criminal case must ensure that such individual has due access to legal aid. Further, the relevant court/body can decide to provide free legal aid to a suspect or defendant based on their financial situation. Advocates and legal specialists may provide free legal aid on a voluntary basis. Such assistance is considered a charitable activity and is regulated by the law "On charity".

A party to civil proceedings has the right to engage any representative not prohibited by law and the court/body hearing the relevant civil case cannot forbid the participation of such representative.

**State-Subsidized Legal Aid**

**Eligibility Criteria**

An individual is entitled to the services of a legal-aid funded advocate (a Public Defender) (i) in criminal cases where the person does not have sufficient means to engage an advocate himself, and (ii) in civil matters if he falls within certain categories (see below). The Office of the Public Defender is founded to provide socially vulnerable citizens with free legal aid in cases provided for by law. A Public Defender is an advocate employed in the Office of the Public Defender employed by the Chairman of the Chamber upon submission by the Head of the Office of the Public Defender. Public Defenders are remunerated for their work from the State Budget as prescribed by law.

Subject to the satisfaction of the criteria set forth above, legal aid in criminal cases is provided by a Public Defender appointed by the Head of the Office of the Public Defender. Legal aid in civil, administrative and constitutional cases is provided on the basis of the applications of citizens and is available to the following:

- members of families of military servicemen who died defending the national borders;
- disabled people of 1st and 2nd category;
- indigent people with poverty graduation rank higher than 0;



- participants in the Great Patriotic war and the participants in military actions in defense of the national border;
- pensioners living alone;
- children left without parental care and similar persons;
- refugees; and
- people temporarily sheltered in Armenia.

State provided legal aid will cover the following activities and services:

- consultation, preparation of applications, lawsuits, appeals and other documents and provision of information;
- representation and defense in criminal, civil, administrative and constitutional cases; and
- representation in all stages of criminal procedure. State legal aid by a Public Defender is forbidden in matters related to business related cases (including corporate litigation) and cases exceeding AMD one million, except if the person receiving the legal aid is a defendant or third party appearing on the side of the defendant, as well as if there are reliable factual circumstances excluding the insolvency of the applicant.

Legal aid is not connected with citizenship, the merits of the case (though the client is normally consulted about the chances of its case) or legal issues (other than the exceptions referred to above). No companies (including NGOs) are eligible for legal aid.

In addition, the Office of the Public Defender organizes free legal aid days for all citizens every Thursday. The Chamber also organizes similar events on a regular basis.

### Mandatory Assignments to Legal Aid Matters

Private attorneys are not required to accept matters assigned by the legal aid scheme. Private attorneys may voluntarily accept a legal aid assignment and, once accepted, they are obliged to act in good faith and in the best interest of the client and may not subsequently terminate their engagement if it would adversely affect the interests of the client. Attorneys employed (and paid) by the Office of the Public Defender are required to accept the matters assigned by the legal aid scheme. The Office of the Public Defender is publicly funded.

### Unmet Needs and Access Analysis

Although the scope of legal activities covered by state-funded legal aid is relatively large, allowing for the appropriate defense and representation of a wide range of rights and interests, a large number of indigent persons do not satisfy the relevant eligibility criteria for state-funded legal aid (see Part B(1) above) and, thus, are currently excluded from making use of it. Consequently, there is significant scope for pro bono legal services to play an important role in supporting such persons who cannot afford to pay for legal assistance but who fail to satisfy the eligibility criteria for state-funded legal aid.

### Alternative Dispute Resolution

#### Mediation, Arbitration, Etc.

The law "On Commercial Arbitration" was adopted in 2006 and the Arbitration Court was established in 2007. The stated purpose of the Arbitration Court is to facilitate the fair settlement of commercial disputes through the operation of an impartial arbitration tribunal in a timely and cost effective manner. In this manner, the Arbitration Court provides parties with a useful alternative to the courts.

Parties may agree to submit a commercial dispute to the Arbitration Court in a written application. Once jurisdiction in respect of an application is accepted by the Arbitration Court, the relevant commercial dispute will become subject to the examination and decision of the arbitration tribunal. The procedure for the operation of the Arbitration Court and the binding nature of decisions adopted thereby are set out in the law "On Commercial Arbitration". Arbitrators are selected on the basis of their experience and availability from a list of arbitrators approved from time to time by the Chamber of Commerce.



In accordance with the law “On Advocacy”, advocates appear on behalf of their clients in the Arbitration Courts. It is possible to obtain state-funded legal aid in respect of a dispute heard by the Arbitration Court.

### Ombudsman

The Legal Ombudsman receives complaints, investigates them, reports them, or consults the applicants, however it does not mediate, and/or adjudicate matters.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Pro bono assistance in Armenia may be provided by:

- private attorneys/advocates;
- law firms;
- consulting firms (principally concerning financial law); and
- legal counsels.

Pro bono legal services are provided solely on a voluntary, ad hoc basis and are not regulated. Consequently, very little is known about the scope and extent of pro bono legal services provided. According to Chambers’ estimates, currently pro bono legal services in Armenia predominantly consist of legal consultations, with legal drafting, legal research and legal representation and advocacy in courts, arbitral tribunal and administrative bodies comprising the remainder of pro bono services provided.

There is no legal obligation on attorneys to undertake pro bono work or to report on pro bono work undertaken by them.

A very limited number of NGOs operate and/or finance independent pro bono legal clinics from time to time and may provide pro bono legal assistance on an ad hoc basis.

One of the Chamber’s objectives is to encourage and implement alternative systems of free legal aid delivery. The Chamber has contributed to the strengthening of a pro bono culture in Armenia primarily by:

- arranging weekly free legal consultations (including written consultations) provided by advocates and certain students at the School of Advocates; and
- granting certificates and acknowledgements to advocates that deliver free legal assistance.

Certain Higher Education Institutes run legal clinics staffed by law students, lecturers and/or professors which provide pro bono legal assistance upon request and in accordance with and subject to the internal regulations of the relevant institution(s). Such clinics are financed by the institutions themselves, universities and/or corporate grants and/or donations.

The Armenian Financial System Mediator (the “**Mediator**”) is a structure with an independent governing system, founded by the Central Bank of Armenia. The objective of the Mediator is to resolve the conflicts between natural person consumers and financial organizations concerning goods and stocks. The services provided by the Mediator are free, and the procedure of the examination of the appeal is simple, fast and transparent. The principles are stipulated in law “On the Financial System Mediator”, according to which its objective is to protect the rights and interests of consumers in the financial sphere as well as to assure the fast, effective and free examination of their appeals. The free services include all the phases of the procedure, that is, the proceedings of the reception and examination of the claim, and the phase of rendering a decision. The Mediator is funded by the Armenian state.

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

The development of pro bono in Armenia has been, and still is, hindered by the absence of a historic pro bono culture. However, the professional community, including the Chamber, is now more aware of the



advantages offered by encouraging and supporting pro bono as an integral part of a lawyer's role, and consequently, the availability of pro bono legal services is now increasing.

## Current State of Pro Bono including Barriers and Other Considerations

### Laws and Regulations Impacting Pro Bono

There is currently no specific law acknowledging or regulating the provision of pro bono legal services. Most notably there is no statutorily mandated minimum legal fee schedule in effect in Armenia. In contrast, the notion of (state funded) legal aid, as well as the terms and conditions of its provision, are clearly stipulated by laws, governing acts and internal regulations.

### "Loser Pays" Statute

As a rule, this statute will apply, particularly in the framework of judicial cases. Generally, all of the reasonably incurred fees and expenses of the successful applicant/defendant will be covered by the other party to the dispute.

## Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

The provision of legal aid is considered to be a commercial activity and only a limited number of lawyers and advocates are prepared to provide legal services without remuneration. The absence of a pro bono culture, where lawyers understand and acknowledge the importance and equity of the provision of free legal assistance, is an important socio-cultural barrier to the expansion of pro bono in Armenia.

Another barrier is public concern about the formal Armenian legal system, corruption, judicial efficiency, lack of public trust in the judiciary which leads to informal dispute resolution, efficacy of elected versus appointed judges, and the professionalism of judges. A wide variety of judicial and anti-corruption reform measures have been implemented recently (or are still in process) in an effort to enhance judicial efficiency and minimise corruption. It is hoped that such measures will improve public trust in the formal legal system and judiciary.

The Chamber is also actively seeking to promote and support the provision of pro bono legal services.

## CONCLUSION

Key members of the legal profession and civil society in Armenia now understand the benefits of establishing a strong pro bono culture in order to complement the availability of state-funded legal aid. Although the scale of pro bono activities is increasing, there is significant space for development. This development would be assisted by the implementation of specific laws and regulations establishing a framework for pro bono and its provision (as in the same way as it exists for state funded free legal aid).

September 2015

## Pro Bono Practices and Opportunities in Armenia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Australia

### INTRODUCTION

Pro bono legal services remain an increasingly important focus for lawyers and law firms throughout Australia. Australia now prides itself as one of the leaders in the world in providing pro bono legal services. Although such efforts are not as widespread as in the United States, a more strategic push for the development of pro bono services in certain targeted areas is allowing for greater access to those in need of free legal services in Australia.

In 1992, the first formal pro bono referral scheme was established in Australia.<sup>1</sup> Since then, additional pro bono “clearing-houses” and legal assistance referral schemes have developed in response to concerns about access to justice. Whether they are focused on the public interest or on particular disadvantaged groups or individuals, referral schemes generally aim to provide assistance to those who would not otherwise be able to assert their legal rights. They do this mainly by connecting individuals and organizations with lawyers who are willing to assist them on a pro bono basis. Referral schemes also provide a focal point in the legal community for the coordination of a wide range of pro bono activities. Among other things, they undertake projects with their lawyer members, often in conjunction with community organizations, directed at a particular community problem or issue. These efforts have effectively increased access to justice for those who would otherwise not know how or have the means to seek legal help.

According to a recent survey (the “**2014 National Survey**”) by the Australian Pro Bono Centre (“**APBC**”, until recently known as the National Pro Bono Resource Centre)<sup>2</sup> the amount of pro bono legal work being done by large law firms in Australia has generally increased over the past few years despite large cuts in the total numbers of lawyers (due to the economic downturn). Of the 41 firms providing data on the number of pro bono hours recorded by their attorneys,<sup>3</sup> more than half reported an increased pro bono budget or target compared to the preceding two years, with only one firm reporting a decrease in pro bono targets or budgets. Across all respondent firms, attorneys participating in pro bono work spent an average of 31.7 hours per lawyer per year on such matters.<sup>4</sup>

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

Australia has a federal system of government, comprising federal (that is, the Commonwealth or national level government), state and territory jurisdictions. The Australian Constitution establishes the federal government and sets out the basis for relations between the Commonwealth, the states and the Australian territories.<sup>5</sup>

---

<sup>1</sup> This was the New South Wales Law Society Community Referral Service Pro Bono Scheme; see <http://www.lawsociety.com.au/community/findingalawyer/probono/index.htm> (last visited on September 4, 2015).

<sup>2</sup> The APBC announced its change of name on June 17, 2015, with the launch of a new website in September 2015; see [http://www.nationalprobono.org.au/news\\_detail.asp?id=135](http://www.nationalprobono.org.au/news_detail.asp?id=135) (last visited on September 4, 2015).

<sup>3</sup> The firms surveyed employed 50 or more full-time equivalent lawyers and included 24 of the 25 largest Australian firms: National Pro Bono Resource Centre, Fourth National Law Firm Pro Bono Survey: Australian Firms with 50 or more lawyers – Final Report, December 2014, available at <http://www.nationalprobono.org.au/page.asp?from=4&id=31> (last visited on September 4, 2015).

<sup>4</sup> National Pro Bono Resource Centre, Fourth National Law Firm Pro Bono Survey: Australian Firms with 50 or more lawyers – Final Report, December 2014 at 4.

<sup>5</sup> Parliament of Australia, “Infosheet 13 – The Constitution”, available at [http://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/00\\_-\\_Infosheets/Infosheet\\_13\\_-\\_The\\_Constitution](http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_13_-_The_Constitution) (last visited on September 4, 2015).



An essential feature of the Australian system of government is that law-making, the exercise of executive power and the application of laws by a judicial power is divided between the three 'arms' of government, respectively, the Parliament, the Executive and the Judiciary. This division is referred to as the 'separation of powers doctrine'.<sup>6</sup>

The Australian Constitution gives the legislative power of the Commonwealth (i.e. the power to make laws) to the Parliament, which is comprised of the Queen (who is represented by the Governor-General) and two 'Houses' of elected representatives - the House of Representatives and the Senate. The Parliament is responsible for passing legislation, serves as a forum for the debate of public policy and authorises the Executive to spend public money, by agreeing to proposals for expenditure and taxation. A further function of Parliament is to provide from its membership the members of the Executive, as set out below. The Governor-General converts proposed laws into Acts of Parliament by assenting (on behalf of the Queen) to legislation that has been passed by the two Houses.

The Executive is comprised of the Queen, Prime Minister and Cabinet. Under the Australian Constitution, the executive power is vested in the Queen and is exercisable by the Governor-General. Practically however, the executive power is held by the Prime Minister and Cabinet as 'advisers' to the Governor-General. The Prime Minister is the elected leader of the party in government and the Cabinet is a policy-making body comprised of senior Ministers selected by the Prime Minister.<sup>7</sup>

The Australian Constitution also gives the Governor-General powers to act independently in certain matters, including the power to dissolve the House of Representatives and, in certain situations, both Houses of Parliament (called a 'double dissolution'). However, other than in exceptional circumstances, the Governor-General will follow the advice of the Prime Minister.<sup>8</sup>

## The Courts

The Australian Constitution vests the judicial power of the Commonwealth in the High Court of Australia, being the highest and final court of appeal in Australia, and other federal courts established by legislation. The latter category is currently comprised of the Federal Court, Family Court and Federal Circuit Court.

Under the separation of powers doctrine referred to above, the judiciary is independent and acts without interference from the parliament or executive. The Australian Constitution also guarantees the tenure and remuneration of judges to assist in securing judicial independence.<sup>9</sup> Federal judicial officers are appointed by the government and cannot be removed from office except by the Governor-General on an address from the Parliament on the grounds of proved misbehaviour or incapacity. The appointment of judges depends upon the terms of the governing statute and constitutional provisions; typically, judges are formally appointed by the Governor-General (who acts on the advice of the government).<sup>10</sup>

One of the High Court's main functions is to interpret the Constitution. The High Court may rule that a particular law is unconstitutional, or beyond the power of the Parliament to make and therefore invalid. Although Parliament may override the judiciary's interpretation of any ordinary law by passing or

---

<sup>6</sup> Parliament of Australia, "Infosheet 20 – The Australian System of Government", available at [http://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/00\\_-\\_Infosheets/Infosheet\\_20\\_-\\_The\\_Australian\\_system\\_of\\_government](http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_20_-_The_Australian_system_of_government) (last visited on September 4, 2015).

<sup>7</sup> Parliament of Australia, "Infosheet 20 – The Australian System of Government", available at [http://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/00\\_-\\_Infosheets/Infosheet\\_20\\_-\\_The\\_Australian\\_system\\_of\\_government](http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_20_-_The_Australian_system_of_government) (last visited on February 17, 2016).

<sup>8</sup> Parliament of Australia, "Infosheet 20 – The Australian System of Government", available at [http://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/00\\_-\\_Infosheets/Infosheet\\_20\\_-\\_The\\_Australian\\_system\\_of\\_government](http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_20_-_The_Australian_system_of_government) (last visited on February 17, 2016).

<sup>9</sup> Australian Government Attorney-General's Department, The Courts, available at <http://www.ag.gov.au/LegalSystem/Courts/Pages/default.aspx> (last visited on September 4, 2015).

<sup>10</sup> See, for example: Federal Court of Australia, Judges of the Court, available at <http://www.fedcourt.gov.au/about/judges> (last visited on September 4, 2015).



amending legislation, the Parliament is ultimately subject to the Constitution. Further, the Constitution cannot be changed by an Act of Parliament alone; a referendum of the people of Australia is necessary to effect any amendment to it.<sup>11</sup>

Each state and territory has their own laws and court system. State and territory courts fall within the responsibilities of the relevant state or territory Attorney-General or Minister for Justice.

## The Practice of Law

The Australian legal profession is comprised of two types of lawyers: solicitors and barristers. One of the primary differences between solicitors and barristers is the public's access to them; solicitors have direct contact with the public whereas lawyers that practice solely as barristers are specialist advocates and advisors and are generally instructed through solicitors. In New South Wales and Queensland, there is a split profession, meaning that there is a clear separation between barristers and solicitors.<sup>12</sup> In South Australia, Victoria, Western Australia and the Australian Capital Territory, the professions of barrister and solicitor are blended, but an independent bar is maintained for those that choose to practice solely as barristers. Similarly, the profession is also blended in Tasmania and the Northern Territory, however only a very small number of practitioners choose to operate as part of an independent bar.<sup>13</sup>

Foreign lawyers in Australia may practice either foreign law (subject to the applicable practising restrictions) or may apply to be admitted as Australian lawyers; the relevant conditions and requirements are set and applied by the legal practitioners board in the state or territory in which the lawyer intends to practice.<sup>14</sup>

According to a recent survey of the Australian legal industry, there were 66,211 practising solicitors in Australia as at October 2014.<sup>15</sup> It was reported that around 70.2% of practising solicitors work in private practice, about 15.8% work in-house (corporate), and around 9.6% in government.<sup>16</sup> The Australian Bar Association reports that there are approximately 6,000 practising barristers in Australia.<sup>17</sup>

There are no specific pro bono rules or requirements, such as a minimum number of hours, which solicitors and barristers are required to satisfy to maintain their practising qualifications. In April 2007, the APBC launched the National Pro Bono Aspirational Target (the "**Target**"), through which it seeks barristers, law firms and chambers of barristers to commit to a voluntary 35 hours of pro bono legal work per lawyer per year.<sup>18</sup> For the 2014/2015 financial year, the Target had 131 signatories (including 85 law

---

<sup>11</sup> Parliament of Australia, "Infosheet 20 – The Australian System of Government", available at [http://www.aph.gov.au/About Parliament/House of Representatives/Powers practice and procedure/00 - Infosheets/Infosheet 20 - The Australian system of government](http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_20_-_The_Australian_system_of_government) (last visited on February 17, 2016).

<sup>12</sup> See <http://www.austbar.asn.au/the-profession> (last visited on February 16, 2016).

<sup>13</sup> See <http://www.austbar.asn.au/the-profession> (last visited on February 16, 2016).

<sup>14</sup> For example, in New South Wales, foreign lawyers may be admitted either as an Australian-registered foreign lawyer or as an Australian lawyer, see <http://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/yourpractisingcertificate/practisingforeignlaw/index.htm> (last visited on September 4, 2015).

<sup>15</sup> The Law Society of New South Wales (prepared by Urbis Keys Young), The 2014 Law Society National Profile – Final Report, available at <https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1005660.pdf> (last visited on February 16, 2016).

<sup>16</sup> The Law Society of New South Wales (prepared by Urbis Keys Young), The 2014 Law Society National Profile – Final Report, available at <https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1005660.pdf> (last visited on February 16, 2016).

<sup>17</sup> See <http://www.austbar.asn.au/> (last visited on February 16, 2016).

<sup>18</sup> See [www.nationalprobono.org.au/target](http://www.nationalprobono.org.au/target) (last visited on February 16, 2016).



firms) covering approximately 11,235 lawyers.<sup>19</sup> Signatories are asked to adhere to and adopt a statement of principles relating to the Target and to report annually to the APBC on whether they have met the Target in the previous year.<sup>20</sup>

There is presently no continuing professional development (“CPD”) credit available to Australian lawyers for providing pro bono legal services. The APBC recently submitted to the Law Council of Australia that CPD rules should be amended to permit a lawyer who undertakes at least a day’s (7.5 hours) legal work on a pro bono basis to claim one CPD unit towards the required minimum ten units of CPD activity;<sup>21</sup> however, this proposal was not adopted.<sup>22</sup>

## Legal Regulation of Lawyers

Solicitors are represented by the Law Society of the state in which they practice,<sup>23</sup> and regulated by a legal practitioners board,<sup>24</sup> while the practice of barristers is governed by the relevant bar council or association.<sup>25</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

There is no constitutional, legislative or common law right to free legal representation in Australia in either criminal or civil cases. The High Court of Australia has, however, discussed a common law obligation for courts to refuse to permit an unfair trial and a right to legal aid in certain circumstances for defendants who are unable to afford legal representation in serious criminal cases.<sup>26</sup>

### State-Subsidized Legal Aid

The system of pro bono in Australia complements a system of legal aid which uses public funds to help those in need of legal services. In 1977, the Australian Government enacted the Commonwealth Legal

---

<sup>19</sup> Australian Pro Bono Resource Centre, Eighth Annual Performance Report on the National Pro Bono Aspirational Target, October 2015 at 4, available at [http://www.nationalprobono.org.au/ssl/CMS/files\\_cms/Eighth\\_Annual\\_Performance\\_Report\\_on\\_the\\_Aspirational\\_Target\\_2015.pdf](http://www.nationalprobono.org.au/ssl/CMS/files_cms/Eighth_Annual_Performance_Report_on_the_Aspirational_Target_2015.pdf) (last visited on February 16, 2016).

<sup>20</sup> Australian Pro Bono Resource Centre, Eighth Annual Performance Report on the National Pro Bono Aspirational Target, October 2015 at 4, available at [http://www.nationalprobono.org.au/ssl/CMS/files\\_cms/Eighth\\_Annual\\_Performance\\_Report\\_on\\_the\\_Aspirational\\_Target\\_2015.pdf](http://www.nationalprobono.org.au/ssl/CMS/files_cms/Eighth_Annual_Performance_Report_on_the_Aspirational_Target_2015.pdf) (last visited on February 16, 2016).

<sup>21</sup> National Pro Bono Resource Centre, Submission to the Law Council of Australia – Legal Profession Uniform Law: Continuing Professional Development Rules, March 6, 2015, available at [https://wic041u.server-secure.com/vs155205\\_secure/CMS/files\\_cms/NPBRC\\_Submission\\_to\\_LCA\\_Pro\\_Bono\\_and\\_CPD\\_Rules\\_0603\\_2015.pdf](https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/NPBRC_Submission_to_LCA_Pro_Bono_and_CPD_Rules_0603_2015.pdf) (last visited on September 4, 2015).

<sup>22</sup> See the meaning of “CPD activity” under Rule 8 of the Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 (NSW), available at <http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+242+2015+cd+0+N> (last visited on September 4, 2015).

<sup>23</sup> For example, the Law Institute of Victoria, see <http://www.liv.asn.au/> (last visited on September 4, 2015).

<sup>24</sup> For example, the Victorian Legal Services Board, see <http://www.lsb.vic.gov.au/> (last visited on September 4, 2015).

<sup>25</sup> For example, the New South Wales Bar Association, see <http://www.nswbar.asn.au/> (last visited on September 4, 2015).

<sup>26</sup> *Dietrich v The Queen* [1992] HCA 57.



Aid Commission Act 1977 (“**LAC Act**”) which established cooperative arrangements between the federal government and state and territory governments under which legal aid would be provided by independent legal aid commissions to be established under state and territory legislation.<sup>27</sup>

The federal Attorney-General’s Department administers funding for the provision of legal aid services for federal law matters through legal aid commissions (“**LACs**”), and manages a community legal services program and other legal aid services for indigenous Australians.<sup>28</sup> State and territory governments fund legal aid services for cases brought under state and territory law. There are eight independent LACs, one in each state and territory. Funding is provided mainly by the federal, state and territory governments. At the federal level, the government has provided funding through the *National Partnership Agreement on Legal Assistance Services*. In the most recent 2014 – 2015 budget year, the federal government initially intended to provide A\$204.4 million funding for legal assistance, representing a decrease of approximately A\$15 million for LACs.<sup>29</sup> Following significant criticism, the government agreed to restore funding of A\$25.5 million (over two years to June 30, 2017) for LACs, community legal centres (“**CLCs**”) and Indigenous legal service providers.<sup>30</sup>

As the laws, legal practices, guidelines and funding of LACs differ across jurisdictions, so too do the services and assistance offered by each LAC. Eligibility for LAC services and grants of legal assistance also varies among LACs and can be confirmed by contacting the appropriate commission.<sup>31</sup>

LACs can grant aid for lawyers to undertake ongoing matters for their clients. However, grants of legal aid for representation in ongoing matters are not available to everyone. Aid will generally be granted only if: (i) the matter is of a type the commission may take on in accordance with Commonwealth and/or state government guidelines; (ii) the applicant passes a means test, based on the applicant’s income and assets and those of any financially associated person; and (iii) the matter is assessed as having merit. If a grant of aid is made, the case will then be referred to either a private practitioner or a lawyer from the commission’s in-house practice.<sup>32</sup>

Generally, some services will be provided by LACs free of charge and without means testing, such as legal information and referral services, advice and minor assistance (some commissions operate telephone hotlines which provide legal advice, or offer it face-to-face), and duty lawyers who provide advice and assist clients with restraint orders, seeking remands, applying for bail and/or presenting pleas in mitigation.<sup>33</sup>

---

<sup>27</sup> This Act was repealed in 1999 by the Statute Stocktake Act 1999, in response to a report in 1995 by the Access to Justice Advisory Committee, *Access to Justice - an Action Plan*, delivered to the Attorney-General and Minister for Justice. Among other things, the Report proposed to establish an Australian Legal Aid Commission, which was subsequently established. [Bills Digest No. 178 1998-99: Statute Stocktake Bill 1999].

<sup>28</sup> See <http://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Pages/Legal-aid.aspx> (last visited on September 4, 2015)

<sup>29</sup> J. Murphy, “Budget Review 2014-15 Index – Legal aid and legal assistance services”, Parliamentary Library, Parliament of Australia, May 2014, available at [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/BudgetReview201415/LegalAid](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201415/LegalAid) (last visited on September 4, 2015).

<sup>30</sup> See <http://www.attorneygeneral.gov.au/Mediareleases/Pages/2015/FirstQuarter/26-March-2015-Legal-aid-funding-assured-to-support-the-most-vulnerable-in-our-community.aspx> (last visited on September 4, 2015).

<sup>31</sup> Commissions can be contacted through National Legal Aid, which represents the Directors of each of the eight State and Territory LACs. See <http://www.nationallegalaid.org/> (last visited on September 4, 2015).

<sup>32</sup> National Pro Bono Resource Centre and Victoria Law Foundation, *The Australian Pro Bono Manual*, February 1, 2005 at 4.3.

<sup>33</sup> National Pro Bono Resource Centre and Victoria Law Foundation, *The Australian Pro Bono Manual*, February 1, 2005 at 4.3.



## Mandatory assignments to Legal Aid Matters

Australian solicitors are not obliged to accept matters, including legal aid cases (but subject to provisions of anti-discrimination legislation). Barristers are subject to the “cab-rank” principle, under which a barrister may be required to accept a brief from a solicitor to appear before a court in a field in which the barrister professes to practise;<sup>34</sup> however, this principle is subject to exceptions and it does not oblige a barrister to accept direct instructions from a person who is not a solicitor.<sup>35</sup>

## Unmet Needs and Access Analysis

As a general matter, the system of public legal aid does not adequately meet the demand for free legal services, largely due to the means and merit testing, which effectively excludes portions of the population who either (i) fall above the minimum means standards, rendering them financially ineligible, but who nonetheless have insufficient funds for legal representation or (ii) meet the minimum means standards but are seeking assistance on matters that do not meet the merit standards.<sup>36</sup> In addition, people who receive legal aid may be required to make a financial contribution and, if monetary sums are recovered, may be required to reimburse certain legal fees.

In some jurisdictions, legislation related to legal aid includes cost indemnity provisions with regard to persons who receive legal aid.<sup>37</sup> For example, the New South Wales Legal Aid Commission Act 1979 generally provides that, where a court or tribunal makes an order regarding costs against a person to whom legal aid is provided, the state’s LAC shall pay the whole of such costs, but this provision contains several exceptions to the general rule.<sup>38</sup> A practitioner prepared to undertake pro bono work should ensure that she or he is familiar with any such provision in the relevant jurisdiction.

Each LAC maintains its own complaints and disputes policies. By way of example, for complaints about its service, staff or private lawyers funded by it, Legal Aid NSW has set up an online complaints form and feedback page and also accepts written complaints. It is also possible to appeal to the Legal Aid Review Committee in respect of refused applications for legal aid grants. Complaints about administration or non-legal services can be taken to the NSW Ombudsman.<sup>39</sup>

## Alternative Dispute Resolution

In Australia, Alternative Dispute Resolution (“**ADR**”) is generally accepted as an umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them and may be facilitative, advisory, determinative or, in some cases, a

---

<sup>34</sup> Legal Profession Uniform Conduct (Barristers) Rules 2015 (NSW), Rule 17, available at <http://www.legislation.nsw.gov.au/sessionalview/sessional/sr/2015-243.pdf> (last visited on September 4, 2015).

<sup>35</sup> Legal Profession Uniform Conduct (Barristers) Rules 2015 (NSW), Rule 21. See also G. Monahan, *Essential Professional Conduct: Legal Ethics*, Cavendish Publishing (Australia) Pty Ltd, 2001 at 15-17.

<sup>36</sup> Details of merit testing can be found at National Pro Bono Resource Centre and Victoria Law Foundation, *The Australian Pro Bono Manual*, February 1, 2005 at 4.3. The biggest gap in legal aid coverage is in the area of civil law, where it is difficult, if not impossible, to get a grant of aid for many kinds of cases.

<sup>37</sup> National Pro Bono Resource Centre and Victoria Law Foundation, *The Australian Pro Bono Manual*, February 1, 2005 at 4.3.

<sup>38</sup> Legal Aid Commission Act 1979 (NSW), section 47, available at <http://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/2.-legal-aid-commission-act/2.4.-part-3-provision-of-legal-aid> (last visited on September 4, 2015).

<sup>39</sup> See <http://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/how-to-complain-to-legal-aid-nsw> (last visited on September 4, 2015).



combination of these.<sup>40</sup> There are a growing number of voluntary and mandatory ADR schemes in Australia, and there are a number of factors that make ADR attractive to low income or disadvantaged members of the community, specifically: the cost of litigation, the reduced time of the dispute, and continuing government sponsorship of the concept of ADR.<sup>41</sup>

Lodging a complaint with an ombudsman is just one example of ADR. There is no cost involved in making a complaint and the complainant is not required to have legal representation. Australia has an ombudsman assigned for each state, along with a federal ombudsman. All government bodies are within the jurisdiction of the relevant ombudsman. There are also industry-based ombudsmen that resolve complaints made against their relevant industry members, the costs of which are recovered by the yearly membership fee paid by each member. Many of the industry-based ombudsmen adhere to the Australian Government's Key Practices for Industry-based Customer Dispute Resolution which stipulates that no application or other fee or charge is required from a complainant before a complaint is dealt with.<sup>42</sup> Unfortunately, research suggests that low income or disadvantaged members of the community who stand to benefit most are often not well informed of the ombudsman services available and fail to engage.<sup>43</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

As explained above, there are no specific pro bono rules or requirements, such as a minimum number of hours, that solicitors and barristers are required to satisfy so as to maintain their practising qualifications; however, a range of pro bono programs have been established by law firms and other organizations in an attempt to promote pro bono work and facilitate involvement by legal practitioners and law students.

#### Law Firm Pro Bono Programs

According to the 2014 National Survey, employment law, governance, commercial agreements, applications for deductible gift recipient (“DGR”) tax status and intellectual property were the five practice areas most commonly receiving pro bono assistance.<sup>44</sup> The APBC has previously noted that:<sup>45</sup>

“Legal Aid funding for employment law matters is in many states limited if not non-existent. Obtaining DGR status from the Australian Tax Office is a complex process that can be vital for not-for-profit organizations to be able to receive tax deductible gifts and donations. Many do not have the resources or the expertise to prepare an application without expert legal assistance.”

---

<sup>40</sup> See <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Pages/default.aspx> (last visited on September 4, 2015).

<sup>41</sup> National Pro Bono Resource Centre and Victoria Law Foundation, *Alternative Dispute Resolution: Assisting people experiencing disadvantage*, June 2012 at 13.

<sup>42</sup> Australian Government Treasury, *Key Practices for Industry-based Customer Dispute Resolution*, February 2015 at 9.

<sup>43</sup> Australian Government Productivity Commission, *Inquiry Report: Access to Justice Arrangements*, December 3, 2014 at 327.

<sup>44</sup> National Pro Bono Resource Centre, *Fourth National Law Firm Pro Bono Survey: Australian Firms with 50 or more lawyers – Final Report*, December 2014 at 33.

<sup>45</sup> National Pro Bono Resource Centre, “*Survey of Large Law Firms Highlights Areas of Unmet Legal Need*”, December 8, 2010, available at [http://www.nationalprobono.org.au/news\\_detail.asp?id=77](http://www.nationalprobono.org.au/news_detail.asp?id=77) (last visited on September 4, 2015).



In contrast, the APBC has previously explained that because many large firms have limited expertise in matters involving family law and criminal law, such matters face the highest levels of rejected requests for pro bono assistance.<sup>46</sup>

The most common sources for new pro bono matters are: direct requests from current pro bono clients and LACs, internal projects and referrals from other organizations, with the balance of pro bono matters originating from pro bono referral schemes and organizations, and CLCs.<sup>47</sup> Most commonly, the type of pro bono assistance provided by law firms is providing legal advice, though transactional matters are a significant portion of pro bono work as well, followed by litigation.

### Community Legal Centres

In addition to LACs, Australians can also take advantage of CLCs for legal assistance. CLCs are independent, non-profit organizations that provide free referral, advice and assistance. There are around 150 CLCs in Australia that receive government funding under the Community Legal Services Program, which in 2013 – 2014 provided their clients with around 262,633 advices (for legal and non-legal matters).<sup>48</sup> They range from centres with no paid staff to offices of ten or more employees, with most having three to six staff and at least one employed solicitor. Many CLCs operate with the assistance of volunteer lawyers and law students. CLCs often experience a high turnover of staff, particularly in rural, remote and regional CLCs.

### Legal Department Pro Bono Programs

Lawyers working in-house and government lawyers in Australia are able to develop pro bono programs for their legal teams. One of the barriers for such legal department programs has been the lack of appropriate professional indemnity insurance; however, as discussed below, the APBC facilitates a national pro bono insurance scheme for certain approved projects. The APBC has also collated various resources regarding legal department programs, including models of in-house corporate pro bono, on its website.<sup>49</sup>

### Bar Association Pro Bono Programs

Each state and territory bar association or council in Australia engages in the promotion or facilitation of pro bono efforts by its member barristers. For example, the NSW Bar Association maintains a Duty Barrister Scheme in conjunction with local courts to help people who cannot afford a lawyer and who do not qualify for legal aid.<sup>50</sup> The Duty Barrister Scheme covers both criminal and civil proceedings.

Together with the NSW Attorney-General's Department, the NSW Legal Aid Commission and the Law Society of NSW, the NSW Bar Association is a founding member of Law Access NSW, a free "one stop shop" to legal information, services and assistance. Law Access NSW is available to all NSW residents

---

<sup>46</sup> National Pro Bono Resource Centre, "Survey of Large Law Firms Highlights Areas of Unmet Legal Need", December 8, 2010. See also: National Pro Bono Resource Centre, Pro bono legal services in family law and family violence: Understanding the limitations and opportunities – Final Report, October 2013, available at <http://www.nationalprobono.org.au/page.asp?from=4&id=31> (last visited on September 4, 2015).

<sup>47</sup> National Pro Bono Resource Centre, Fourth National Law Firm Pro Bono Survey: Australian Firms with 50 or more lawyers – Final Report, December 2014 at 42.

<sup>48</sup> It has been noted that not all CLCs are funded under the Community Legal Services Program, so these figures are an underrepresentation of the total activities performed over the relevant period: National Association of Community Legal Centres, The work and clients of CLSP CLCs in numbers – 2013/14 financial year, updated November 2014, available at [http://www.naclc.org.au/cb\\_pages/reports\\_and\\_resources.php](http://www.naclc.org.au/cb_pages/reports_and_resources.php) (last visited on September 4, 2015).

<sup>49</sup> National Pro Bono Resource Centre, "In-House Lawyers", available at <http://www.nationalprobono.org.au/page.asp?from=8&id=313> (last visited on September 4, 2015).

<sup>50</sup> New South Wales Bar Association, "Briefing Barristers: Legal Assistance", available at <http://www.nswbar.asn.au/briefing-barristers/legal-assistance> (last visited on September 4, 2015).



but is particularly aimed at people who have difficulty accessing traditional community and government legal services such as those in regional areas with disabilities.<sup>51</sup>

### University Legal Clinics and Law Students

Most law schools across Australia encourage students to volunteer their time to CLCs, Legal Aid schemes or local clearing-houses or referral schemes. In contrast to law faculties in many other parts of the world, legal aid work and university-managed clinics have generally not been part of the law school curriculum in Australia; however, this is changing. Currently, there are at least 25 law schools in Australia offering clinical legal education programs.<sup>52</sup>

In response to growing demands of Australian law students for more social justice opportunities,<sup>53</sup> the APBC has published a guide for students focused on social justice careers, promoting volunteering opportunities and directing students to resources and materials on pro bono.<sup>54</sup> The guide discusses the many ways students can get more involved in such work, including doing pro bono legal work and volunteering while studying at university and during their practical legal training (“PLT”) placements. The APBC has recommended that students consider volunteering at CLCs or other community legal organizations, participating in clinical legal education at Australian universities, getting involved in internships/outreach Programs, taking PLT courses in public interest issues, and pursuing employment with LACs, government and non-governmental organizations (“NGOs”).

### Others

#### Professional association legal assistance schemes

Many professional associations coordinate pro bono legal assistance schemes. Each scheme determines eligibility for assistance based on its own guidelines, usually using a means and a merits test, but generally assistance is not provided under these schemes if another form of assistance is available to the applicant (such as assistance from a CLC or legal aid). Depending on the scheme, assistance may be provided on a without-fee, a reduced-fee, or a conditional-fee basis. To apply for assistance through these schemes, applicants need to complete an application form, divulge information about their case, and provide detailed information (including documentation) concerning their income, assets and expenditure.

#### Public Interest Law Clearing Houses (“PILCHs”)

PILCHs have been established by collaborations among groups including independent organizations, legal non-profits, private law firms, university law schools, community legal centres and individual attorneys. At present, PILCHs operate in New South Wales and Victoria (founded in 1992 and 1994, respectively) under the joint name of Justice Connect (as of July 1, 2013),<sup>55</sup> Queensland (“QPILCH”, founded in 2001),<sup>56</sup> South Australia (“JusticeNet SA”, founded in 2009),<sup>57</sup> and Western Australia (“Law Access Pro Bono Referral Scheme”, founded in 1992).<sup>58</sup> PILCHs’ operations are substantially funded by

---

<sup>51</sup> See <http://www.lawaccess.nsw.gov.au/Pages/about-us/about-us.aspx> (last visited on September 4, 2015).

<sup>52</sup> The Kingsford Legal Centre at the University of New South Wales publishes a guide to these courses, available at <http://www.klc.unsw.edu.au/node/27> (last visited on September 4, 2015).

<sup>53</sup> National Pro Bono Resource Centre, “Law Students Want More Social Justice Opportunities”, May 13, 2011, available at [http://www.nationalprobono.org.au/news\\_detail.asp?id=86](http://www.nationalprobono.org.au/news_detail.asp?id=86) (last visited on September 4, 2015).

<sup>54</sup> The guide is available at [http://www.nationalprobono.org.au/news\\_detail.asp?id=88](http://www.nationalprobono.org.au/news_detail.asp?id=88) (last visited on September 4, 2015).

<sup>55</sup> See <http://www.justiceconnect.org.au/> (last visited on September 4, 2015).

<sup>56</sup> See <http://www.qpilch.org.au/> (last visited on September 4, 2015).

<sup>57</sup> See <http://www.justicenet.org.au/> (last visited on September 4, 2015).

<sup>58</sup> See <http://www.lawsocietywa.asn.au/pro-bono-scheme.html> (last visited on September 4, 2015).



fees from member legal practices. PILCHs refer “public interest”<sup>59</sup> matters to member law firms and other members (for example, barristers and some corporations’ legal departments) for services to be provided on a pro bono basis. PILCHs will receive and assess requests for assistance and then contact member firms to see if they will accept a referral.

### Court-based pro bono referral schemes

Some courts have also established formal referral schemes under their own rules. These schemes aim to facilitate the provision of legal services to litigants who otherwise would not be able to obtain them in instances where doing so is in the interest of the administration of justice. Court registries generally maintain lists of firms and lawyers who have volunteered to participate in these schemes, and the referrals are generally made by the court to a court registrar for referral to a solicitor or barrister; for example, the Federal Court of Australia has made arrangements with the state and territory bar associations to enable it to refer a party to a lawyer for legal assistance in certain circumstances.<sup>60</sup>

The High Court of Australia also avails itself of pro bono assistance in some cases. There are instances where the Court has explored pro bono options through professional associations (generally comprised of lawyers, legal academics and law students) on behalf of litigants with little means and who appear to have an arguable case.

### Court duty lawyer schemes

Many Australian courts and tribunals now operate duty lawyer schemes as well. These schemes are often coordinated by the courts or tribunals, which maintain lists of lawyers available to provide limited assistance to unrepresented litigants. Firms interested in being a part of these kinds of schemes should contact their local professional association for more information.

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

Solicitors in Australia have a long tradition of providing pro bono legal services. Certain initiatives by the government and NGOs in recent years have led to greater access to and awareness of pro bono services. Moreover, in recent years there has been significant interest in providing free legal services by lawyers employed in the for-profit sector.

In 2001, the National Pro Bono Task Force made a recommendation to the Commonwealth Attorney-General that a National Pro Bono Resource Centre be established. The Centre (now known as the APBC) opened in August 2002 and is an independent, non-profit organization funded by the Commonwealth Attorney-General’s Department, the state and territory Attorneys-General and the Faculty of Law at the University of New South Wales.<sup>61</sup> The APBC aims to encourage pro bono legal services and supports lawyers and law firms to make it easier for them to provide pro bono legal services. Its work includes reviewing and reporting on pro bono legal work undertaken throughout the nation, making available information and resources to existing and potential pro bono legal service providers and promoting pro bono law to community organizations and the general public.

The APBC is not able to refer individuals to lawyers for help with a legal problem. Rather, the APBC promotes and supports pro bono through its independent role as advocate, broker, coordinator, researcher and resource provider. It directs individual case referrals to pro bono clearing-houses and referral agencies which exist in many Australian states.

---

<sup>59</sup> The meaning of “public interest” varies among PILCHs. For example, QPILCH considers a matter to be “in the public interest” if it “affects a significant number of people; or raises matters of broad public concern, or requires legal intervention to avoid a significant and avoidable injustice; or particularly impacts on disadvantaged or marginalized groups” (see [http://www.qpilch.org.au/resources/factsheets/Queensland\\_Public\\_Interest\\_Law\\_Clearing\\_House\\_Incorporated\\_\(QPILCH\).htm](http://www.qpilch.org.au/resources/factsheets/Queensland_Public_Interest_Law_Clearing_House_Incorporated_(QPILCH).htm)) (last visited on September 4, 2015).

<sup>60</sup> See <http://www.fedcourt.gov.au/attending-court/court-referral-assistance> (last visited on September 4, 2015).

<sup>61</sup> See <http://www.nationalprobono.org.au/page.asp?from=1&id=16> (last visited on September 4, 2015).



As a recent development, certain Australian states permit “nil fee” practising certificates for volunteer or pro bono-only legal practitioners, including Western Australia, Victoria and Queensland. In Victoria, this certificate restricts the holder to volunteering at a CLC (and a condition to that effect will be imposed on the practising certificate).<sup>62</sup> In Queensland, the holder may undertake legal work on a pro bono project approved by the Centre.<sup>63</sup> In Western Australia, the Legal Practice Board will similarly impose a “volunteer or pro bono only” condition on a practising certificate, upon request.<sup>64</sup>

Both the Victorian Government and the Commonwealth Government have certain pro bono requirements for the law firms that are on their advisory panels, including the law firms that are seeking panel appointments.<sup>65</sup> In Victoria, law firms must commit at least 10 percent of the value of the total hours billed under its panel arrangements to pro bono work.<sup>66</sup> Law firms seeking to be on Commonwealth Government panels must comply with the Commonwealth Legal Services Multi Use List conditions. One condition is that firms must commit to pro bono legal work by either being a signatory to the Target, or to nominate a target value of Pro Bono Legal Services (as defined in the Target) over a financial year.<sup>67</sup>

### Current State of Pro Bono

Pro bono legal work is defined by the APBC as:<sup>68</sup>

1. Giving legal assistance for free or at a substantially reduced fee to:—

- individuals who can demonstrate a need for legal assistance but cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship; or
- individuals or organizations whose matter raises an issue of public interest which would not otherwise be pursued; or
- charities or other non-profit organizations which work on behalf of low income or disadvantaged members of the community or for the public good;

2. Conducting law reform and policy work on issues affecting low income or disadvantaged members of the community, or on issues of public interest;

3. Participating in the provision of free community legal education on issues affecting low income or disadvantaged members of the community or on issues of public interest; or

4. Providing a lawyer on secondment at a community organization (including a community legal organization) or at a referral service provider such as a Public Interest Law Clearing House.”

As discussed above, a key aspect of the pro bono framework in Australia is the use of formal pro bono schemes, often coordinated or established by professional associations, courts and PILCHs throughout Australia.

The average number of pro bono hours per lawyer across all reporting signatories to the Target (discussed above) from the 2014/2015 financial year was 33.2 hours per lawyer.<sup>69</sup>

---

<sup>62</sup> For further information, see [http://lsbc.vic.gov.au/?page\\_id=207](http://lsbc.vic.gov.au/?page_id=207) (last visited on September 4, 2015).

<sup>63</sup> For further information, see [http://www.qls.com.au/For\\_the\\_profession/Your\\_legal\\_career/Practising\\_certificates](http://www.qls.com.au/For_the_profession/Your_legal_career/Practising_certificates) (last visited on September 4, 2015).

<sup>64</sup> For further information, see <https://www.lpbwa.org.au/Legal-Profession/Practising-in-Western-Australia/Volunteer-or-pro-bono-only-condition> (last visited on September 4, 2015).

<sup>65</sup> For further information, see <http://www.nationalprobono.org.au/page.asp?from=0&id=274> (last visited on February 16, 2016).

<sup>66</sup> For further information, see <http://www.premier.vic.gov.au/new-legal-services-panel-delivers-record-pro-bono-commitment/> (last visited on February 16, 2016).

<sup>67</sup> For further information, see <http://www.nationalprobono.org.au/page.asp?from=0&id=274> (last visited on February 16, 2016).

<sup>68</sup> National Pro Bono Resource Centre, Fourth National Law Firm Pro Bono Survey: Australian Firms with 50 or more lawyers – Final Report, December 2014 at 21.



The 2014 National Survey reported that the core barriers to firms doing pro bono work in Australia are firm capacity, concern about conflicts of interest with fee paying clients, insufficient expertise in relevant areas of law, and lack of management / partner support within the firm. Other critical constraints include insufficient organization of firm pro bono programs, competing pressure to meet financial targets, commitment of individual lawyers across the firm, lack of information on pro bono opportunities and the ability to fund external disbursements.<sup>70</sup>

### Fee Waivers

Exemptions or waivers of court and tribunal fees (such as filing fees, setting down and daily hearing fees) may be available to those undertaking pro bono matters. In fact, the relevant legislation, rules or regulations for many Australian courts and tribunals expressly provide for fee waiver, exemption, remittal or postponement of fees. Other courts, like the Supreme Court of South Australia, do not have express fee waiver provisions in its governing rules or Acts, but interested parties are still able to apply for waiver by the court, using its prescribed forms.

In the Administrative Appeals Tribunal and in Commonwealth courts (including the High Court of Australia and the Federal Court of Australia) any party may apply to the registrar for a fee waiver. Fees may be waived if the registrar believes that the payment of the fee would cause financial hardship. Additionally, applicants may be eligible for a fee exemption if they (1) have been granted legal aid; (2) hold a particular benefit or concession card; (3) are a prison inmate or lawfully detained; or (4) are under 18 years of age, or in receipt of a youth allowance, Austudy or Abstudy payment.

### Professional Indemnity Insurance

Another major barrier to those doing pro bono work in Australia has historically been the many legal and insurance considerations that come along with it. Providing legal advice can result in liabilities, even when done on a pro bono basis. It is essential that those interested in doing pro bono work in Australia consider whether they are sufficiently insured before providing their services, as they can potentially be held liable for any negligence resulting from their services.

The APBC provides a professional indemnity insurance scheme to facilitate lawyers that work in corporations and government participating in pro bono work. This scheme is intended to remove one of the key constraints on in-house lawyers (who often do not hold insurance needed to cover pro bono work), by protecting such lawyers from civil claims that may arise.<sup>71</sup> This insurance may be applied for in respect of pro bono projects that have been approved by the APBC.

### Disbursement Assistance

The costs of disbursements and the procedures to apply for disbursement assistance often act as a barrier to litigants, even in instances where pro bono assistance is available. Limited disbursement assistance is available for pro bono matters, and the amount of disbursement funding available, if any, varies by jurisdiction. Some states and territories have funds that can be used, but the availability of funding is limited. It may not be possible for applications for assistance to be made until the disbursement has been incurred, and there are often significant exemptions and caps on amounts recoverable.

Disbursements can include (1) the costs of obtaining expert reports or transcripts of proceedings; (2) the cost of hiring an attorney; and (3) interpreter fees. However, many schemes impose limits prohibiting them from providing assistance in cases that are handled on a “no win, no fee” basis and are likely to

---

<sup>69</sup> Australian Pro Bono Resource Centre, Eighth Annual Performance Report on the National Pro Bono Aspirational Target, October 2015 at 4, available at [http://www.nationalprobono.org.au/ssl/CMS/files/cms/Eighth\\_Annual\\_Performance\\_Report\\_on\\_the\\_Aspirational\\_Target\\_2015.pdf](http://www.nationalprobono.org.au/ssl/CMS/files/cms/Eighth_Annual_Performance_Report_on_the_Aspirational_Target_2015.pdf) (last visited on February 16, 2016).

<sup>70</sup> National Pro Bono Resource Centre, Fourth National Law Firm Pro Bono Survey: Australian Firms with 50 or more lawyers – Final Report, December 2014 at 64-67.

<sup>71</sup> National Pro Bono Resource Centre, “National Pro Bono PI Insurance Scheme”, available at <http://www.nationalprobono.org.au/page.asp?from=8&id=236> (last visited on September 4, 2015).



result in damages or payment of compensation. Firms are advised to always check whether a client may be eligible for legal aid, as grants of legal aid usually cover both disbursements and costs.<sup>72</sup>

The general rule in Australia is that an unsuccessful party in litigation (even if represented on a pro bono basis) will reimburse the legal costs of the successful party – this is reflected in the costs rules of the courts. Australian courts do, however, exercise a broad discretion in respect of the awarding of costs and, particularly in proceedings brought for the public interest,<sup>73</sup> the courts may not award costs against an unsuccessful litigant. There is also potential for a public interest client to limit its exposure to an adverse costs order by way of an indemnity from an applicable legal aid scheme or even a litigation funder.<sup>74</sup>

### Key Resources

- *Australian Pro Bono Centre (formerly known as the National Pro Bono Resource Centre)*: <http://www.nationalprobono.org.au/home.asp> (last visited on February 16, 2016)
- *Justice Connect*: <http://www.justiceconnect.org.au/> (last visited on September 4, 2015)
- *QPILCH*: <http://www.qpilch.org.au/> (last visited on September 4, 2015)
- *JusticeNet SA*: <http://www.justicenet.org.au/> (last visited on September 4, 2015)
- *Law Access Pro Bono Referral Scheme (WA)*: <http://www.lawsocietywa.asn.au/pro-bono-scheme.html> (last visited on September 4, 2015)
- *National Legal Aid*: <http://www.nationallegalaid.org/> (last visited on September 4, 2015)
- *National Association of Community Legal Centres*: <http://www.naclc.org.au/> (last visited on September 4, 2015)
- *Pro bono Australia*: <http://www.probonoaustralia.com.au/> (last visited on September 4, 2015)
- *Centre for Asia-Pacific Pro Bono*: <http://www.cappb.org/> (last visited on September 4, 2015)
- *Law Access NSW*: <http://www.lawaccess.nsw.gov.au/> (last visited on September 4, 2015)

## CONCLUSION

Pro bono opportunities and access in Australia have significantly increased since the establishment of the first pro bono clearing-house in 1992. The heightened awareness and expanded activity in the realm of pro bono have been accomplished in large part through the efforts of the government, bar associations and various community partners. However, many areas remain to be developed, particularly with respect to the inclusion of legal aid and clinical courses within Australian law school curriculums.

Lawyers interested in providing pro bono services in Australia should visit the resources listed above and contact their local referral schemes, professional associations, courts, tribunals and clearing-houses to get involved.

September 2015

Pro Bono Practices and Opportunities in Australia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>72</sup> National Pro Bono Resource Centre and Victoria Law Foundation, *The Australian Pro Bono Manual*, February 1, 2005 at 4.5.

<sup>73</sup> For example, see *Ruddock v Vadarlis* [2001] FCA 1865; *Blue Wedges Inc v Minister for the Environment, Heritage & the Arts* [2008] FCA 8.

<sup>74</sup> G. Namey, "Litigation costs: strategies for the public interest lawyer", *The 2010 Conference of the Civil Justice Research Group*, Melbourne, September 2010 at 5-6, available at <http://intranet.law.unimelb.edu.au/staff/events/files/LitigationcostsGN.pdf> (last visited on September 4, 2015).

## Pro Bono Practices and Opportunities in Austria<sup>1</sup>

### INTRODUCTION

The Austrian legal system has a tradition of providing a variety of pro bono services. These include the preliminary legal advice (*erste anwaltliche Auskunft*) provided by attorneys in the course of regular “jour fixes” organized by the local bar (i.e. a preliminary discussion and analysis of the facts and the legal implications of a matter), fixed weekly days on which judges at the district courts are obliged to provide free legal advice to individuals and, in particular, a comprehensive legal aid system which obliges Austrian attorneys to advise indigent natural and legal persons free of charge in civil and criminal matters. In addition, many Austrian attorneys, including law firms, regularly offer additional pro bono advice, i.e. above the level of the aforementioned preliminary discussion and analysis, and/or preliminary legal advice if the prerequisites to apply for legal aid are not met. Typical beneficiaries of such pro bono activities are (apart from individuals in need) cultural and art institutions as well as welfare and church institutions.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The constitution of Austria establishes a framework of a federal parliamentary representative democratic republic. Its centerpiece is the Federal Constitutional Law,<sup>2</sup> which comprises the fundamental federal constitutional provisions. However, the Austrian constitution comprises a variety of additional constitutional acts and individual provisions in statutes and treaties which are designated as constitutional.

Austria consists of nine autonomous federal states (*Bundesländer*), which, just like the federation, all have constitutions defining them to be republican entities governed according to the principles of representative democracy.

Apart from republicanism and federalism, fundamental constitutional principles include the rule of law, the protection of personal liberty, the separation of powers and the right to a fair trial.<sup>3</sup>

##### The Courts

The court system is divided between ordinary courts (*Ordentliche Gerichte*), dealing with criminal and civil cases, and public law tribunals for constitutional law and administrative law matters (*Gerichtshöfe des öffentlichen Rechts*). Since 2014, administrative courts (*Verwaltungsgerichte*) have further been established in each of the federal states.

District courts (*Bezirksgerichte*), regional courts (*Landesgerichte*) and appellate courts (*Oberlandesgerichte*) constitute the hierarchy of the ordinary court system and provide a regional organization in each federal state. The supreme court in criminal and civil cases is the Supreme Court of Justice (*Oberster Gerichtshof*).

The Constitutional Court (*Verfassungsgerichtshof*) is the supreme court in constitutional matters whereas the Higher Administrative Court (*Verwaltungsgerichtshof*) is the supreme court in administrative proceedings.

<sup>1</sup> This chapter was drafted with the support of Schönherr rechtsanwälte gmbh.

<sup>2</sup> Bundes-Verfassungsgesetz (“B-VG”).

<sup>3</sup> See B-VG Art 83, 2.



Regional courts (*Landesgerichte*) and appellate courts in commercial and labor matters can consist of mixed panels with lay judges and at least one professional judge depending on the specific matter in dispute. All other court panels consist of professional judges only. All judges are appointed by the state.

### The Practice of Law

The legal education required to become a registered attorney has a two-tier structure. After a successful university education (i.e. a masters degree in law or business law) a five-year legal clerkship (*Praktische Verwendung*) in various branches of the legal system has to be completed.<sup>4</sup> The prospective attorney must also pass the bar exam (*Rechtsanwaltsprüfung*), which consists of written and oral exams. The bar exam can be taken after completion of three years of the legal clerkship. A participation in pro bono activities during the legal university education or the legal clerkship is possible but not required. Even though university law clinics do exist, they are a very recent phenomenon only (see IV.a.v. below). Thus, the possibilities to engage in pro bono activities during the university education are still limited.

The admission to practice as an attorney is awarded by the local bar association (*Rechtsanwaltskammer*). In addition to the bar exam and the five-years legal clerkship, the applicant has to complete a certain number of training events, obtain indemnity insurance and pass a reliability check by the bar.<sup>5</sup> There is no distinction between barristers and solicitors. There are specific regulations and certain exemptions for qualified lawyers from European Union and EFTA<sup>6</sup> member states wishing to practice in Austria. There are no pro bono related requirements to obtaining or retaining the licensure. However, each practicing attorney is required to provide legal aid (*Verfahrenshilfe*) to any natural or legal person who is unable to bear the expenses of the proceedings (see III. below).

About 6,000 licensed attorneys currently practice in Austria,<sup>7</sup> which equates to a median number of attorneys per capita of roughly one to 1430. In 2014, legal aid assistance was granted to indigent persons and legal entities in 22,000 cases.<sup>8</sup>

### Legal Regulation of Lawyers

Attorneys are subject to the provisions of the professional code (*Rechtsanwaltsordnung*) and associated regulations. Apart from the professional rules of conduct, the bar rules also regulate the compensation of attorneys.<sup>9</sup>

Austrian attorneys are, in principle, free to agree their fees, including the type of fee, the amount of the fee and how it is to be paid.<sup>10</sup> In practice, Austrian lawyers regularly charge their clients hourly rates rather than, for instance, fixed fees. Contingency fees (*Erfolgshonorare*) are prohibited; however, attorneys may agree on a premium for successful services.<sup>11</sup>

---

<sup>4</sup> See RAO §§ 1, 2.

<sup>5</sup> See RAO § 1.

<sup>6</sup> European Free Trade Association.

<sup>7</sup> See <http://www.rechtsanwaelte.at/kammer/kammer-in-zahlen/mitglieder/> (last visited on September 4, 2015).

<sup>8</sup> See <http://www.rechtsanwaelte.at/kammer/kammer-in-zahlen/verfahrenshilfe/> (last visited on September 4, 2015).

<sup>9</sup> Federal Attorney-at-law-Standard-Rate-Act (Rechtsanwaltstarifgesetz, "RATG"), the Federal Profession Code (Rechtsanwaltsordnung, "RAO"), the Professional General Terms on Fees (Allgemeine Honorar-Kriterien, "AHK") and the Professional Guidelines (Richtlinien für die Ausübung des Rechtsanwaltsberufs, für die Überwachung der Pflichten des Rechtsanwalts und für die Ausbildung der Rechtsanwaltsanwärter, "RL-BA").

<sup>10</sup> See RATG § 2, ¶ 1 and § 26, ¶ 2; RAO § 16, ¶ 1; AHK § 1; RL-BA § 50, ¶ 1.

<sup>11</sup> See Austrian Civil Code ((Allgemeines Bürgerliches Gesetzbuch) "ABGB") § 879, ¶ 2 N. 2; see also AHK, § 12 which allows in criminal matters a premium up to 50% of the incurred fees.



If there is no explicit agreement on fees between the attorney and the client, a statutory fee regime applies which is set forth in the bar rules.<sup>12</sup> The calculation of the statutory fees is based on the value of the dispute and, to some extent, on the time the attorney has spent on the matter. Statutory fee schedules provide for fees for every individual service rendered by the attorney to the client (such as phone calls, memos, letters, briefs, participation in negotiations or in court proceedings, etc.).<sup>13</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

#### In Civil Proceedings

*Amtstage*: On certain days, at least once a week, judges at the district courts are obliged to provide free legal advice to individuals. On these occasions individuals may also declare motions, claims and other legal statements verbally.<sup>14</sup>

In civil proceedings below a certain value, representation by an attorney in court is not required by law. Thus, the respective party may file actions and other motions without the assistance of an attorney. Nevertheless, such party shall receive guidance by the judges since the latter must fulfil their legal duty to inform and notify the parties of their situation in the process and discuss the legal and factual basis of the claim.

In civil proceedings, a party (either an individual or legal entity) may be granted legal aid by the court if certain requirements are met (see below III.b).<sup>15</sup> In essence, a grant of legal aid results in the partial or full exemption from paying attorney's fees and court fees, i.e. court fees and the fees of the appointed attorney are waived if the beneficiary loses the case. However, in civil law litigations, the opposing party still has to bear the beneficiary's attorney's fees and court fees if the beneficiary prevails.

#### In Criminal Proceedings

Legal aid may also be applied for by individuals in criminal proceedings. Similar requirements and consequences apply as in civil proceedings discussed above.

### State-Subsidized Legal Aid: Eligibility Criteria

Austrian citizens and foreign citizens, regardless of whether the applicant is a plaintiff or defendant, national or alien, are generally eligible for legal aid.

To receive legal aid, the applicant has to be indigent. An applicant has to prove that their income is too low and that they do not own sufficient property to engage in civil proceedings, or to pay an attorney in criminal proceedings, without jeopardizing basic maintenance. To demonstrate indigence, the applicant has to disclose an income statement and a declaration of assets.

In addition, in civil proceedings the applicant's claim must not be obviously without merits or frivolous.<sup>16</sup> The "obviously without merits"-test requires a judge to determine the claim's merits. It is not required that the claim / defense has a strong chance of success but it must have a reasonable basis. In practice, only "hopeless" claims / defenses are denied legal aid. The second requirement implies, in particular, that applicants will not receive legal aid in cases where they can achieve their objectives in a more straightforward and cost-efficient manner. In criminal proceedings legal aid is granted if the legal and/or

---

<sup>12</sup> AHK, § 12.

<sup>13</sup> See Lesigang, AnwBl, 157, 161 (1965); Neidhart, DAR 122 (1983).

<sup>14</sup> See Code of Civil Procedure (Zivilprozessordnung "ZPO") §§ 439, 434.

<sup>15</sup> See ZPO §§ 63 et seq.

<sup>16</sup> See ZPO §§ 63, 66 and RL-BA §§ 56 et seq.



factual circumstances of the respective case require the assignment of a legal counsel to the accused to ensure a fair trial.

The conditions under which legal aid may be granted to a legal entity are similar to those for an individual. However, there is no eligibility for a legal entity if a third party that is economically or factually involved therewith (e.g., a shareholder) is not indigent.<sup>17</sup>

## Mandatory Assignments to Legal Aid Matters

Attorneys are generally required to accept matters assigned to them under the legal aid scheme. In case a court decides that legal aid is granted and that the appointment of an attorney is necessary or mandatory, the judge will issue a request to the local bar association. The board of the local bar association will then assign the matter to one of its attorney members. To the extent possible, the board shall take into consideration requests for a specific attorney.<sup>18</sup> The appointed attorney may only refuse the mandate for sound reasons such as a conflict of interest.<sup>19</sup>

As discussed above, the attorney is compensated by the opposing party if the applicant prevails in the litigation. Otherwise, the attorney is not entitled to fees. However, as legal aid has the character of a social security benefit, the federal states pay a certain contribution to the local bar as remuneration, thus providing for an indirect benefit to the attorneys registered with the bar. The funds are used to sponsor retirement pensions, occupational disability pensions and provision for dependents. Their volume basically depends on the number of members in the local bar association and the number of appointments within the legal aid scheme.<sup>20</sup> These contributions however generally do not match the fees which the attorneys would have generated in the matters, were they not subject to legal aid.

## Unmet Needs and Access Analysis

Low income individuals, like single parents, who cannot afford legal costs insurance (*Rechtsschutzversicherung*) but are not “sufficiently poor” to qualify for assistance under the legal aid scheme always run the risk of being deprived of their rights.

Furthermore, NGOs and charitable organizations struggle to fulfill the requirements of the legal aid scheme. This often forces charitable organizations to choose between abandoning professional legal services completely or diverting funds from charitable purposes to cover legal expenses.

Finally, complex cases may be dealt with unsatisfactorily under the legal aid system. Despite the minimum professional standards stipulated by the bar rules, attorneys may tend to allocate less time and efforts to legal aid cases in comparison to regular matters which are subject to remuneration. Furthermore, some potential pro bono cases cannot be handled on a legal aid basis because special expertise or manpower is required. For example, cases with cross-border implications can usually not be handled by a single lawyer on a legal aid basis.

## Alternative Dispute Resolution

Mediation, Arbitration etc.

Several public arbitration offices offer out-of-court dispute resolution schemes. In certain matters concerning tenant law and neighbor law, it is necessary to file the matter with the corresponding

---

<sup>17</sup> See ZPO § 63, 2.

<sup>18</sup> See ZPO § 67.

<sup>19</sup> See RAO § 46, 2.

<sup>20</sup> See RAO § 47.



arbitration office before a judicial procedure can be initiated.<sup>21</sup> The fees depend on the policies of the specific office. However, in many cases the arbitration procedure is free of charge.<sup>22</sup>

Additionally, in civil law disputes it is possible to seek an out-of-court settlement by mediation pursuant to the Civil Law Mediation Act (*Zivilrechts-Mediations-Gesetz*). The Federal Ministry of Justice (*Bundesministerium für Justiz*) provides a list of qualified mediators who can be approached by the parties if a mediation proceeding is required. Even though the services of a mediator are not free of charge, the fees are fixed. Unlike court fees, these do not depend on the value of the dispute and, therefore, often provide for an affordable alternative to a legal proceeding.<sup>23</sup> Both the arbitration and mediation proceedings result in a binding out-of-court settlement if the parties so agree.

## Ombudsmen

Ombudsmen are widely used to provide an easily accessible and cost-efficient alternative dispute resolution scheme. Most notably and specific to Austria is the Austrian Ombudsman Board (*Volksanwaltschaft*) which works on a federal level and mediates between citizens, public authorities and other administrative bodies.<sup>24</sup> A complaint, e.g., concerning unjust treatment or magisterial inactivity, may be filed with the Austrian Ombudsman Board at any time at no cost. In addition, some federal states have local Ombudsman Boards (*Landesvolksanwälte*).

Apart from that, a variety of ombudsmen schemes exist which offer mediation services and advice in disputes with regard to, *inter alia*, insurance, banking and finance, consumer online purchases, university matters and animal welfare.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

It is not mandatory for Austrian lawyers to participate in or report to the pro bono programs of the local bar associations. Attorneys have the opportunity to voluntarily provide free preliminary legal advice (*erste anwaltliche Auskunft*) in information centers set up by the local bar associations.<sup>25</sup> Some attorneys even offer this service in their own offices. There are also a variety of other forums for free legal advice where attorneys can participate in a pro bono manner.<sup>26</sup>

However, the pro bono practice of Austrian attorneys is by no means limited to preliminary legal advice (*erste anwaltliche Auskunft*). Many attorneys, including law firms, regularly offer free legal advice even on a “secondary level”, i.e. above the level of the aforementioned preliminary discussion and analysis. Typical beneficiaries of such pro bono activities are – apart from individuals in need – cultural and art institutions, welfare or church institutions, regardless of their ability to pay.

---

<sup>21</sup> See <https://www.help.gv.at/Portal.Node/hlpd/public/content/101/Seite.1010140.html> (last visited on September 4, 2015).

<sup>22</sup> For example in cases of consumer disputes, see <https://verbraucherschlichtung.at/cm/index.php?id=78> (last visited on September 4, 2015).

<sup>23</sup> See <https://www.help.gv.at/Portal.Node/hlpd/public/content/101/Seite.1010140.html> (last visited on September 4, 2015).

<sup>24</sup> See <http://volksanwaltschaft.gv.at/ueber-uns#anchor-index-1528> (last visited on September 4, 2015).

<sup>25</sup> More detailed information on this service (Erste Anwaltliche Auskunft) is available at <http://www.rechtsanwaelte.at/> (last visited on September 4, 2015).

<sup>26</sup> See <http://www.help.gv.at/Content.Node/98/Seite.980300.html#Recht> (last visited on September 4, 2015).



## Law Firm Pro Bono Programs

Many law firms, including the largest Austrian law firms as well as international law firms with a presence in Austria, have ongoing pro bono programs. However, sources for pro bono opportunities, especially for social organizations, such as major referral organizations, NGOs or clearing houses are difficult to find in Austria at present (see below b.ii.3.).

## Legal Department Pro Bono Programs

In general, Austrian companies are strongly engaged in providing pro bono services. In 2014, nearly half of Austrian companies claimed to be engaging in pro bono projects.<sup>27</sup> However, such projects mainly consist of general corporate social responsibility activities rather than providing actual legal services to those in need.

## Bar Association Pro Bono Programs

Local bar associations have set up information centers in which individuals can obtain free preliminary legal advice (*erste anwaltliche Auskunft*).<sup>28</sup> Legal advice is only given by attorneys who are admitted to the respective local bar association. It is provided irrespective of whether the person is indigent or not. However, the legal advice provided only comprises an initial legal assessment, practical and legal information, or a referral to a specialized body or organization.

## University Legal Clinics and Law Students

In 2014, the first University Law Clinic, the Vienna Law Clinic,<sup>29</sup> was established. It provides free legal advice in civil law, asylum law and company start-up law. According to their mission statement, the students involved in the Vienna Law Clinic hope to contribute to and initiate the establishment of other law clinics in Austria.<sup>30</sup>

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

Pro bono does not have a long history in Austria due to the comprehensive statutory legal aid scheme and a variety of other benefits facilitating the access to legal advice. However, with the emergence of regional and international law firms, institutional pro bono programs were established and brought to the public's attention.

### Current State of Pro Bono including Barriers and Other Considerations

#### Laws and Regulations Impacting Pro Bono

##### **“Loser Pays” Statute**

The “Loser Pays” concept applies insofar as statutory fee schedules are designed for litigation matters, in which the defeated party basically bears all incurred costs and fees.<sup>31</sup>

##### **Statutorily Mandated Minimum Legal Fee Schedule**

In the past, any kind of fee dumping, i.e., charging less for legal services than provided for in the statutory fee schedules, was generally prohibited.<sup>32</sup> An exception was made only for equitable reasons of equity and only subsequent to the conclusion of the matter. This, however, has changed

<sup>27</sup> Vgl. Verantwortungsatlas österreichische Wirtschaft, Julius Raab Stiftung 2014.

<sup>28</sup> More detailed information on this service (Erste Anwaltliche Auskunft) is available at <http://www.rechtsanwaelte.at/> (last visited on September 4, 2015).

<sup>29</sup> See <http://viennalawclinics.org> (last visited on September 4, 2015).

<sup>30</sup> See <http://viennalawclinics.org/about/> (last visited on September 4, 2015).

<sup>31</sup> ZPO § 41; Wrabetz/Bertrams, AnwBl 505, 508 (1987).

<sup>32</sup> See Lesigang, supra n. 7 at 157.

significantly in recent years. Under present Austrian law, lawyers may, even in litigation matters, charge less than the statutory fees.<sup>33</sup>

### **Practice Restrictions on Foreign-Qualified Lawyers**

Such restrictions exist and have an impact on pro bono services. The admission requirements for legal practice in Austria (see above II.a.iii) are strict and include an Austrian university degree, a five year clerkship and the bar exam. It is possible for EU citizens or citizens of Switzerland with a law degree from a foreign university to take the Austrian bar exam, provided that their degree is equivalent to an Austrian university degree. Additionally, their legal clerkship has to be comparable to the mandatory legal clerkship in Austria. Alternatively, European foreign-licensed lawyers may apply for admission as European Lawyers.<sup>34</sup> Lawyers from other jurisdictions on the other hand may not be admitted as practicing lawyers without completing the Austrian university legal education and the five-year clerkship.

### **Concerns About Pro Bono Eroding Public Legal Aid Funding**

Concerns about pro bono eroding public legal aid funding apparently exist and have an impact on pro bono services. There is only a marginal pro bono practice in the litigation context. The main reason is that representation of a party in a litigation matter without charging any fees is not considered, by some, to be professionally ethical.

### **Regulations Imposing Practice Limitations on In-House Counsel**

Whilst there are no apparent direct restrictions in this regard, indirect restrictions do exist. In-house counsel may not register as attorneys with the local bar associations as they are not regarded as “independent” within the meaning of the underlying statutes.<sup>35</sup> Professional indemnity insurance policies are usually offered to registered attorneys only. Thus, in-house counsel actually engaging in pro bono activities would have to face uncovered professional liability risks.

### **Availability of Legal Insurance for Clients**

Affordable legal expense insurance policies are widespread in Austria and cover a great variety of areas of law. The insurance services cover, *inter alia*, the court fees, statutory legal fees and the legal fees of the other party, if the policy holder has to bear them. Most policies contain deductibles. Usually the amount of coverage is contractually limited.

### **Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System**

Almost all Austrian attorneys frequently work for indigent people. Usually however, unlike other, especially Anglo-American, countries, pro bono work by Austrian attorneys is not typically undertaken as part of an institutionalized pro bono program. Above all, this is due to the legal aid scheme which provides for a fairly comprehensive mechanism to assure access to justice for the poor and which is an institutionalized free legal assistance program. However, all major law firms in Austria have implemented additional pro bono programs which now are simply considered to be part of an attorney’s professional courtesy and responsibility.

### **Pro Bono Resources**

This section lists some potential points of contact for attorneys willing to provide pro bono services and individuals in need for pro bono legal services:

#### **Pro Bono Austria**

Established in 2015, a clearing-house whose mission is to bring together pro bono service providers with indigent people from charitable organizations.<sup>36</sup>

---

<sup>33</sup> Id.

<sup>34</sup> See European Lawyer Act (Europäisches Rechtsanwaltsgesetz „EIRAG“) §§ 1 et. seq.

<sup>35</sup> DLA Piper Legal Professional Privilege Guide 2015, pp. 11 et seq.

<sup>36</sup> See <http://www.probonoaustria.at/> (last visited on September 4, 2015).



### **Helping Hands**

This NGO is focused on legal aid and advice around all aspects of asylum legislation in Austria and also cases of discrimination and racism. The organization is also engaged in integrative activities. The team consists of professional solicitors and aims to find concrete and individual solutions to cases. They also represent people facing deportation from Austria and some who have been deported in their legal proceedings to return to Austria.<sup>37</sup>

### **Caritas Vienna – Asylzentrum**

This organization provides legal advice and representation in asylum appeals, and voluntary return assistance. The legal advice covers: employment of foreigners, family reunion, citizenship law, detention, and administrative criminal cases. Languages of consultation include: Russian, Dari / Farsi, Arabic, Kurdish, Chinese, German, English, et al.<sup>38</sup>

### **Netzwerk AsylAnwalt**

Consists of a group of attorneys who provide legal services to asylum seekers in Austria.<sup>39</sup>

## CONCLUSION

In addition to the institutionalized comprehensive Austrian legal aid system, the provision of pro bono services is now standard practice for larger law firms and companies. A variety of (in some cases recently established) institutions and clearing-houses like Pro Bono Austria will increasingly facilitate access to pro bono programs.

September 2015

Pro Bono Practices and Opportunities in Austria

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>37</sup> See <http://www.helpinghands.at/> (last visited on September 4, 2015).

<sup>38</sup> See <https://www.caritas-wien.at/hilfe-angebote/asyl-integration/beratung-fuer-asylwerberinnen/asylzentrum/> (last visited on September 4, 2015).

<sup>39</sup> See <http://www.asylanwalt.at/> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in Azerbaijan<sup>1</sup>

### INTRODUCTION

Despite the fact that the Republic of Azerbaijan has no cultural heritage of legal aid and pro bono services, a professional environment that provides legal assistance on a voluntary basis as part of the role of the lawyer is gradually developing. We note that there is still a lack of both legal aid and pro bono services in Azerbaijan. Moreover, not all individuals in Azerbaijan can afford to hire a lawyer and pay for his or her legal services, so the Government of Azerbaijan is taking active steps to expand its role in providing legal aid, while some individual lawyers are also trying to be engaged in pro bono services for the same reasons.

In addition, the Academy of Justice of Azerbaijan, the Bar Association of Azerbaijan (the “**Bar**”), the Confederation of Lawyers of Azerbaijan and a number of law firms, including the Baku Law Centre together with foreign partners have commented on a draft law on legal aid which is currently being considered in Azerbaijan.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Constitution of the Republic of Azerbaijan (the “**Consitution**”) is the basic law of the Republic of Azerbaijan adopted on November 12, 1995. It has supreme legal force and direct legal effect on the whole territory of Azerbaijan. According to the Constitution, a person has the right to receive qualified legal advice. In cases stipulated by law, legal assistance is provided by way of legal aid funded by the government.

##### The Courts

Currently, Azerbaijan has a three-tier court system - the court of first instance, the court of appeal and the supreme court of cassation courts. The courts of first instance are district (city) courts, military, local administrative and economic courts and courts of serious crimes.

Under the new judicial system there are six regional Courts of Appeal in Azerbaijan. The Courts of Appeal consist of four chambers: (1) civil, (2) criminal, (3) military and (4) administrative and economic.

As part of the court system, the Supreme Court is a court of cassation instance. The Supreme Court consists of four judicial chambers: (1) civil, (2) criminal, (3) military and (4) administrative and economic.

The Constitutional Court of Azerbaijan is the supreme body of constitutional justice on matters attributed to its jurisdiction by the Constitution to ensure the supremacy of the Constitution and the protection of an individual’s fundamental rights and freedoms. It is an independent body and not dependent upon any legislative, executive or other judicial bodies.

The highest demand for free legal aid and pro bono services are seen in the courts of first instance.

Judges in Azerbaijan are elected. To become a judge, a nominee should pass an election procedure which is based on successful completion of written and oral exams. The judges’ election process is conducted by the Committee for the Selection of Judges. A new judge will typically be appointed to the courts of first instance. A new judge may be appointed to courts of higher instance by the Milli Majlis of Azerbaijan and by the President of Azerbaijan.

---

<sup>1</sup> This chapter was drafted with the support of Grata Law Firm.



## The Practice of Law

### Education.

Law students receive basic legal education after four years of study at the law faculty of a university. There are only three universities in Azerbaijan that have a law faculty and which teach future lawyers. Only the law faculty of the Baku State University operates legal clinics providing free legal assistance. A graduate of this university is permitted to provide free legal aid and pro bono services to low-income segments of the population: pensioners, the disabled, refugees and displaced persons and students.

Due to the fact that the system of pro bono in Azerbaijan today is not as extensively developed as in other countries, there are no specific rules or requirements for the provision of pro bono services as part of a lawyer's continuing professional development. Pro bono services are performed by lawyers on a voluntary basis and are not mandatory. Accordingly, there is no CLE credit for pro bono, however members of the Bar are required to improve their qualifications and undergo applicable training and educational programs, such as the training program for members of the Bar on "Advocacy skills".

### Licensure

Azerbaijani legislation does not require a license to practice law. If however, legal aid, pro bono or paid legal services relate to the representation of a client in criminal proceedings or in the court of cassation instance (the Supreme Court of Azerbaijan) (in "advocacy"), then a lawyer must pass an exam to become a member of the Bar.

### Demographics

Azerbaijan has a population of approximately 9,573,938 individuals. The specific number of lawyers is unknown. There are only 25 operating legal advice centers in 64 districts of the country, which means that there are approximately nine lawyers for every 100,000 individuals.

### Legal Regulation of Lawyers.

Lawyers that have been appointed by the state to provide state-funded legal aid have an obligation to provide legal advice (without charge to the client) in accordance with the Law "On Lawyers and Advocacy". The lawyers who provide legal aid under this law are appointed by the appropriate governmental authorities. Other than the above law, there is no specific regulation on providing legal services without charge (including pro bono services) in Azerbaijan.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The Constitution guarantees citizens the right to receive assistance from qualified legal counsel and, in cases set forth by law, the right to receive legal aid.

#### In Civil Proceedings

A party to a lawsuit in civil proceedings is required to be represented by a lawyer in accordance with Article 67 of the Civil Procedure Code. Persons who are unable, due to their financial position, to hire a lawyer at their own expense, are entitled to legal assistance free of charge or at the expense of the state budget of Azerbaijan. These funds are paid in the amount established by the applicable legislation and they may be withheld from the person against whom a judgment is made.

#### In Criminal Proceedings

In accordance with Article 121 of the Criminal Procedure Code of Azerbaijan, the state body conducting the criminal proceedings is obliged to ensure that a suspect or accused may exercise their rights. Accordingly, if such person does not have adequate means to pay counsel's fees, legal aid will be provided to such person by the state.



## State-Subsidized Legal Aid

### Eligibility Criteria

A person will be eligible to receive legal aid from the state, if the person is a low-income citizen. The applicant's immigration status (i.e. whether they are a citizen, permanent resident, refugee or internally displaced person) and whether the person is a pensioner or disabled will also be taken into consideration in assessing whether legal aid will be provided.

### Mandatory assignments to Legal Aid Matters

Lawyers and members of the Bar who are on the list drawn up by the Presidium of the Bar must provide state-funded legal aid. A lawyer who has been appointed to represent a client by the state cannot refuse to perform such representation. The lawyers' fees for legal aid work are paid by the state and the amount is determined by the relevant executive body of the state.

### Unmet Needs and Access Analysis

Low-income citizens are required to provide a number of documents to the state to confirm their low-income status. Without this confirmation, the state will not provide free legal aid to that person. We understand there are a number of low-income citizens who are unable to provide the relevant documentation and who are therefore not able to access state-funded legal aid. Those citizens nonetheless require legal assistance and pro bono services should help such low-income citizens to receive good quality free legal advice.

### Alternative Dispute Resolution

#### Mediation, Arbitration, Etc.

Alternative dispute resolution in Azerbaijan is only provided by the International Commercial Arbitration Court. In April 2008, the Arbitration and Mediation Center of Azerbaijan was set up. This center consists of three main institutions: the International Commercial Arbitration Court; Arbitration Court; Baku Mediation Center. One of the activities of the Office of the Azerbaijan Arbitration and Mediation Center is a collaboration with government agencies and non-governmental organizations to improve the legislation and joint efforts for the development and promotion of alternative dispute resolution.

#### Ombudsman

The Commissioner for Human Rights investigates complaints from citizens of Azerbaijan, foreigners and other persons and legal entities with respect to the violation of human rights.

Legal aid is not available for mediation/arbitration or ombudsman actions.

## PRO BONO ASSISTANCE

### Pro bono Opportunities

#### Private Attorneys

Private lawyers in Azerbaijan are not obliged to provide, or report on, pro bono services. As of today, no pro bono programs have been set up by Azerbaijani law firms or corporate legal departments.

#### Non-Governmental Organizations (NGOs)

Multiple NGOs operate in Azerbaijan. Some of them focus on human rights' protection and legal services connected therewith. The role of such NGOs is to make proposals to improve the legal framework in Azerbaijan. They do not, however, render qualified legal assistance or pro bono services to the population of Azerbaijan. Examples of such NGOs include the Eurasian Lawyers Association; the Azerbaijan Lawyers Confederation; the Azerbaijani Center for Human Rights; and the Committee for Democracy and Human Rights.



## Bar Association Pro Bono Programs

As mentioned above, members of the Bar are required to participate in specific programs relating to advocacy and client representation in court. These programs may also prove useful for the purposes of pro bono related services rendered by the members of the Bar on a voluntary basis.

## University Legal Clinics and Law Students

Graduates of the faculty of law of the Baku State University may provide, among others, pro bono services to low-income segments of the population: pensioners, the disabled, refugees and displaced persons, students.

## Historic Development and Current State of Pro Bono

### Historic Development of Pro bono

Historically, there has been no culture of pro bono legal assistance in Azerbaijan. Azerbaijan was a part of the USSR for a long time, which has affected the development of pro bono culture. For example, legal aid in the USSR (as most other social services) was exclusively within the remit of the state and most of the cases, such as they were, were free of charge for individuals.

### Current State of Pro bono including Barriers and Other Considerations

Azerbaijan still lacks a professional environment that fully supports pro bono work. Nevertheless, state owned institutes (e.g., the Institute under the Academy of Justice), private companies (including international and local law firms) and non-governmental organizations seek to provide qualified pro bono services and the extent of such services is growing consistently. In addition, a draft law is being discussed in the legal community of Azerbaijan, which should improve the quality of state-funded legal aid as well as making the process of rendering state-funded legal aid more straightforward and reducing the period of time taken by the state to pay lawyers fees. The streamlining of state-funded legal aid will also potentially impact pro bono related services.

### Laws and Regulations Impacting Pro Bono

In accordance with the requirements of Law “On Lawyers and Advocacy”, the provision of legal services by foreign-qualified lawyers in Azerbaijan is limited exclusively to advice and opinions on the application of the laws of the state in which such lawyers are qualified to practice, or rules relating to international law. Foreign-qualified lawyers are allowed to participate in civil cases, criminal cases, administrative and economic disputes and administrative violations where permitted by an international treaty ratified in the Azerbaijan Republic.

There is no professional indemnity legal insurance relevant to the provision of pro bono services. However, Azerbaijan law requires that each lawyer creates a safety bank account and credit two percent of their monthly income into such account. The funds from such account are used to satisfy the claims of clients relating to damages suffered by such client due to the actions or inactions by the lawyer in connection with the legal services rendered by such lawyer.

### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

The legal services’ environment is underdeveloped in Azerbaijan. Hence, the pro bono services’ culture is yet developing and not very popular. Nevertheless, pro bono legal services may be used by low-income citizens who cannot afford to pay for a lawyer. Moreover, some citizens of Azerbaijan may not really trust the providers of pro bono services and may question the quality of pro bono services just because such services are free of charge. Another barrier to the provision of pro bono services is the remoteness of many towns from the capital of Azerbaijan making quality control difficult (without setting up regional or local pro bono centers).



## Pro Bono Resources

In Azerbaijan, one of the key pro bono resources are the NGOs. Registration of NGOs is performed by the Ministry of Justice. Another pro bono resource is the law faculty of the Baku State University. In addition, some private lawyers are also engaged in rendering pro bono services, but this is yet to be widespread in Azerbaijan.

## CONCLUSION

As a matter of practice, pro bono services are not extensively available and there are only a few practicing lawyers who are engaged in pro bono services in Azerbaijan. Nevertheless, the demand for pro bono services is significant due to there still being a great number of citizens and NGOs that are financially unable to access legal aid (as noted above) and that therefore need pro bono advice from lawyers and members of the Bar.

September 2015

Pro Bono Practices and Opportunities in Azerbaijan

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Belarus<sup>1</sup>

### INTRODUCTION

Article 62 of the Constitution (the “**Consitution**”) of the Republic of Belarus (“**Belarus**”)states that everyone shall have the right to legal assistance. However, in practice, legal aid is available only in a limited number of situations and its regulation under Belarussian legislation is fragmented. Accordingly, the need for pro bono services to fill the gap is significant. A pro bono culture is only recently emerging in Belarus in response to that need.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

The Constitution was adopted in 1994 and has supreme legal force. Other national and regional laws may not contravene the provisions of the Constitution. Universally-recognized principles of international law and international treaties and agreements of Belarus are also recognized as sources of law in Belarus.<sup>2</sup> Court decisions are not officially recognized as sources of law; however, decisions of the Constitutional Court of Belarus and decisions of the Plenum of the Supreme Court of Belarus (the “**Supreme Court**”) on the application of legislation have binding legal force.

#### The Courts

In accordance with Article 5 of the Code of the Republic of Belarus “On Judicial System and Status of Judges” dated June 29, 2006 No. 139-3 (as amended), the state court system consists of (a) the Constitutional Court (which conducts reviews of the conformity of legal acts with the provisions of the Constitution) and (b) the courts of general jurisdiction (which resolve civil, criminal and administrative disputes).

The courts of general jurisdiction are headed by the Supreme Court which acts as the highest supervisory body to the lower courts of general jurisdiction and also resolves significant cases as a court of first instance. Lower courts of general jurisdiction include regional courts, regional economic courts<sup>3</sup> and district courts. All judges in the state courts of Belarus are appointed either by the President of Belarus or the Council of the Republic (Parliament).

There is also a system of non-state arbitration courts regulated by the Law “On Arbitration Courts” dated July 18, 2011 No. 301-3. Arbitration courts hear only commercial disputes.

#### The Practice of Law

The legal profession in Belarus is represented by: (a) advocates (can be only individuals), (b) commercial attorneys (can be commercial organizations or individual entrepreneurs) and (c) in-house lawyers.<sup>4</sup>

The practice of law by advocates and commercial attorneys is subject to licensing requirements in accordance with the Edict of the President of the Republic of Belarus “On Licensing of Certain Activities”

---

<sup>1</sup> This chapter was drafted with the support of Sbh partners.

<sup>2</sup> Available at official web-site of Belarussian legal information:  
<http://www.pravo.by/main.aspx?guid=12581&p0=02.04> (last visited on September 4, 2015).

<sup>3</sup> Minsk city court and Minsk city economic court have the status of regional courts.

<sup>4</sup> Under Belarussian law, notaries and real estate agents also form part of the legal profession, but are not considered for the purposes of this summary.



dated September 1, 2010 No. 450. Licensing is conducted by the Ministry of Justice of Belarus. However, unlike advocates, commercial attorneys cannot represent their clients in the state courts of Belarus.

The licensing requirements for commercial attorneys are as follows:

- for commercial law firms – all employees (except for technical and support staff) must have a legal education and at least two of them must have lawyers' certificates<sup>5</sup> issued by the Ministry of Justice;
- for individuals – lawyer's certificate issued by the Ministry of Justice.

The Licensing requirements for advocates are as follows:

- Belarussian citizenship;
- legal education;
- internship at an advocate office or sole-practicing advocate (at least six months for individuals that have three or more years' professional experience, and at least one year for individuals with less than three years' professional experience); and
- the passing of a qualification exam set by the qualification commission of the Ministry of Justice.

Licenses to practice law in Belarus are issued only to Belarussian legal entities or citizens. Therefore, foreign lawyers and foreign law firms are prohibited from the practice of law as advocates or as commercial lawyers. According to information provided by the Ministry of Justice as of June 2015, there were 170 commercial law firms and 579 individuals licensed as commercial attorneys<sup>6</sup> and 1,888 individuals licensed as advocates in Belarus.<sup>7</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS

Legal aid is provided (a) at the expense of regional bar associations or (b) at the expense of national or regional budgets in situations set out in Article 28 of the "Law on Advocate Services" (*mandatory legal aid*).

Legal aid is provided in the following cases at the expense of the applicable regional bar association:

- for plaintiffs that have labor or alimony claims in district (city) courts or regional courts;
- oral advice for veterans of the Great Patriotic War (Second World War) – in connection with non-business related matters by way of oral advice;
- for citizens of Belarus – in connection with the preparation of pension and allowance applications;
- oral advice for for certain disabled persons that does not require review of documents; and
- for minors or their parents (guardians) – in connection with the protection of the minor's interests;

Legal aid in these matters is provided by advocate offices or individually practicing advocates who are admitted to practice by the applicable regional bar association. The regional bar associations determine the procedure for providing legal aid and they distribute the expenses for conducting the same to the applicable advocate or advocate office.

Legal aid is provided to the victims of human trafficking or terrorism (in connection with their social rehabilitation) from the national budget. Reimbursement of advocates' fees for the provision of such legal aid is made in accordance with the Resolution of the Council of Ministers of the Republic of Belarus "On Procedure of Reimbursement of Advocates' Fees for Provision of Legal Aid to Victims of Human-trafficking and Terrorism" dated February 6, 2012 No. 122, namely:

---

<sup>5</sup> Lawyers' certificates are issued by the Ministry of Justice to individuals who have at least three years of professional experience.

<sup>6</sup> Legal services, available at [http://www.minjust.by/ru/site\\_menu/license/legal\\_services](http://www.minjust.by/ru/site_menu/license/legal_services) (last visited on September 4, 2015).

<sup>7</sup> Advocate service, available at [http://www.minjust.by/ru/site\\_menu/license/lawyer\\_work](http://www.minjust.by/ru/site_menu/license/lawyer_work) (last visited on September 4, 2015).



- 70 per cent. of the first category tariff rate for one working day in the Supreme Court and in regional courts; and
- 50 per cent. of the first category tariff rate for one working day in the district (city) courts, where such work can include participation in preliminary investigation, giving of oral advice and explanations, drafting of statements, complaints and other legal documents.

Legal aid is provided to criminal suspects or defendants from the applicable regional budget by advocates appointed at the request of the court. Reimbursement of advocates' fees for the provision of such legal aid is determined by the Resolution of the Ministry of Justice and the Ministry of Finance of the Republic of Belarus "On Instruction of Reimbursement of Advocates' Fees from Regional Budgets" dated August 30, 2007 No. 57/129 in the following way:

- 70 per cent. of the first category tariff rate for one working day at the appointment in the Supreme Court or regional courts;
- 50 per cent. of the first category tariff rate for one working day at the appointment of district (city) courts; and
- 50 per cent. of one working day salary in connection with conducting of inquiry procedures, preliminary investigation and trial.

Importantly, advocates' fees for the provision of legal aid to criminal suspects and defendants that are reimbursed from regional budgets must be reimbursed by such individuals in the event they are found guilty by the court.

All three forms of mandatory legal aid referred to above will be provided only to individuals of certain social groups. Accordingly, mandatory legal aid is not available to the wider public. According to the last statistics available at the website of the Republican Bar Association, in 2013 advocates provided legal aid to 85,900 individuals which is equal to 26% of total legal assistance (privately paid and legal aided) provided by advocates.<sup>8</sup> This statistic does not distinguish between legal aid provided at the expense of bar associations and legal aid provided at the expense of national or regional budgets.

Each regional bar association can also determine other categories of individuals to whom its members can provide legal aid services at the expense of such bar association in addition to those categories of individuals who are entitled to receive legal aid services at the expense of regional bar associations in accordance with para. 1 of Art. 28 of the Law on Advocate Service. Regional bar associations usually arrange free legal consultations on Belarussian Advocates Day (June 26) and Lawyer's Day (December 5).

## PRO BONO ASSISTANCE

Pro bono culture in Belarus, as in other CIS countries, has started to emerge only in recent years after the dissolution of the USSR. As such, it is still in its early stages and is not widely known to the public as a separate source of legal assistance. There are separate legal acts covering certain aspects of pro bono assistance, but there is no comprehensive regulation on this.

In accordance with the Resolution of the Ministry of Justice of Belarus "On Some Issues of Legal Education of the Population" dated November 19, 2010 No. 98 (the "**Act on Legal Education**") advocates, commercial attorneys, court officials, notaries, real estate agents in-house lawyers, NGOs and university law clinics can provide oral legal advice in certain areas.

Pro bono legal aid may also be provided under the Edict of the President of Belarus "On Provision of Gratuitous (Sponsor) Aid" dated July 1, 2005 No. 300 (the "**Edict on Gratuitous Aid**") for the purposes indicated therein (including the development of art, sport or social protection of citizens). In accordance with the Edict on Gratuitous Aid, persons providing sponsor aid (including in the form of free services) shall enter into an agreement in respect thereof with recipients of such sponsor aid where the parties

---

<sup>8</sup> Information was announced at the Board of Republican Bar Association on February 28, 2014, previously available at <http://www.rka.by/news/itogi-raboty-belorusskoy-advokatury-podvedeny> (last visited on September 4, 2015).



shall agree on the aim, amount and procedure for providing sponsor aid. A template sponsor aid agreement has been developed by the Government of Belarus. Recipients of sponsor aid must also provide reports to sponsors on the utilization of such sponsor aid.

## Pro Bono Opportunities

### Law Firm Pro Bono Programs

Law firms in Belarus that operate as commercial attorneys do not typically establish special pro bono programs. Pro bono work is conducted by them on a case-by-case basis. The development of a pro bono culture among law firms is hindered, in part, by the absence of western law firms in the Belarussian legal market that could promote pro bono values amongst the local legal society. Accordingly, there is no pro bono culture in Belarus and pro bono work is not considered to be notable or prestigious.

### Non-Governmental Organizations

NGOs can generally provide limited pro bono assistance in the form of oral legal advice under the Act on Legal Education. There are also special types of NGOs that can provide free legal aid on specific matters (such as trade unions and consumer-protection associations). In particular, consumer protections associations in accordance with the Law “On Protection of Consumers’ Rights” dated January 9, 2002 No. 90-3 are entitled to:

- provide free legal consultations to consumers on the protection of their rights;
- submit claims on behalf of consumers to manufacturers or, as the case may be, sellers, suppliers or their representatives; and
- submit claims on behalf of consumers to courts and also represent consumers’ interests in courts.

### University Legal Clinics and Law Students

In accordance with the Act on Legal Education, legal clinics established by universities can carry out free oral legal consultations to vulnerable social groups such as indigent citizens, the disabled, veterans of the Great Patriotic War (Second World War), orphans, single mothers, etc. These consultations are provided by students under the supervision of their professors. Legal clinics have been established at the Belarussian State University, Grodno State University, Vitebsk State University, Gomel State University and Brest State University.

## Pro Bono Resources

The New Eurasia Establishment (the “**NEE**”) has implemented a legal clinic support program that promotes a network of university-based legal clinics providing free legal services to vulnerable social groups. Through this project, the NEE aims to enhance the professional capacity of legal clinic tutors and clinicians and strengthens the educational role of legal clinics to produce qualified lawyers. The project facilitates networking between legal clinics and promotes their advocacy role in the provision of free services for vulnerable people. A list of legal clinics participating in the NEE’s network and links to their web-sites are available at the NEE’s web-site<sup>9</sup>. The program is supported by the Eurasia Foundation with funding from the U.S. Agency for International Development (USAID).

Legal aid in the sphere of consumer rights protection is conducted by consumer protection associations. The full list of consumer protection associations can be found on the website of the Ministry of Trade of Belarus<sup>10</sup>. The largest association is the republican public association “Belarusian society of the protection of consumers”<sup>11</sup>.

---

<sup>9</sup> See <http://www.eurasia.by/partners.php> (last visited on September 4, 2015).

<sup>10</sup> See [http://www.mintorg.gov.by/index.php?option=com\\_content&task=view&id=509](http://www.mintorg.gov.by/index.php?option=com_content&task=view&id=509) (last visited on September 4, 2015).

<sup>11</sup> See <http://www.potrebitel.by/> (last visited on September 4, 2015).



## CONCLUSION

Pro bono culture in Belarus is just emerging. Currently, only advocates and law firms are in a position to provide full scale pro bono services. However, none of the major law firms currently have an established pro bono program. Other potential providers of pro bono services are limited at law to oral legal consultations. At the same time, barriers to the development of pro bono in Belarus are predominantly of a social nature – Belarus does not have a tradition of pro bono and Belarussian society remains unfamiliar with such type of legal assistance.

September 2015

Pro Bono Practices and Opportunities in Belarus

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Belgium

### INTRODUCTION

Under the Belgian Constitution, all individuals have a right to legal assistance, which is provided and obtained in the form of advisory services and representation in judicial matters. Even outside the framework of state organized legal assistance and aid, ample opportunities exist for lawyers and law firms to provide voluntary legal services on a pro bono basis including, for instance, advising and representing social enterprises and non-profit organisations on European law issues. However, just as any other form of generosity or charity requires a fostering environment, the provision of *free-of-charge* services can only truly prosper in a legal community that is characterized by a culture of commitment to pro bono projects. Although Belgian law mandates the government to make differing types of assistance available to indigent people, thereby requiring a fair contribution from the legal profession in assuring the constitutional right to legal assistance, a strong pro bono culture has not traditionally existed in the Belgian domestic legal community for various reasons. In fact, the vast majority of pro bono projects have been undertaken by the local offices of international law firms and corporate legal departments with UK or US roots, rather than by domestic firms or Benelux organizations.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

According to article 23 of the Belgian Constitution (the “Constitution”), all Belgian citizens have the right to legal assistance.<sup>1</sup> However, article 191 of the Constitution seems to extend this protection to anyone residing on Belgian territory, unless the legislator can objectively justify a differential treatment for non-Belgian citizens.<sup>2</sup> The intention of the founding fathers of the Constitution must have been to avoid situations where laymen would lose the enjoyment of a certain privilege or right, or the possibility to formulate a defense against allegations, due to lack of legal knowledge or social resilience. Citizens should have access to legal experts, and in this regard a primary institutional obligation rests with the government. However, the actual implementation of this right has been left primarily to specialized organisations, and notably to the legal profession. Access to justice is particularly critical for the poor, who typically depend on various entitlements to meet basic needs such as food, housing and medical care.<sup>3</sup> In other words, even those who lack sufficient resources should be entitled to access to justice, not least because attempting to navigate the legal system without counsel generally puts lay participants at a disadvantage. For the same reason, the government should absorb the financial burden arising from the conduct of legal proceedings, where *justiciables*, or citizens, are unable to carry the expenses themselves (legal aid).

##### The Courts

Belgium is a federal state divided into three economic regions<sup>4</sup>: Dutch-speaking *Flanders* in the north, francophone *Wallonia* in the south, and *Brussels*, the bilingual capital, where French and Dutch share official status. There is also a small German-speaking minority in the eastern part of the country. These

---

<sup>1</sup> Authoritative authors even argue that since the constitutional right to legal assistance qualifies as an individualizable right, justiciables should be able to enforce it directly in courts and tribunals. See for instance M. Van Damme, *Overzicht van het Grondwettelijk Recht*, Brugge, die Keure, 2008, 456.

<sup>2</sup> See for instance the judgment of the Constitutional Court, June 10, 2010, no. 69/2010.

<sup>3</sup> See D. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 *Fordham L. Rev.* 2415 (1999).

<sup>4</sup> From an institutional perspective, a distinction is made between economic regions and cultural communities which both have distinct competences, apart from the powers that remain at federal level.



territorial divisions are also reflected in the strict language requirements observed before the Belgian courts.<sup>5</sup> Belgium's judicial system falls within the civil law tradition, where a set of codified rules are applied and interpreted by judges. The organisation of the courts and tribunals is a competence of the federal government only.

The Belgian court system is modeled on the French system, where courts and tribunals are hierarchically organized according to a pyramidal structure. The resolution of disputes relating to (subjective) *civil* rights (both vis-à-vis other justiciable parties and the State in all its forms) falls within the exclusive competence of the judiciary (*rechterlijke macht; pouvoir judiciaire*). However, jurisdiction over disputes relating to *political* rights and *legal relationships* with the State that only give rise to an '*interest*' on the part of the claimant, is typically granted to *administrative* jurisdictions (*administratieve rechtscolleges; juridictions administratives*) which, from a constitutional perspective, are not part of the judiciary. Generally speaking, administrative, civil and criminal law proceedings are distinct in terms of procedures and fair trial guarantees.

In terms of trial judges, a distinction is made between "sitting magistrates" (*zittende magistratuur; magistrature assise*) who are professional judges (called *rechters* or *juges* in the lower courts and *raadsheren* or *conseillers* in the appellate courts), and "standing magistrates" (*staande magistratuur; magistrature debout*) who are officers from the public prosecutor's office (*openbaar ministerie; ministère public*). In some of the lower courts, professional judges sit alongside non-professional judges or lay judges (*lekenrechter; juge laïc*). Judges are appointed by the Executive (*uitvoerende macht; pouvoir exécutif*) after having passed exams and also on the basis of their professional experience.<sup>6</sup> There is no political interference in this process.

Administrative proceedings are conducted before administrative courts. The "Council of State" (*Raad van State; Conseil d'État*) serves as an advisory court at the junction of the legislative, executive and judicial powers. The Council of State has the power to suspend and annul administrative acts (individual and statutory) that are contrary to the legal rules in force, acts as an advisory body in legislative and statutory matters, and, being the administrative supreme court, reviews the external and internal legality of decisions of lower administrative jurisdictions, without reconsidering the facts leading to the dispute.

Minor offences (*overtredingen; contraventions*) and road traffic offences are brought in the first instance before a "Police Court" (*politie rechtbank; tribunal de police*), while intermediate offences (*wanbedrijven; délits*) and more serious crimes like burglary, robbery and fraud, are tried before a "Misdemeanors Court" (*correctionele rechtbank; tribunal correctionnel*), which is the penal department of a "Tribunal of First Instance" (*rechtbank van eerste aanleg; tribunal de première instance*).<sup>7</sup> The latter also houses a so-called "Court for the Application of Sentences" (*strafuitvoeringsrechtbank; tribunal de l'application des peines*) which is responsible for ensuring the effective execution of sentences in penal cases and which delivers judgments on the legal status outside prison of persons sentenced to a deprivation of liberty.<sup>8</sup> Persons accused of having committed the most serious "crimes" (*misdaad; crime*), are summoned to appear before "Assize Courts" (*hof van assisen; cour d'assises*) which are convened on an *ad hoc* basis and where a jury deliberates on the question of guilt and the resulting penalty (typically in different sessions).<sup>9</sup> In penal cases, judgments of the Police Court can be appealed before the Misdemeanors Court, while judgments of the Misdemeanors Court, ruling at the first instance level, are open to appeal

---

<sup>5</sup> See also the fact that on April 1, 2014, the Brussels tribunals were split into separate Dutch and French tribunals, so as to provide for a more efficient and accessible legal system.

<sup>6</sup> The High Council of Justice (Hoge Raad voor de Justitie; Conseil supérieur de la justice) plays a vital role in the policy for the appointment of judges, on an objective and non-political basis.

<sup>7</sup> There are 15 police courts and 13 tribunals of first instance, one for each judicial district (gerechtelijk arrondissement; arrondissement judiciaire).

<sup>8</sup> Decisions of the courts for the application of sentences may be appealed to the court of cassation by the State Counsel's Office or by the convicted person.

<sup>9</sup> There is an assize court for each of the ten provinces and for the Brussels-Capital district.

before a “Court of Appeal” (*hof van beroep; cour d’appel*).<sup>10</sup> However, the party claiming damages, the public prosecutor’s office and the convicted person may only lodge an “appeal in cassation” (*cassatieberoep; pourvoi en cassation*) against a judgment of the Assize Court.

Civil lawsuits are dealt with at the first instance by a so-called “Justice of the Peace Court” (*vrederichter; justice de paix*) or a “District Court” (*burgerlijke rechtbank; tribunal civil*), depending on the nature of the dispute and/or the monetary value of the claims; the latter court being the civil branch of the First Instance Court.<sup>11</sup> A reform in 2013 created a specialized “Family and Juvenile court” (*familie-en jeugdrechtbank; tribunal de la famille et de la jeunesse*) within the structure of the Tribunal of First Instance. Commercial Courts (*rechtbank van koophandel; tribunal de commerce*) and Labor Tribunals (*arbeidsrechtbank; tribunal du travail*) respectively deal with commercial and labor matters.<sup>12</sup> Decisions of the Justice of the Peace Court can be appealed before a District Court or a Commercial Court, depending on whether the claim is of civil or commercial nature. Judgments of District Courts, Family and Juvenile Courts, and Commercial Courts are all open to appeal before a Court of Appeal, while decisions of Labor Tribunals are subject to review before a “Labor Appellate Court” (*arbeidshof; cour du travail*).<sup>13</sup>

The “Court of Cassation” (*hof van cassatie; cour de cassation*), the supreme judicial court, heads all the judicial courts in Belgium. Appeals can be brought only against judgments delivered at last instance, that is to say judgments for which it is no longer possible to lodge an “ordinary appeal” (*hoger beroep; appel*) on points of fact and law. It does not deal with the substance of cases but examines whether the decisions referred to it contravene the law or the rules of procedure. Whenever it quashes a judgment, the case is referred back to the previous level. The “Constitutional Court” (*grondwettelijk hof; cour constitutionnelle*) is a court of law composed of 12 judges who ensure the observance of the Constitution by the legislative authorities of Belgium. It has the power to annul, declare unconstitutional and suspend laws, decrees and ordinances infringing on Title II of the Constitution (articles 8 to 32 on the rights and freedoms of the Belgians), on articles 170 and 172 (legality and equality of taxes) and 191 of it (protection of foreign nationals) and on the power-defining rules between those authorities, provided for in the Constitution and in laws on institutional reform. Its jurisdiction can be seized either through the instigation of an action for annulment, or by way of referrals for preliminary questions from courts and tribunals.

## The Practice of Law

As part of their three-year apprenticeship post-educational qualification, “aspirant lawyers” (*stagiair-advocaat; avocat-stagiaire*) not only have to obtain a declaration of professional aptitude (rewarded after having passed bar exams in the first year of the apprenticeship), but are also enrolled in what is called “*pro deo*” assistance<sup>14</sup>, that is to say, legal assistance to indigent people that could not otherwise afford the services of a lawyer (see further below).<sup>15</sup> This is an inextricable part of the aspirant lawyer’s training and serves to broaden their experience allowing them to develop a preference for a specific area of law. Currently, the Flemish Bar council commands that every aspirant lawyer completes 15 *pro deo* cases during their apprenticeship. These cases are assigned during monthly aspirant lawyer meetings, which are supervised by senior lawyers appointed by the local bar. These cases can be challenging as they range from asylum cases to divorce proceedings, often within a tight time schedule.

<sup>10</sup> Five such courts exist, one for each “judicial resort” (*rechtsgebied; resort*).

<sup>11</sup> Conceptually, a justice of the peace court can be seen as a civil magistrates’ court, of which there are 187 in Belgium, one for each “judicial canton” (*gerechtelijk kanton; canton judiciaire*).

<sup>12</sup> There are nine Commercial Courts and nine Labour Tribunals.

<sup>13</sup> As is the case for Labour Tribunals as well, the divisions of a Labour Appellate Court consist of a professional judge and two or four lay judges. In Belgium there are five Labour Appellate Courts.

<sup>14</sup> Note that it is important not to associate and confuse *pro deo* with *pro bono*. Although both virtues have in common that services are provided (partially) free-of-charge on the part of the justiciable, in *pro deo* cases lawyers are still compensated for rendering such services by the government, albeit indirectly through the Bar associations.

<sup>15</sup> See notably articles 428 and 428bis of the Belgian Judicial Code and Chapter II.1 “Traineeships” and Chapter II.2 “Professional training” in the Code of Ethics for Lawyers of the Flemish Bar Council, 10/09/2014.



Note that even though aspirant lawyers hold law degrees, they are still required to complete a three-year apprenticeship under the supervision of a senior qualified lawyer (*stagemeester; patron*) before being qualified to practice independently.<sup>16</sup> However, even during such time, aspirant lawyers are full members of the Bar association, may handle and represent cases themselves and are allowed to use the title of lawyer.

### Role of In-house Counsel

The statute of in-house counsel (*bedrijfsjurist; juriste d'entreprise*) is defined in the Act of March 1, 2000 (as amended by the Act of May 19, 2010). Central to the legislative framework is the establishment of an Institute for In-House Counsels (*Instituut voor bedrijfsjuristen; Institut des juristes d'entreprise*) which is tasked with drawing up a list of its members, setting ethical rules and ensuring compliance therewith, coordinating the further expansion of the activities of in-house counsels, overseeing the legal education of its members and giving advice on matters which relate to in-house counsel. Membership of the Institute is only open to individuals who hold a law degree and provide legal counsel and assistance under a private or public employment contract with a private or public employer who is engaged in economic, social, administrative or scientific activities in Belgium. Membership is available to foreign-trained and qualified counsel working for an enterprise in Belgium. The principal difference between a lawyer and in-house counsel is that the former acts as a self-employed legal service provider while the latter provides similar services, except those that remain reserved to the legal profession, under an employment contract.

Article 5 of the Act of March 1, 2000 states that the advice given by in-house legal counsel (who are members of the Institute) for the benefit of their employers in the framework of their work as legal counsel is confidential. This was confirmed by both the Court of Appeal of Brussels and the Supreme Court in the context of a dawn raid that was carried out by the Belgian Competition Authority at the premises of Belgacom.<sup>17</sup> The legal professional privilege does not only extend to the legal advice given by in-house counsel, but also to requests for legal advice made to in-house counsel and correspondence relating to such requests, draft legal opinions of in-house counsel and other preparatory documents. However, the professional privilege protection is lost as soon as such legal advice is disclosed to a person outside the company.

### Opportunities for Foreign Lawyers

**Requalification** – Nationals of the EU, the European Economic Area (the “**EEA**”),<sup>18</sup> Member States and Switzerland (hereinafter collectively referred to as “**EU lawyers**”) may requalify as local Belgian lawyers either by taking an aptitude test or by following three years of continuous and effective practice in Belgium under the supervision of a Belgian-qualified senior lawyer. For all *other* foreign lawyers, requalification is dealt with on a case-by-case basis where reciprocity will be applied under certain conditions by the Bar association to whom the request was addressed, such as having been domiciled in Belgium for at least three to six years.<sup>19</sup>

**Establishment**<sup>20</sup> – EU lawyers who are authorized to use one of the professional lawyer titles mentioned in Directive 98/5/EC, may practice in Belgium on a *permanent basis* under their home title, after registration with a Belgian Bar on the list of European Lawyers (the “E-list”), and are allowed to carry out the *same* professional activities in Belgium as fully qualified members of the Belgian Bars, in particular the provision of legal advice on the law of his or her home state, on EU and international law and even on

---

<sup>16</sup> This is what distinguishes full-fledged lawyers from trainee lawyers.

<sup>17</sup> See judgments of the Court of Appeal of Brussels, March 5, 2013 and the Supreme Court, January 22, 2015.

<sup>18</sup> The Agreement creating the European Economic Area entered into force on January 1, 1994 and aimed to extend parts of the EU law *acquis* to the EFTA States Norway, Iceland and Liechtenstein.

<sup>19</sup> See for the specific legal framework regarding these issues, articles 428 bis-decies of the Judicial Code and the Royal Decree of August 24, 1970.

<sup>20</sup> For a distinction between the provision of services and establishment according to EU law, see the judgment of the European Court of Justice of November 30, 1995, Gebhard, C-55/94.



Belgian law.<sup>21</sup> All other foreign lawyers pursuing their activities on a full-time basis, may (but do not have to) request registration on the list of associated members of the Brussels Bar (*liste des membres associés du barreau de Bruxelles*, sometimes referred to as “B-List”).

**Services** – EU lawyers who hold recognized professional titles may also provide temporary services in Belgium on an unrestricted basis, apart from the fact that they may only represent and defend clients in Belgian courts in association with a local lawyer.<sup>22</sup> Unregistered third country citizens may also provide services in areas other than Belgian law.

### Legal Regulation of Lawyers

Although the Judicial Code sets out a basic framework of rules of conduct, the legal profession is to a large extent governed by two overarching Bar associations: the “Flemish Bar Council” (*Orde van Vlaamse Balies*) for the Dutch speaking Bars and the *Ordre des Barreaux Francophones et Germanophones* for the French and German speaking Bars (each referred to herein as “**Orde**” and collectively as, the “**Ordes**”). Divided over 27 Court Districts, there are in total 14 Dutch, 13 French, and one German local Bar associations. Even though each lawyer is required to be a member of the Bar (*balie; barreau*) of the judicial district where his/her services are primarily rendered, that does not prohibit the lawyer from appearing in courts located in other judicial districts. In practical terms, all of the Belgian Bar Associations are organized under and governed by similar principles. The *Ordes* are not only the principal bodies in charge of organizing legal assistance, they also monitor the quality of the legal services rendered, promulgate ethics rules within the limited legal framework, and function as a disciplinary institution which can disbar lawyers for certain breaches of their legal and ethical duties (regulated by the *Ordes*’ Codes of Conduct). Even more important is that the *Ordes* are also endowed with the competence to moderate lawyer fees where they prove to be excessive in relation to the services rendered (see further below).

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The legal profession has traditionally been regarded as having a broad social responsibility in terms of contributing to access to justice for those who cannot afford counsel. This may be seen as a tradeoff for the extensive social privileges lawyers enjoy, for instance the monopoly to plead in courts, professional independence, legal professional privilege, and far-reaching self-regulation through the profession’s ethical codes. As early as the beginning of the 19th century, Napoleon’s Imperial Decree of December 14, 1810 already required Bar associations to develop mechanisms of free legal assistance for those in need, and the prevailing Belgian Judicial Code still pays tribute to this tradition.

The Constitution grants all citizens the right to legal assistance, and the Judicial Code further identifies two systems of assistance: “legal assistance” (*juridische bijstand; aide juridique*) where the substantive aspect prevails over the pecuniary one, and “legal aid” (*rechtsbijstand; assistance judiciaire*) which is a purely financial intervention on the part of the state. Legal assistance takes place at two levels, i.e. *front-line* and *second-line* legal assistance. Finally, there are also a few opportunities to lodge complaints with Ombudsmen.

---

<sup>21</sup> See articles 477 quinques-nonies of the Judicial Code.

<sup>22</sup> See articles 477 bis-quarter of the Judicial Code. With regard to the exception to unrestricted provision of services, reference should be made to the judgements of the European Court of Justice of February 25, 1988, *Commission v. BRD*, case 427/85 and of July 10, 1991, *Commission v. France*, case 294/89.

## Front-line Legal Assistance

Front-line legal assistance<sup>23</sup> (*eerstelijnsbijstand; aide juridique de première ligne*) is provided by a local “Legal Assistance Commission” (“**LAC**”) (*Commissie voor Juridische Rechtsbijstand; Commission d’Aide Juridique*). Each Court District has its own LAC, composed of an equal number of representatives from the local *Orde* and public social welfare centers (*openbare centra voor maatschappelijk welzijn; centres publiques d’action sociale*). During LAC sessions – which are consultation sessions open to both natural and legal persons – lawyers provide preliminary (but limited) legal and practical advice on a variety of issues, or they refer persons to lawyers or a specialized body capable of providing second-line (more elaborate) legal assistance.<sup>24</sup> In turn they receive compensation from the LAC. A lawyer providing front-line legal assistance does not conduct a thorough investigation of the case and does not draft letters or agreements, but only provides advice on simple matters and does not address complex issues. To avoid abusive practices, a lawyer offering front-line legal assistance is not allowed to offer assistance and representation in further proceedings relating to the same client, nor is he allowed to refer the client to one particular lawyer for further assistance.

Note that, unlike second-line legal assistance, the front-line legal variant is available to all, and is *not* linked to income, nationality or age. As of January 1, 2004 Legal Assistance at LAC sessions is a free service.<sup>25</sup> Each qualified lawyer willing to participate in primary LAC sessions informs the LAC of the areas of the law that he or she is qualified to advise on.

## Second-line Legal Assistance

Second-line legal assistance is organized by a “Legal Assistance Bureau” (“**LAB**”) (*Bureau voor juridische bijstand; Bureau d’aide juridique*) and consists of giving more sophisticated legal advice and/or assisting and representing someone in a judicial proceeding. This type of assistance may be requested in any proceeding, whether criminal, civil or administrative, and at *any* stage of the proceedings. In the context of this assistance, one can rely on a lawyer for more detailed legal opinions, establishing the necessary contacts, drafting letters, accompanying the client to meetings with government institutions and even in situations leading up to actual proceedings. Although assistance with court actions, and notably legal representation, are the most common expressions of legal assistance, there is no requirement that the assistance take place within the context of formal proceedings.

A LAB is in charge of organizing the availability of second-line legal assistance in each Court District, depending on the *Orde* to which that district is subject. Second-line legal assistance is available *only* to natural persons who have insufficient financial means.<sup>26</sup> Citizens who fulfil the criteria are partially or completely exempt from paying fees for second-line legal assistance. Lawyers rendering second-line legal assistance services are paid by the Belgian Department of Justice through the intermediary of the local *Ordes*. The remuneration is determined by the Department of Justice and is based on a points system, in which the value of one point is determined annually, taking into account the entire State’s legal assistance budget and the number of matters in that year.<sup>27</sup>

---

<sup>23</sup> Belgian Judicial Code (Belg. Jud. Code), art. 508/1 to 508/6; see also L’aide Juridique: Un Meilleur Accès à la Justice, Service Public Fédéral Justice, available at [http://justice.belgium.be/fr/publications/een\\_betere\\_toegang\\_tot\\_justitie.jsp?referer=tcm:421-138590-64](http://justice.belgium.be/fr/publications/een_betere_toegang_tot_justitie.jsp?referer=tcm:421-138590-64) (last visited on September 4, 2015).

<sup>24</sup> Each LAC maintains a list of all lawyers qualified by the local *Orde* wishing to perform services in the context of secondary legal assistance, which is updated annually.

<sup>25</sup> Royal Decree, Dec. 18, 2003.

<sup>26</sup> Center groups can rely on a rebuttable presumption of sufficient financial means. Those groups include, among others, minors below 18, people who have been found to be mentally ill, and foreigners claiming refugee status or applying for residence on the basis of asylum legislation.

<sup>27</sup> For judicial year 2014-2015, the budget for secondary legal assistance is estimated approximately € 74 million according to the verbal answer of the Minister of Justice to an oral question during the plenary meeting of May 21, 2015, CRIV PLEN 047 p.20. The value of one point is € 24.76€.

Under the *Ordes*' rules, lawyers cannot accept contingency fees from clients, nor can they seek further remuneration from an indigent client who receives complete legal assistance.<sup>28</sup> Secondary legal assistance often results from a referral of the lawyer providing primary legal assistance. However, natural persons have the right to choose any lawyer qualified by the local *Orde* for secondary legal assistance. If the lawyer is willing to accept the case, he or she can request that the LAB designate him or her as the person's secondary legal assistance provider. Ultimately, every lawyer must be authorized by the *Orde* to give secondary legal assistance in each individual case. In urgent matters, one may contact an on-duty lawyer from the emergency service of the LAB for this authorization.

Accordingly, Second-line legal assistance is not only provided by aspirant lawyers in the course of their three-year apprenticeship, but also full-fledged lawyers who volunteer to take on *pro deo* cases, either on a principal or incidental basis. The latter can also specify in which area of law they want to render *pro deo* services. Aspirant lawyers on the other hand are obliged to enroll for *pro deo* assistance, are not allowed to identify a legal area of preference and cannot refuse to take on second-line legal assistance cases assigned to them, unless they have good reason to do so. A lawyer who is consulted by a client and who knows or suspects that the client qualifies for second-line legal assistance, is under an obligation to inform the client of this fact.<sup>29</sup>

As of January 2012, under the Statute of August 13, 2011<sup>30</sup> (also called the "**Salduz Bill**" in reference to the Case Law of the European Court of Human Rights), all natural persons are entitled to prior consultation with a lawyer, and can demand that this lawyer be present at the first interrogation by the police or the magistrate in charge of an inquest. Following the partial annulment of the Salduz Bill by the Constitutional Court in 2013, a *Salduz Bis* scheme will be put in place, taking effect from January 1, 2016 which would require a lawyer to be present during *any* questioning.<sup>31</sup> To give effect to this statutory right, the *Ordes* have established a "Salduz-Permanency" in order to ensure that suspects can consult a lawyer within two hours. In theory, when an individual wishes to invoke his or her right to prior consultation and assistance, the police must first contact a call-center set up by the *Ordes*, requesting the assistance of an on-duty lawyer from the neighbourhood. The on-duty lawyer will then offer a 30-minute (maximum) consultation. After that, the interrogation can take place. In practice, due to the limited number of lawyers available, prior consultations are sometimes held over the phone, and lawyers rarely assist in the actual interrogation.

### State-Subsidized Legal Aid

The other component of state-sponsored legal services, "legal aid", means that certain costs and fees incurred during judicial or extra-judicial proceedings are waived either in part or in full, for litigants who do not have adequate income to cover those costs. These fees include, among others, registration fees (*registratierechten; droits d'enregistrement*), registry costs (*griffierechten; droit de greffe*), the fees related to intervention of bailiffs (*rechtsdeurwaarders; huissiers de justice*), notaries (*notarissen; notaires*) and specialists in the context of a judicial expert investigation (*deskundigenonderzoek; expertise*). Access to legal aid is available to Belgian nationals, nationals of EEA member states, foreign nationals in accordance with international treaties, foreign nationals having their ordinary residence in Belgium or in a Member State of the EU, foreign nationals in immigration proceedings, and even legal persons can request legal aid.

### Mandatory Assignments to Legal Assistance Matters

In terms of mandatory assignments to legal assistance matters, Belgian law requires Flemish aspirant-lawyers to enroll for *pro deo* assistance in the course of their three-year apprenticeship, with the

<sup>28</sup> See BELG. JUD. CODE art. 459.

<sup>29</sup> See article III.1.8.1 of the CODE OF ETHICS FOR LAWYERS of the Flemish Bar Council.

<sup>30</sup> Legal Act of Aug. 13, 2011.

<sup>31</sup> See also judgment of the Constitutional Court of February 14, 2013, no. 7/2013.



possibility that the attorney-general of the Bar assigns even more *pro deo* matters, if such need may exist. Aspirant lawyers are not allowed to identify a legal area of preference and cannot refuse to take on second-line legal assistance cases assigned to them, unless they have good reason to do so.

## Unmet Needs and Access Analysis

Currently, in order to qualify for second-line legal assistance, a single individual may not earn more than € 944 net per month (full exemption from payment) or between € 944 and € 1,213 per month (partial exemption). However, if the individual is married, co-habiting or single but taking care of dependents, the thresholds are based on *total family income* and amount to a maximum of € 1,213 (full exemption) and € 1,480 net per month (partial exemption), increased by approximately € 164 per dependent that the individual is taking care of.<sup>32</sup> The majority of people in need of legal support exceed these thresholds. The law also identifies certain individuals for which it creates a legal presumption of indigence, among others, refugees, minors, disabled people and people receiving other forms of social state-subsidized benefits. Legal persons are not eligible for second-line legal assistance at all. There are no current clear figures on whether the current state-subsidized legal assistance scheme meets current unmet legal needs of indigent and marginalized individuals. Certainly, the amount of eligible categories for legal assistance and aid has not kept pace with the increasing volume of legal proceedings, implying that those who rely on the system, use it extensively.

## Alternative Dispute Resolution

### Ombudsman

In Belgium, people who feel that they have been wronged may, in certain cases, also resort to an Ombudsman (*ombudsman; médiateur*) with their complaints.<sup>33</sup> An Ombudsman is an impartial complaint handler whose mediation services can be solicited in order to assess the fairness of decisions taken by government institutions, autonomous public companies and even private companies. Ombudsmen have not only been created at the federal level<sup>34</sup>, but also at the regional<sup>35</sup> and municipal levels (for instance Antwerp, Bruges, Sint-Niklaas and Ghent). Similarly, customers can consult specific Ombudsmen regarding dealings with service-providing public companies (national Postal and Railway companies). Furthermore, many different types of Ombudsmen have been established on the basis of commercial legislation for disputes between customers and private companies in particular business segments like insurance, financial disputes, telecom, energy and consumer services. Even though all Ombudsmen are governed by different acts and establish different rules of conduct and procedure, in general they all require that the complainant has already attempted to resolve the dispute him or herself, but failed to do so. Ombudsmen will collect information, subject companies and administrative departments to requests for information and even hearings if necessary, and give a form of opinion that might reconcile the interests of the parties. Ombudsmen typically do not adjudicate matters. Even though their opinions are not binding, the incriminated company or administration cannot simply ignore this advice, without properly explaining why. If the ombudsman's acts fail, it always remains possible to submit the dispute to arbitration or to take the case to a court. Fees incurred by citizens for having relied on the services of an Ombudsman are very rare.

---

<sup>32</sup> These figures are applicable as of September 1, 2014.

<sup>33</sup> The following website provides a useful overview of the different types of ombudsmen and their areas of competence: it is available at <http://www.ombudsman.be/nl> (last visited on September 4, 2015).

<sup>34</sup> Act of March 22, 1995 "establishing the positions of Federal Ombudsmen", O.J., April 7, 1995.

<sup>35</sup> "Vlaamse Ombudsdienst" for the Flemish region, "Médiateur de la Région wallonne" for the Walloon region, "Médiateur de la Communauté française" for the francophone Community and "Ombudsmanns für die Deutschsprachige Gemeinschaft" for the German-speaking Community.



## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

Although a system of legally mandated pro bono assistance and a consequential duty to report such matters does not exist in Belgium, neither the Belgian Judicial Code nor the Code of Conduct for Lawyers of the *Ordes* requires a lawyer to request payment for his or her services. Similarly, there is no imposed tariff for calculating lawyer fees. Each lawyer establishes his own fees, but he must comply with the requirements of article 446ter of the Judicial Code, which states “*that the fees should be established with fair moderation*”.<sup>36</sup>

Thus, while the Belgian legal system described above renders it possible for individuals to receive legal consultation for free, along with a free defense, free consultation and assistance, and legal aid, any self-employed lawyer – acting as private attorney or as a member of a law firm – is permitted to provide free legal assistance at their discretion to anyone, regardless of their ability to pay and without being sanctioned for offering services for free or for a fixed fee.<sup>37</sup>

#### Law Firm Pro Bono Programs

Statistics reveal an increase in the number of pro bono programs undertaken by various law firms. This change has coincided with the establishment of branches of big Anglo-American law firms, where a vibrant pro bono culture has existed for many years. These firms have played a crucial role in the cultivation and professionalization of pro bono services in Belgium, although spill-over to the Belgian domestic legal landscape remains fairly limited. A recent statistical survey incorporating data of 14 international law firms with offices in Belgium and representing more than 500 lawyers, estimated that in Belgium, lawyers performed on average 27.1 hours of pro bono services over the last 12 months, which compares favourably with the European average of 17.7 hours.<sup>38</sup>

Law firms have commonly provided pro bono services to NGOs seeking legal advice on matters relating to European law or information on how to lobby for or against initiatives of European institutions. The main beneficiaries of such pro bono services are charitable organisations like Amnesty International, Human Rights Watch, and Friends of the Earth. According to the results of the *Brussels Pro Bono Project*, initiated in 2004 and led by lawyers of different Anglo-American law firms, Brussels in particular offers a wide “*number of opportunities, especially in the area of advising and representing non-profit organizations in Europe*.”<sup>39</sup> The handling of (high profile) pro bono cases is in part due to the increasing implementation of corporate social responsibility charters by international law firms, thus obliging or encouraging lawyers from such firms to take up a minimal amount of pro bono hours every year.

#### In-House Pro Bono Programs

Although there have not been any official studies looking at pro bono services by in-house counsel, informal evidence shows that, similar to law firms, local offices of multinational corporations have expanded their pro bono programs to include opportunities for Belgium-based in-house counsel. In-house counsel from the Brussels offices of several US corporations have participated in the annual PILNet Pro Bono Forum over the past few years, evidencing a growing commitment to pro bono by in-house legal

---

<sup>36</sup> What this means is not entirely clear. See for instance JO STEVENS, *Advocatuur: Regels & Deontologie*, Mechelen, Wolters Kluwer, 2015, 718-783.

<sup>37</sup> A law firm can provide the service either free of charge, for a minimum charge or for a fee upfront.

<sup>38</sup> See TrustLaw: Index of Pro Bono 2015 by Thomson Reuters Foundation, available at <http://www.trust.org/trustlaw/> (last visited on September 4, 2015).

<sup>39</sup> Mayer, Brown, Rowe & Maw LLP, *Pro Bono Update*, 30 (2005), available at [http://www.mayerbrown.com/Files/Publication/ec4bcbbf-cfef-4563-9a1c-9b8fbb2e0b3e/Presentation/PublicationAttachments/t6fa6db0c-318e-4ec7-9921-9c0bb4563479/news1\\_probono\\_July05.pdf](http://www.mayerbrown.com/Files/Publication/ec4bcbbf-cfef-4563-9a1c-9b8fbb2e0b3e/Presentation/PublicationAttachments/t6fa6db0c-318e-4ec7-9921-9c0bb4563479/news1_probono_July05.pdf) (last visited on September 4, 2015).



staff. For example, in-house counsel for one such corporation worked with the Brussels office of an international law firm to organise a pro bono “desk project” available to the legal staff of both entities located in Belgium and around the globe. In addition, these two organisations collaborated again to kick off an asylum clinic, in conjunction with a local NGO focusing on refugee rights.

In-house lawyers often work in close collaboration with international law firms to identify appropriate pro bono opportunities. This type of partnership helps address any issues of legal expertise, insurance, and staffing coverage. Most in-house pro bono projects tend to avoid the litigation sphere, and instead focus on research, drafting memoranda, and providing basic advice in administrative matters.

### Non-Governmental Organisations

Although NGOs are typically the recipients of pro bono legal assistance, some of them are also engaged in the provision of such services. Belgium’s most prominent pro bono NGO is *Avocats Sans Frontières* (“ASF”) which seeks to provide legal assistance in sensitive cases around the world. Headquartered in Brussels, ASF regularly organises seminars for European lawyers on topics such as corporate social responsibility and the role of lawyers in the prevention of torture. However, most of its activities are implemented ‘in the field’, in fragile or post-conflict countries, where it offers legal aid services, among others through the establishment of legal centres (mobile and fixed office locations), organization of mobile court hearings and raising awareness and educating the population on their rights. It also seeks to expand capacity in those countries by offering professional training to lawyers, institutional support to the local Bar associations for the development of the profession, organization of legal aid, and observation of trials and networking for the creation of local synergies. In terms of advocacy, ASF arranges meetings with local and international institutions and authorities and submits position papers and publications. All these activities are carried out in partnership with local entities: NGOs and civil society groups, lawyers, bar associations, local institutions and authorities, and international NGOs and other institutions. ASF counts some major international law firms in its International Legal Network.<sup>40</sup> However, the vast majority of its members are individual lawyers, working for international law firms and mid-sized Belgian law firms, choosing independently to commit themselves in symbolic or high profile pro bono cases.

### Bar Association Pro Bono Programs

According to the ASF website, quite a few Belgian Bar associations support the initiatives of the ASF financially. Similarly, on April 19, 2011 the Dutch speaking Order of the Brussels Bar entered into a protocol agreement (*protocolakkoord; accord de jumelage*) with the Bar of Lubumbashi in the Democratic Republic of Congo, which facilitates exchange opportunities between members of the respective bars, the financing and establishing of a library containing not only books on Congolese, Belgian, French and International law, but also of legislation in neighbouring African countries and the OHADA (*organisation pour l’Harmonisation en Afrique du Droit des Affaires*).

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

For decades the Belgian legal profession (mainly aspirant lawyers) was engaged in pro bono activities to indigent individuals, without any form of financial support from the government. This pro bono system was gradually replaced in 1980 (with regard to aspirant lawyers) and in 1995 (with regard to full-fledged lawyers) by a state-subsidised *pro deo* scheme as a result of the integration of a directly enforceable right to legal assistance in article 23 of the Constitution.

Proposals for mandatory pro bono requirements have come and gone mainly due to resistance from the Bar associations and the legal profession in general. Accordingly, a proposal in 2013 to reform the regime of second-lie legal assistance which, among other things, aspired to establish a framework for mandatory pro bono services, was abandoned.

---

<sup>40</sup> See <http://www.asf.be/action/> (last visited on September 4, 2015).



## Current State of Pro Bono including Barriers and Other Considerations

There are several regulatory and cultural reasons why pro bono services have not become prominent or commonplace in the Belgian domestic legal landscape.

**Excess of lawyers** – Belgium has an excess of lawyers. In terms of demographics, Belgium had more than 15 lawyers per 10,000 inhabitants<sup>41</sup> in 2015, which is almost twice the rates of neighbouring countries like France and the Netherlands. The consequential struggle for clients, by offering services for very low fees, resulted in the observation that as much as 30% of the legal profession earns less than € 1,000 per month. Recently, high-level members of the bar associations have made calls for a limit on the number of lawyers and law students, while others have urged that exams at universities and during apprenticeships are intensified.<sup>42</sup> This struggle for paying clients clearly undermines the incentive to provide pro bono services; on the contrary, it effectively reserves these opportunities for those lawyers and law firms who can afford not to charge for all the services they render.

**Lawyer's publicity** – Another indirect barrier to maintaining a pro bono practice in Belgium is the various restrictions on legal advertising, as this prevents lawyers and law firms from promoting their pro bono activities. Although members of the *Orde van Vlaamse Balies* are not restricted from advertising pro bono services, for members of the *Ordre des Barreaux Francophones et Germanophones*, such advertising is restricted and might go beyond the scope of what is permissible. In any event, it is advisable to present any pro bono advertising campaign to a representative of either the *Orde van Vlaamse Balies* or the *Ordre des Barreaux Francophones et Germanophones*, and to request an informal approval before launch. Many advertising campaigns will lead to claims from other law firms to the President of the respective orders, and an informal approval will in many cases avoid long discussions with the President and any affected parties.

**Loser pays** – In terms of procedural expenses, the losing party bears the procedural costs in principle, but the court can allocate costs between the parties as it sees fit if the winning party fails to prove particular claims. Notwithstanding the court's discretion to allocate costs in this manner, the perception that the "loser pays" principle applies by default is likely to have a detrimental effect on the willingness of indigent individuals who are not eligible for state-subsidized legal aid to pursue claims, for fear of exposing themselves to costs they cannot afford. With regard to attorney's fees, the fees of the successful parties' attorney are not recoverable, except for a portion of such fees that is known as the "procedural indemnity", which is in fact a lump sum paid by the losing party towards the attorney's fee incurred by the successful party.

**State-funded legal assistance** – The relative ease with which indigent natural persons can access state-organized legal assistance and legal aid will also be a barrier to pro bono. Many NGOs or other similar organisations will be inclined to bring their case to the LAB *through* one of the victims they represent (e.g. victims of human trafficking, domestic violence, asylum seekers, etc. many of whom have a right to pro deo assistance). These organisations will thus receive a referral, rather than start an independent search for a pro bono lawyer willing to assist and represent him or her for free. In fact, the perception that state-subsidised legal assistance is sufficient to fully satisfy the social task of granting access to justice, has to some extent undermined the emergence of a complementary pro bono culture.

**Attitude** – Recent generations of lawyers expect to be duly compensated for state-subsidised legal assistance to underprivileged people. There may be a reluctant attitude towards pro bono services, primarily motivated by income-related concerns, especially for those who are entangled in the *pro deo* system, and receive their only income from state-subsidised legal assistance.

---

<sup>41</sup> On January 1, 2015, the population of Belgium was approximately 11,191,000.

<sup>42</sup> See for instance JAN DYCK in Today's Lawyer: "Er zijn te veel advocaten", available at <http://www.jubel.be/tl-artikel-van-de-maand-trop-is-te-veel-te-veel-is-trop-jan-dyck/> (last visited on September 4, 2015).



## Pro Bono Resources

As stated on ASF's website, the International Legal Network is comprised of "lawyers with one or several fields of legal expertise, thematic or contextual, who are available to act in the field or from their local bar association. Whenever there is a new mission to be undertaken, the ILN sends out a 'call for volunteers' to the whole of the network and entrusts the mission to available lawyers according to their fields of expertise of ASF." More information regarding ASF and the International Legal Network are available at <http://www.asf.be/international-legal-network> (last visited on September 4, 2015). Other pro bono clearinghouses exist in Europe, although Belgium-based projects are seldom listed.

## CONCLUSION

All attempts in Belgium to let pro bono work take place in a regulated environment have failed so far, but there are increased calls for the establishment of a pro bono culture in the Belgian domestic legal market. The Bar's failure to secure broader participation in pro bono work is all the more disappointing when measured against the success that such work has yielded. Opportunities exist for law firms to provide free legal assistance outside the *pro deo* system as well as for in-house counsel to actively participate in pro bono projects (either in collaboration with a major law firm or alone). Considering the presence of various international organizations in Belgium, interesting pro bono work can be undertaken here, especially in Brussels, although firms and in-house counsel will have to make a conscious effort to obtain the work as pro bono schemes are not known to the general public. It will take special dedication, particularly from in-house counsel, to identify appropriate pro bono opportunities.

September 2015

Pro Bono Practices and Opportunities in Belgium

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Bolivia<sup>1</sup>

### INTRODUCTION

Pro bono work in Bolivia is not particularly common nor is it widely practiced among private attorneys. Compared to other Latin American countries such as Argentina and Mexico, each of which has successfully created the infrastructure for the provision of pro bono services on a non-governmental basis,<sup>2</sup> Bolivia still lacks such an institutionalised infrastructure for pro bono.

Although pro bono has not traditionally formed part of the legal culture, law firms have become increasingly interested in pro bono work. This interest has been driven, in part by the “business case” to carry out pro bono work as clients have become increasingly aware and interested in the pro bono profile of Bolivian law firms.<sup>3</sup> As a result, the larger and more internationally focused firms have been cautiously increasing their pro bono involvement.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Bolivia is a democratic republic located in the south east of the Latin American continent. The country is divided into nine departments. It is a multi-ethnic state with a population of around ten million with the indigenous population comprising more than 50%.

Bolivia’s legal system is based on the Roman-Germanic model, which includes division of powers and a democratically legitimated legislature empowered to implement statutory law which, in turn, is binding on the judiciary.<sup>4</sup> Statutory law is the principal source of law with the Bolivian constitution (the “**Constitution**”) at its core.<sup>5</sup>

The Bolivian Civil Code is an adaptation of the former French Code Napoléon.

Historically determined legal customs and court judgments are sources of secondary law and certain of the legal customs are applied solely on a departmental level (*leyes departamentales*).

A new constitution came into force on February 7, 2009 pursuant to which the country was officially renamed as the Plurinational State of Bolivia, highlighting the multi-ethnic composition of the population. A dominant objective of the constitutional reform was to preserve the self-determination of the indigenous people and to guarantee their participation in the political discourse of the country. Several constitutional tools were implemented as a result, including the reservation of a certain number of seats in the national congress for indigenous people and the recognition of an indigenous judiciary in penal matters. The indigenous judiciary is in addition to the existing state judiciary, and each judiciary has its own rights of hearing. Certain criminal acts with reference to indigenous principles and laws can now be heard in indigenous courts without further prosecution within the common court.

---

<sup>1</sup> This chapter was drafted with the support of C.R. & F. Rojas Abogados.

<sup>2</sup> See The Latin Lawyer and Vance Center Pro bono Survey 2014, P. 6, 8, available at <http://www.vancecenter.org/vancecenter/images/stories/vancecenter/pro%20bono%20survey%202014.pdf> (last visited on September 4, 2015).

<sup>3</sup> Ibid., P.5.

<sup>4</sup> Mauricio Ipina Nagel, The Bolivian Legal System and Legal Research, 2009, available at <http://www.nyulawglobal.org/globalex/Bolivia.htm#bar> (last visited on September 4, 2015).

<sup>5</sup> Further sources of law in Bolivia are available at <http://bolivialegal.com/> (last visited on September 4, 2015).



## The Courts

### Levels, Relevant Types and Locations

Following substantial reforms the national judiciary consists of the following courts:

- the Supreme Court (Tribunal Supremo de Justicia)<sup>6</sup>,
- the (Plurinational) Constitutional Tribunal (*Tribunal Constitucional Plurinacional*)<sup>7</sup><sup>8</sup>,
- the Judiciary Council (*Consejo de la Magistratura*)<sup>9</sup>,
- the Agrarian and Environmental Tribunal (*Tribunal Agroambiental*)<sup>10</sup>.

The Supreme Court is divided into four chambers and hears penal, civil social and administrative matters and also serves as the appellate court for the various regional courts (*tribunals departamentales*), such as the district courts, lower regional courts and courts for specific matters such as commercial, criminal, family, labor, social security, controlled substances, mining, administrative and breaches courts<sup>11</sup>.

### Appointed vs. Elected Judges

As part of the sweeping constitutional and judicial reforms introduced in 2009 and 2010, the first nationwide judicial elections were held in order to choose the 28 members of the four national courts (the Supreme Court, the Plurinational Constitutional Court, the Agro-environmental Tribunal and the Judicial Council) by a direct democratic procedure in 2011.<sup>12</sup>

Prior to those direct democratic elections, the judges were elected by the legislature on the basis of party agreements.<sup>13</sup> For the direct election in 2011 there were 581 candidates, from which 125 were selected for the election by the ruling Plurinational Legislative Assembly.<sup>14</sup> The new assigned judges then elect the departmental judges.<sup>15</sup>

The most recent judicial elections were perceived extremely critically by the population, the opposition and international elections observation organisations. Observers criticised that the pre-selection of judges for the public vote was highly politicised, favouring candidates which were likely to represent the interests of the new government without adequate consideration of their actual qualification.<sup>16</sup> A further point of

---

<sup>6</sup> See <http://tsj.bo/> (last visited on September 4, 2015).

<sup>7</sup> Ley No 027.

<sup>8</sup> See <http://www.tcpbolivia.bo/tcp/judicial> (last visited on September 4, 2015).

<sup>9</sup> See <http://magistratura.organojudicial.gob.bo/> (last visited on September 4, 2015).

<sup>10</sup> See <http://www.tribunalagroambiental.bo/> (last visited on September 4, 2015).

<sup>11</sup> Mauricio Ipina Nagel, *The Bolivian Legal System and Legal Research*, 2009, available at <http://www.nyulawglobal.org/globalex/Bolivia.htm#bar> (last visited on September 4, 2015).

<sup>12</sup> See <http://lta.reuters.com/article/domesticNews/idLTASIE7A7Q0E20111013?pageNumber=1&virtualBrandChannel=0> (last visited on September 4, 2015).

<sup>13</sup> See <http://www.lanacion.com.ar/1415329-reves-para-evo-en-la-eleccion-de-jueces> (last visited on September 4, 2015).

<sup>14</sup> See <http://americaeconomia.com/politica-sociedad/politica/bolivia-avanza-polemica-eleccion-de-jueces-por-voto-universal> (last visited on September 4, 2015).

<sup>15</sup> See <http://lta.reuters.com/article/domesticNews/idLTASIE7A7Q0E20111013?pageNumber=1&virtualBrandChannel=0> (last visited on September 4, 2015).

<sup>16</sup> See <https://www.hrw.org/world-report/2015/country-chapters/bolivia> (last visited on September 4, 2015).



critique was the allegedly targeted voidance of ballots.<sup>17</sup> In spite of the far-reaching protests, the elections were declared valid by the government.

## The Practice of Law

### Education

The qualifications for becoming a lawyer in Bolivia are set out in Art. 6 of la *Ley del Ejercicio de la Abogacía* – ley N° 387 (the “**Law of the Practice of Law**”). The academic prerequisite is the completion of a law degree at one of the eight Bolivian law faculties. The usual study period is between nine and ten semesters.

### Pro bono Specific Rules and Requirements

There are no particular rules or requirements placed on lawyers in Bolivia to undertake pro bono.

### Licensure

A lawyer in Bolivia must be registered with the Ministry of Justice in order to practice law. Candidates have to provide evidence of their graduation from law school and a certificate of good conduct. There are no differences in this respect between barristers, solicitors and in-House Counsel. Foreign professionals wanting to practice law in Bolivia must obtain an official approval of their professional degree.

### Demographics

The public Bar Register of the Ministry of Justice has 1,516 lawyers on record<sup>18</sup> on the basis of 10,027,254 inhabitants in 2013,<sup>19</sup> that equates to 6,614 inhabitants per lawyer.

### Legal Regulation of Lawyers

La *Ley del Ejercicio de la Abogacía* – Ley no. 387 (the “**Lawyers Act**”) of 2013 regulates the rights and duties of lawyers, and also states that the compensation of a lawyer will be announced by the Ministry of Justice every two years by public media.<sup>20</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### State-Subsidized Legal Aid

Law No. 463 of the Multinational Public Defender Service (the “**Service**”) grants a service provided by the State based on the recognition of the right to defense as a fundamental right and expression of justice. The Service provides poverty-stricken defendants with attorneys at public expense if needed. Additionally, a mobile public defender service was established in order to cover legal needs in the more remote parts of the country.<sup>21</sup>

---

<sup>17</sup> See <http://www.economist.com/node/21542421> (last visited on September 4, 2015). 40.5% of the votes were voided.

<sup>18</sup> See the following links:

[http://rpa.justicia.gob.bo/rpa/app/images/files/6to\\_Juramento\\_La\\_Paz\\_2015.pdf](http://rpa.justicia.gob.bo/rpa/app/images/files/6to_Juramento_La_Paz_2015.pdf);  
[http://rpa.justicia.gob.bo/rpa/app/images/files/3er%20%20Juramento%20Potosi%202015\(1\).pdf](http://rpa.justicia.gob.bo/rpa/app/images/files/3er%20%20Juramento%20Potosi%202015(1).pdf);  
<http://rpa.justicia.gob.bo/rpa/app/images/files/3er%20Juramento%20Tarija%202015.pdf>;  
[http://rpa.justicia.gob.bo/rpa/app/images/files/3%20er%20Jumraneto%20Chuquisaca%202015\(2\).pdf](http://rpa.justicia.gob.bo/rpa/app/images/files/3%20er%20Jumraneto%20Chuquisaca%202015(2).pdf);  
<http://rpa.justicia.gob.bo/rpa/app/images/files/4toJuramento%20Oruro%202015.pdf>;  
<http://rpa.justicia.gob.bo/rpa/app/images/files/5to%20Juramento%20La%20Paz%202015.pdf> (all last visited on September 4, 2015).

<sup>19</sup> See [http://www.la-razon.com/index.php?url=/economia/OficialBolivia-habitantes-Paz-Santa-Cruz\\_0\\_1879612094.html](http://www.la-razon.com/index.php?url=/economia/OficialBolivia-habitantes-Paz-Santa-Cruz_0_1879612094.html) (last visited on September 4, 2015).

<sup>20</sup> See <http://medios.economiayfinanzas.gob.bo/MH/documentos/L387.pdf> (last visited on September 4, 2015).

<sup>21</sup> Greame R. Newman, 2010, *Crime and Punishment around the world*, Bolivia, p. 58.



## Mandatory Assignments to Legal Aid Matters

According to the Lawyers Act, licensed attorneys have to provide free care to people with limited economic resources. Therefore, the Ministry of Justice will send lists of attorneys registered in the past year to the Judicial Branch (Bar Association), for the appointment of attorneys and defenders, to provide legal assistance in accordance with No. 025 of the Judiciary Law. In principle, every attorney registered with the Ministry of Justice could become appointed for legal assistance.

There is no compensation provided by the state for such assigned matters.

## Unmet Needs and Access Analysis

In 2007, the Inter-American Commission of Human Rights found that only 11 municipalities have Public Defenders, which represents only 3% of all municipalities in Bolivia. They further found that the quality of the service provided by such Public Defenders appears to be relatively poor as compared to private attorneys.<sup>22</sup>

## Alternative Dispute Resolution

### Mediation, Arbitration, Etc.

The Ministry of Justice has implemented two public institutions in the Bolivian judicial system to allow for the settlement of disputes by means of arbitration and mediation.<sup>23</sup>

The first one, *Centro de Conciliación y Arbitraje Comercial*, was introduced in 1992 and is a mediation and arbitration institution.<sup>24</sup> It is the main body for administering alternative dispute resolution in Bolivia and is fully empowered to supervise and manage national and international disputes.<sup>25</sup> A second centre for arbitration was created with the *Centro Boliviano de Arbitraje & Conciliación*.<sup>26</sup> The *Centro de Conciliación y Arbitraje Comercial* has 79 Bolivian attorneys serving as arbitrators.<sup>27</sup> Since its inception, the centre has settled more than 100 disputes.

### Ombudsman

In 1997, Bolivia introduced *El Defensor del Pueblo* (the “Ombudsman”) by law.<sup>28</sup> As a public institution, the responsibility of the Ombudsman is to defend human rights and the rights of citizens against abuses from political powers.<sup>29</sup> The current Ombudsman, Rolando Villena Villegas, was elected in 2010<sup>30</sup> and is paid by the state to perform his duties.<sup>31</sup> The responsibility of the Ombudsman is to investigate and report independently on human rights violations pursuant to Art. 11 of *Ley del Defensor del Pueblo – Ley No. 1818*. He is allowed to suggest the ratification or signing of human rights treaties and to propose changes to decrees, laws and non-judicial resolutions. Furthermore, the Ombudsman is permitted to present and

<sup>22</sup> See <http://www.cidh.org/pdf%20files/BOLIVIA.07.ENG.pdf>, p. ix (last visited on September 4, 2015).

<sup>23</sup> See <http://www.cebac.com.bo/03presentacion.php>, (last visited on September 4, 2015).

<sup>24</sup> See <http://www.arbitraje.bo/index.php?mc=19> (last visited on September 4, 2015).

<sup>25</sup> See <http://www.arbitraje.bo/index.php?mc=27> (last visited on September 4, 2015).

<sup>26</sup> See <http://www.cebac.com.bo/01presentacion.php>, (last visited on September 4, 2015).

<sup>27</sup> See <http://www.arbitraje.bo/index.php?mc=36> (last visited on September 4, 2015).

<sup>28</sup> See <http://www.defensoria.gob.bo/sp/quees.marco.asp> (last visited on September 4, 2015).

<sup>29</sup> See <http://www.eabolivia.com/social/3788-rolando-villena-villegas-nuevo-defensor-del-pueblo-boliviano.html> (last visited on September 4, 2015).

<sup>30</sup> See <http://www.defensoria.gob.bo/sp/defensor.biografia.asp> (last visited on September 4, 2015).

<sup>31</sup> See [http://www.defensoria.gob.bo/sp/preguntas\\_frecuentes\\_defensor.asp](http://www.defensoria.gob.bo/sp/preguntas_frecuentes_defensor.asp) (last visited on September 4, 2015).



monitor the status of complaints. The Ombudsman also participates directly in the resolution of conflicts, for example in the dialogue between cocoa growers and the integral development of the tropics of Cochabamba.<sup>32</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

There is no national clearinghouse or other central pro bono organization which is able to directly assign pro bono matters. Private attorneys have to cooperate with international or smaller local pro bono organizations (see below) in order to engage in pro bono work. Alternatively, some of the more international law firms are aiming to establish their own pro bono practice. For example, Ferrere has established an ongoing cooperation with several national and international NGOs<sup>33</sup> and has been among the firms more active in undertaking local pro bono activities.

#### Law Firm Pro Bono Programs

The Cyrus R. Vance Center for International Justice reports that there are a number of Bolivian law firms that have signed the Pro bono Declaration for the Americas (PBDA). The PBDA was launched in 2008 to encourage collaboration among law firms engaging in pro bono. Despite being signatories to the PBDA, private law firms' pro bono programs are relatively unevolved.

Consequently, in the majority of cases involving Bolivian citizens or NGOs, the cases are handled on a pro bono basis by international law firms, often North American firms with a large Latin American presence, rather than local Bolivian firms.

#### Legal Department Pro Bono Programs

Based on public information, law firms do not generally have pro bono programs as such.

#### Non-Governmental Organizations (NGOs)

In Bolivia not many NGOs are involved in pro bono activity.

There is one global and one Latin-American organization participating in pro bono action in Bolivia. The Cyrus R. Vance Center for International Justice is a global organization with an active presence in Latin America. The organization has supported four projects in Bolivia on a pro bono basis. For example, the Vance Center provided training for lawyers in order to develop their capacity to provide legal representation to petitioners before the Inter-American Commission on Human Rights.

The Latin-American NGO Red ProBono Internacional serves as a clearinghouse to coordinate the work of pro bono lawyers and law firms on a regional basis. The focus of Red *ProBono* Internacional in Bolivia is on the development of pro bono service. In this context, they provide information and advice to Bolivian law firms about pro bono work.

Bolivia itself has only three regional NGOs that are involved in pro bono work. These three NGOs are present throughout Bolivia and are specialized in different fields such as human rights and the rights of women. *El Centro de Estudios Jurídicos e Investigación Social* is an organization working on human rights problems, which represents pro bono clients before the *Comision Interamericana de Derechos Humanos* (CIDH) and the Inter American Court of Human Rights. Another NGO is *La Oficina Jurídica Para La Mujer* which was founded to promote and guarantee the rights of women. The third Bolivian NGO

---

<sup>32</sup> See <http://www.juridicas.unam.mx/publica/librev/rev/iidh/cont/37/pr/pr9.pdf>, p. 243 (last visited on September 4, 2015).

<sup>33</sup> See <http://en.ferrere.com/who-we-are/corporate-social-responsibility/pro-bono> (last visited on September 4, 2015).



is *La Capacitación y Derechos Ciudadanos*, an organization founded by students of the *Universidad Católica Boliviana*. They provide legal advice for the population with low incomes and limited access to justice.

### Bar Association Pro Bono Programs

There are currently no Bolivian Bar Association Pro Bono Programs. The Multinational Public Defender Service mentioned above, being a governmental entity, is a legal aid institution.

### University Legal Clinics and Law Students

The *Capacitación y Derechos Ciudadanos* together with two universities, *Universidad Católica Boliviana* and the *Universidad Salesiana de Bolivia*, created the first Legal Clinic in 2012.<sup>34</sup> The program was initially supported by the International Senior Lawyers Project which provided experienced pro bono lawyers during the implementation of the Legal Clinic.

## Historic Development and Current State of Pro Bono

### Current State of Pro Bono

Bolivia does not have a pro bono clearinghouse or other institution to serve as a central coordinating body for pro bono activities on a national basis or to assign pro bono matters to firms which would like to engage in pro bono work (like the Comisión Pro Bono in Argentina or the ProVene in Venezuela).

The country still lacks well developed programs and a coordinated approach to pro bono. The social background of the country, being among the poorest of the Latin American continent, makes the institutionalization of pro bono work difficult. Pro bono is still subject to individual engagement and devotion and strongly depends on the enthusiasm and the willingness to contribute of the individual attorney.

Generally, pro bono supporters are aiming for a better integration of the pro bono work and projects into the law firms culture and to anchor pro bono as part of the self-understanding of the lawyers and law firms. The major objective is to achieve an increasing institutionalization of pro bono work and culture in order to guarantee coverage of unmet legal needs within Bolivia.

### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

The major obstacle to the implementation of and participation in a functional pro bono infrastructure is the widespread distrust by the population in the legal system, which suffers severely from corruption. In 2014, Bolivia's Congress announced that 300 of the country's 508 prosecutors were under various forms of investigations under the statutes of the public prosecutor's office, leading to fears that the judiciary is ill-equipped to address graft, fraud and abuse. Thirty percent of the population reported being victims of corruption.<sup>35</sup>

President Morales tried to achieve improvements by replacing appointed judges with elected ones. This undertaking ended in a nationwide scandal. In 2011, more than five million people went to the polls to elect judges, but over 40% of the counted votes were invalid. Combined with blank ballots, the percentage of invalid votes rose to nearly 60%.<sup>36</sup> This was seen by the media and the opposition party as

---

<sup>34</sup> See <http://www.lawschool.cornell.edu/spotlights/First-Bolivian-Legal-Clinic.cfm> (last visited on September 4, 2015); and <https://www1.villanova.edu/villanova/law/newsroom/webstories/2013/022013.html> (last visited on September 4, 2015).

<sup>35</sup> See <http://www.worldpoliticsreview.com/articles/15457/unlike-neighbors-bolivia-s-morales-contains-corruption-fallout> (last visited on September 4, 2015).

<sup>36</sup> See [http://myweb.fsu.edu/adriscoll/CV\\_files/DriscollNelson2012ESBolivia.pdf](http://myweb.fsu.edu/adriscoll/CV_files/DriscollNelson2012ESBolivia.pdf), p. 3 (last visited on September 4, 2015).



a setback for the President.<sup>37</sup> The opposition dismissed the direct elections, denouncing it as a plan to fill the courts with Movement for Socialism party militants.<sup>38</sup> The prior appointment procedure was criticized, because of the lack of transparency and the necessary safeguards.<sup>39</sup>

There is also a public perception that the judicial system and the courts are underfunded and inefficient which shows in unpredictable processing periods and an uncertain outcome of petitions and proceedings.<sup>40</sup> As a result, there are a lot of Bolivians without access to justice.<sup>41</sup>

The Human Rights World Report of 2014 describes an extensive use of pre-trial detention, long delays in trials and overcrowded prisons.<sup>42</sup> Additionally, the country has had big problems with high-profile killings of women. Public protest resulted in a new comprehensive law to combat gender-based violence but the Inter-American Commission on Human Rights has found that the judicial response to those cases is deficient and not on a par with the severity and incidence of the problem.<sup>43</sup>

This fundamental distrust by the population leads to a renunciation of the legal system which cannot easily be overcome by pro bono supporters.

### Pro Bono Resources

Useful information on legal aid and pro bono opportunities in Bolivia can be found on the following websites, mostly in Spanish:

- Public Defender Service: <http://www.defensoria.gob.bo/> (last visited on September 4, 2015)
- The Cyrus R. Vance Center for International Justice: <http://www.vancecenter.org/vancecenter/> (last visited on September 4, 2015)
- The Centro de Estudios Jurídicos e Investigación Social: <http://cejis.org/> (last visited on September 4, 2015)
- Oficina Jurídica Para La Mujer: <http://www.ojmbolivia.org> (last visited on September 4, 2015)
- Red ProBono Internacional: <http://redprobono.org/es/>
- Capacitación y Derechos Ciudadanos: <http://www.cdcbolivia.com/> (last visited on September 4, 2015)

## CONCLUSION

Bolivia still lacks an established civil society and opportunities for the individual to substantially participate in social, political and legal matters are limited. Distrust in the government and the political system and widespread poverty define Bolivian society. In these circumstances, Pro bono in Bolivia is still at an early stage of development. The influence of pro bono service providers is limited and widespread corruption within the judiciary makes it difficult to provide reliable legal assistance to people with limited economic

<sup>37</sup> See <http://www.lanacion.com.ar/1415329-reves-para-evo-en-la-eleccion-de-jueces> (last visited on September 4, 2015).

<sup>38</sup> See <http://americaeconomia.com/politica-sociedad/politica/bolivia-avanza-polemica-eleccion-de-jueces-por-voto-universal> (last visited on September 4, 2015).

<sup>39</sup> See <http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CDIQFjAC&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUId%3Ddea29564-a74c-4148-93ed-63201108f0fb&ei=5kOaVZ6VCYnjoAS1w4C4Cw&usq=AFQjCNHEXKXPdCUPJomyhsRmKJRBbO9ayQ> (last visited on September 4, 2015).

<sup>40</sup> See <http://www.opentrial.org/legal-dysfunction/item/132-bolivias-legal-system-recommendations-for-reform> (last visited on September 4, 2015).

<sup>41</sup> See <http://www.economist.com/node/21542421> (last visited on September 4, 2015).

<sup>42</sup> See <https://www.hrw.org/world-report/2014/country-chapters/bolivia>; <http://ain-bolivia.org/2012/08/prison-detainees-in-bolivia-bad-fruit-of-a-slow-judiciary-system/> (both last visited on September 4, 2015).

<sup>43</sup> See <http://www.cidh.org/women/Access07/chap2.htm>, recital 123 (last visited on September 4, 2015).



resources. The concept of pro bono is not yet commonly acknowledged due to a lack of incentives to engage in pro bono work – and a lack of faith in its outcome.

However, one can detect a growing awareness for the advantages of pro bono and the positive impact it has on society. With external assistance from international pro bono organisations and clearinghouses, the national pro bono infrastructure is slowly gaining more substance. With the assistance of other international Latin American clearinghouses it was even envisaged that a Bolivian national clearinghouse will be established. Continued success, however, will be conditioned on the further democratisation of the country and the outcome of the ongoing struggle to fight corruption.

September 2015

Pro Bono Practices and Opportunities in Bolivia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Brazil

### INTRODUCTION

Brazil is Latin America's largest country and arguably the region's leading economy, home to a vibrant and developed legal community. Despite these and its many other positive attributes, it is also a country suffering from widespread inequality. While this combination would appear to present meaningful opportunities for the provision of pro bono legal services, the Brazilian legal community does not have a long-standing tradition of providing such services. The Brazilian Federal Constitution (the "**Constitution**") sets forth as fundamental rights the right to access to justice and the right to free legal assistance, but in practice such fundamental rights are not yet fully accessible for a significant part of the population. Pro bono work could help provide assistance where State-funded legal aid is not available, but regulatory restrictions that were in force until recently have significantly hindered the development of pro bono work in the country. However, there have been important changes in the last few years, with gradual but clear signs of evolution in terms of regulation and the mentality of the legal community in general. Law practitioners in Brazil have been devoting increasing resources to pro bono activities and pro bono services are expected to increase in the future.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Constitution was approved in October 5, 1988 and is the fundamental and supreme law of Brazil. It establishes that Brazil is a federal presidential republic, based on a representative democracy. The President is both the head of state and the head of government. The political and administrative organization of Brazil comprises the federal government, the states (26 states and one federal district) and the municipalities.

The federal government is divided into three independent branches: the executive power, exercised by the President (elected to a four-year term), supported by Ministers; the legislative power, exercised by the National Congress (composed of the Federal Senate and the Chamber of Deputies); and the judicial power, exercised by different courts, as described below.

Likewise, the government of each state has an executive power, which is exercised by the Governor (elected to a four-year term); a legislative power; and a judiciary power, as described below. Each municipality has an autonomous local government, comprising a mayor (the executive power, elected to a four-year term) and a legislative assembly.

The Constitution provides for the constitutional right of access to justice and defines the Brazilian judicial structure.

##### The Courts

##### Levels, Relevant Types, and Locations

The Constitution organizes the judicial system into specialized courts and ordinary courts.<sup>1</sup> The Supreme Federal Court and the Superior Court of Justice are the heads of the system. The specialized courts are divided between the military courts, labor courts and electoral courts. The ordinary courts are divided between the Federal and the State branches. Each Federal and State branch has courts of first instance and courts of second instance; first instance decisions are usually issued by one judge; second instance decisions are usually issued by a panel of three judges. First instance courts may specialize on a given legal subject, such as family law or criminal law.

---

<sup>1</sup> Article 92 of the Brazilian Federal Constitution.



### Appointed vs. Elected Judges

Brazilian judges of first and second instance courts need to be approved in public competitions. There is an exception for judges of second instance courts which can be indicated by the Executive power. Those cases are limited to renamed attorneys or Public Prosecutor (“Quinto Constitucional”).<sup>2</sup>

## The Practice of Law

### Education

In order to permissibly practice law in Brazil, a lawyer (*advogado*) must be registered with the Brazilian Bar Association. In order to register with the Brazilian Bar Association, an individual must (i) have a law degree, and (ii) have been approved in a final examination to the Brazilian Bar Association, among others.<sup>3</sup> Each of the states and the federal district is responsible for licensing attorneys in their territories, through the respective State Bar Associations. For example, an attorney must have gained admission to the Bar Association of São Paulo prior to practicing law in that jurisdiction on a regular basis.

Lawyers admitted in one State Bar Association can practice law in other States without the need for supplementary registration as long as their work is limited to the simultaneous performance of five specific acts in another state, falling into any of the three following categories: (i) pleadings before Court; (ii) legal counseling and (iii) legal management.

To act in other States without limitation, lawyers need to request a supplementary registration before the other State Bar Association or request the assignment of the registration from the original State Bar Association.

### Licensure and Legal Regulation of Lawyers

The practice of law is organized through Bar Associations in each of the Brazilian states or federal district (the “**State Bar Associations**”). These State Bar Associations are in turn joined into the *Ordem dos Advogados do Brasil* (the “**Brazilian Bar Association**”),<sup>4</sup> which is empowered by federal law to regulate the profession. The practice of law in Brazil is regulated by means of a federal statute – Law No 8,906 of July 4, 1994 – and other legislation, among which is the Brazilian Bar Association’s Code of Ethics and Discipline of February 13, 1995, as amended from time to time.

The Brazilian Bar Association’s Code of Ethics and Discipline sets forth the rules of professional conduct and ethics concerning issues such as advertising, client relationships and legal fees. These regulations are also embodied in professional conduct codes enacted by the individual State Bar Associations.

In Brazil, lawyers enjoy wide latitude to enter into fee arrangements with their clients, as long as they observe the more general rules of ethics and professional conduct. Legal fees can be agreed in the form of billable hours, flat fees and contingent or success fees.

While there are a significant and growing number of international law firms that have established offices in Brazil, foreign lawyers are not authorized to practice Brazilian law. The Brazilian Bar Association authorizes foreign lawyers to act as consultants as to foreign law, as long as they are registered with the Brazilian Bar Association for this purpose. Many international firms have established offices in Brazil by entering into close affiliations with local Brazilian firms. Alliances between international and Brazilian firms have been subject to increasing scrutiny from Bar Associations, as Brazilian local firms argue that in some cases these alliances in practice serve to bypass the existing restrictions for foreign lawyers to practice law in Brazil.

Portuguese qualified lawyers who are duly registered with the Portuguese Bar Association may register with the Brazilian Bar Association to practice law in Brazil, subject to certain conditions of reciprocity treatment agreed between the Portuguese and the Brazilian Bar Associations.<sup>5</sup>

---

<sup>2</sup> Article 94 of the Brazilian Federal Constitution.

<sup>3</sup> Articles 8 and 9 of Law No 8906 of July 4, 1994.

<sup>4</sup> See <http://www.oab.org.br> (last visited on September 4, 2015).

<sup>5</sup> Ruling (Provimento) No 129, of December 8, 2008 of the Brazilian Bar Association.



**Demographics: Number of Lawyers per Capita; Number of Legal Aid Lawyers per Capita.**

According to the latest reports, in 2014, there were approximately 835,000 lawyers in Brazil (for a population of roughly 206 million people), and estimates indicate that by 2019 there will be 1,000,000 lawyers (for a population closer to 215 million), thus demonstrating an increasing rate of lawyers per capita.<sup>6</sup> The number of law schools has also increased in the last decade, from 165 in 1995 to 1,284 in 2014.

In 2014, according to the Brazilian Demographic Institute, the population of Brazil totaled 202,768,562 inhabitants. This would make the number of lawyers per capita in 2014 approximately 243.

However, this number varies drastically depending on the region or State of Brazil. According to data published by the Brazilian Bar Association in 2008, the five States with the highest number of lawyers per capita were: the Federal District (140), Rio de Janeiro (154), São Paulo (203), Rio Grande do Sul (245) and Mato Grosso do Sul (327). The five States with the lowest number of lawyers per capita were: Amazonas (858), Bahia (859), Pará (883), Piauí (913) and Maranhão (1,337). The same 2008 data indicates that Brazil would rank as having the third highest number of lawyers in the world, behind the United States and India.<sup>7</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

#### In Civil Proceedings<sup>8</sup>

The Brazilian Constitution grants as fundamental rights the right to access to justice and the right to full and free legal assistance.<sup>9</sup> These rights are granted in very broad terms, comprising assistance in relation to any type of legal dispute or litigation, before any type of court, as well as the provision of legal consultancy services, or assistance in conciliation procedures before litigation takes place. To attain these objectives and provide broad legal assistance to those who cannot afford it, the Constitution mandates the creation of Public Defender Offices at federal and state levels.<sup>10</sup>

The obligation of the State to provide access to the courts and free legal advice to the public is also required pursuant to specific legislation concerning, for instance, consumer rights, labor unions and access to small claims courts.

#### In Criminal Proceedings<sup>11</sup>

The same legal provisions described above regarding the right to legal assistance in civil proceedings apply to the right to legal assistance in criminal proceedings.

---

<sup>6</sup> See <http://blog.portalexamedeorde.com.br/blog/2014/11/futuro-da-advocacia-brasil-devera-ter-1-milhao-de-advogados-em-2018/> and <http://www.worldometers.info/world-population/brazil-population/> (last visited on September 4, 2015).

<sup>7</sup> See [http://www.conjur.com.br/2008-fev-05/aceso\\_advogados\\_maior\\_estados\\_ricos](http://www.conjur.com.br/2008-fev-05/aceso_advogados_maior_estados_ricos) (last visited on February 21, 2016).

<sup>8</sup> Pursuant to Article 36 of the Brazilian Civil Procedure Code, a party in any civil proceeding must be represented by a lawyer.

<sup>9</sup> Brazilian Federal Constitution Article. 5, XXXV and LXXIV.

<sup>10</sup> Brazilian Federal Constitution Article 134. The Constitution expressly refers to Public Defenders as essential for the Brazilian justice system, along with other institutions such as the Public Prosecutors or the Attorney General. The Complementary Law No 80 of January 12, 1994, altered by Complementary Law No 132, of October 7, 2009, organizes the Public Defenders' career.

<sup>11</sup> Pursuant to Article 261 of the Brazilian Criminal Procedure Code, no defendant in a criminal case can be accused or sentenced without being represented by a lawyer.



## State-Subsidized Legal Aid

Non-remunerated legal services may be made available in Brazil through: (i) the appointment of a lawyer (Public Defender) by the State; (ii) Law No 1060 of February 5, 1950 (concerning legal assistance); (iii) the operation of legal clinics; and (iv) the rendering of pro bono legal advice by qualified lawyers, either individually or collectively. From these alternatives, (i) and (ii) correspond to State-subsidized legal aid.

### Appointment of Public Defenders

Where a person is unable to pay for legal representation, the Brazilian State must appoint an attorney free of charge to ensure the exercise of the constitutional right of access to justice. In such cases, counsel is appointed from the Public Defenders' Office, at Federal or State level. Public Defenders are bachelors in law who must pass a public competition to join the Public Defenders Office.

Public Defenders may provide legal assistance in relation to a broad range of matters. Typical examples are assistance to criminal defendants, individuals seeking alimony payments or other family law rights, as well as individuals involved in a variety of civil law disputes. The activity of Public Defenders is not limited to representation in court, but also comprises legal consultancy, mediation or arbitration of conflicts, actions to educate the population about human rights and other types of laws.<sup>12</sup> In addition to Brazilian citizens, foreigners resident in Brazil can also benefit from legal assistance provided by Public Defenders.

The number of Public Defenders is often insufficient to handle the large demand for legal assistance (for instance, in the state of São Paulo, for each existing Public Defender there are over 50,000 individuals from the public in need of legal assistance)<sup>13</sup> and it is common for the different Public Defenders Offices to establish cooperation agreements with local Bar Associations to have additional legal support from private lawyers where needed. Lawyers who assist the Public Defenders Office are remunerated by the State in accordance with a pre-approved table of fees.

### Legal Assistance Law

Law No 1060 of February 5, 1950 ensures legal assistance to any person who alleges they are unable to bear legal costs without affecting the financial ability to support themselves or their own family.<sup>14</sup> This form of legal assistance is available to Brazilian nationals and also foreigners resident in Brazil and can be provided in relation to any legal matter. It is granted by a judge, on the basis of a request formulated by the interested party as plaintiff or defendant in a legal proceeding. A person who invokes Law No 1060 is presumed to have the right to legal assistance and does not need to prove such inability to support themselves; however, the judge may withdraw such benefit if the other party to the proceedings is able to rebut this presumption.

---

<sup>12</sup> Complementary Law No 80 of January 12, 1994, as altered by Complementary Law No 132, of October 7, 2009.

<sup>13</sup> See <http://www.probono.org.br/ipb-fala-undefinidacesso-a-justica-e-advocacia-pro-bonoundefinid-aos-estudantes-da-direito-sao-bernardo> (last visited on September 4, 2015); and <http://www.conjur.com.br/2012-jun-24/entrevista-daniela-cembranelli-defensora-publica-geral-sao-paulo> (last visited on September 4, 2015).

A research study conducted in 2013 by IPEA (Institute of Applied Economic Research) and ANADEP (National Association of Public Defenders) (available at <http://www.ipea.gov.br/sites/mapadefensoria> (last visited on September 4, 2015)) indicated that, although currently all states in Brazil have formally created the respective Public Defenders Offices, in practice in at least four states (Paraná, Santa Catarina, Goiás and Amapá) such offices were not yet functioning, mainly due to delays in organizing public competitions to recruit Public Defenders. Overall, from the 8,489 Public Defender positions created throughout Brazil by law at federal and state levels, over 40% of such positions still needed to be fulfilled with actual nominations of Public Defenders. The study concluded that many states (such as São Paulo, Minas Gerais and Bahia) had a significant deficit in the number of Public Defenders needed to assist the population in need. Overall, the study estimated that approximately 10,500 additional Public Defender positions would need to be created in Brazil, in order to reach a ratio of 10,000 individuals in need (with income lower than three times the minimum wage) per Public Defender in the country.

<sup>14</sup> Law No 1060 of February 5, 1950, Article 2, sole paragraph.



In addition to legal fees, beneficiaries of Law No 1060 may be exempt from the general fees involved in judicial proceedings, such as fees to the court, Official Journal publications, experts and witnesses. However, attorneys that represent beneficiaries of Law No 1060 are still permitted to charge fees for their work. For instance, if the beneficiary of the legal assistance wins a claim, the unsuccessful party will be required to pay the fees of the attorneys representing the beneficiary. Also, if the beneficiary of the legal assistance wins the case and has agreed with the attorney representing him that fees will be payable on a contingency basis, the beneficiary may be required to pay the relevant portion of contingent fees, as long as such payment does not affect the beneficiary's ability to provide for themselves or their family.

### Eligibility Criteria

Individuals who demonstrate that their monthly income is lower than three times the minimum wage in Brazil (around US\$750 per month)<sup>15</sup> are considered to be unable to pay for legal representation and may thus be assisted by a Public Defender. Individuals who earn more than this amount may also qualify for the benefit.

A Public Defender may be requested by individuals (if they fulfill the criteria mentioned above), but also by nonprofit organizations, if they do not have sufficient financial resources to obtain legal representation.

In relation to Law No 1060, recent case law has also recognized that legal entities, and not only individuals, may be entitled to legal assistance based on such law, as long as an inability to pay is demonstrated.

### Mandatory Assignments to Legal Aid Matters

Are Private Attorneys Required to Accept Matters Assigned to Them by A Court or Legal Aid Scheme, or are Assignments Voluntary?

As mentioned above, the Brazilian Constitution provides for the right to access to justice and to free legal assistance (i.e., the right to public defenders). Therefore, any attorney can volunteer to provide legal assistance with the Brazilian Bar Association and the judge appoints such lawyer to assist a party who does not have resources to pay for legal representation. In case of absence of the Brazilian Bar Association in some jurisdiction, the judge can appoint any attorney to provide the legal assistance, and such lawyer may refuse the appointment if they provide a justification, but these usually need to be exceptional.

Are Private Attorneys Compensated, Even at a Reduced Fee, for Such Assigned Matters?

If the party has financial resources to pay legal fees, as determined by the judge of the proceedings<sup>16</sup>, they will be required to pay. If the party has no financial resources, the lawyer can request the payment of legal fees by the State.

### Alternative Dispute Resolution

#### Mediation, Arbitration, Etc.

The law applicable to Public Defenders expressly sets forth that Public Defenders will make it a priority to try to obtain an extra-judicial solution of conflicts by means of mediation, conciliation, arbitration or other.<sup>17</sup>

---

<sup>15</sup> In 2015, the minimum wage in Brazil is set in R\$ 788, or approximately US\$ 250.

<sup>16</sup> See <http://www.cnj.jus.br/noticias/cnj/78885-noticia-servico> (last visited on September 4, 2015); <http://www.oabsp.org.br/comissoes2010/assistencia-judiciaria/manual-do-advogado> (last visited on September 4, 2015); <http://www.oabmg.org.br/dativo/> (last visited on September 4, 2015); Article 263 of the Brazilian Criminal Procedure Code.

See <http://www.oabmt.org.br/Noticia/Noticia.aspx?id=6503&titulo=advogados-que-recusarem-nomeacao-como-dativos-nao-incorrem-em-infracao-etica> (last visited on September 4, 2015).



More broadly, mediation and arbitration have been developing in Brazil as an alternative mechanism to solving conflicts, lowering the dependency on judicial courts and providing full access to the justice system. The judicial reform in 2004 (which began with Constitutional Amendment No. 45) foresaw the approval of laws regulating mediation and arbitration. Law No 13,129/2015, which regulates arbitration,<sup>18</sup> was approved on May 26, 2015 and Law No 13,140/2015, which regulates mediation, was approved on June 26, 2015.<sup>19 20</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Law Firm Pro Bono Programs

Historically, Bar Associations and local lawyers in general have not provided pro bono legal services in a systematic and consistent manner. This has been in part due to the sharp growth in the number of lawyers in Brazil and the difficulty in finding billable work for these new lawyers. Consequently, State Bar Associations have tended to focus greater attention on the needs of their less successful members than on making legal services available to civil society at large.

However, this approach has changed with the recent approval of a new chapter to the Brazilian Bar Association's Ethics Code, which expressly allows pro bono practices in Brazil for the benefit of individuals and non-profit legal entities in need of legal assistance. It is therefore expected that law firms' pro bono programs will increase in the coming years. The law firms that already provided pro bono services before the change in the Brazilian Bar Association's Ethics Code are expected to increase the resources devoted to such practice now that the scope of the provision of pro bono services has been made clearer.

#### Legal Department Pro Bono Programs

Some of the legal departments within major companies in Brazil have been involved in pro bono services in conjunction with the Instituto Pro Bono (described below).<sup>21</sup>

#### Non-Governmental Organizations (NGOs)

In 2001, a group of lawyers from São Paulo created the Instituto Pro Bono,<sup>22</sup> a groundbreaking organization designed to organize, expand and promote the provision of pro bono legal services in Brazil. One of the first tasks undertaken by this group was to overturn the São Paulo Bar Association's prohibition on performing pro bono services. Instituto Pro Bono was able to lobby the São Paulo Bar Association to pass a resolution in 2002 permitting lawyers to provide free assistance to NGOs.<sup>23</sup> However, this resolution did not extend to providing free assistance to individuals. As São Paulo boasts the most sophisticated legal practice and practitioners in Brazil, this was an important step to the wider

---

<sup>17</sup> Complementary Law No 80 of January 12, 1994, as altered by Complementary Law No 132, of October 7, 2009, Article 4, II.

<sup>18</sup> See [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2015/Lei/L13129.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13129.htm) (last visited on September 4, 2015).

<sup>19</sup> See <http://www.cnbsp.org.br/Documentos/Upload/Conteudo/files/13140-2015%281%29.pdf> (last visited on September 4, 2015).

<sup>20</sup> See <http://www.amcham.com.br/impactos-legislativos-e-juridicos/noticias/arbitragem-e-mediacao-empresarial-facilitam-solucoes-amigaveis-e-preserva-relacoes-comerciais-8831.html> (last visited on September 4, 2015).

<sup>21</sup> See <http://www.probono.org.br/quem-somos/prestando-contas> (last visited on September 4, 2015).

<sup>22</sup> See <http://www.probono.org.br> (last visited on September 4, 2015).

<sup>23</sup> The "Pro Bono Resolution" of August 19, 2002.



spread of pro bono services throughout the country. In 2008, the Bar Association of the State of Alagoas issued a similar resolution to allow pro bono work exclusively to NGOs.

Launched with the advice and cooperation of the Public Counsel Law Center in Los Angeles,<sup>24</sup> the Instituto Pro Bono serves as a clearinghouse for pro bono cases, though it also has a number of in-house lawyers who provide pro bono services directly. It works with a network of Brazilian lawyers and law firms, referring cases to qualified lawyers who have volunteered to accept these on an unpaid basis. This organization often deals with cases relating to public interest rights of action, known as “*interesses difusos e coletivos*”, comparable to a class action. Since its first years, Instituto Pro Bono has advised NGOs in matters concerning the rights of children, women, minorities and persons with special needs and environment law. It has also established wide international alliances with similar organizations in the Americas and elsewhere. It was active, for example, in the drafting of the Pro Bono Declaration for the Americas, undertaken by the Cyrus R. Vance Center for International Justice Initiatives of the New York City Bar, and launched in January 2008<sup>25</sup>. Furthermore, it was active in lobbying the Brazilian Bar Association to legalize pro bono legal services throughout the country and to permit attorneys to provide pro bono legal services not only to NGOs but also directly to individuals.

There is a growing movement in Brazil of “third sector” initiatives. These are essentially NGO-driven initiatives meant to provide various forms of social services. There have been attempts to set up NGOs to provide legal services, but in the past these have generally been prohibited by Bar Association rules. A type of pro bono practice that has been growing among law firms in Brazil is to have some lawyers act as board representatives in NGOs and other “third sector” entities and thereby participate in the administration of such entities free of charge.

#### University Legal Clinics and Law Students

The operation of legal clinics is not specifically regulated in Brazil. Legal clinics are normally run by qualified lawyers who supervise a group of junior and trainee lawyers, who in turn have the most interaction with the client. Traditionally, legal clinics have been organized through Brazilian universities and law schools.<sup>26</sup> The Instituto Pro Bono has programs that law students can join to support lawyers engaged in pro bono activities.<sup>27</sup>

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

As explained above, Bar Associations have traditionally banned pro bono work as adversely affecting the ability of other attorneys to earn a livelihood. However, it was often argued that Article 133 of the Brazilian Constitution provides support for pro bono legal services, for it states that advocacy is an essential component of the proper administration of justice to which the State is bound. In June 2015, the Brazilian Bar Association finally approved an amendment to Article 30 of its Ethics Code that authorizes the provision of pro bono services for individuals and non-profit legal entities that cannot afford to pay for legal assistance.<sup>28</sup> The Brazilian State Bar Association may issue more detailed regulations concerning

---

<sup>24</sup> See <http://www.publiccounsel.org> (last visited on September 4, 2015).

<sup>25</sup> See <http://redprobono.org/> (last visited on September 4, 2015).

<sup>26</sup> For instance, since the early 1920s pro bono legal assistance is provided by students of the Law School of the University of São Paulo through the Departamento Jurídico XI de Agosto, (<http://www.dionzedeagosto.org.br>) (last visited on September 4, 2015).

<sup>27</sup> See <http://www.probono.org.br/projeto-pro-bono-jr> (last visited on September 4, 2015).

<sup>28</sup> “Article 30. In the exercise of pro bono assistance, the lawyer needs to employ the usual care and dedication, so that the beneficiary will feel duly assisted and will trust the pro bono lawyer. § 1º Pro bono assistance corresponds to the free and voluntary provision of legal services in favor of non-profit legal entities and of those that the non-profit legal entities represent, whenever they cannot afford to pay for legal assistance. § 2º Pro bono assistance may also be provided in favor of individuals who do not have enough resources to, without impairing



pro bono practice, but the Ethics Code amendment has already boosted the development of this practice in Brazil.

## Current State of Pro Bono including Barriers and Other Considerations

### Laws and Regulations Impacting Pro Bono

Historically, there was resistance from the Brazilian Bar Association to allow pro bono practice, which was seen as a violation of the ethical rules and a form of unethical advertisement, and therefore, the Brazilian Bar Association restricted the terms whereby lawyers could provide free legal assistance.

However, in June 2015, the Brazilian Bar Association approved a new chapter to the Ethics Code that permits lawyers to engage in pro bono services, irrespective of whether the lawyer was chosen by the client, or appointed by the court. In November 2015, the Brazilian Bar Association edited Ruling No. 166/2015 to regulate the provision of pro bono services.<sup>29</sup>

According to Ruling No. 166/2015, pro bono services may be provided to individuals, to non-profit legal entities and to the beneficiaries of non-profit legal entities, whenever they have no financial resources to pay for legal services. Both lawyers from private practice and lawyers from in-house departments may provide pro bono services.

Also according to Ruling No. 166/2015, lawyers who chose to provide pro bono services cannot subsequently charge the beneficiaries of such pro bono services for any paid legal advice or representation; this prohibition is valid for a period of three years, starting from when the provision of the pro bono services ends. Providing pro bono services in conjunction with, or as a condition to, the provision of paid legal services is also prohibited under any circumstance.

Furthermore, Ruling No. 166/2015 expressly stipulates that pro bono services cannot be used for political or electoral purposes or as a marketing tool, and only institutional or generic publicity of pro bono services are permissible.

In January 2016, the Brazilian Bar Association issued Resolution No 02/2016, creating a “pro bono week” to take place every second week of each month of December. During such week, special events shall be organized to promote and deliver pro bono assistance to those in need.<sup>30</sup>

#### “Loser Pays” Statute

According to Articles 82 and 322 of the Civil Procedure Code, the losing party shall pay the legal fees paid by the winning party to the lawyer.

#### Statutorily Mandated Minimum Legal Fee Schedule

Each State section of the Brazilian Bar Association publishes a Minimum Legal Fee Schedule. The fees may vary from State to State.

#### Practice Restrictions on Foreign-Qualified Lawyers

Foreign-qualified lawyers are not allowed to practice Brazilian law. They may act as consultants in foreign law, as long as they are registered with the Brazilian Bar Association for this purpose.

#### Concerns About Pro Bono Eroding Public Legal Aid Funding (i.e., where government pays private attorneys to represent indigent clients)

One of the concerns of the Brazilian Bar Association is that some lawyers in Brazil make their living from state-provided legal aid commissions (as mentioned above, some lawyers are remunerated by the State to assist Public Defenders, given that the number of Public Defenders in Brazil is often insufficient to handle the large demand for free legal assistance). Pro bono services could take away the only source of income for such lawyers.

---

their own subsistence, hire a lawyer. § 3º Pro bono advocacy cannot be used for political or election purposes, neither benefit institutions that have such purpose, nor be used as means of advertising to attract clients.”

<sup>29</sup> <http://www.oab-bnu.org.br/attachments/article/11955/PROVIMENTO%20166.2015.pdf>

<sup>30</sup> <http://www.oab-bnu.org.br/attachments/article/11955/resolucao-n-02-299860837.pdf>



### **Regulations Imposing Practice Limitations on In-House Counsel**

In-house lawyers employed by a public or private company may be restricted to representing third parties as clients before Brazilian Courts or Administrative Institutions. For example, if an in-house lawyer leaves his/her employer, he or she may be forbidden to represent third parties against the company for years after the employment relationship is over.

The activities of in-house lawyers in Brazil are not fully regulated, and in 2013 the Brazilian Bar Association created a “Special Commission for In-House Lawyers”, to discuss and develop themes related to in-house legal practice, including their prerogatives and obligations.<sup>31</sup> Specifically with respect to pro bono services, Ruling No. 166/2015 from the Brazilian Bar Association expressly provides that in-house lawyers are allowed to provide pro bono services.<sup>32</sup>

### **Availability of Professional Indemnity Legal Insurance Covering pro bono activities by Attorneys**

At least some of the Brazilian State Bar Associations regulate professional indemnity legal insurance for the corresponding practitioners. This practice (of contracting provisional indemnity legal insurance) is in general still novel and little developed in Brazil. As pro bono activities have just been authorized by the Brazilian Bar Association, the State Bar Associations will still need to regulate how legal insurance may apply to pro bono activities.

### **Availability of Legal Insurance for Clients (protection for moderate income individuals not eligible for legal aid but unable to afford full-cost legal fees)**

Legal expenses insurance products are not very developed in Brazil. The Brazilian Bar Association opposes the offer of legal services through insurance plans; it considers that such practice breaches ethical rules because it is likely to lead to the “commoditisation” of legal services, resulting in a significant reduction of legal fees (to a level below the minimum legal fee schedule) and to the undue advertising of legal services. Lawyers that take part in such legal expenses insurance products may suffer sanctions.<sup>33</sup>

## **Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System**

### **Public concerns about the formal legal system, such as corruption, judicial efficiency, lack of public trust in the judiciary which leads to informal dispute resolution, efficacy of elected versus appointed judges, and the professionalism of judges.**

In recent years, Brazil has been involved in major criminal investigations into corruption at a State level, involving the government and State-owned companies. These cases resulted in a loss of trust in the political sector, but at the same time they reinforced the role of the Brazilian courts and legal institutions (such as the federal police and public prosecutors), confirming their strength and independence. In this context, the public trust in the functioning of the Brazilian judicial system and in such institutions has increased, as they showed that they are capable of investigating and convicting politicians and business people.

A major problem faced by the Brazilian judicial system continues to be the extensive delays in the review of almost any type of judicial proceedings. These delays are due to insufficient human resources or infra-structure, as well as to the number of appeals possible against almost any type of judicial/court decision. As a result, it is common for legal proceedings in Brazil to last five, ten or more years. Such delays are often a cause of concern and lack of trust in the judiciary.

<sup>31</sup> See <http://www.oab.org.br/noticia/25263/oab-cria-comissao-especial-da-advocacia-corporativa> (last visited on February 21, 2016); <http://www.secovi.com.br/biblioteca/publicacoes/oab-cria-comissao-especial-da-advocacia-corporativa-para-dialogar-com-empresas/750/> (last visited on February 21, 2016); and <http://www.migalhas.com.br/Quentes/17,MI217367,61044-Comissao+Especial+da+Advocacia+Corporativa+toma+possa+em+Brasilia> (last visited on February 21, 2016).

<sup>32</sup> See <http://www.oab.org.br/noticia/29076/oab-edita-provimento-que-regulamenta-a-advocacia-pro-bono> (last visited on February 21, 2016).

<sup>33</sup> See <http://www.conjur.com.br/2010-jan-09/resistencia-oab-nao-impede-oferta-planos-assistencia-juridica>; and [http://www.ambito-juridico.com.br/site/index.php?n\\_link=revista\\_artigos\\_leitura&artigo\\_id=3553](http://www.ambito-juridico.com.br/site/index.php?n_link=revista_artigos_leitura&artigo_id=3553) (last visited on February 21, 2016).



### Opposition from the Bar

Until June 2015, the Brazilian Bar Association and the State Bar Associations restricted the terms on which free legal services could be provided and regarded lawyers who did not charge for their services as breaching professional ethics rules. In this context, pro bono work could be perceived as suggestive of unethical marketing.

Only the Bar Associations of the States of São Paulo and Alagoas in Brazil allowed pro bono services to be provided, but their authorization was limited to pro bono services directed to NGOs (as discussed above). In January 2012, the Ethics Commission of the São Paulo Bar Association issued a resolution expressly prohibiting the provision of pro bono services to individuals.<sup>34</sup>

The new chapter to the Brazilian Bar Association's Ethics Code that was introduced in June 2015 has approved pro bono practices in Brazil. These practices have been further regulated by Ruling No. 166/2015, issued by the Brazilian Bar Association in November 2015.<sup>35</sup>

Pro bono work remains subject to the general restrictions on advertising imposed by the State Bar Associations. Brazilian lawyers cannot advertise to prospective clients, publicize the value of their services (paid or free) or solicit legal work. They may only inform the public about the type of legal services that they provide.<sup>36</sup>

### Pro Bono Resources

#### Entities Engaged in Pro Bono

As mentioned, law firms and legal departments of companies based in Brazil were engaged in some pro bono activity before the recent changes in the Brazilian Bar Association's Ethics Code and are expected to increase such activities going forward. In addition, the non-profit organization Instituto Pro bono has had a major role in the development of pro bono services in the country.

Bearing in mind that foreign lawyers may not practice Brazilian law, opportunities for an international law firm to provide pro bono legal services in Brazil may still be permissible through relations with established local law firms, with Brazil-based NGOs and other entities of the "third sector" (such as Ashoka Organization and Connectas Human Rights<sup>37</sup>), as well as through contact with the Instituto Pro Bono. There are presently several websites that list entities in the "third sector" in Brazil and specify areas in which they may need assistance.<sup>38</sup>

## CONCLUSION

There is a growing awareness and willingness in Brazil to provide pro bono legal services in a systematic and organized manner. Access to justice remains an unattainable right for many in Brazil and pro bono advocacy could play a much more instrumental role than it currently does to help alleviate this lack of access to justice. Although it is clear that much work remains to be done, indications point to increased participation in, and recognition of the value of, pro bono activities. With the recent approval by the Brazilian Bar Association of the provision of pro bono services in Brazil, the opportunities available in the pro bono arena will certainly increase in the years to come.

---

<sup>34</sup> See <http://www.conjur.com.br/2012-jan-05/advocacia-pro-bono-destina- apenas-pessoa-juridica-oab-sp> (last visited on September 4, 2015); and <http://www.migalhas.com.br/Quentes/17,MI162849,81042-ADIn+questiona+lei+do+MT+que+responsabiliza+advogado+por+obrigacao+de> (last visited on September 4, 2015).

<sup>35</sup> <http://www.oab.org.br/noticia/29076/oab-edita-provimento-que-regulamenta-a-advocacia-pro-bono>

<sup>36</sup> Brazilian Bar Association, Ruling No 94 of September 5, 2000.

<sup>37</sup> See <http://www.conectas.org/artigo-1> (last visited on September 4, 2015).

<sup>38</sup> See <http://www.terceirosetor.org.br/> (last visited on September 4, 2015); <http://portaldovoluntario.v2v.net/> (last visited on September 4, 2015); <http://www.voluntariado.org.br/> (last visited on September 4, 2015); <http://www.voluntarios.com.br/> (last visited on September 4, 2015); and <http://www3.ethos.org.br/> (last visited on September 4, 2015).



February 2016

Pro Bono Practices and Opportunities in Brazil

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Bulgaria<sup>1</sup>

### INTRODUCTION

Free legal representation was institutionalized in Bulgaria in 2006 with the adoption of the Legal Aid Act<sup>2</sup>, which recognized the need to ensure equal access to the justice system for all. In accordance with the policies reflected in the Legal Aid Act, there are no regulatory barriers to providing pro bono legal services. Nevertheless, while free legal representation is not discouraged, there are both financial and practical considerations that may affect practitioners' willingness or ability to provide pro bono services. For example, budget cuts have made it exceedingly difficult for legal aid attorneys to collect compensation for their services. Likewise, some practitioners may be required to charge and remit VAT to the State, regardless of whether their services were provided free of charge. The most critical impediment to pro bono services in Bulgaria, however, is the overall lack of cultural awareness of such services and a resulting lack of pro bono "infrastructure" (such as the lack of referral organizations or clearing-houses). Most free legal representation in Bulgaria is provided by NGOs in the course of their general operations, or by private practitioners on an individualized, ad-hoc basis. However, a systematic, organized approach to the provision of pro bono services is lacking.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

The Bulgarian Constitution (the "**Constitution**"), adopted on July 12, 1991 following the fall of the Communist regime in 1989, is the supreme internal legislative act and sets forth the basic rights of citizens, the form and structure of government and the collaboration among the different branches of government.<sup>3</sup> The provisions of the Constitution apply directly and do not require the enactment of any laws to implement such provisions.<sup>4</sup> Treaties ratified in accordance with the appropriate procedure also apply directly and supersede domestic legislation.<sup>5</sup>

The legislative body in Bulgaria is known as the National Assembly (or *Narodno Sabranie*), a unicameral parliament with the power to pass laws, enact state budgets and establish tax rates, among other things.<sup>6</sup> Some of the major codes enacted by the National Assembly which directly affect the practice of law, many in recent years, include the Administrative Procedure Code 2006, the Civil Procedure Code 2008, the Criminal Code 1968, as amended, and the Criminal Procedure Code 2006.<sup>7</sup> Since Bulgaria is a member of the European Union (the "EU"), the law of the EU also frequently interacts with Bulgaria's internal legislation.<sup>8</sup>

---

<sup>1</sup> This chapter was drafted with the support of the law firm of Djingov, Gouginski, Kyutchukov & Velichkov.

<sup>2</sup> Promulgated in the Bulgarian State Gazette, issue No. 79/Oct. 4, 2005, in force as of Jan. 1, 2006.

<sup>3</sup> See <http://www.nyulawglobal.org/globalex/Bulgaria1.htm> (last visited on September 4, 2015).

<sup>4</sup> Judicial Reform Review for Bulgaria, Volume IV, Bulgarian Institute for Legal Initiatives, February 2013.

<sup>5</sup> Judicial Reform Review for Bulgaria, Volume IV, Bulgarian Institute for Legal Initiatives, February 2013.

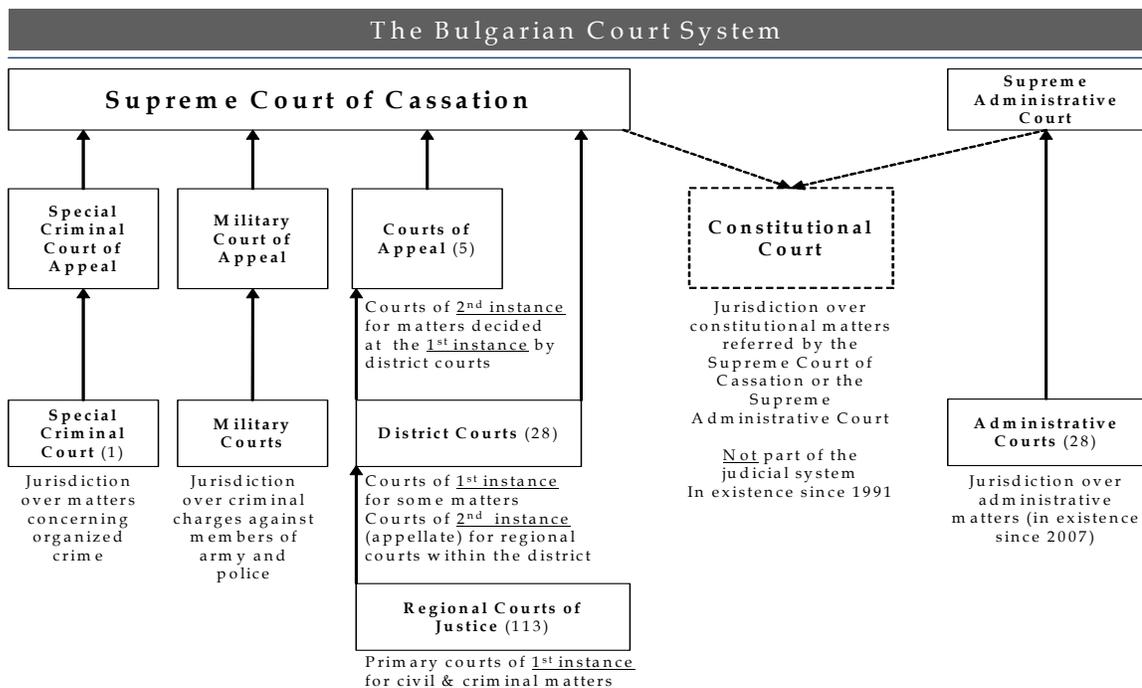
<sup>6</sup> Judicial Reform Review for Bulgaria, Volume IV, Bulgarian Institute for Legal Initiatives, February 2013.

<sup>7</sup> See <http://www.nyulawglobal.org/globalex/Bulgaria1.htm> (last visited on September 4, 2015); The Legal Profession Reform Index for Bulgaria, American Bar Association, May 2006.

<sup>8</sup> See <http://www.nyulawglobal.org/globalex/Bulgaria1.htm> (last visited on September 4, 2015).

## The Courts

The Constitution provides for an independent judiciary established in accordance with the framework set forth in the Constitution.<sup>9</sup> The Bulgarian judicial system is comprised of judges, prosecutors and investigating police officers who have magistrate rank.<sup>10</sup> All courts have corresponding prosecution offices in the respective judicial districts.<sup>11</sup> Prosecutors conduct investigations, file criminal charges, oversee the enforcement of penalties for criminal offenses and of other sanctions and take part in civil (though very rare, e.g. in procedures on interdiction of persons) and administrative proceedings.<sup>12</sup> Investigators also conduct investigations in cases envisaged by law.<sup>13</sup> A Constitutional Court exists to rule on constitutional issues, but is not a part of the judicial system.<sup>14</sup> The chart below illustrates the structure of the court system in detail.<sup>15</sup>



The judicial system is largely overseen and governed by an administrative body known as the Supreme Judicial Council (the “SJC”).<sup>16</sup> Judges, prosecutors and investigators are appointed, promoted, demoted, transferred and removed from office by the SJC.<sup>17</sup> The SJC is composed of 25 members who are also

<sup>9</sup> BULGARIA CONST., ch. 7, arts. 117-134.

<sup>10</sup> Judicial Reform Review for Bulgaria, Volume IV, Bulgarian Institute for Legal Initiatives, February 2013.

<sup>11</sup> Judicial Reform Review for Bulgaria, Volume IV, Bulgarian Institute for Legal Initiatives, February 2013.

<sup>12</sup> Judicial Reform Review for Bulgaria, Volume IV, Bulgarian Institute for Legal Initiatives, February 2013.

<sup>13</sup> Judicial Reform Review for Bulgaria, Volume IV, Bulgarian Institute for Legal Initiatives, February 2013.

<sup>14</sup> Judicial Reform Review for Bulgaria, Volume IV, Bulgarian Institute for Legal Initiatives, February 2013.

<sup>15</sup> While not reflected on the chart, in administrative-criminal proceedings Regional Courts of Justice act as the court of first instance and their decisions may be appealed to the Administrative Courts. In such instances, the acts of the Administrative Courts are final and binding.

<sup>16</sup> Judicial Reform Review for Bulgaria, Volume IV, Bulgarian Institute for Legal Initiatives, February 2013.

<sup>17</sup> BULGARIA CONST., ch. 6, art. 129.



judges, prosecutors and investigators.<sup>18</sup> Eleven members are elected within the judiciary, 11 are elected by the National Assembly, and three are *ex officio* members by law (the presidents of the Supreme Court of Cassation, the Supreme Administrative Court, and the Chief Prosecutor).<sup>19,20</sup>

## The Practice of Law

### Education

Pursuant to the Attorneys Act of 2004 (the “**Attorneys Act**”),<sup>21</sup> anyone wishing to become an attorney must have a university law degree.<sup>22</sup> Law school is a formally accredited five-year university program that concludes with state oral and written examinations.<sup>23</sup> Under the Ordinance on the Unified Requirements for Acquiring Higher Education in Law and the Professional Qualification “Lawyer,”<sup>24</sup> (the “**Legal Education Ordinance**”) adopted by the Council of Ministers<sup>25</sup> with Resolution No. 75/Apr. 5, 1996, in order to earn a law degree, students must complete at least ten semesters and a minimum of 3,500 hours of study.<sup>26</sup> Students complete obligatory courses such as constitutional law, criminal law and procedure and European Union law, and have the option to take elective courses in the areas of intellectual property law and bank law.<sup>27</sup> Amendments to the Legal Education Ordinance adopted in 2005 specifically allow for the establishment of legal clinics, recognizing their role in providing valuable practical experience to law students.<sup>28</sup>

Those who graduate law school go on to have careers as prosecutors, investigators, judges, attorneys, non-attorney lawyers known as legal advisors, notaries and bailiffs, all of whom are known generally as “lawyers” in Bulgaria.<sup>29</sup> However, only attorneys who are members of Attorneys’ Colleges,<sup>30</sup> may engage in the private practice of law independently and appear in court on behalf of clients.<sup>31</sup>

---

<sup>18</sup> Judicial Reform Review for Bulgaria, Volume IV, Bulgarian Institute for Legal Initiatives, February 2013.

<sup>19</sup> See <http://www.nyulawglobal.org/globalex/Bulgaria1.htm> (last visited on September 4, 2015).

<sup>20</sup> Pursuant to the major constitutional changes recently voted by the National Assembly (still to be reviewed by the Constitutional Court before entering into force), the SJC will be divided into two separate panels, a judges’ and a prosecutors’ panel.

<sup>21</sup> Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004).

<sup>22</sup> Article 4.(1).1 of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004).

<sup>23</sup> The Legal Profession Reform Index for Bulgaria, American Bar Association, May 2006.

<sup>24</sup> Promulgated in SG, issue No. 31/Apr. 12, 1996, last amended, SG, issue No. 62/ July 12, 2013.

<sup>25</sup> The Council of Ministers is a cabinet composed of the Prime Minister, Deputy Prime Ministers and Ministers with overall responsibility for implementing the state’s domestic and foreign policy.

<sup>26</sup> Ordinance on the Unified Requirements for Acquiring Higher Education in Law and the Professional Qualification “Lawyer,” Adopted with Resolution of the Council of Ministers No. 75/Apr. 5, 1996, promulgated in SG, issue No. 31/Apr. 12, 1996, last amended SG No. 62 (July 12, 2013), Article 6.

<sup>27</sup> Ordinance on the Unified Requirements for Acquiring Higher Education in Law and the Professional Qualification “Lawyer,” Adopted with Resolution of the Council of Ministers No. 75/Apr. 5, 1996, promulgated in SG, issue No. 31/Apr. 12, 1996, last amended SG No. 62 (July 12, 2013), Articles 7.(4) and 9.(1).

<sup>28</sup> Ordinance on the Unified Requirements for Acquiring Higher Education in Law and the Professional Qualification “Lawyer,” Adopted with Resolution of the Council of Ministers No. 75/Apr. 5, 1996, promulgated in SG, issue No. 31/Apr. 12, 1996, last amended SG No. 62 (July 12, 2013), Articles 10a.(1-2).

<sup>29</sup> The Legal Profession Reform Index for Bulgaria, American Bar Association, May 2006.

<sup>30</sup> These are mandatory organizations of attorneys, governed by their respective Bar Councils that have executive, managerial and disciplinary functions and oversee the attorneys admitted to their respective organizations.

<sup>31</sup> The Legal Profession Reform Index for Bulgaria, American Bar Association, May 2006, p. 8.



## Licensure

As described above, all graduates of law school are known as “lawyers” but not all graduates of law school become practicing attorneys. Only an attorney admitted to and registered with an Attorneys’ College (*Advokatska Kolegia*) may engage in the private practice of law and appear in court on behalf of multiple clients. Non-attorney lawyers, known as legal advisors or *juris consultants*, work within companies, governmental agencies, or NGOs, and may engage in the practice of law only on behalf of their respective employers.

Attorneys’ Colleges are organizations administered and overseen by an elected Bar Council as independent, self-governing bodies whose decisions are subject to administrative and judicial review.<sup>32</sup> A separate Attorney’s College, and a corresponding Bar Council, operate in each of the 28 districts in Bulgaria with the exception of the capital of Sofia (where the Sofia City district and Sofia Region district share a single Attorney’s College).<sup>33</sup> An attorney admitted to an Attorney’s College may practice in any district and before any forum in the country, but must maintain an office in the territory of the Attorney’s College of which he or she is a member.<sup>34</sup>

All Bulgarian citizens of legal capacity are eligible for admission to an Attorneys’ College if they meet the requirements set forth in the Attorneys Act, including holding a university law degree, having had at least two years of professional legal experience<sup>35</sup>, passing the state bar examination, and having the moral and professional qualities necessary for practicing law.<sup>36</sup> Foreign attorneys educated and accredited to practice law in an EU member state may take a transfer test in Bulgarian law and be entered into the Unified Registry of Foreign Attorneys in Bulgaria.<sup>37</sup>

## Demographics

According to the Council of Bars and Law Societies of Europe Lawyers’ Statistics for 2015, there were 12,629 fully-qualified attorneys registered in Attorneys’ Colleges around Bulgaria.<sup>38</sup> As of February 2012, there were 2,275 judges and 2,517 prosecutors practicing law in Bulgaria.

## Legal Regulation of Lawyers

The Attorneys Act of 2004 regulates the legal profession,<sup>39</sup> and governs the rights to provide legal services. The precursor to the Attorneys Act of 2004 was its namesake of 1991,<sup>40</sup> which did away with the regulatory scheme in place during Communist rule in Bulgaria between 1945 and 1989, and established the legal profession as a vocation regulated by the Constitution and aimed at protecting individual rights and liberties. Legal professionals’ ethical obligations are governed by the Attorney’s Code of Ethics, adopted by the Supreme Bar Council, a professional organization comprised of elected members representing bar associations across the country. The Code of Ethics addresses matters of independence, confidentiality and conflicts of interest, as well as questions of remuneration for legal services, incorporating by reference Ordinance No. 1 of July 9, 2004 on the Minimum Size of Attorneys’

---

<sup>32</sup> The Legal Profession Reform Index for Bulgaria, American Bar Association, May 2006, p. 27.

<sup>33</sup> The Legal Profession Reform Index for Bulgaria, American Bar Association, May 2006, p. 9.

<sup>34</sup> Attorneys Act, Article 40.(6).

<sup>35</sup> Candidates without a two-year legal experience are admitted in the Attorneys’ Colleges as Junior Attorneys.

<sup>36</sup> Attorneys Act, Article 4.(1)1-5.

<sup>37</sup> Attorneys Act, Article 18.1.

<sup>38</sup> Council of Bars and Law Societies of Europe Statistics, 2015, available at <http://www.cbbe.eu/index.php?id=375&L=0> (last visited on September 4, 2015).

<sup>39</sup> SG 55/2004, last amended 1/1/2012.

<sup>40</sup> SG 80/91.



Fees.<sup>41</sup> Finally, the Legal Aid Act of 2006<sup>42</sup> regulates the provision of state-sponsored legal services for qualifying individuals.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

In 2006, Bulgaria established a framework for the provision of legal aid in civil, administrative and criminal proceedings with the adoption of the Legal Aid Act.<sup>43</sup> The law was part of an initiative to reform the Bulgarian judicial system, and one of the key objectives of that initiative was ensuring equal access to the judicial system for all Bulgarian citizens. When the Legal Aid Act was adopted, the legislator did not extend these access rights to legal entities. While some Bulgarian courts have extended the right to legal aid to legal entities pursuant to the Legal Aid Act, the majority of courts favor the literal interpretation of Art. 5 of the Legal Aid Act and maintain that only natural persons are entitled to this right.

The Legal Aid Act provides for the following categories of legal aid: (i) legal consultations aimed at reaching a settlement prior to filing a case; (ii) preparing a case file for the purposes of filing a case; (iii) legal representation in civil, criminal and administrative proceedings; and (iv) legal representation of individuals detained for probable cause.<sup>44</sup> Legal aid is not available in commercial and tax matters.<sup>45</sup>

The agency responsible for administering legal aid is the Bulgarian National Legal Aid Bureau (“**NLAB**”), an independent state entity, whose structure and functions are regulated by the Legal Aid Act, the Decree of the Council of Ministers No 4/06.01.2006.<sup>46</sup> The responsibilities of the NLAB include the monitoring and supervision of activities related to the provision of legal aid, the administering of payments for legal aid, the maintenance of the National Register of Legal Aid and the promotion of the legal aid system.<sup>47</sup> Attorneys wishing to provide legal aid under the Legal Aid Act must file an application with the NLAB, which must be pre-approved by their local Bar Council. The NLAB then includes all such individuals in the National Legal Aid Register, which is a public document, available to individuals seeking legal aid. According to the annual report of the NLAB for 2014, as of December 31, 2014, there are 5,034 attorneys listed in the National Legal Aid Register.

In 2015, the NLAB established seven legal aid centers, where indigent individuals can seek legal assistance on civil, criminal, and administrative matters from NLAB staff attorneys. Legal assistance is also available on the NLAB’s “hot line.”<sup>48</sup>

### State-Subsidized Legal Aid

#### Eligibility Criteria

Whether one qualifies for legal aid depends on the specific category of legal aid sought. First, legal aid is available by law in all cases where the relevant laws implicated in the proceedings require legal

---

<sup>41</sup> Last suppl. SG 28/28.03.2014.

<sup>42</sup> SG 79/04.10.2005.

<sup>43</sup> SG 79/04.10.2005, in force since 01.01.2006.

<sup>44</sup> Id. § 21.

<sup>45</sup> Id. § 24.

<sup>46</sup> SG 5/17.01.2006.

<sup>47</sup> Legal Aid Act, Article 8.

<sup>48</sup> See <http://btvnovinite.bg/article/bulgaria/obshtestvo/centrove-shte-predlagat-bezplatna-pravna-pomosht-na-grazhdanite.html> (last visited on September 4, 2015).



representation<sup>49</sup>; for example, pursuant to Article 30 of the Constitution, every Bulgarian citizen is entitled to legal representation upon their arrest or indictment in a criminal proceeding. Second, where an individual is involved in ongoing civil, criminal and administrative proceedings, legal aid is available if that individual cannot afford an attorney, or wishes to retain an attorney, and the interests of justice require the provision of legal aid (as determined by the organization administering the proceedings (e.g., the pertinent court)). Whether an individual can afford an attorney is determined on the basis of sworn declarations provided by that individual. Finally, where an individual is not currently involved in legal proceedings, they may receive legal aid if they qualify for the receipt of state aid, if they have been placed in a social services institution, or if they have a foster child in custody. The determination of whether an individual not currently in civil proceedings qualifies for legal aid is vested with the NLAB.<sup>50</sup>

### Mandatory Assignments to Legal Aid Matters

Individuals eligible for legal aid may request representation by a particular attorney. If that attorney is listed in the National Legal Aid Register, they may not decline to undertake the representation.<sup>51</sup>

### Unmet Needs and Access Analysis

At the time it was promulgated, the Legal Aid Act was viewed as an important novel initiative for ensuring equal access to the justice system. However, its practical implementation has been hampered by the limited availability of financial resources. For 2015, the legal aid budget was BGN ten million. However, due to budgetary deficits, the actual amount allocated to legal aid for 2015 was approximately BGN 9.5 million.<sup>52</sup>

### Alternative Dispute Resolution

The two key alternative dispute resolution systems in Bulgaria are the institution of the Ombudsman and arbitration of commercial disputes under the Court of Arbitration. As to the former, the Ombudsman Act 2003 created the institution of the Ombudsman. The Ombudsman may intervene by means envisaged by law when citizens' rights and freedoms have been violated by actions or omissions of the state and municipal authorities, as well as by public officers. As to the latter, the Court of Arbitration within the Bulgarian Chamber of Commerce and Industry is a 117-year old well-regarded institution that offers, among other things, out-of-court arbitration and mediation resolution services.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

While the concept of pro bono legal representation exists in principle in Bulgaria, there is no structured approach to the provision of such services, and there appears to be an overall lack of awareness of pro bono services both among practitioners and among individuals who need such services. Most pro bono services are provided on an ad-hoc basis resulting from a fortuitous encounter of supply and demand rather than a streamlined, systematic approach. For example, it is common practice to see public announcements in the media advertising temporary law clinics or hot lines offering free legal consultations, usually for a particular social group. The only systematic approach to pro bono representation lies in the work of NGOs, which sometimes provide free legal services in their field of operation, and the work of pro bono law clinics at higher education institutions. Accordingly, free legal services are usually provided by public service attorneys or law students. Private practitioners engage in free legal representation less frequently and usually on an ad-hoc, individual basis. In practice, pro bono representation is provided in one of four ways:

---

<sup>49</sup> Id. Article 23.

<sup>50</sup> Id. Article 25.

<sup>51</sup> Id. Article 26.

<sup>52</sup> See <http://presa.bg/article/archive/60441/2/0> (last visited on September 4, 2015).



## NGOs Offering Pro Bono Services

This is the most common approach to pro bono services in Bulgaria, as many NGOs offer free legal consultations in the field in which they operate. The NGOs' activities may be primarily law-related, or they may cover a broader range of social services, with legal representation as only one aspect of such services. For example, a "legal" NGO may provide (i) free legal representation to individuals in cases involving human rights (e.g., the Association for European Integration and Human Rights) or refugees' rights (e.g., the Program for Legal Protection of Refugees and Migrants or the Center for Legal Aid – Voice in Bulgaria), or (ii) free legal consultations for civic organizations (e.g., the Bulgarian Center for Not-for-Profit Law). On the other hand, a "social services" NGO, such as one focused on women's rights, may carry out a range of activities aimed at promoting women's rights, including lobbying the legislature, providing medical and psychological support to victims of domestic violence, and offering free legal services to these victims (e.g., the Gender Alternatives Foundation). Notably, however, these NGOs do not serve as referral organizations or clearing-houses; rather, the pro bono services are provided by staff attorneys.

## Pro Bono Law Clinics at Higher Education Institutions

The law faculties of many universities in Bulgaria operate law clinics where law students provide legal services on a pro bono basis. Participation in the clinics is optional, with supervision provided by practicing attorneys.<sup>53</sup> While successful at exposing students to real-life legal problems and courtroom practices on behalf of disadvantaged clients, many clinics face resistance from local bar councils who view the clinics as possible competitors.<sup>54</sup>

## Private Practitioners Offering Pro Bono Services as Part of their General Practice

This is the least common approach. While it appears that some law firms have pro bono practice areas, generally, private practitioners handle on a pro bono basis high-profile matters which can help generate publicity for their practice. In this respect, it is worth noting that because the pro bono culture in Bulgaria is generally underdeveloped, there is no pressure among private, commercial practitioners to demonstrate a commitment to pro bono, and, as a result, dedicating time and resources to pro bono in a systematic way is the exception rather than the rule.

## Practitioners Offering Free Legal Representation to Friends and Family

Finally, while not pro bono in the traditional sense, in practice, most free legal representation is provided to friends or family by practicing attorneys, an option specifically provided for under the Attorneys Act.<sup>55</sup>

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

As a general matter, Bulgaria lacks the systematic commitment to pro bono among legal practitioners observed in the Anglo-American legal tradition. Typically, private practitioners engaged in pro bono legal work have either studied or worked abroad and have, in essence, imported the concept of organized pro bono services. Thus, as noted above, pro bono legal services are most commonly provided by NGOs offering free legal consultations in the fields in which they operate, alongside their core activities such as lobbying or social services.

---

<sup>53</sup> Ordinance on the Unified Requirements for Acquiring Higher Education in Law and the Professional Qualification "Lawyer," Adopted with Resolution of the Council of Ministers No. 75/Apr. 5, 1996, promulgated in SG, issue No. 31/Apr. 12, 1996, last amended SG No. 62 (July 12, 2003), Article 10a.(3).

<sup>54</sup> The Legal Profession Reform Index for Bulgaria, American Bar Association, May 2006.

<sup>55</sup> Id. Attorneys Act, Article 31, paragraph 1, item 3 & Ordinance No. 1 of July 9, 2004 on the Minimum Size of Attorneys' Fees, Article 5, item 3.



## Current State of Pro Bono; Barriers and Other Considerations

### Laws and Regulations Impacting Pro Bono

In Bulgaria, there are no regulatory impediments to providing pro bono legal services. While there are regulations governing the minimum remuneration for legal service, these regulations specifically permit attorneys to provide free legal assistance to: (i) indigent persons; (ii) persons eligible for State aid; and (iii) relatives or other attorneys.<sup>56</sup>

However, there are both financial and practical considerations that may limit practitioners' willingness or ability to provide pro bono services. First, practitioners may have a financial disincentive to provide pro bono services since the Value Added Tax Act<sup>57</sup> requires attorneys whose income in the latest fiscal year exceeds BGN 50,000 (US\$31,800) to register to pay VAT. VAT is then owed to the State for any services provided by these attorneys, regardless of whether they were provided free of charge.

Additionally, pro bono representation could, at least in theory, expose attorneys to disciplinary sanctions. Because the Attorneys Act imposes minimum remuneration for the provision of legal services unless the exceptions specified by law apply,<sup>58</sup> attorneys providing free legal services to ineligible individuals are subject to disciplinary sanctions. When individuals seek free legal representation pursuant to the Legal Aid Act, they must prove their eligibility through (in the case of indigent persons) declarations certified by the relevant authorities responsible for state aid, or (in the case of foster parents), through sworn declarations verified by the courts; individuals who provide false information are subject to criminal sanctions. In contrast, information provided by individuals seeking legal representation on a pro bono basis is not similarly certified or verified, and no criminal liability arises for the provision of false information. Thus, absent assistance by the state or by referral organizations, attorneys are not in a position to verify eligibility and could, in theory, become subject to disciplinary sanctions for providing free legal services on the basis of false representations by their clients.

Finally, a 2015 proposed amendment to the Attorneys Act contemplates that only attorneys (i.e., persons admitted to and registered with an Attorneys' College) could provide legal consultations<sup>59</sup>; non-attorney lawyers (i.e., "legal advisors" who tend to work for companies or NGOs) providing legal consultations would face fines by the state. The proposed amendment has been criticized by the Bulgarian Helsinki Committee (an NGO focused on the protection of human rights) as an encroachment on legal practitioners' ability to provide free legal services to persons in need.<sup>60</sup>

### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

The most critical barrier to pro bono work in Bulgaria remains the lack of awareness among both practitioners and potential clients, and the resulting lack of a pro bono "infrastructure," including referral organizations or clearing houses. However, in recent years, there has been an increased recognition of the need to provide pro bono services for vulnerable social groups (for example, the provision of free legal representation to refugees and migrants increased as a result of the recent influx of Syrian war refugees in Bulgaria). Additionally, there has been a growing awareness of the importance of fostering a pro bono culture, particularly among young lawyers, and a growing commitment to pro bono among private practitioners.

### Pro Bono Resources

The following NGOs provide pro bono legal services, either to individuals or NGOs, though they do not serve as clearing houses or referral organizations:

---

<sup>56</sup> Attorneys Act of 2004, art. 38; Ordinance No. 1 of Jul. 9, 2004 on the Minimum Size of Attorneys' Fees, art. 5 (last amend. and suppl. SG 28/28.03.2014).

<sup>57</sup> SG 63/04.08.2006, last suppl. SG 41/05.06.2015.

<sup>58</sup> Attorneys Act of 2004, art. 38; Ordinance No. 1 of Jul. 9, 2004 on the Minimum Size of Attorneys' Fees, art. 5 (last suppl. SG 31/15.04.2011).

<sup>59</sup> See <http://parliament.bg/bills/43/554-01-14.pdf> (last visited on September 4, 2015).

<sup>60</sup> See <http://new.legalworld.bg/42546.zabranata-needvokati-da-okazvat-pravna-pomosht-e-posegatelstvo-sreshtu-naj-uiazvimite-grajdani.html> (last visited on September 4, 2015).



- The Gender Alternatives Foundation, focused on the promotion of women’s rights (<http://www.genderalternatives.org/index.php/en/news/101-dynamic-start-for-gender-alternatives-foundation> (last visited on September 4, 2015))
- Bulgarian Helsinki Committee, focused on the legal protection of human rights and providing legal consultations, representation and defence to approximately 5,000 people annually ([www.bghelsinki.org#sthash.M1revVx8.dpuf](http://www.bghelsinki.org#sthash.M1revVx8.dpuf) (last visited on September 4, 2015))
- Center for Legal Aid – Voice in Bulgaria, focused on promoting the rights of migrants, refugees, and other vulnerable groups (<http://www.centerforlegalaid.com/> (last visited on September 4, 2015))
- The Bulgarian Center for Not-for-Profit Law, focused on providing legal advice to civic organizations (<http://www.bcnl.org/en/index.html>) (last visited on September 4, 2015).

## CONCLUSION

While Bulgaria established formal free legal representation in 2006 and pro bono legal representation exists in principle, there is no organized effort to provide pro bono services. In recent years, there has been a trend among young professionals educated and trained abroad to return to Bulgaria, bringing with them cultural awareness of best practices, including a commitment to pro bono legal services. As such, the expectation is that over the next decade, the pro bono culture in Bulgaria will grow and develop further.

In the immediate term, it is key to increase awareness of pro bono services and work towards the establishment of referral organizations and clearing houses. NGOs that currently provide some legal representation can play a critical role by serving as intermediaries between individuals in need of representation and practitioners in the broader legal community.

September 2015

Pro Bono Practices and Opportunities in Bulgaria

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



# Pro Bono Practices and Opportunities in Canada<sup>1</sup>

## INTRODUCTION

Canada has a rich tradition of promoting access to justice through, among other things, legal aid and pro bono legal assistance. In recent years there has been increased support for the active coordination of pro bono opportunities and, particularly as a result of the efforts of professional bodies such as the Canadian Bar Association, various initiatives have been undertaken to promote, simplify and encourage pro bono participation across Canada. While pro bono legal services and legal aid are generally available across Canada, several factors affect the availability of such services, including underfunding, insurance requirements, uneven coverage, fragmented approaches, discretionary eligibility criteria and a lack of information to potential clients/applicants. Notwithstanding these factors, lawyers and law students across Canada increasingly continue to provide pro bono services.

## OVERVIEW OF THE LEGAL SYSTEM

### The Justice System

#### Constitution and Governing Laws

The Constitution of Canada (the “**Constitution**”), which includes the Constitution Act 1867 and the Constitution Act 1982, sets out the basic principles of a democratic government and defines the powers of the three branches of government: the executive, the legislative, and the judiciary.<sup>2</sup> Canada is a federation with jurisdiction over governance divided between the federal government that governs matters of a national interest and ten provincial and three territorial governments that are responsible for matters of a more local nature.<sup>3</sup> Although common law is applied throughout the Canadian legal system, within the province of Quebec, a civil law system is applied for all matters of a private law nature.<sup>4</sup>

#### The Courts

Canada’s system of courts is complex. Generally speaking, Canada’s court system is based on a tiered hierarchy and is divided into federal and provincial/territorial courts organized by levels of superiority.<sup>5</sup> While each province/territory has jurisdiction over the administration of justice within their jurisdiction, the federal government maintains exclusive legislative authority over criminal law in order to ensure fair and consistent treatment of criminal law nationally.

Within each province/territory there are generally three or four levels of courts, which can be divided between trial-level courts and appeal courts. Among trial-level courts there are provincial/territorial courts and superior trial courts. The former are staffed with judges appointed by the province/territory and handle certain family law and criminal law matters. The superior trial courts have the power to review the

---

<sup>1</sup> This chapter was drafted with the support of Shane C. D’Souza and Diego Beltran of McCarthy Tétrault LLP, Jamie Telfer of Hewlett Packard Enterprise Canada, and a contribution from the Canadian Bar Association.

<sup>2</sup> The Canadian Constitution, Department of Justice, available at <http://www.justice.gc.ca/eng/csj-sjc/just/05.html> (last visited on September 4, 2015).

<sup>3</sup> The Constitutional Distribution of Legislative Powers, available at <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=federal&doc=legis-eng.htm> (last visited on September 4, 2015). Note however that Canada’s three territories have less extensive legislative powers than the provinces, see Difference between Canadian Provinces and Territories, available at <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=provterr&doc=difference-eng.htm> (last visited on September 4, 2015).

<sup>4</sup> Where Our Legal System Comes From, Department of Justice, available at <http://www.justice.gc.ca/eng/csj-sjc/just/03.html> (last visited on September 4, 2015).

<sup>5</sup> For more details, see Department of Justice, Canada’s Court System, available at <http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/index.html> (last visited on September 4, 2015).



decisions of the provincial/territorial courts and to deal with more serious criminal cases and civil and family law cases, including divorces. The superior appeal courts hear appeals from the superior trial courts. Notwithstanding that the provinces/territories administer the superior courts in their jurisdiction, the federal government appoints judges based on an application and assessment process. Although there are permanent court houses and judicial centers in each province/territory, courts also travel “on circuit” to small or isolated areas.<sup>6</sup> Outside of the courts, certain matters, such as labor relations and employment discrimination, are adjudicated by specialized administrative tribunals which may be subject to judicial review by the courts.

Federal courts hear matters that are under exclusive federal control. The Federal Court may sit anywhere in Canada and conducts hearings across Canada. Decisions of the Federal Court may be appealed to the Federal Court of Appeal which hears cases in 18 cities across Canada. Federal judges are appointed by the Minister of Justice through an application and assessment process.

The Supreme Court of Canada serves as the final court of appeal and answers important questions of national importance. The Supreme Court of Canada sits in Ottawa<sup>7</sup> and consists of a Chief Justice and eight other justices appointed by the federal government.

## The Practice of Law

### Education

There are twenty-three law schools in Canada. Of these, seventeen offer a degree in common law, six offer a degree in civil law, and five offer degrees in both common and civil law. Canada’s law societies have agreed on a national requirement that graduates of Canada’s common law programs must meet in order to enter into a law society admission program. While pro bono is not included as part of these national requirements, some law schools have included such a requirement. For example, Osgoode Hall Law School demands that students complete at least 40 hours of unpaid public interest law related work as a requirement for graduation.<sup>8</sup>

### Licensure

#### **The Role of Solicitors and Barristers**

In Canada, the professions of solicitors and barristers are fused and Canadian lawyers can call themselves barristers or solicitors. Generally, a barrister is a litigator. Their work is associated with the court process, including alternative dispute resolution and administrative tribunals. Solicitors’ work, on the other hand, involves assisting clients with all other legal matters including drafting contracts or wills, handling real estate transactions and incorporating and maintaining companies.

Law societies established at the provincial/territorial level set the standards for admission to the profession and the conduct of its members.<sup>9</sup> The Federation of Law Societies of Canada (the “**Federation**”), which is the national coordinating body for Canada’s 14 provincial and territorial law societies, has undertaken a major initiative on behalf of the law societies to develop national standards for admission to ensure that admission standards are consistent across the country. Generally speaking, admission to a provincial/territorial law society requires an applicant to have

---

<sup>6</sup> For more details, see Department of Justice, How the Courts are Organised, available at <http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/page3.html> (last visited on September 4, 2015).

<sup>7</sup> Teleconferencing facilities to locations across the country are available, see Supreme Court of Canada, The Canadian Judicial System, available at <http://www.scc-csc.gc.ca/court-cour/sys-eng.aspx> (last visited on September 4, 2015).

<sup>8</sup> Osgoode Hall Law School, Osgoode Public Interest Requirement, available at <https://www.osgoode.yorku.ca/programs/jd-program/osgoode-public-interest-requirement/> (last visited on September 4, 2015).

<sup>9</sup> Federation of Law Societies of Canada, Our Members: Canada’s Law Societies, available at <http://flsc.ca/about-us/our-members-canadas-law-societies/> (last visited on September 4, 2015).



attended an approved law school in Canada,<sup>10</sup> passed the relevant provincial/territorial bar admission course and completed a period of articling, which is a training period with a firm. The bar admission course and specific articling requirements vary between provinces/territories.

### **The Role of Foreign Lawyers**

Foreign-qualified lawyers cannot practice law in Canada without being licensed to practice. To obtain a license to practice in a province/territory, foreign-qualified lawyers are required to complete the necessary accreditation licensing process and complete articling.

### **Demographics**

In 2013, there were approximately 117,000 lawyers registered with the law societies of Canada, with the majority of them working as either sole practitioners or in small firms of up to ten lawyers.<sup>11</sup>

### **Legal Regulation of Lawyers**

The function of Canadian law societies is to regulate the legal profession in the public interest of that jurisdiction. The Federation leads the development of high national standards for the legal profession and undertakes initiatives to introduce common standards in, among others, admissions,<sup>12</sup> money laundering,<sup>13</sup> codes of conduct<sup>14</sup> and complaints and discipline across all provinces/territories.<sup>15</sup>

To practice in Canada, each lawyer is required to be a member of a law society and be governed by its rules. Each of the provincial/territorial law societies is established by provincial/territorial law and is principally responsible for regulating the conduct of Canadian lawyers. These provincial/territorial law societies are, in light of guidance from the Federation, responsible for writing the codes of conduct, investigating and adjudicating complaints of misconduct and imposing sanctions on their members. While there is some limited non-lawyer oversight in certain provinces,<sup>16</sup> in general the profession is largely self-regulating.

## **LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES**

### **The Right to Legal Assistance**

While it is acknowledged that access to legal services is fundamentally important in any free and democratic society, it is generally accepted that the Constitution does not provide an automatic right to

---

<sup>10</sup> Attendees to foreign law schools may apply for their education to be approved by the National Committee on Accreditation (or, in the case of Quebec, directly by the Barreau du Québec or the Chambre des notaires du Québec which each have their own evaluation procedures) who will determine what, if any, further coursework or examinations must be completed. For more details, see Federation of Law Societies of Canada, National Committee on Accreditation, available at <http://flsc.ca/national-committee-on-accreditation-nca/> (last visited on September 4, 2015).

<sup>11</sup> 2013 Statistical Report, Federation of Law Societies of Canada, available at <http://docs.flsc.ca/STATS2013ReportFINAL.pdf> (last visited on November 4, 2015).

<sup>12</sup> National Admission Standards, available at <http://flsc.ca/national-initiatives/national-admission-standards/> (last visited on September 4, 2015).

<sup>13</sup> Model Rules to Fight Money Laundering and Terrorist Financing, available at <http://flsc.ca/national-initiatives/model-rules-to-fight-money-laundering-and-terrorist-financing/> (last visited on September 4, 2015).

<sup>14</sup> Model Code of Professional Conduct, available at <http://flsc.ca/national-initiatives/model-code-of-professional-conduct/> (last visited on September 4, 2015).

<sup>15</sup> National Discipline Standards, available at <http://flsc.ca/national-initiatives/national-discipline-standards/> (last visited on September 4, 2015).

<sup>16</sup> The Law Society of British Columbia, for example, is subject to review by an independent Ombudsperson, available at <https://www.bcombudsperson.ca/complaints/what-we-investigate> (last visited on September 4, 2015).



state-funded counsel in all proceedings.<sup>17</sup> Notwithstanding this, Canadian courts have recognised that an individual's right to publically funded counsel exists in certain circumstances, such as ensuring that a criminal accused receives a fair trial<sup>18</sup> and in civil cases involving a government-initiated challenge to child custody.<sup>19</sup>

## State-Subsidized Legal Aid

The administration of legal aid services in Canada falls mainly within the responsibility of the provincial/territorial governments. Contribution funding is provided to the provinces and territories for the delivery of legal aid services to economically disadvantaged persons through the Legal Aid Program. In the absence of national coordination, each province/territory has established its own legal aid plan,<sup>20</sup> utilising different delivery mechanisms, employing varying eligibility criteria and coverage provisions and in some cases requiring client contribution and repayment.<sup>21</sup> For instance, some provinces/territories provide numerous services such as telephone hotlines, community clinics, mediation services, subject-specific services and representation while others provide much more limited services.

The financial eligibility criteria for applicants vary by province/territory and are generally based on income levels, with varying rules regarding the rate of client contributions towards the fees.

Applicants may seek legal aid if their matter is taking place in a different province/territory than where they reside. Generally, if an applicant and their legal matter are eligible for legal aid in their province/territory of residence then a referral will be sent to the legal aid plan in the province/territory where the matter is taking place. The discretionary decision to cover the legal matter is, however, up to the legal aid plan of the province/territory where the matter is taking place.

Legal aid is also limited to certain types of matters. For criminal matters, legal representation is generally provided for indictable offences and for certain summary offences if there is a likelihood of imprisonment or, for some schemes, loss of livelihood, if convicted. For civil matters, most plans provide legal representation for disputes involving child protection/welfare matters, while some also cover matters such as child custody and immigration/refugee issues.

## Mandatory assignments to Legal Aid Matters

Legal aid programs generally compensate lawyers for their time, subject to the particulars of the retainer. Generally, legal aid programs pay hourly rates to lawyers at much lower rates than a lawyer would charge a paying client. Other legal aid programs cap the hours they are willing to pay on a matter, even if the hours spent by the lawyer exceeds the cap.

---

<sup>17</sup> See *Christie v. British Columbia* [2007] 1 S.C.R. 873.

<sup>18</sup> In making this determination, the court must consider various factors, including, the seriousness of the charges, the length and complexity of proceedings, and the accused's ability to participate effectively and defend their case at trial. The accused must also establish that they have exhausted all avenues for receiving legal aid and be unable to retain counsel on their own, see *Attorney General of Quebec v. R.C.* [2003] R.J.Q. 2027 at para 130 and *R v Rushlow* [2009] ONCA 461 at paras 19 and 20.

<sup>19</sup> For a general discussion on the right to publically funded counsel in Canada, see, Erika Heinrich, *Canadian Jurisprudence Regarding the Right to Legal Aid*, Lawyers' Rights Watch Canada (September 2013), available at <http://www.lrwc.org/ws/wp-content/uploads/2013/09/Canadian-Right-to-Legal-Aid-E.Heinrich.pdf> (last visited on September 4, 2015) and Vicki Schmolka, *Making the Case: The Right to Publicly-Funded Legal Representation in Canada*, Canadian Bar Association (Feb. 2002), available at [http://www.cba.org/cba/pdf/2002-02-15\\_case.pdf](http://www.cba.org/cba/pdf/2002-02-15_case.pdf) (last visited on September 4, 2015).

<sup>20</sup> *Provincial and Territorial Legal Aid Plans*, Canadian Bar Association, available at <http://www.cba.org/Cba/advocacy/legalaid/resources.aspx> (last visited on September 4, 2015).

<sup>21</sup> For a general discussion of the provincial legal aid plans, *Legal Aid Eligibility and Coverage in Canada*, Department of Justice Canada (Oct. 2002), available at [http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr03\\_la5-rr03\\_aj5/rr03\\_la5.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr03_la5-rr03_aj5/rr03_la5.pdf) (last visited on September 4, 2015).



Other than in very limited instances where the court may insist on a lawyer being appointed where fairness is at stake in the trial process, lawyers accept legal aid on a voluntary basis. In other words, a lawyer who has no ongoing involvement with the litigant cannot be directed to accept a client and legal aid rates as compensation.

## Unmet Needs and Access Analysis

There are many disparities, inconsistencies and shortcomings of legal aid across Canada. Certain professional bodies, such as the Canadian Bar Association (the “CBA”), have taken an active role in trying to initiate change in the legal aid system, calling for national standards of legal aid coverage and eligibility, increased public funding, a revitalised commitment from the federal government and even (unsuccessfully) attempting to establish a constitutional right to legal aid in British Columbia through the courts.<sup>22</sup> Additionally, in response to some of these concerns, the Department of Justice has established a Deputy Minister Advisory Panel to investigate ways to maximize the federal investment in legal aid through innovations, best practices and efficiencies.<sup>23</sup>

The CBA has identified four facets to the current legal aid crisis: underfunding, disparities in coverage, fragmentation and disproportionate impact. Recent statistics show that the federal government now contributes less than 20% of the costs associated with the legal aid plans.<sup>24</sup> Cuts in criminal legal aid funding, together with other factors, such as the increasing complexity and costs of cases,<sup>25</sup> have hindered the ability of the provincial/territorial legal aid programs to respond to demand.<sup>26</sup> Along with this, the decision to incorporate civil legal aid funding within a general, unallocated transfer of funds to the provinces, has been associated with recent shortcomings of certain legal aid programs.<sup>27</sup>

Additionally, as eligibility levels are generally set lower than the low-income levels measured by Statistics Canada Low Income Cut-Off, many low-income individuals, who may not be able to retain a lawyer, may fail to qualify for legal aid services.<sup>28</sup> Or, alternatively, they may only qualify for legal assistance that covers one part of their legal problem. This denial of legal representation or only partial assistance to low-income individuals may result in self-represented individuals including those who are vulnerable or

---

<sup>22</sup> See, e.g., Legal Aid in Canada, available at <http://www.cba.org/cba/advocacy/legalaid/default.aspx> (last visited on September 4, 2015) and Reaching Equal Justice Report: An Invitation to Envision and Act, The Canadian Bar Association (November 2013) available at [http://www.cba.org/CBA/equaljustice/secure\\_pdf/EqualJusticeFinalReport-eng.pdf](http://www.cba.org/CBA/equaljustice/secure_pdf/EqualJusticeFinalReport-eng.pdf) (last visited on September 4, 2015).

<sup>23</sup> Report of the Deputy Minister Advisory Panel on Criminal Legal Aid, Legal Aid Directorate, Department of Justice (2014), available at [http://www.justice.gc.ca/eng/rp-pr/csj-sjc/esc-cde/rr14/DMAP\\_Report.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/esc-cde/rr14/DMAP_Report.pdf) (last visited on September 4, 2015).

<sup>24</sup> Statistics Canada, Legal aid in Canada, 2013/2014, available at <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14159-eng.htm> (last visited on September 4, 2015).

<sup>25</sup> Legal Aid Program Evaluation Final Report, Office of Strategic Planning and Performance Management, Evaluation Division, Department of Justice (January 2012), available at [http://publications.gc.ca/collections/collection\\_2013/jus/J22-16-2012-eng.pdf](http://publications.gc.ca/collections/collection_2013/jus/J22-16-2012-eng.pdf) (last visited on September 4, 2015).

<sup>26</sup> Maximising the Federal Investment in Criminal Legal Aid, Prairie Research Associates (PRA Inc.) (2014).

<sup>27</sup> See, e.g., Leonard T. Doust, QC, Foundation for Change, Report of the Public Commission on Legal Aid in British Columbia (Mar. 2011), available at [http://www.publiccommission.org/media/pdf/pcla\\_report\\_03\\_08\\_11.pdf](http://www.publiccommission.org/media/pdf/pcla_report_03_08_11.pdf) (last visited on September 4, 2015).

<sup>28</sup> Ibid. See also, Certificate Program for Legal Aid Ontario, available at <http://www.legalaid.on.ca/en/getting/certificateprogram.asp> (last visited on September 4, 2015); the maximum gross income amount to qualify for free legal aid services in Ontario for a family of one is \$12,135, contrasted with a low income cut-off of approximately \$20,000, see Low income cut-offs (1992 base) before tax, Statistics Canada, available at <http://www.statcan.gc.ca/pub/75f0002m/2014003/tbl/tbl02-eng.htm> (last visited on September 4, 2015).



disadvantage, including as to education and literacy.<sup>29</sup> These factors may also discourage some people from applying for legal aid because of how they perceive their request will be evaluated.<sup>30</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

There are a wide variety of volunteer opportunities available to legal professionals across Canada to address the unmet needs of low-income and/or disadvantaged individuals and non-profit organizations,<sup>31</sup> with many lawyers already participating in such pro bono activities.<sup>32</sup>

#### Private Attorneys

Although there is no requirement for Canadian lawyers to provide pro bono legal services, lawyers are encouraged by their regulatory bodies and professional associations to provide pro bono representation to persons who would otherwise be self-represented.<sup>33</sup> The CBA's Pro Bono Committee suggests that all members of the legal profession aim to contribute 50 hours or 3% of billings per year on a pro bono basis.<sup>34</sup> Additionally, the Federation's Model Code of Professional Conduct encourages lawyers to enhance the profession's standard and reputation by providing pro bono legal services.

#### Law Firm Pro Bono Programs

In recent years, various law firms have reviewed their pro bono policies and have committed additional resources to pro bono initiatives in order to provide support and structure to facilitate pro bono work.<sup>35</sup> Some larger law firms also second junior associates or articling students to legal aid offices or other projects. Some law firms, such as McCarthy Tétrault LLP, encourage pro bono initiatives by treating hours spent on pro bono matters as the equivalent of billable hours, up to a threshold, for the purposes of internal measurement and recognition.

---

<sup>29</sup> See, e.g., Melina Buckley, Moving Forward on Legal Aid (Jun. 2010), available at <http://www.cba.org/CBA/Advocacy/PDF/CBA%20Legal%20Aid%20Renewal%20Paper.pdf> (last visited on September 4, 2015).

<sup>30</sup> See Legal Aid in Canada, available at <https://www.cba.org/cba/Advocacy/legalAid/> (last visited on September 4, 2015).

<sup>31</sup> See, e.g., the volunteer opportunities offered by Pro Bono Alberta, available at <http://www.pbla.ca/volunteer/> (last visited on September 4, 2015) and Access Pro Bono (BC), available at <http://accessprobono.ca/information-lawyers> (last visited on September 4, 2015), and Pro Bono in Nova Scotia: Current practice and future opportunities, available at: <https://nsbs.org/sites/default/files/ftp/NovaScotiaProBonoStudy.pdf> (last visited on September 4, 2015), for an illustration of the opportunities available in Nova Scotia (which does not currently benefit from a provincial pro bono organisation).

<sup>32</sup> For example, in Nova Scotia, 77% of lawyers provided some form of pro bono service in 2009, *ibid.* at 6.

<sup>33</sup> Canadian Judicial Council, Statement of Principles on Self-Represented Litigants and Accused Persons, (September 2006), available at [http://www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_other\\_PrinciplesStatement\\_2006\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf) (last visited on September 4, 2015).

<sup>34</sup> Canadian Bar Association, Resolution 98-01-A, Promoting a Pro Bono Culture in the Canadian Legal Profession, available at <http://www.cba.org/CBA/groups/pdf/98-01-A.pdf> (last visited on September 4, 2015).

<sup>35</sup> See, e.g., McCarthy Tétrault, Making a Difference Together, available at [http://www.mccarthy.ca/community\\_and\\_pro\\_bono\\_work.aspx](http://www.mccarthy.ca/community_and_pro_bono_work.aspx) (last visited on September 4, 2015), Borden Ladner Gervais, Pro Bono Services, available at <http://www.blg.com/en/aboutblg/probonoservices> (last visited on September 4, 2015), Blakes, Pro Bono, available at <http://www.blakes.com/English/WhoWeAre/SocialResponsibility/Pages/ProBono.aspx> (last visited on September 4, 2015) and Gowlings, Pro Bono & Community Service, available at <http://www.gowlings.com/Firm/communityService.asp> (last visited on September 4, 2015).



## Legal Department Pro Bono Programs

Legal departments have teamed up with law firms, NGOs and bar associations to receive training and on-going support and provide pro bono services. Provincial bar associations also work to broker pro bono projects with law firms and community organizations. For example, Federal Department of Justice lawyers have provided services advising low-income clients on landlord and tenant matters. Lawyers from the Royal Bank of Canada have teamed up with lawyers from McCarthy Tétrault LLP to represent unaccompanied children who arrive in Canada on immigration matters. In certain jurisdictions, legal department lawyers must work with NGOs (as that term is described below) for insurance coverage purposes in order to provide pro bono legal services.<sup>36</sup> Some legal departments create their own program and then take it to the NGO for approval, such as the Hewlett Packard Enterprise /HP Inc. seminar for middle school students on legal implications of online behaviour, which required the cooperation of the local school board and Pro Bono Law Ontario.

## Non-Governmental Organizations (NGOs)

Several province-wide pro bono organizations have been established (i.e., Pro Bono Law Ontario, Pro Bono Law Alberta, Pro Bono Law Saskatchewan, Pro Bono Quebec and Access Pro Bono - British Columbia)<sup>37</sup> to increase access to justice by creating and facilitating opportunities for lawyers to provide pro bono legal services particularly through referral programs that match the needs of individuals and nonprofit organizations with the expertise and availability of volunteer lawyers. These organizations also provide information and resources on other volunteer opportunities and on issues such as insurance coverage and have played an influential role in increasing awareness of pro bono opportunities and services.

For example, Pro Bono Law Ontario (“**PBLO**”) is a non-profit charity founded in 2001 that connects lawyers with Ontarians who cannot afford legal services and are not eligible for legal aid.<sup>38</sup> In Ontario, PBLO is the legal profession’s only organized volunteer response. PBLO serves over 14,000 clients per year with demand increasing each year. PBLO creates and manages volunteer programs and connects lawyers either directly to clients or to opportunities in partnership with charitable organizations. PBLO also offers pro bono legal services through LawHelp Ontario.<sup>39</sup> These services are provided for both individuals and charitable organizations and include representation, free legal advice by phone and free legal advice at walk-in centers.

Aside from provincial pro bono organizations, there are many NGOs in Canada that provide pro bono legal services. For example, the Volunteer Lawyers Service (“**VLS**”) is sponsored by United Way, the Canadian Bar Association, Alberta Branch, the Law Society of Alberta and the Association of General Counsel of Alberta. VLS matches eligible non-partisan charitable organizations with volunteer lawyers who provide a range of pro bono legal services including incorporation, charitable registration, board governance, contracts or trademark registration.

## Bar Association Pro Bono Programs

The CBA has a dedicated pro bono committee that is mandated to recognize and support the efforts of pro bono lawyers, share information about pro bono across the country, and provides resources to

---

<sup>36</sup> Rules of the Law Society of Alberta, Rule 148 (2.1); Law Society of Upper Canada By-Law 6, Section 9(2); BC Lawyers’ Compulsory Professional Liability Insurance Policy Number LPL 12-01-01(definition of “Sanctioned Services”).

<sup>37</sup> Pro Bono Law Alberta, available at <http://www.pbla.ca/> (last visited on September 4, 2015), Access Pro Bono British Columbia, available at <http://accessprobono.ca/> (last visited on September 4, 2015), Pro Bono Law Ontario, available at <http://www.pblo.org/> (last visited on September 4, 2015), Pro Bono Quebec, available at <http://www.probonoquebec.ca/en/> (last visited on September 4, 2015) and Pro Bono Law Saskatchewan, available at <http://www.pblsask.ca/> (last visited on September 4, 2015).

<sup>38</sup> See <https://www.pblo.org> (last visited on September 4, 2015).

<sup>39</sup> See <https://www.lawhelpontario.org> (last visited on September 4, 2015).



lawyers in private practice, the public sector and the corporate sector. The CBA lists numerous pro bono opportunities on its website.<sup>40</sup>

### University Legal Clinics and Law Students

Canadian law schools have shown a strong commitment to social justice. Many law schools run legal clinics allowing law students to gain experience and exposure in the law while providing services to the public. Furthermore, a significant contribution to pro bono legal services is provided by law students through the Pro Bono Students Canada (“**PBSC**”) initiative, which relies on volunteer lawyers supervising its various projects.<sup>41</sup> PBSC has a chapter in 21 law schools across Canada, with over 1,600 law students volunteering approximately 130,000 hours of free legal services to 400-500 public interest groups, community organizations, courts and tribunals across the country.<sup>42</sup>

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

Lawyers in Canada have long considered the representation of those unable to afford legal representation to be part of their professional responsibility and the provision of pro bono legal services has existed in Canada in various forms for many years.<sup>43</sup> However, early pro bono programs proved to be unsustainable, principally as a result of small numbers of volunteers, overwhelming client demands and underfunding. This inability to adequately meet the legal needs of the poor led to the development of the current legal aid system from the modest pro bono arrangements that prevailed up to the mid-1960s.<sup>44</sup> By the 1990s, the provision of legal services to address the unmet legal needs of the poor had come to be seen more as the responsibility of government than of the legal profession.<sup>45</sup>

### Current State of Pro Bono including Barriers and Other Considerations

More recently, pro bono legal services are increasingly seen as a significant component of access to justice.<sup>46</sup> Over the last 15-20 years there has been a concerted effort in the legal profession to coordinate and encourage active participation in pro bono activities, principally through the establishment and consolidation of the centralised referral organizations described above and as a result of the recent failings of legal aid plans to meet the growing needs of the poor.<sup>47</sup> While legal aid programs are generally only intended for the poorest residents and only provide limited services, pro bono programs typically

<sup>40</sup> See <http://www.cba.org> (last visited on September 4, 2015).

<sup>41</sup> Pro Bono Students Canada, available at <http://www.probonostudents.ca/> (last visited on September 4, 2015).

<sup>42</sup> Pro Bono Students Canada, History, available at <http://www.probonostudents.ca/about-pbsc/history> (last visited on September 4, 2015).

<sup>43</sup> See, e.g., Lorne Sossin, The Public Interest, Professionalism, and the Pro Bono Publico, 46 Osgoode Hall Law Journal 131 (2008), available at <http://ssrn.com/abstract=1205162> (last visited on September 4, 2015) and The Canadian Bar Association, “Tension at the Border”: Pro Bono and Legal Aid, A Consultation Document prepared by the CBA’s Standing Committee on Access to Justice (October 2012), available at [https://www.cba.org/cba/groups/PDF/ProBonoPaper\\_Eng.pdf](https://www.cba.org/cba/groups/PDF/ProBonoPaper_Eng.pdf) (last visited on September 4, 2015).

<sup>44</sup> Ab Currie, Expanding Horizons: Rethinking Access to Justice in Canada, Department of Justice Canada (Feb. 2000), available at [http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/op00\\_2-po00\\_2/op00\\_2.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/op00_2-po00_2/op00_2.pdf) (last visited on September 4, 2015).

<sup>45</sup> Lorne Sossin, The Public Interest, Professionalism, and the Pro Bono Publico, 46 Osgoode Hall Law Journal 131 (2008), available at <http://ssrn.com/abstract=1205162> (last visited on September 4, 2015).

<sup>46</sup> Lorne Sossin, The Public Interest, Professionalism, and the Pro Bono Publico, 46 Osgoode Hall Law Journal 131 (2008), available at <http://ssrn.com/abstract=1205162> (last visited on September 4, 2015) and Ab Currie, Expanding Horizons: Rethinking Access to Justice in Canada, Department of Justice Canada (Feb. 2000), available at [http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/op00\\_2-po00\\_2/op00\\_2.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/op00_2-po00_2/op00_2.pdf) (last visited on September 4, 2015).

<sup>47</sup> Ibid.



serve a greater number of individuals as well as charitable organizations as a result of more lenient financial eligibility criteria, broader areas of coverage and more discretion on accepting cases.

## Laws and Regulations Impacting Pro Bono

### “Loser Pays” Statute

In Canada, judges have a wide discretion in deciding whether to award costs. Recently, courts in certain provinces have permitted lawyers representing clients on a pro bono basis to seek cost awards from the losing party.<sup>48</sup> Allowing lawyers to seek cost awards, promotes access to justice and encourages lawyers to volunteer in deserving cases.

### Concerns About Pro Bono Eroding Public Legal Aid Funding

Legal aid and pro bono in Canada have historically existed in what may be perceived to be tension with one another, with formal legal aid schemes coming into existence primarily as a result of traditional pro bono practices failing to meet growing demands and then failings of legal aid schemes being viewed as a catalyst for the recent rise of pro bono programs.<sup>49</sup> This has led to concerns that, while the pro bono strategy succeeds in increasing access to justice by serving otherwise unmet legal needs in the short-term, it alleviates political pressure on governments to maintain and/or increase legal aid funding, and arguably weakens the legal service delivery system in the long-term.<sup>50</sup>

## Regulations Imposing Practice Limitations on In-House Counsel and Government Lawyers

Additional concerns apply to in-house lawyers who want to provide pro bono services. These include exposure to legal claims, the risk of conflicts of interest, insurance requirements and the availability of opportunities. Recent initiatives of the Canadian Corporate Counsel Association have been aimed at easing these concerns so that in-house lawyers can more easily participate in pro bono. Additionally, some law societies in Canada have adopted professional conduct rules to facilitate in-house counsel providing pro bono services. For example, in Alberta, insurance coverage has been extended to governmental and in-house lawyers when they provide services through a non-profit services provider.

Crown counsel, who previously were restricted from providing pro bono due to issues with insurance coverage and potential conflicts of interest due to the large scope of cases handled by the federal government, have set up a new program that allows Crown counsel to provide pro bono services outside their regular hours at three clinics in Canada on specific areas of law that the government has screened to minimize conflicts.

## Availability of Professional Indemnity Legal Insurance Covering Pro Bono Activities by Attorneys

In order to practice in Canada, lawyers must typically maintain adequate insurance.<sup>51</sup> Although private practice lawyers in Canada are required to maintain insurance in order to provide legal services, some

---

<sup>48</sup> See <http://www.montanaprobono.net/geo/search/item.120537> (last visited on September 4, 2015).

<sup>49</sup> Lorne Sossin, The Public Interest, Professionalism, and the Pro Bono Publico, 46 Osgoode Hall Law Journal 131 (2008), available at <http://ssrn.com/abstract=1205162> (last visited on September 4, 2015).

<sup>50</sup> See, e.g., Jamie Maclaren, Integrating pro bono and legal aid (October 30, 2009), The Lawyers Weekly, available at <http://www.oregonadvocates.org/geo/search/item.286718> (last visited on September 4, 2015) and The Canadian Bar Association, “Tension at the Border”: Pro Bono and Legal Aid, A Consultation Document prepared by the CBA’s Standing Committee on Access to Justice (October 2012), available at [https://www.cba.org/cba/groups/PDF/ProBonoPaper\\_Eng.pdf](https://www.cba.org/cba/groups/PDF/ProBonoPaper_Eng.pdf) (last visited on September 4, 2015).

<sup>51</sup> With the exception of certain interprovincial initiatives regarding mobility of lawyers mentioned previously.



provinces provide an exemption from maintaining insurance for certain groups of lawyers, such as in-house, government/public, non-practicing and retired.<sup>52</sup> Although such exempt lawyers still maintain indemnity insurance, some do not, therefore rendering them unable to provide pro bono legal services.

While some provincial/territorial law societies and insurance providers have made arrangements for such uninsured members to benefit from extended indemnity insurance coverage when providing pro bono services, this is not currently available in all provinces/territories and, where it is available, is generally subject to limitations, such as only extending protection for certain “approved” services and programs.<sup>53</sup> In the provinces of Alberta, British Columbia, Ontario and Saskatchewan, the law societies also provide insurance coverage for a nominal annual fee to retired or non-practicing lawyers with a status of “active for pro bono only.” Given that insurance coverage remains a major barrier to participation in pro bono, the CBA passed a resolution urging all law societies to arrange for an extension of insurance coverage in order to facilitate the participation of all lawyers in pro bono.<sup>54</sup> Please see the websites of the provincial pro bono organizations for more information on insurance.

## Other Barriers to Pro Bono

Even in circumstances where a lawyer provides pro bono services, the disbursements related to a legal matter may prevent the recipient from accessing justice. In order to address this concern, some provincial pro bono organizations have been successful in setting up disbursement funds to assist with the costs incurred in relation to pro bono matters.<sup>55</sup> However, this is a not common practice across Canada.

Although each province/territory benefits from an established organization providing legal education and information to its residents,<sup>56</sup> the absence of a coordinated pro bono referral organizations in every province/territory can make it more difficult and onerous to locate and identify pro bono opportunities and information.

## Pro Bono Resources

### Provincial/Territorial Pro Bono Organizations

- Pro Bono Law Alberta: <http://www.pbla.ca/> (last visited on September 4, 2015)
- Access Pro Bono British Columbia: <http://accessprobono.ca/> (last visited on September 4, 2015)
- Pro Bono Law Ontario: <http://www.pblo.org/> (last visited on September 4, 2015)
- Pro Bono Quebec: <http://www.probonoquebec.ca/en/> (last visited on September 4, 2015)
- Pro Bono Law Saskatchewan: <http://www.pblsask.ca/> (last visited on September 4, 2015)

---

<sup>52</sup> See e.g., the insurance provisions of Alberta, available at <http://www.lawsociety.ab.ca/membership/status/insurance/exemption.aspx> (last visited on September 4, 2015), British Columbia, available at <http://www.lawsociety.bc.ca/page.cfm?cid=203&t=Exemptions and Ontario> (last visited on September 4, 2015), available at [http://www.lawpro.ca/Insurance/Practice\\_Type/Practice\\_Type.asp](http://www.lawpro.ca/Insurance/Practice_Type/Practice_Type.asp) (last visited on September 4, 2015).

<sup>53</sup> See, e.g., the insurance extension provisions for Ontario, available at [http://www.lawpro.ca/insurance/Practice\\_type/Probono\\_exempt.asp](http://www.lawpro.ca/insurance/Practice_type/Probono_exempt.asp) (last visited on September 4, 2015), British Columbia, available at <https://www.lawsociety.bc.ca/page.cfm?cid=209&t=Coverage-for-pro-bono-legal-services> (last visited on September 4, 2015) and Alberta, available at [http://www.lawsociety.ab.ca/advisory\\_2010/advisory\\_volume\\_8\\_issue\\_5\\_dec2010/news/pro\\_bono\\_insurance.aspx](http://www.lawsociety.ab.ca/advisory_2010/advisory_volume_8_issue_5_dec2010/news/pro_bono_insurance.aspx) (last visited on September 4, 2015).

<sup>54</sup> Insurance Coverage for Pro Bono Legal Services, available at <http://www.cba.org/CBA/groups/pdf/07-04-A.pdf> (last visited on September 4, 2015).

<sup>55</sup> See, e.g., Access Pro Bono, Disbursement Coverage, available at <http://accessprobono.ca/disbursement-coverage> (last visited on September 4, 2015) and Pro Bono Quebec, Mandate(s) for Lawyers, available at <http://www.probonoquebec.ca/en/lawyers-and-law-students> (last visited on September 4, 2015).

<sup>56</sup> Supreme Court of Canada, Public Legal Information and Education Sites, available at <http://www.scc-csc.gc.ca/res/unrep-nonrep/plie-opij-eng.aspx> (last visited on September 4, 2015).



- Canadian Bar Association: <http://www.cba.org/CBA/groups/probono/resources.aspx> (last visited on September 4, 2015)
- Pro Bono Students Canada: <http://www.probonostudents.ca/> (last visited on September 4, 2015)
- Calgary Legal Guidance: <http://clg.ab.ca/> (last visited on September 4, 2015)
- Edmonton Centre for Equal Justice: <http://ecej.ca/> (last visited on September 4, 2015)
- Lawyers Without Borders: <http://www.asfquebec.com/en> (last visited on September 4, 2015)
- Canadian Lawyers Abroad: <http://cla-ace.ca/> (last visited on September 4, 2015)
- Pro Bono Canada: <http://probonocanada.org/> (last visited on September 4, 2015)

## CONCLUSION

Canada has a long history of encouraging access to justice through both legal aid programs and pro bono assistance. At present, with funding concerns and policy issues reshaping the legal aid landscape, the Canadian legal profession continues to provide pro bono assistance and, through important contributions by regulatory bodies and professional organizations, there is a growing recognition that pro bono legal services form a significant component of access to justice. The legal profession's increased emphasis on the importance of contributing to pro bono initiatives and the establishment of provincial pro bono organizations have significantly increased the awareness of and access to pro bono opportunities, however the absence of coordinated pro bono organizations in some provinces/territories has resulted in all disparate pro bono opportunities across Canada.

September 2015

Pro Bono Practices and Opportunities in Canada

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Chile<sup>1</sup>

### INTRODUCTION

Chile was among the first Latin American countries to lead the pro bono movement through pro bono foundations, NGOs, and private law firms. Its support and promotion of pro bono has also led to the expansion of pro bono culture beyond its borders within Latin America.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Chilean legal system belongs to the Civil Law tradition. Its current constitution was adopted in 1980 and was amended in 1989 and 2005. In addition, the legal system is also regulated by general regulations such as the Civil Code and the Commerce Code.

In the Chilean justice system, the most important laws and codes are the Civil Procedure Code, the Criminal Procedure Code, the Criminal Code, and the Organic Code of Courts, among other laws and regulations which are not codified.

##### The Courts

The judiciary includes one Supreme Court, one Constitutional Court, 17 Courts of Appeal, Oral Criminal Tribunals and Guarantee Judges, Military Tribunals, 224 Civil Courts, over 300 Local Police Courts and many other Tribunals and courts specialized in family law, labor law, customs, tax law, electoral affairs, etc.

##### The Practice of Law

##### Education

In order to obtain a law degree in Chile, with some specific exceptions, it is mandatory to study under the formal legal education system. There are approximately 27 Universities that have a law faculty in Chile.

##### Licensure

The Supreme Court grants licenses to practice law in Chile, and such a license bestows upon an individual the title of lawyer or “*Abogado*.”

To obtain a license to practice law in Chile it is necessary to have a law degree from a Chilean university and subsequently to successfully complete a postgraduate-professional-practice period of six months in a Legal Assistance Corporation (*Corporación de Asistencia Judicial* or “**CAJ**”)<sup>2</sup>, which is a branch of government overseen by the Ministry of Justice.<sup>3</sup>

The mandatory professional practice period with a CAJ is focused on providing services to low-income individuals. Recent law school graduates work in the areas of labor, family, and civil law under the supervision of practicing attorneys. This will often serve as a young attorney’s second exposure to direct

---

<sup>1</sup> This chapter was drafted with the support of Mr. Sergio Díez and Mrs. María Francisca Salas of the law firm, Cariola Díez Perez-Cotapos & Cia. Ltda in collaboration with Mrs. Carolina Contreras from the Chilean Pro Bono Foundation.

<sup>2</sup> Ley No. 17.995 establishes the Corporación de Asistencia Judicial de la Región Metropolitana de Santiago in Santiago, the Corporación de Asistencia Judicial de la Región de Valparaíso in Valparaíso, and the Corporación de Asistencia Judicial de la Región del Bío-Bío in Concepción.

<sup>3</sup> Ley Orgánica Constitucional 7421, arts. 523, 526.



legal services, as many law schools incorporate clinical work as either a mandatory component of a law degree or a voluntary activity open to all students. See also Section III(A)(1) for further on CAJs.

Only Chilean-qualified attorneys may represent clients in court. Attorneys qualified in other jurisdictions, however, may, and often do, practice law in Chile, generally focus on the transactional matters rather than litigation. Prior to practicing law in Chile, non-Chilean attorneys must comply with applicable registration requirements.<sup>4</sup>

Lawyers are not required to perform pro bono work as part of their education.

### Demographics

During year 2014, a total number of 3.384 lawyers took oath before the Supreme Court (16% more than the previous year).

### Legal Regulation of Lawyers.

The legal profession in Chile is subject to limited regulatory oversight. Neither membership with a local bar association nor postgraduate education is required. Furthermore, disqualification from the practice of law is very rare, and malpractice insurance is not common among Chilean lawyers.

Notwithstanding the foregoing, lawyers affiliated with the Chilean Bar Association must observe the rules and principles established in the Bar's Professional Ethics Code.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

#### Civil Proceedings

Article 19 of the Chilean Constitution<sup>5</sup> guarantees the right to a legal defense and also the right to an attorney; it states that the law will provide the means to secure resources to those defendants who cannot hire an attorney by themselves.

In order to implement this basic constitutional principle, Law Number 17,995, passed in 1981 by the Ministry of Justice, created the CAJs, which provide public, decentralized, and non-profit public services and are responsible for providing free guidance and legal assistance to anyone in need with no financial means to get assistance on their own. The activities of the CAJs is, however, limited to the areas of civil, labor, family and old criminal system matters as well as providing legal assistance to the victims of crime.

There are four CAJs: CAJ Tarapacá, CAJ Valparaíso, CAJ Metropolitana and CAJ Bío Bío. Each CAJ focuses its work in a different region of the country. A Social Work and Legal Assistance for the Family Foundation (*Fundación de Asistencia Social y Legal de la Familia*) also collaborates with the CAJs in providing the services referred to above.

Notwithstanding that most of the CAJ legal services are provided by post graduate law students, their work is always guided and supervised by a staff of internal qualified lawyers who directly work for the CAJ.

#### Criminal Proceedings

Under the current criminal system, the National Prosecution Agency (*Ministerio Público*) is responsible for prosecuting crimes, and the Office of Public Defence (*Defensoría Penal Pública*), a government agency overseen by the Ministry of Justice, is responsible for defending individuals against criminal charges. Criminal cases are decided by an independent tribunal (*Juzgado de Juicio Oral*) in a hearing, and factual

---

<sup>4</sup> Revalidation and recognition of non-Chilean attorneys available at: <http://www.uchile.cl/portal/presentacion/relaciones-internacionales/revalidacion-de-titulos-extranjeros/9884/informativo-sobre-tramites-de-revalidacion> (last visited on September 4, 2015).

<sup>5</sup> Constitución Política De La República De Chile (Const. Chile) art. 19 (3).



findings can be appealed only in exceptional circumstances. An independent judge (*Juez de Garantía*) is responsible for overseeing and protecting the fundamental rights of the accused. Both the Juzgados de Juicio Oral and the Juez de Garantía are subject to Supreme Court oversight.

As discussed above, the Chilean Constitution guarantees all defendants the right to attorney representation.<sup>6</sup> While the Office of Public Defense is responsible for representing all criminal defendants, regardless of financial means, it may require a non-indigent defendant to contribute up to the entire cost of the representation. In practice, over 90% of the defendants are impoverished, and therefore, they are represented free of charge.<sup>7</sup> The Office of Public Defense is viewed favorably by the public and is seen as providing a high-quality defense to defendants who otherwise could not afford such services.

Although Chile's criminal procedure is of a high standard, prison conditions are generally poor; prisons are often overcrowded, antiquated, and subject inmates to substandard living conditions.<sup>8</sup> Although policies are being implemented to improve inmate conditions, prison conditions is an area where there is substantial opportunity for pro bono work.

## State-Subsidized Legal Aid

State-subsidized legal aid is provided to those with lower income. Eligibility is determined based on the per capita income of the defendant's family. Even if the defendant exceeds the maximum per capita income requirement, he may be given legal assistance depending on the circumstances of the case.

## Mandatory Assignments to Legal Aid Matters

### Legal Aid

The following mandatory legal aid services exist in Chile:

#### Legal Practice or Training

In order to obtain a law degree in Chile, and consequently to be able to perform as a lawyer in the country (and in addition to the previously referred requirements for these purposes), once a law student finishes law school, he has to provide free legal services representing the State of Chile for approximately six months in various areas of law.

Moreover, these services are usually provided through the CAJs.

#### “Turno” or Legal Shift

There is also a system referred to as *turno*. In accordance with *turno*, once the law degree is obtained, the lawyer may receive a court order to provide free legal services for a month.

### Pro Bono

Even though it is not mandatory for lawyers to provide pro bono services, it is indeed common practice.

The Chilean Pro Bono Foundation (*Fundación Pro Bono*) coordinates pro bono services. It has improved pro bono work by making it more professional and visible in the legal community. In Chile, attorneys are not financially compensated in connection with State funded legal aid or pro bono services.

### Unmet Needs and Access Analysis

In general terms, partitions (or “*particiones*”) represent a legal unmet need. The government, though its CAJs, does not provide guidance and assistance in connection with these types of matters.

---

<sup>6</sup> See supra footnote 5./ A clarification was made in connection with note 2 and 5. Please clarify.

<sup>7</sup> Sofia Libedinsky, *The Reform Of The Criminal Justice System In Chile: From An Inquisitorial To An Adversarial Oral System – The Public Defender Office Role And Goals* (presented at the Second European Forum on Access to Justice on Feb. 24–26, 2005).

<sup>8</sup> US Dep't OF State, *Human Rights Report, Chile* (2010).



Moreover, even though the Pro Bono Foundation provides assistance in connection with partitions, it does so only when specific criteria are met: the community members must be reachable, the disputed property must have a maximum fiscal value, and the disputed property must be located in the city of Santiago.

Consequently, individuals in these types of cases that cannot meet the aforementioned criteria are sometimes deprived of legal assistance.

### Alternative Dispute Resolution (“ADR”)

#### **Mediation, Arbitration, Etc.**

Free mediation may be possible to individuals that the government determines are without sufficient financial means. However, arbitration in Chile is not free and legal aid is not available for this type of ADR, thus depriving low-income earners access to arbitration as a form of dispute resolution.

#### **Ombudsman**

In 1985, the Chilean Chapter of the Ombudsman or “*defensor del pueblo*” was created. The Chapter is dedicated to studying, promoting, and developing the Ombudsman office in Chile. Despite its existence, the institution has little authority, and in Chile, its role has not been as developed as in other countries.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

##### **Mandated to do Pro Bono?**

Pro bono work is voluntary for private attorneys. Nonetheless, it is a common practice among medium to large law firms.

##### **Mandated to Report Pro Bono?**

Lawyers, law firms, in-house legal departments, and any one affiliated to the Chilean Pro Bono Foundation, is requested to annually report to the Foundation all pro bono hours worked. There is however no formal sanction if such report is not sent.

#### Law Firm Pro Bono Programs

As mentioned above, even though pro bono is not mandatory in Chile, it is very common among medium to large law firms (including, as an example, Cariola Diez Perez-Cotapos one of Chile’s leading law firms with over 95 attorneys).

Usually, law firms provide pro bono assistance by, among other activities, letting their associates and partners review specific pro bono cases, giving talks about legal topics specifically requested by pro bono clients, and preparing legal documentation.

#### Legal Department Pro Bono Programs

It is very common for in-house legal departments to provide pro bono services although the details of that provision will, of course, depend on the internal policies of each specific company. The Chilean Pro Bono Foundation will refer potential pro bono clients to affiliated legal departments.

#### Non-Governmental Organizations

NGOs in Chile provide direct legal services to victimized or indigent groups. Rather than referring cases to private attorneys, these NGOs bring cases on behalf of these pro bono clients directly. For example, Corporación de Promoción y Defensa de los Derechos del Pueblo (CODEPU) is an NGO focusing its efforts on the defense of human rights.<sup>9</sup> CODEPU offers social, legal, and psychiatric assistance to

---

<sup>9</sup> See <http://www.codepu.cl/> (last visited on September 4, 2015).



individuals and groups that are victims of human rights violations, assisting close to 1,000 victims per year. CODEPU also disseminates information relating to human rights and conducts trainings for social organizations and schools.

### Bar Association Pro Bono Programs

There is a cordial, collaborative relationship between the Chilean Pro Bono Foundation and the Chilean Bar Association.

The Chilean Bar Association welcomes and supports pro bono work. The Bar has incorporated in the latest version of its Ethics Code an explanation of the importance of pro bono work to the legal profession. Also, the Bar typically refers some pro bono cases to the Chilean Pro Bono Foundation and vice-versa.

Notwithstanding the abovementioned relationship, the Chilean Bar Association does not interfere with the Foundation's decisions or guidelines and, consequently, the two institutions remain independent.

### University Legal Clinics and Law Students

It has become common practice for law schools to require its students to successfully complete at least one semester of work in their legal free clinics to obtain a law degree.

There are different programs involving universities. One of the most recent is called *desafío pro bono* (the pro bono challenge), where students are invited to propose ideas involving pro bono work. The best ideas are chosen, and the students whose idea or project is chosen win the opportunity to be assisted by a specific law firm affiliated to the Foundation in order to develop their idea.

Also, the Chilean Pro Bono Foundation has partnerships with law schools of many universities (such as Universidad Católica de Chile, Universidad de Chile, Universidad Diego Portales and Universidad Adolfo Ibáñez).

## HISTORIC DEVELOPMENT AND CURRENT STATE OF PRO BONO.

### Historic Development of Pro Bono

Independent pro bono work has been provided for many years and the nonprofit Chilean Pro Bono Foundation (*Fundación Pro Bono*) was founded in 2000, with a mission to help and organize the practice of pro bono work for lawyers and law firms, professionalize it and make it more visible. It was based on the American pro bono model and was later adapted to accommodate the specific needs and circumstances of Chile, based on extensive feedback from leading Chilean law firms.

The Chilean Pro Bono Foundation cites the following as being among the most important obstacles that have arisen in connection with pro bono.

#### Type of Advice

The Pro Bono Foundation started providing assessments only for non-controversial matters, principally corporate matters. However, as the Foundation evolved, cases of domestic violence were also taken, and more recently, criminal matters.

#### Clients Confidence Regarding Pro Bono Service

Initially, it was a challenge to convince pro bono clients that pro bono services constitute quality legal assistance particularly as there is a widespread belief in Chile that free goods and services are not always taken seriously and have a low quality.

Over the years, however, that belief has diminished. One of the causes may be that, when a lawyer decides to get involved in pro bono work, be it through the Foundation or individually, the service is provided voluntarily, often in an area of their particular expertise, and consequently that lawyer makes a genuine effort to provide quality assistance.



## Financial Means and Program Development

The development of pro bono programs depends primarily on available financial means/funding which are usually difficult to obtain.

In the case of the Pro Bono Foundation, part of the solution has been to ask members for an annual fee. The Foundation has also been able to obtain some partnerships or alliances with public notaries and experts in order to obtain reduced fees or no charge in respect of pro bono services.

## Current State of Pro Bono including Barriers and Other Considerations.

There are no significant barriers to providing pro bono legal assistance in Chile. However, as noted above, representation in courts is limited solely to lawyers, whose license to practice is granted by the Supreme Court.

There are no mandatory or minimum fees imposed on legal services. The fee structure of lawyers is not regulated, except for the (nonobligatory) guidance provided by the local bar in the Code of Ethics. Furthermore, articles 44 and 45 of the Code of Ethics (2011)<sup>10</sup> of the Chilean bar association regulate the provisioning of pro bono services. It states that the duty of care of lawyers providing pro bono services is the same as that owed to any other client.

Additionally, it states that the provision of pro bono services cannot be used for any purpose other than providing access to justice and effective legal representation in respect of the rule of law. The Code of Ethics provides that attorneys have an obligation to provide legal defense services to citizens with limited resources.

## Laws and Regulations Impacting Pro Bono

### “Loser Pays” Statute (as applicable)

A “Loser Pays” statute applies in Chile.

Nonetheless, there is a benefit called poverty privilege (*privilegio de pobreza*) stated in the Chilean Civil Procedure Code and the Organic Code of Courts that may be granted by the Judicial Assistance Corporations and/or judges during or before trial, to those with no financial means. Once granted, the beneficiary is exempted from paying some costs or fees associated the procedure, such as court or judicial receiver (*receptor judicial*) costs, some registration costs before the Real Estate Registrar and other court costs (payable by the losing party). This privilege may be requested by a person either assessed by Judicial Assistance Corporations (legal aid) or Pro Bono.

There are no specific rules regarding pro bono activity.

Although Article 13 of the Ethics Code establishes a general prohibition on promotion or solicitation of legal services in certain circumstances, the same Article provides that the promotion or solicitation of legal services in a pro bono context is allowed.

### Practice Restrictions on Foreign-Qualified Lawyers.

There are no restrictions for foreign lawyers that have validated its law degree in accordance with Chilean law. Moreover, a validated foreign lawyer may be able to appear in court, provide legal assessments and serve in situations where a lawyer is required.

Moreover, in connection with the aforementioned validation, Chile is part of some international treaties which are currently in force (with Colombia, Ecuador, España, Perú and Uruguay, among others), in order to facilitate the validation procedure for lawyers of such jurisdictions.

---

<sup>10</sup> See <http://www.colegioabogados.cl> (last visited on September 4, 2015).



### Regulations Imposing Practice Limitations on In-House Counsel.

There are no specific regulations which impose practice limitations on in-house counsels. Nonetheless, limitations may be established by each company, as applicable.

### Availability of Professional Indemnity Legal Insurance Covering pro bono activities by Attorneys

Not applicable.

### Availability of Legal Insurance for Clients (protection for moderate income individuals not eligible for legal aid but unable to afford full-cost legal fees)

Not applicable.

## Pro Bono Resources.

*Fundación Pro Bono* is Chile's leading clearinghouse for pro bono work and focuses on finding and distributing pro bono opportunities to private attorneys, with the goal of improving access to free justice in Chile.<sup>11</sup> It does not provide direct services to clients. Rather, it serves solely as a clearinghouse, referring matters to private firms and individual attorneys and developing new pro bono programs serving nonprofit entities, NGOs and private citizens.

As of early 2008, *Fundación Pro Bono* received approximately 30 requests for pro bono services per week, which it screens and refers to practitioners on a regular basis. Boasting a network of 28 affiliated firms and over 1,000 individual affiliated attorneys, *Fundación Pro Bono* aims to refer over 20,000 hours of pro bono services on an annual basis. According to its 2013 annual report, affiliated attorneys reported a total of 22,396 hours of pro bono services that year.

*Fundación Pro Bono* divides its efforts into a number of programs: family law, government transparency and access to information, arbitration, transactional and tax services to NGOs and micro entrepreneurs, and legal assistance to victims of violent crimes. *Fundación Pro Bono* has entered into a collaboration agreement with the national government pursuant to which private attorneys provide free legal assistance to victims of crime.

In 2013, for example, members represented individuals in 100 criminal cases.<sup>12</sup> Its primary goal is developing the overall pro bono practice and placing pro bono matters with private attorneys. Overall, *Fundación Pro Bono* (through its affiliated lawyers) has served 2,670 individuals in over 312 family and civil cases and has provided assistance to 56 micro entrepreneurs and 208 social organizations.

*Fundación Pro Bono* has been regarded as a model throughout the Latin American legal community and has been recognized for its efforts by the United Nations.

## CONCLUSION

The Chilean bar is a Latin American leader in providing pro bono legal services. In fact, in accordance with the 2013 Annual Report of the Chilean Pro Bono Foundation, in 2013 22,396 hours were dedicated by more than 1,120 attorneys to pro bono work in Chile, which means that many attorneys already perform more than the 20 hours per year.<sup>13</sup> The practice of pro bono is likely to continue to increase and become further institutionalized in the coming years.

September 2015

Pro Bono Practices and Opportunities in Chile

---

<sup>11</sup> See <http://www.probono.cl> (last visited on September 4, 2015).

<sup>12</sup> Fundación Pro bono Annual Report, 2013, available at <http://www.probono.cl/wp-content/uploads/2014/10/memoria-pro-bono-2014.pdf> (last visited on September 4, 2015).

<sup>13</sup> Id.



This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in China<sup>1</sup>

### INTRODUCTION

The People's Republic of China (the “**PRC**” or “**China**”) is a single-party state<sup>2</sup> composed of 22 provinces, four municipalities, five autonomous regions and two special administrative regions.<sup>3</sup> While the Chinese legal system mandates government-sponsored legal aid, the opportunities for pro bono legal assistance are much more limited. This chapter discusses the legal system, the legal aid system, and pro bono opportunities and considerations in China.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

After the practice of law was reduced nearly to non-existence<sup>4</sup> during the Chinese Cultural Revolution<sup>4</sup>, China has revived and rapidly expanded its legal system since 1978.<sup>5</sup>

#### Constitution and Governing Laws

China's law-making body is called the National People's Congress (the “**NPC**”).<sup>6</sup> In 1979, the NPC created a number of organic laws that outlined the status, internal structure, and legislative drafting procedures for the government's many administrative and legislative entities, court system, and prosecutorial functions of the state. The NPC also promulgated the Criminal Law and Criminal Procedure Law governing the PRC.

Soon after the creation and promulgation of these governing laws, China adopted its Constitution on December 4, 1982.<sup>7</sup> The Constitution outlines the structure of the state and the fundamental rights and duties of citizens.<sup>8</sup> The Constitution also provides that the NPC and the NPC's Standing Committee have the power to review whether laws or activities violate the Constitution.<sup>9</sup>

The chief administrative authority of the PRC is the State Council (aka the “**Central People's Government**”). China's State Council, like the U.S. Cabinet, is empowered to enact administrative rules and regulations. This State Council oversees a number of Ministries such as the Ministry of Agriculture,

---

<sup>1</sup> This chapter was drafted with the support of PILnet: THE GLOBAL NETWORK FOR PUBLIC INTEREST LAW.

<sup>2</sup> White Paper on China's Political Party System, available at <http://www.china.org.cn/english/news/231852.htm> (last visited on September 4, 2015).

<sup>3</sup> Map of China Showing Self-Governed Municipalities, Autonomous Regions, Provinces and Special Administrative Regions (S.A.R.) , available at [http://www.nationsonline.org/oneworld/china\\_administrative\\_map.htm](http://www.nationsonline.org/oneworld/china_administrative_map.htm) (last visited on September 4, 2015).

<sup>4</sup> Gerard J. Clark, An Introduction to the Legal Profession in China in the Year 2008, 41 SUFFOLK U. L. REV. 833 (2008).

<sup>5</sup> RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW 14 (2002).

<sup>6</sup> Functions and Powers of the National People's Congress, [http://www.npc.gov.cn/englishnpc/Organization/2007-11/15/content\\_1373013.htm](http://www.npc.gov.cn/englishnpc/Organization/2007-11/15/content_1373013.htm) (last visited on September 4, 2015).

<sup>7</sup> LEGISLATING, THE JUDICIARY, AND LAWYERS IN CHINA IN CHINA LAW DESKBOOK, 55 (2010) , available at <http://www.chinalawdeskbook.com/pdf/CLD%20Ch3.pdf> (last visited on September 4, 2015).

<sup>8</sup> Id.; see also Constitution of the People's Republic of China, available at [https://www.constituteproject.org/constitution/China\\_2004?lang=en](https://www.constituteproject.org/constitution/China_2004?lang=en) (last visited on September 4, 2015).

<sup>9</sup> Id.



Ministry of Commerce, Ministry of Education, and Ministry of Health.<sup>10</sup> The State Council and its ministries may issue regulations that have the power of law, and are also controlling over local and provincial laws and regulations.<sup>11</sup>

## The Courts

The Chinese Court system is divided into four levels. The Supreme People's Court is the highest judicial organ in China, and is specifically authorized by the Constitution.<sup>12</sup> Beneath the Supreme People's Court is the Higher People's court at the provincial level, followed by the Intermediate Level and Basic Level People's Courts at the more local level.<sup>13</sup>

China's legal system is unlike that of many common law jurisdictions in that there is no formal system of precedent.<sup>14</sup> The Supreme People's Court supervises the administration of justice and issues directives for the purpose of guiding lower courts. However, it does not have the power to interpret the law. Though in practice courts do often look to parallel and higher courts' rulings on certain issues, technically there is no obligation for any court to listen to or follow the decision of another. Rather, the authority to interpret law is vested with bodies such as the aforementioned government ministries, supervised by the State Council.<sup>15</sup>

## The Practice of Law

### Education

Since the revival of China's legal system, a number of institutions have been developed that offer legal training to students, including law students under the direction of the Ministry of Justice (the "MOJ") and major Chinese national and provincial universities.<sup>16</sup> Formal legal education began in 1979 with approximately 2,000 law students being enrolled in two law schools that year.<sup>17</sup> Today, China has over 600 law departments, with over 360,000 students taking either undergraduate, professional, or independent study courses in law.<sup>18</sup>

Presently, there are no pro bono-specific rules or requirements for graduating from law university or to become a lawyer. Though the government mandates the provision of legal aid, to date it has not yet required pro bono work as part of China's legal curriculum.

### Licensure

The Ministry of Justice (the "MOJ") is responsible for administering qualifying exams, licensing, and disciplining attorneys for misconduct.<sup>19</sup> To become a lawyer in China, a candidate must obtain a

---

<sup>10</sup> CHINA LAW DESKBOOK, supra n. 7, at 59, 61.

<sup>11</sup> Id. at 61.

<sup>12</sup> Id. at 69.

<sup>13</sup> Clark, supra note 4, at 835.

<sup>14</sup> CHINA LAW DESKBOOK, supra n. 7, at 69.

<sup>15</sup> Id.

<sup>16</sup> Id. at 72.

<sup>17</sup> Id.

<sup>18</sup> China's Journey Toward the Rule of Law: Legal Reform, 1978-2008; Cai Dingjian, p. 265, copyright 2010 by Koninklijke Brill NV, Leiden, The Netherlands and by Social Sciences Academic Press, Beijing, China.

<sup>19</sup> CHINA LAW DESKBOOK, supra n. 7, at 74.



recognized degree (bachelor's, master's, or doctoral), pass the National Judicial Exam, and complete a one-year apprenticeship.<sup>20</sup>

Non-citizen lawyers are not allowed to sit for the Chinese Bar exam. However, foreign non-citizen lawyers can work for an American firm's Chinese office. Such firms, however, cannot practice or interpret Chinese law, but may perform legal services that do not involve Chinese law. To practice in China, foreign lawyers must have first practiced in another jurisdiction for two years.<sup>21</sup>

## Demographics

### Lawyers

The number of Chinese lawyers has continued to expand alongside the growth of China's legal system. In 2013, of an estimated total population of about 1.36 billion people<sup>22</sup>, there were over 248,623 lawyers<sup>23</sup> and 20,609 law firms.<sup>24</sup>

### Legal Aid

In the 1980s and 90s, China lacked any comprehensive nationwide legal aid system.<sup>25</sup> In 1996, the MOJ issued a notice requiring the establishment of legal aid centers in response to a growing concern that the disadvantaged were unable to afford legal services, particularly in view of increasing legal fees accompanying economic development in China.<sup>26</sup> By 2003, China boasted 2,642 legal aid centers with about 9,000 total staff (both lawyers and non-lawyers) nationwide. By 2011, there were over 3,200 government legal aid centers with more than 14,000 staff.<sup>27</sup> Despite this growth, however, China has continued to struggle to provide sufficient legal aid to satisfy the total demand.<sup>28</sup>

### Legal Regulation of Lawyers

In China, the MOJ is tasked with supervising lawyers, law firms, and lawyers' associations. It is also responsible for administering qualifying exams and licensing and disciplining attorneys for misconduct.<sup>29</sup> Lawyers' conduct is governed by the National Lawyer's Law, which gives standards for the legal profession, provides rules on malpractice, specifies prohibited activities for lawyers and firms, and sets tax laws and regulations for legal institutions.<sup>30</sup>

---

<sup>20</sup> Legal Work in China, available at <http://www.top-law-schools.com/legal-work-in-china.html> (last visited on September 4, 2015).

<sup>21</sup> Id.

<sup>22</sup> China: Total Population from 2010 to 2020, available at <http://www.statista.com/statistics/263765/total-population-of-china> (last visited on September 4, 2015).

<sup>23</sup> Number of Lawyers in China between 2005 and 2013, available at <http://www.statista.com/statistics/224787/number-of-lawyers-in-china> (last visited on September 4, 2015).

<sup>24</sup> Number of Law Firms in China between 2005 and 2013, available at <http://www.statista.com/statistics/224791/number-of-law-firms-in-china> (last visited on September 4, 2015).

<sup>25</sup> Legal Aid, Congressional-Executive Commission on China, available at <http://www.cecc.gov/legal-aid> (last visited on September 4, 2015).

<sup>26</sup> See Jia, Mark, "Legal Aid and the Rule of Law in the People's Republic of China," Maryland Series in Contemporary Asian Studies: Vol. 2011: No. 1, Article 1 (available at <http://digitalcommons.law.umaryland.edu/mscas/vol2011/iss1/1>) (last visited on September 4, 2015).

<sup>27</sup> See Sun, Jianying, "Legal aid ensures equal treatment under law." China Daily, December 12, 2012.

<sup>28</sup> Some studies conclude that current legal aid capacity is only meeting about 30% of total demand. Sun Shunan, "Effectively Doing Legal Aid Work Well, Allowing Disadvantaged Groups to Experience Rule of Law's Sunlight," qie shi zuo hao fa lu yuan zhu gong zuo, rang kun nan qun zhong gan shou fa zhi yang guang (2008), Hainan Justice Bureau, available at <http://justice.hainan.gov.cn/gov/tshifa/flyz/flyz004.htm> (last visited on September 4, 2015).

<sup>29</sup> CHINA LAW DESKBOOK, supra n. 7, at 74.

<sup>30</sup> Id.



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The legal aid system is one of the very few major channels through which Chinese legal professionals contribute their support to the underprivileged in Chinese society. This system is expressly provided in PRC law and driven by the Chinese government at different levels and throughout different regions. Undertaking legal aid assignments is a mandatory requirement or duty for PRC lawyers.

Despite this requirement, China is still far from forming/cultivating a culture or atmosphere of providing pro bono legal work by legal professionals without the strong administrative support or stimulation from the government. The Chinese government has not yet put in place efficient laws and regulations protecting and giving credit to the lawyers and firms which are active in undertaking legal aid or pro bono legal work. Furthermore, due to Chinese culture and history, Chinese people do not rely much on law and lawyers for the purpose of protecting their rights in China compared to western countries. Similarly, legal aid and pro bono are still new and remote concepts to ordinary people in daily life.

The National Lawyers' Law, governing both civil and criminal matters, provides that "[a] citizen who needs the assistance of lawyers . . . but cannot afford lawyers' fees, may obtain legal aid in accordance with State regulations."<sup>31</sup> The Regulations on Legal Aid sets up the framework and general principles of the PRC legal aid system.<sup>32</sup>

Article 34 of the revised Criminal Procedure Law of the PRC provides for the right to legal assistance in criminal cases, stating that "For public-prosecuted cases, the court can designate a lawyer who provides legal assistance to defend the accused if the accused fails to appoint a defense attorney for economic or other reasons. If the accused fails to appoint a defender because they are blind, deaf, mute or a minor, the court should designate a lawyer who provides legal aid to defend the accused. If the accused receives a death penalty, but fails to appoint a defense attorney, the court should designate a lawyer who provides legal aid to defend the accused."<sup>33</sup>

### State-Subsidized Legal Aid

China's state-subsidized legal aid program is substantial and detailed. Under the Regulations on Legal Aid, the PRC legal aid system has four levels.<sup>34</sup> At the national level, the Legal Aid Center (the "LAC") was created to supervise and coordinate legal assistance across the country.<sup>35</sup> At the provincial level, legal aid centers have been established to supervise and coordinate legal aid work in their respective jurisdictions.<sup>36</sup> The next level is prefectures and cities where legal aid centers are charged with both administering and implementing legal aid programs in their areas.<sup>37</sup> At the county level, legal aid centers

---

<sup>31</sup> Law of the People's Republic of China on Lawyers, art. 41, available at <http://en.chinacourt.org/public/detail.php?id=100> (last visited on September 4, 2015).

<sup>32</sup> China: The National Report, 2, available at <http://www.internationallegalaidgroup.org/images/edinburgh2015/nationalpapers/china2015.pdf> (last visited on September 4, 2015).

<sup>33</sup> Legal Assistance, available at <http://www.china.org.cn/english/Judiciary/31005.htm> (last visited on September 4, 2015).

<sup>34</sup> China's Judiciary — Legal Assistance, available at <http://www.china.org.cn/english/Judiciary/31005.htm> (last visited on September 4, 2015).

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Id.



are responsible for accepting and examining legal aid applications and arranging for the provision of legal aid services to eligible applicants.<sup>38</sup>

### Eligibility Criteria

The PRC legal aid system covers a wide range of legal matters. According to the Notice Regarding Development of Legal Aid Work issued by the MOJ in 1997, the scope of legal aid includes: (1) criminal cases; (2) claims for elderly support, child support, and orphan support; (3) compensation for work accidents except liability accidents; (4) claims by minors, the elderly, the blind, the deaf, the mute and the disabled for compensation for infringed rights; (5) claims for compensation from the government; (6) claims for disability pensions; and (7) other legal matters that “truly require legal aid.”<sup>39</sup> Moreover, local governments may opt to provide additional legal aid coverage. The majority of the provinces have included legal aid coverage for traffic accidents, medical negligence, domestic violence, and other matters.<sup>40</sup>

To be eligible for legal aid in China, an applicant must fall into one of the following five categories: (1) PRC citizens who are under financial hardship<sup>41</sup> and have demonstrated that assistance is necessary to safeguard one’s legal rights and interests; (2) blind, deaf, mute, or underage criminal defendants or suspects without legal representation; (3) other disabled or elderly criminal defendants or suspects unable to obtain legal representation because of financial hardship; (4) criminal defendants without legal representation and likely to be sentenced to the death penalty; and (5) non-PRC criminal defendants with court-appointed legal representation.<sup>42</sup> Upon approval, applicants may obtain legal services free of charge. Even if ineligible for legal aid, an applicant may nonetheless have access to free legal advice through a legal aid hotline.<sup>43</sup>

### Mandatory Assignments to Legal Aid Matters

The PRC legal aid system relies on both professional and financial support in order to meet the demand for legal services.<sup>44</sup> Although legal aid centers have their own staff attorneys, much of the caseload is handled by outside lawyers who work on a subsidy basis.<sup>45</sup> Under the National Lawyers’ Law, PRC lawyers “must undertake the duty of legal aid in accordance with State regulations.”<sup>46</sup> All Chinese lawyers are expected to provide legal aid to indigent clients when called on by the local government.<sup>47</sup>

<sup>38</sup> China: The National Report, supra n.32, at 3.

<sup>39</sup> MINISTRY OF JUSTICE, Notice Regarding Development of Legal Aid Work (May 10, 1997), included in Allen C. Choate, Legal Aid in China in 12 THE ASIA FOUNDATION WORKING PAPER SERIES, 31-36 (Apr. 2000), available at <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan017813.pdf> (last visited on September 4, 2015).

<sup>40</sup> Legal Aid in China, available at [http://www.legalinfo.gov.cn/english/Legal-Aid/content/2010-01/25/content\\_2035688.htm?node=7619](http://www.legalinfo.gov.cn/english/Legal-Aid/content/2010-01/25/content_2035688.htm?node=7619) (last visited on September 4, 2015).

<sup>41</sup> Notice Regarding Development of Legal Aid Work, supra n.39. Because economic development is uneven across China, there is no unified standard for “financial hardship” in China. Under the Regulations on Legal Aid, local governments are empowered to formulate their own financial standards. See REGULATIONS ON LEGAL AID, art. 13, available at <http://www.cecc.gov/pages/selectLaws/ResidencySocWelfare/regsLegalAid.php> (last visited on September 4, 2015).

<sup>42</sup> Legal Aid in China, supra n.40.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id. As of July 2015, lawyers received an average of RMB 1,500 for a civil case and RMB 1,200 for a criminal case assigned to them. See Free Legal Aid Program Sees Expansion, available at <http://chinawatch.washingtonpost.com/2015/07/free-legal-aid-program-sees-expansion> (last visited on September 4, 2015).

<sup>46</sup> Law on Lawyers, supra n.31, art. 42.

<sup>47</sup> See Jia, Mark, supra n. 26, at 13-16.



Once a case is assigned to a lawyer, the lawyer may not decline to accept the case.<sup>48</sup> Lawyers that refuse to accept legal aid work are subject to warnings, suspensions of business, and possible loss of the license to practice.<sup>49</sup> Besides lawyers, other legal professionals, such as notary clerks and paralegals, also provide legal services through legal counseling, document drafting, and other nonprocedural assistance.<sup>50</sup> Adequate funding is also crucial to the operation of the PRC legal aid system in order to subsidize the assigned private lawyers who render services.<sup>51</sup> The major source of funding is the PRC government's allocation, and legal aid expenses are included in the government's budget every year.<sup>52</sup> Private donations are another source of financial support for legal aid in China.<sup>53</sup>

## Unmet Needs and Access Analysis

The Chinese legal aid system has grown at a rapid pace. In 2011, more than 3,200 government legal aid centers with more than 14,000 staff were processing 844,000 cases, and more than 50,000 community stations had been set up to accept legal aid applications.<sup>54</sup> In 2012, these agencies handled more than one million cases and accepted consultations from about 5.76 million people.<sup>55</sup>

However, the Chinese legal aid system is not without its shortcomings. For one, the quality of legal assistance provided via the PRC legal aid system is often not very high. One reason for this is that, unsurprisingly, many Chinese lawyers lack motivation and diligence in performing legal aid because they are doing it solely to comply with China's mandatory requirements.<sup>56</sup> Law firms often send their least experienced lawyers to work on those cases and fulfill the firms' legal aid requirements.<sup>57</sup>

The quality of legal aid may also suffer because the government does not have sufficient financial support to provide to legal aid centers. Because the majority of legal aid is administered by local governments, those needing legal aid may encounter dramatically different qualities of assistance depending largely on where they live.<sup>58</sup>

Finally, many in China still lack access to legal aid altogether. The Chinese government's standards have restricted legal aid to the poorest of the poor, such that many of the impoverished people in China often do not qualify.<sup>59</sup> In about 90% of cases, litigants in China still do not have a lawyer representative, and it is estimated that about 800 million (out of the total population of 1.35 billion) cannot afford lawyers' fees.<sup>60</sup> Accordingly, there is still a significant need for access to legal services for many in China.

---

<sup>48</sup> See Choate, *supra* n.39, at 9.

<sup>49</sup> See Jia, Mark, *supra* n. 26, at 13-16.

<sup>50</sup> Legal Aid in China, *supra* n.40; Notice Regarding Development of Legal Aid Work, *supra* n.39.

<sup>51</sup> *Id.*

<sup>52</sup> Legal Aid in China, *supra* n.40.

<sup>53</sup> *Id.*

<sup>54</sup> Sun, Jianying, "Legal aid ensures equal treatment under law." *China Daily*, December 12, 2012; see Choate, *supra* n.39, at 33.

<sup>55</sup> "Justice Minister urges legal aid for poor." *China Daily*, September 26, 2013.

<sup>56</sup> Phan, Pamela N., "Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice," *Yale Human Rights and Development Journal*, Volume 8, Issue 1 (2005), P. 146.

<sup>57</sup> Regan, Francis, "How and Why Is Pro Bono Flourishing: A Comparison of Recent Developments in Sweden and China" in C. Arup & Laster, eds. *For the Public Good: Pro Bono and the Legal Profession in Australia*, Sydney: Federation: Special Edition of 'Law in Context', Vol. 19 (2001), P.156.

<sup>58</sup> Legal Aid in China, *supra* n.40.

<sup>59</sup> See "A Research Report on the Legal Aid Services in Shenzhen," Longan (Shenzhen) Law Firm (January 2014).

<sup>60</sup> International Bridges for Justice, "IBJ: Establishing an International Support Network for China's Criminal Defenders," International Bridges for Justice Handout at Committee.



## PRO BONO ASSISTANCE

Though still new in China both as a theory and a practice, pro bono assistance can help address the needs left by the Chinese legal aid system.

### Pro Bono Opportunities

The concept of pro bono is relatively new to the Chinese legal community. There is no requirement, either formal or informal, for individual attorneys to engage in pro bono work. Aside from the government-run legal aid programs previously described, there are a small number of independent organizations that provide pro bono legal services in China.<sup>61</sup>

#### University Legal Clinics

Among the few pro bono entities in China are legal clinics in universities.<sup>62</sup> For example, the Beijing University Legal Aid Society was founded to provide legal services in the community.<sup>63</sup> Since its inception, it has organized a number of events that primarily focus on consumer protection and employee protection.<sup>64</sup> University legal clinics allow for both law students and qualified lawyers to have an opportunity to engage in pro bono work in the local community.

#### Non-Governmental Organizations, including Clearinghouses

Clearinghouses act as matchmakers between lawyers and NGOs or individual clients. Such organizations screen and organize pro bono work, connecting those in need with those who may best be able to offer assistance. An example is The Global Network for Public Interest Law (“PILnet”).<sup>65</sup> Through its Beijing office, PILnet has developed a clearinghouse that matches pro bono opportunities with law firms.<sup>66</sup> In 2009, over 1200 hours of legal services were rendered in China through PILnet; by 2014, this number had jumped to over 8000 hours.<sup>67</sup> PILnet’s continued success provides a good indication of the potential growth in pro bono work in the future.<sup>68</sup> In addition to PILnet, there are a number of other organizations promoting legal aid and, increasingly, pro bono opportunities.<sup>69</sup>

---

<sup>61</sup> Benjamin L. Liebman, Legal Aid and Public Interest Law in China, 34 TEX. INT’L L. J. 211, 269 (1999).

<sup>62</sup> The Center for the Protection of the Rights of Disadvantaged Citizens at Wuhan University Law School, available at <http://www.cprdc.org/web> (last visited on September 4, 2015), Constitutional and Civil Rights Center at Qinghua University Law School; Legal Aid Society of the Beijing University, available at <http://en.law.pku.edu.cn/sf/sq/7799.htm> (last visited on September 4, 2015) are among the most established law school clinics in China. See, e.g., Skeletal Legal Aid Requires Flesh and Muscle, China Development Brief, available at <http://ccj.sagepub.com/content/26/1/36.abstract> (last visited on September 4, 2015).

<sup>63</sup> Goal of the Beijing University Legal Aid Society, <http://en.law.pku.edu.cn/sf/sq/7799.htm> (last visited on September 4, 2015).

<sup>64</sup> Summary of Beijing University’s Consumer Protection and Legal Support Working Station on March 15, available at <http://laa.lawpku.org/xhlc/315gzzj.htm> (last visited on September 4, 2015); see also Discussion on Protection of Employee Interests of Female Workers, <http://laa.lawpku.org/xhlc/qhsh.htm> (last visited on September 4, 2015).

<sup>65</sup> See generally PILnet: THE GLOBAL NETWORK FOR PUBLIC INTEREST LAW, available at <http://www.pilnet.org/> (last visited on September 4, 2015).

<sup>66</sup> Public Interest Law Initiative – 2010 Pro Bono Report, available at [http://www.pilnet.org/component/docman/doc\\_download/2-2010-pilnet-pro-bono-report.html](http://www.pilnet.org/component/docman/doc_download/2-2010-pilnet-pro-bono-report.html) (last visited on September 4, 2015).

<sup>67</sup> Id. 2014 statistics were obtained through direct interviews with PILnet managers.

<sup>68</sup> Id.

<sup>69</sup> For example, “Justice for All” is a Chinese organization that engages in legal aid, training, and research “to promote social equality of women, the disabled, those with AIDS, and other groups in need.” See



That said, although the Chinese government has slowly permitted some NGOs, including international NGOs such as Greenpeace and the Red Cross, to open branches,<sup>70</sup> stringent regulations continue to limit the ability to open new NGO's or engage in certain activities.

## Law Firm Pro Bono Programs

### Foreign Law Firms

Many U.S. or European law firms have pro bono programs for their lawyers to engage in pro bono representation of underrepresented clients. In theory therefore, lawyers seeking to do pro bono work could do so by going through an international law firm's pro bono department.

However, *foreign* lawyers seeking to do pro bono work in China will run into a number of challenges. Most significantly, in China, only PRC-qualified lawyers may appear in court and advise on questions of PRC law.<sup>71</sup> Foreign lawyers cannot qualify to practice PRC law, and foreign law firms are not allowed to form joint ventures with PRC lawyers.<sup>72</sup> Under this system, it is difficult for foreign lawyers and foreign law firms in China to engage in pro bono services that involve any legal matters related to PRC law. Additionally, China offices of international law firms may not have the same policies as their counterparts in the U.S. or Europe, where pro bono hours are counted among each lawyer's billable hours.

### Local Chinese Law Firms

Chinese law firms do not officially recognize or encourage pro bono legal work. Lawyers in China face tremendous economic stress and experience a strong feeling of financial and social insecurity.<sup>73</sup> Consequently, pro bono legal work is not valued very highly in traditional Chinese law firms, and such work does not contribute to meeting lawyers' billable quotas.<sup>74</sup> Without any support from the firms themselves, individual lawyers who choose to engage in pro bono work must do so on their own time. Because of the strong profit incentive driving the majority of Chinese law firms, engaging in pro bono work has not yet become a significant part of the practice of Chinese lawyers.<sup>75</sup>

## In-House Counsel

Chinese in-house lawyers have tended to volunteer through corporate social responsibility (CSR) activities as opposed to pro bono legal services. For example, in 2007, General Electric in China adopted an unusually progressive company-wide Hepatitis B vaccination program, which involved education, non-discrimination training, and treatment.<sup>76</sup> As CSR programs become more established, in-house lawyers may consider offering opportunities to integrate pro bono legal services into their existing CSR activities.

---

<http://chinadevelopmentbrief.cn/directory/justice-for-all/> (last visited on 4 September 2015). Other examples include the Beijing Zhicheng Migrant Workers' Legal Aid and Research Center (available at <http://zhichenglaw.weebly.com/beijing-zhicheng-migrant-workers-legal-aid-and-research-center-mwlarc.html> (last visited on 4 September 2015)), the Equity & Justice Initiative of Shenzhen (available at <http://chinadevelopmentbrief.cn/directory/equity-justice-initiative/> (last visited on 4 September 2015)).

<sup>70</sup> See Greenpeace East Asia — Contact Us, available at <http://www.greenpeace.org/eastasia/about/contact/> (last visited on 4 September 2015); Red Cross Society of China, available at <http://www.china.org.cn/english/MATERIAL/132108.htm> (last visited on 4 September 2015). See generally, Deyong Yin, China's Attitude Toward Foreign NGOs, 8 WASH. U. GLOBAL STUD. L. REV. 521 (2009).

<sup>71</sup> CHINA BUSINESS LAW HANDBOOK, USA International Business Publication 68 (2007).

<sup>72</sup> THE LAW SOCIETY OF ENGLAND AND WALES, How to Practice in China, available at <http://communities.lawsociety.org.uk/international/regions/north-asia-and-the-pacific/china/how-to-practise-in-china/5045529.article> (last visited on September 4, 2015).

<sup>73</sup> See generally PILnet, *supra* note 58.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Maloy, Stephen A., "How to Reduce Hepatitis B in the Workplace," China Business Review, July-August 2009, p. 44-47, also available at <http://www.chinabusinessreview.com/how-to-reduce-hepatitis-b-in-the-workplace/> (last visited on 30 October 2015).



In addition, in-house lawyers can play a pro-active role to encourage pro bono through their decisions on corporate policies and in law firm selection.

## Current State of Pro Bono

As China's legal system is relatively new, so too is its focus and emphasis on pro bono. Historically, China has not had any sort of pro bono system, and those attempting to do pro bono work may encounter a number of difficulties along the way.

### Barriers

#### Lack of Understanding

Perhaps the best indicator of the infant status of pro bono in China is the fact that only recently have there even been efforts to give a name to the concept.<sup>77</sup> While there is an increasing recognition within the legal community of the importance of serving those who cannot afford to pay for lawyers, the Chinese language has not had a phrase to describe the provision of voluntary, free legal services. For the time being, Chinese lawyers have settled on the terms *lǚ shì* or *lǚ suǒ shē huì zé ren*—which means “lawyers’ or law firms’ social responsibility.”<sup>78</sup> As this term becomes more well-known, hopefully China will see a corresponding growth in lawyers willingly providing free legal services to those in need.

#### Lack of Funding

Though the Chinese government does fund legal aid, it does not currently provide financial support for pro bono initiatives. Currently, the majority of funding comes from law firms, lawyers, and charities.<sup>79</sup> However, as the number of lawyers willing to provide their services on a pro bono basis grows, the Chinese government may consider providing financial support.<sup>80</sup>

#### Challenges Regarding the Rule of Law

Though China has made significant strides in the development of its legal system, concerns remain about how seriously it intends to enforce the rule of law.<sup>81</sup> Traditionally, the “rule of law” is the principle providing that decisions should be made by application of known principles or laws, without the intervention of discretion in their application.<sup>82</sup> China's legal system unfortunately has a legacy of political intermeddling and use of personal connections (*guanxi*) to circumvent the law or gain leniency.<sup>83</sup> Though the government has made attempts at reform, confidence in the legal system will remain limited until more progress is made concerning the adoption and recognition of the rule of law.<sup>84</sup>

### Resources

Lawyers looking for opportunities to do pro bono work in China should turn first to clearinghouses such as PILnet,<sup>85</sup> or to other organizations that promote both legal aid and increasingly, pro bono.<sup>86</sup> Despite

---

<sup>77</sup> “Finding the Words for Pro Bono in China,” PILnet: THE GLOBAL NETWORK FOR PUBLIC INTEREST LAW, available at <http://www.pilnet.org/public-interest-law-news/blogs/30000-feet/154-translating-pro-bono> (last visited on September 4, 2015).

<sup>78</sup> Id.

<sup>79</sup> Caspani, Maria, “Q&A: Opening the door to pro bono work in China,” Thomson Reuters Foundation, available at <http://www.trust.org/item/20121024090000-g8yo0/?source=search> (last visited on September 4, 2015).

<sup>80</sup> Id.

<sup>81</sup> CHINA LAW DESKBOOK, *supra* n. 7, at 77.

<sup>82</sup> Black's Law Dictionary 1196 (5th Ed. 1979).

<sup>83</sup> CHINA LAW DESKBOOK, *supra* n. 7, at 77-78.

<sup>84</sup> CHINA LAW DESKBOOK, *supra* n. 7, at 79.

<sup>85</sup> <http://www.pilnet.org> (last visited on 4 September 2015).

<sup>86</sup> See “ii. Non-Governmental Organizations, including Clearinghouses” above



restrictions regarding the practice and interpretation of Chinese law, foreign lawyers and law firms can still advise NGOs or non-profit organizations on legal issues they might face in areas with international dimensions. Opportunities for pro bono legal work, though not abundant, are available for both Chinese and foreign lawyers seeking to offer legal assistance.

Although pro bono resources and opportunities remain limited in China, they have developed steadily over the past few years. More Chinese lawyers are willing to contribute and are taking a leading role in forming NGOs with the support from the local governmental authorities. Due to the PRC law restrictions, some NGOs (such as Shanghai Fu'en Legal Center for NGOs registered in Shanghai) are structured similar to the PILnet clearing house, connecting local law firms with the underprivileged and/or others who are in need of pro bono legal services.

## CONCLUSION

China is still developing its understanding and valuation of pro bono legal services. However, the opportunities to do pro bono work have continued to increase, and a number of organizations have already been established either to provide, or to facilitate the provision of, legal assistance services in China. As the Chinese legal landscape continues to change, lawyers may continue to have more opportunities to render pro bono services to those in need.

September 2015

Pro Bono Practices and Opportunities in China

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Colombia<sup>1</sup>

### INTRODUCTION

The pro bono movement in Colombia has gained significant momentum over the last few years. Though, historically, the Colombian legal establishment has not shown significant commitment to providing pro bono services, this is now changing considerably. This change in attitude has developed mainly as a result of both the concerted efforts of a younger generation of attorneys as well as an increased emphasis on, and visibility of, pro bono work throughout Latin America. Today, many leading law firms in Colombia engage in systematic pro bono activities. This commitment has encouraged a nascent culture of pro bono work that is expected only to increase in the coming years. This section provides a brief overview of the Colombian legal system, reviews different avenues of free legal aid available to indigent persons and introduces a number of organizations currently providing pro bono services in Colombia.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The current Colombian Constitution was enacted in 1991 (the “**Constitution**”), replacing the Constitution of 1886. The Constitution establishes Colombia as a unitary republic with a national government composed of legislative, judicial and executive branches. It also establishes democracy as the main political system, encouraging the active participation of citizens in the public decision-making process and including how public institutions are controlled.

The Constitution is the highest form of law in Colombia and it includes a number of rights for indigent and underprivileged citizens to access the justice system. The 1991 Constitution institutionalized the action of guardianship (*Acción de Tutela*), an efficient mechanism for the rapid and effective protection of fundamental rights of citizens that are being seriously threatened by an act of the State or by an individual. This is the basis from which the pro bono culture has evolved with regard to lawyers and large law firms. As a result, actions before the Constitutional Court have become an important way to safeguard the legal, social and human rights of the Colombian population.

There are various direct and indirect methods for disputing the constitutionality of the laws including (i) by way of a public action brought to question the validity of certain acts (such as acts amending the Constitution and decree laws) or to contest an administrative act and (ii) a claim brought by an individual to protect that person’s fundamental constitutional rights.

##### The Courts

##### Levels, relevant types, and locations

Judicial power in Colombia is exercised by four roughly equal supreme judicial branches, each located in the main capital Bogotá. The Supreme Court of Justice is the highest court of civil, labor, land, commercial and criminal law. The Council of State is the highest court of administrative law. The Superior Judicial Council administers and disciplines the civilian judiciary and resolves jurisdictional conflicts arising between other courts. Finally, the Constitutional Court is the sole judicial body with jurisdiction over constitutional law, adjudicating actions that seek to uphold fundamental rights or attack laws and regulations that are alleged to be unconstitutional.

Below this structure there are two further levels of local judiciary. The lowest level is composed of individual judges sited in almost each city or town in the country. Appeals are made to the High Tribunal

---

<sup>1</sup> This chapter was drafted with the support of Gómez-Pinzón Zuleta Abogados.



(Housing Courts) located in the capital city of the applicable *Departamento*<sup>2</sup>, comprising a collegium of specialized judges.

### Appointment of judges

There is a mixed system regarding the election of judges in Colombia. The judges of the first and second instances (individual judges and High Tribunals of each *Departamento*) are appointed by a competitive nation-wide examination that is open to every attorney in Colombia. Judges are appointed from a list of the highest scorers in those examinations.

Each of the highest courts employ a slightly different system for the appointment of judges, but in each case the appointments are made by an institution other than the court itself. In the case of The Superior Judicial Council, the judges of the 'government administrative' court room are elected by a combination of the Council of State, the Supreme Court of Justice and the Constitutional Court. For the Disciplinary Judicial Panel, the Judges are elected by the National Congress based on Government shortlists.

Judges of the Constitutional Court are elected by the Senate based on Government shortlists. Judges of the Council of State and the Supreme Court of Justice are appointed by cooptation based on lists provided by the Superior Judicial Council.

In each case the term of office for a judge is eight years.

## The Practice of Law

### Education

To practice law in Colombia, an attorney must hold a law degree from a licensed Colombian university. There are no pro bono specific requirements in terms of minimum number of hours in order to obtain a law degree. However, law students are required to provide free legal services in a *consultorio jurídico* (legal clinic) during their last year of study. While law students in the *consultorios jurídicos* are supervised by licensed attorneys, law students are authorized to provide representation only in certain types of civil and criminal cases.

### Licensure

To practice law in Colombia, an attorney must be registered with the *Consejo Superior de la Judicatura*.<sup>3</sup> To obtain such registration, an attorney must hold a law degree from a licensed Colombian university.

Attorneys holding law degrees from foreign universities may be admitted to practice, if (i) their degree is evaluated and determined by the authorities to be the equivalent of a Colombian degree, and (ii) they pass the ECAES, the national qualification exam. While degrees granted in some jurisdictions, such as Spain and other Latin American countries, are regularly deemed to be equivalent, degrees granted in other jurisdictions, such as the United States, are unlikely to be so regarded.

### Demographics

According to the National Register of Lawyers as of September 4, 2015<sup>4</sup>, there were 260,234 practicing lawyers in Columbia for an estimated population approaching 50 million.<sup>5</sup> This equates to 520 Lawyers per 100,000 inhabitants.

---

<sup>2</sup> Colombia is divided in political-administrative units called "departamentos," which are administrative genres to divide the country in a decentralized way. Those "k" do not have the autonomy to legislate on their own, but they are ruled under the National Law enacted by Congress.

<sup>3</sup> MARTINDALE-HUBBELL LAW DIGEST 2007, COL-11.

<sup>4</sup> Registro Nacional de Abogados, Gaceta del Foro. Abogados Inscritos, available at [http://gacetadelforo.ramajudicial.gov.co/gaceta\\_del\\_foro/gaceta\\_foro\\_resultado.aspx?opcion=1&txtfechalnicio=&txtfechaFin=&cboTrimestre=%277/1/2015%27%20AND%20%279/30/2015%27&cboTipoNoVigencia=&txtNombres=&txtApellidos=&cboTipo\\_identificacion=&txtNumero\\_identificacion=&txtNumero\\_tarjeta\\_profesional=&cboTipoSancion](http://gacetadelforo.ramajudicial.gov.co/gaceta_del_foro/gaceta_foro_resultado.aspx?opcion=1&txtfechalnicio=&txtfechaFin=&cboTrimestre=%277/1/2015%27%20AND%20%279/30/2015%27&cboTipoNoVigencia=&txtNombres=&txtApellidos=&cboTipo_identificacion=&txtNumero_identificacion=&txtNumero_tarjeta_profesional=&cboTipoSancion) (last visited on September 4, 2015).

<sup>5</sup> See <http://worldpopulationreview.com/countries/colombia-population/> (last visited on September 4, 2015).



## Legal Regulation of Lawyers

The main Legal Regulation for Lawyers is set out in law Ley 1123 of 2007, also called “The Lawyer Statute”, which regulates the disciplinary norms for regarding the exercise of law by attorneys in Colombia.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

#### In Civil Proceedings

In Civil Proceedings, there is no right to free legal assistance. However, the *consultorios jurídicos* are entitled to provide free legal aid to those who cannot pay for a lawyer. Those centers are staffed by law students in their final year of study and may assist clients in connection with civil, family, or labor matters. Law schools also have *centros de conciliación* which engage in binding mediations, providing another route for indigent persons to resolve legal issues.

#### In Criminal Proceedings

In criminal proceedings, all defendants are entitled to the assistance of counsel. Indigent criminal defendants have the constitutional right to be represented by counsel free of charge. Such assistance is provided by the *Defensoría del Pueblo* the “**Public Defender’s Office**”) an entity created by the Constitution and charged with providing free services to indigent criminal defendants. The Public Defender’s Office is also empowered to provide legal assistance to those persons who are not indigent but are unable for some other reason to obtain competent legal representation.

All licensed and practicing attorneys may be required to provide free assistance to indigent criminal defendants if called upon to do so by the Public Defender’s Office. This occurs where no *defensor public* (public defender) is available to take the case.<sup>6</sup> These *defensores de oficio* (public defenders), as they are also known, are obligated to serve as part of their professional obligation to protect the State of Law and human rights.<sup>7</sup> Although *defensores de oficio* receive payment only in exceptional situations, they are subject to the same obligations as a *defensor público*. The failure of an attorney to respond to such a summons may result in the institution of disciplinary proceedings against him or her.<sup>8</sup> Disciplinary sanctions include censure, fines, suspension and expulsion from the profession.<sup>9</sup>

### State-Subsidized Legal Aid

Eligibility Criteria, i.e., eligibility limitations based on:

The State-subsidized legal aid in Colombia is part of a Public Policy that was enacted, in its current form, in 2005. The “*Sistema Nacional de Defensa Pública*” (National System of Public Defense) provides access to state-subsidized legal aid in any area of Law.

Although there are no eligibility requirements to speak of (e.g. based on the merits of the case or the immigration status of the applicant) priority is given to indigent persons who would otherwise lack the resources to pay for legal representation. Due to a lack of resources, however, State-subsidized legal aid struggles to meet the legal needs of indigent individuals. NGO’s are not able to access legal aid as the

---

<sup>6</sup> Constitutional Court Decision C-075 of 1995 (“CONST. COLOMBIA”) (Law 941 of 2005 tried to eliminate the duty of *defensores de oficio*; there were simply not enough *defensores públicos* to meet the demand. Thus, the Constitutional duty to be a *defensor de oficio* when called prevails.)

<sup>7</sup> Ley 1123 de 2007, lib. II, tit. I, cap. I § 21 (the national disciplinary code of attorneys).

<sup>8</sup> Id.; Ley 941 de 2005, art. 8; Constitutional Court Decision C-075 of 1995.

<sup>9</sup> Id. at lib. II, tit. II, cap. I art. 40.



main scheme is structured to assist indigent individuals only. Accordingly, there are insufficient state-subsidized lawyers to represent all legal issues affecting the poorest people in Columbia.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Mandated to do or report Pro Bono?

There are no rules or regulations that require lawyers admitted to practice in Colombia to do or to report pro bono work.

#### Law Firm Pro Bono Programs

A number of individual law firms in Columbia run their own pro bono programs. These are typically established either because the law firm in question is a signatory to the Pro Bono Declaration for the Americas or because the program forms part of that firm's corporate social responsibility policy. There is a Pro Bono Foundation (Clearinghouse) in Colombia that regulates the programs for the firms that are signatories to the Pro Bono Declaration.

#### University Legal Clinics and Law Students.

As noted above, the *consultorios jurídicos* (legal clinics) are run by all registered Colombian law schools. These programs were established over three decades ago and have been instrumental in instilling a sense of duty to the community in a younger generation of attorneys. Law students must provide free legal services in a *consultorio jurídico* during their last year of studies. While the *consultorios jurídicos* are supervised by a licensed attorney, law students are explicitly authorized to provide representation only in certain types of criminal cases.<sup>10</sup>

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

Historically, most pro bono services were performed by attorneys on a purely altruistic and sporadic basis, rather than as part of a structured program. This has changed in recent years, in part because a new generation of attorneys, active in providing direct services in the *consultorios jurídicos* during their legal education, has felt a need to contribute to society through the provision of free legal services.

This new generation has been able to overcome some initial institutional resistance to pro bono work on the part of the legal establishment. A second contributing factor is that the Latin American legal community as a whole has placed an increasing emphasis on pro bono services in recent years. This emphasis is evidenced by the recent development and implementation of the Pro Bono Declaration for the Americas. This Declaration was drafted by a committee of leading lawyers from Latin America and the United States. To date, more than 20 Colombian law firms, law schools and the legal departments of certain companies have signed on to the Declaration, thereby committing themselves to providing an average of at least 20 pro bono hours annually per practicing attorney.

### Current State of Pro Bono including Barriers and Other Considerations

#### Laws and Regulations Impacting Pro Bono

There is a general regulation in Colombia that mandates that the losing party to a lawsuit must pay for the costs of the legal proceedings to the counterparty. There are otherwise no rules that directly govern or otherwise specifically impact the provider of pro bono services in Columbia. In particular, there is no mandated minimum legal fee schedule.

---

<sup>10</sup> Ley 941 de 2005, art. 17; Constitutional Court Decision C-075 of 1995.



### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

There are two main barriers to pro bono work in Colombia, namely: (i) there is no clear criteria for determining whether particular services qualify as pro bono and (ii) large law firms are still in the process of recognizing the benefit and utility of providing pro bono services, and as such, there does not yet exist a strong infrastructure within law firms to support providing pro bono services. Other barriers that sometimes impede the provision of pro bono services in Colombia and other Latin American countries are language barriers, time constraints, excessive regulation and control, lack of financial resources, and lack of suitable opportunities.

### Pro Bono Resources

#### Entities Engaged in Pro Bono

*Fundación Pro Bono Colombia* is a pro bono clearinghouse.<sup>11</sup> Officially launched in 2008, its members include over 20 law firms. The foundation runs legal seminars for the underprivileged and researches human rights issues. It also offers legal training in human rights issues, family law and administrative law for attorneys from law firms providing pro bono services.

The best way for lawyers interested in providing pro bono services in Colombia to get started is to contact *Fundación Pro Bono Colombia* in order to join that organization as an independent lawyer. Through that organization independent lawyers get access to the clearinghouse's database of available cases and can take whichever case best fits their skills.<sup>12</sup>

*Fundación Pro Bono* also helps people find the right lawyer for their pro bono case according to the lawyer's specialty and experience.

In addition to legal clinics, Colombian law schools are developing *grupos de derecho publico*, which undertake high-impact human rights litigation, mainly through constitutional actions. Universidad de Los Andes<sup>13</sup> has a number of these groups including the *grupo de derecho publico* ("G-DIP"), run by Professor Daniel Bonilla, and PAIS (*Programa de Acción por la Igualdad y la Inclusión Social*), which focuses on disability rights. *Universidad del Rosario* also has a similar group (*Grupo de Acciones Públicas*)<sup>14</sup> as does *Universidad Sergio Arboleda*.

*Servicios Jurídicos No Remunerados* is a partnership formed between *Universidad de Los Andes* and a number of Colombian law firms. It offers free legal services to nonprofit groups dedicated to humanitarian causes, in particular in the areas of health, education, environment, disability and children's law. Over 25 Colombian law firms donate their services to this project, permitting the organization to provide its clients with specialized support in nearly every area of substantive law. Initially, the program offered only services related to legal incorporation and the negotiation of contracts. However, attorneys linked to the program now also provide representation for public interest controversies.

*Compartamos con Colombia* is an alliance of professional services firms formed to support not-for-profit entities. It undertakes initiatives designed to contribute to Colombia's development. The alliance counts 17 law firms, investment banks and consulting firms among its ranks.<sup>15</sup> *Compartamos con Colombia* provides subsidized institutional support to (i) nonprofit organizations, (ii) projects that seek to efficiently channel resources or projects that promote social entrepreneurship, and (iii) initiatives furthering self-sustaining social investment. The organization also develops strategies promoting corporate responsibility and family-based philanthropy. To date, *Compartamos con Colombia* has

<sup>11</sup> See <http://probono.org.co> (last visited on September 4, 2015).

<sup>12</sup> For those lawyers willing to get involved in the pro bono services in Colombia as well as being part of *Fundación Probono*, they must fill the questionnaire available in the following link: <http://probono.org.co/quienes-somos/apoyenos/sea-abogado-pro-bono/> (last visited on September 4, 2015).

<sup>13</sup> See <http://www.uniandes.edu.co/> (last visited on September 4, 2015).

<sup>14</sup> See <http://www.urosario.edu.co/guia-ur/escuelas-y-facultades/Facultad-de-Jurisprudencia/ur/GAP> (last visited on September 4, 2015).

<sup>15</sup> See <http://www.compartamos.org> (last visited on September 4, 2015).



provided free or low-cost institutional support to over 60 nonprofit organizations operating in the areas of sustainable development, children's rights, education, health and microfinance, among others.<sup>16</sup>

The NGO *Comisión Colombiana de Juristas* is dedicated to the preservation of human rights in Colombia. Its activities include commenting on proposed legislation, compiling and distributing information and legal analysis to the population at large and providing direct representation in high-impact litigation aimed at preserving and safeguarding human rights.<sup>17</sup> It represents clients in cases both before the Constitutional Court (and other Colombian bodies) and before the Inter-American Commission on Human Rights.

## CONCLUSION

Recent years have seen great strides in the field of pro bono legal services in Colombia. The main pro bono clearinghouse has existed for five years now and many of the top law firms in the nation have committed themselves publicly to devoting a percentage of their time to providing pro bono services, and have established internal policies for doing so. Despite these advances, much work remains to be done. The Colombian legal codes contain numerous actions and remedies designed to safeguard the legal and social rights of its citizens. However, such safeguards are technical and complex, and their application often requires the specialized assistance of an attorney. Furthermore, as one leading practitioner notes, the country has significant unaddressed needs in the areas of population displacement, the environment, anti-corruption programs, and family law and children's rights, among others.<sup>18</sup> Nonetheless, there is still much reason for optimism given the recent trajectory of pro bono services in Colombia.

September 2015

Pro Bono Practices and Opportunities in Colombia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>16</sup> See <http://www.compartamos.org/en/convocatoria> (last visited on September 4, 2015).

<sup>17</sup> See <http://www.coljuristas.org> (last visited on September 4, 2015).

<sup>18</sup> Paula Samper Salazar, Pro Bono en Colombia, available at <http://www.trust.org/trustlaw/country-profiles/pro-bono.dot?id=dc0c1e66-f4b1-4ca9-addf-edd49d4287a6> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in Costa Rica

### INTRODUCTION

The legal community, based in the capital city of San José, is increasingly recognising the value of a pro bono culture and the significant impact pro bono work can have on democracy and justice. The Pro Bono Declaration for the Americas is the founding document that is helping to institutionalise altruistic and other pro bono activities by lawyers in Costa Rica.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Costa Rica is governed by the Constitution of 1949 (*Constitución Política de la República de Costa Rica*, the “**Constitution**”). The Constitution is the fundamental and supreme law of Costa Rica. It has two primary functions: (i) to establish the government and its powers; and (ii) to recognise the fundamental human rights of individuals and the constitutional procedure to enforce them.

There are three governmental branches, in accordance with the principle of separation of powers, which are the Executive, Legislative and Judicial branches. The Executive branch, composed of the President of the Republic of Costa Rica and the Council of Ministers, is charged with the administration of the State, ensuring that laws are duly executed and enforced. The Legislative branch, which resides in the unicameral Legislative Assembly (*Asamblea Legislativa*), has the authority to make, amend and repeal laws. Finally, the Judicial branch, through the court system, administers and enforces the laws, and is expressly bound by the Constitution to adhere to the principle of due process of law.

##### The Courts

The Supreme Court of Justice of Costa Rica is the highest court of the Judiciary. According to Article 157 of the Constitution, the Supreme Court shall be composed of the number of judges deemed necessary to handle the system’s requirements. Currently, the Judiciary is comprised of around 1,120 judges who are each elected by the Legislative Assembly.<sup>1</sup> In 1989, the Constitution was amended to create a Constitutional branch within the Supreme Court. This fourth chamber (*Sala IV*) has specific jurisdiction over matters that involve the Constitution and violation of constitutional rights.

The administrative rules for the Judiciary are set forth in the Law on Judiciary Power (*Ley Orgánica del Poder Judicial*). The Costa Rican Court system is comprised of the Supreme Court, the Superior Courts (Courts of Appeal), the Trial Judges and, at the lowest level, the Justices of the Peace (*Jueces de Paz*).<sup>2</sup>

##### The Practice of Law

##### Education

Until recently, a lawyer only had to obtain a law degree from one of the 28 universities in Costa Rica that offer law studies (only one is a public university and the others are private) to join the Costa Rica Bar Association and, thus, become a qualified lawyer. However, in May 2015, the Costa Rica Bar Association introduced a compulsory bar exam for law graduates that aims to raise the standard of lawyers in the country. As a result Costa Rica has joined Brazil as the only other Latin American country with a mandatory bar examination. The first exams took place in June 2015 and tested candidates on seven

---

<sup>1</sup> See <http://redprobono.org/wp-content/uploads/2013/10/Costa-Rica-Esp.pdf> (last visited on September 4, 2015).

<sup>2</sup> See [http://www.nyulawglobal.org/globalex/Costa\\_Rica1.htm#\\_Toc414085161](http://www.nyulawglobal.org/globalex/Costa_Rica1.htm#_Toc414085161) (last visited on September 4, 2015).



types of law, designated as core areas by the Bar: commercial, civil, constitutional, criminal, labor, family and administrative law.<sup>3</sup>

### Licensure

The legal profession in Costa Rica is regulated by the Costa Rica Bar Association (*Colegio de Abogados de Costa Rica*) with which each lawyer is required to register. Lawyers in Costa Rica must comply with a Code of Conduct (*Código de Deberes Jurídicos, Morales y Éticos del Profesional en Derecho*) and the rules of the Bar Association (*Ley Orgánica; Reglamento Interior del Colegio de Abogados*)<sup>4</sup>. Lawyers in Costa Rica must at all times preserve absolute independence, comply with confidentiality rules, serve the clients' interests diligently, conscientiously and promptly, and cannot act in situations where a conflict of interest exists.

Foreign lawyers can advise in Costa Rica only on international law and the laws of the jurisdiction in which they are qualified. In order to obtain a full licence to practise law in Costa Rica, foreign lawyers must apply to the University of Costa Rica to have their law degree assessed as being equivalent to a Costa Rican law degree. Foreign lawyers also need to sit the Bar Association's legal ethics exam. Once in receipt of all this documentation (including proof of residency), the foreign lawyer can apply for a licence from the Bar Association.<sup>5</sup>

### Demographics: Number of Lawyers Per Capita; Number of Legal Aid Lawyers Per Capita

According to the Costa Rica Bar Association, the number of lawyers per capita is around 22,785 practicing lawyers, reflecting an increasing trend in comparison to previous years, with about 1,350 lawyers joining each year. There is one lawyer for every 200 inhabitants, making Costa Rica one of the highest ratios in Latin America.<sup>6</sup>

### Legal Regulation of Lawyers

Legal regulation of lawyers is established in Law No. 13, of October 28, 1941, of the Bar Association of Costa Rica (*Ley Orgánica del Colegio de Abogados y Abogadas de Costa Rica*) that requires every practicing lawyer to be affiliated with the Costa Rica Bar Association (*Colegio de Abogados de Costa Rica*), which, among other functions, oversees their professional conduct.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The obligation to provide legal aid is not established as such in the Constitution. However, the right of access to justice is stipulated in Article 41 of the Constitution: *"Everyone shall be entitled to receive reparation for injury or damage caused to themselves or to their property or moral interests, through recourse to the laws. Justice shall be prompt, effective, not denied, and in strict accordance with the laws"*.

The same right of access to justice is also established for criminal proceedings (Article 39 of the Constitution): *"No one shall be made to suffer a penalty except for a crime, unintentional tort or misdemeanour punishable by previous law, and by virtue of a final judgment handed down by a competent authority, after the defendant has been given an opportunity to plead his defence, and upon the necessary proof of guilt."*

---

<sup>3</sup> See <http://latinlawyer.com/features/article/48025/costa-rica-sparks-debate-compulsory-bar-exam/> (last visited on September 4, 2015).

<sup>4</sup> See [http://www.abogados.or.cr/uploads/CMS/Articulo/19\\_0Reglamento-interior-del-Colegio-de-Abogados-y-Abogadas-de-Costa-Rica.pdf](http://www.abogados.or.cr/uploads/CMS/Articulo/19_0Reglamento-interior-del-Colegio-de-Abogados-y-Abogadas-de-Costa-Rica.pdf) (last visited on September 4, 2015).

<sup>5</sup> See [http://www.ibanet.org/PPID/Constituent/Bar\\_Issues\\_Commission/ITILS\\_Costa\\_Rica.aspx](http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Costa_Rica.aspx) (last visited on September 4, 2015).

<sup>6</sup> See [https://www.larepublica.net/app/cms/www/index.php?pk\\_articulo=533327273](https://www.larepublica.net/app/cms/www/index.php?pk_articulo=533327273) (last visited on September 4, 2015).



## State-Subsidised Legal Aid

State-subsidised legal aid is provided by the Public Defender of Costa Rica (*Defensa Pública*).<sup>7</sup> The Public Defender is a subsidiary body of the Administration of Justice, within the Judiciary and is dependent on the Superior Council of the Judiciary (*Consejo Superior del Poder Judicial*) with respect to administrative aspects. The institution's legal basis and rules are set out in Articles 149 to 159 in the Law on Judiciary Power (*Ley Orgánica del Poder Judicial*).

### Eligibility Criteria

#### Financial Means

Public Defenders provide free representation in criminal and family law matters for Costa Rican citizens who lack sufficient financial resources to hire a private defence lawyer. Although the main aim is to provide services to low-income people, the service is also available to paying clients.

#### Legal Issues/Case Type

The Public Defenders' role consists of providing legal representation or advice and granting the right of access to justice for Costa Rican citizens.

The Public Defender has 38 offices throughout the country, in addition to being present in all of the circuit courts of Costa Rica. Public Defenders provide legal services in the following areas of law: adult criminal law; juvenile criminal law; maintenance payments; execution of the sentences; administrative and disciplinary proceedings against judicial officers; agricultural law; penalisation of violence against women; and misdemeanour matters.

## Alternative Legal Aid - Social Defence

Apart from state-sponsored legal aid, an inter-institutional body was established in 2008, the Social Defence (*Defensoría Social*),<sup>8</sup> that pursues the effective legal defence of people in vulnerable conditions, in accordance with the definition provided by the Brasilia Regulations Regarding Access to Justice for Vulnerable People:

*"Vulnerable people are defined as those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights before the justice system as recognized to them by law."<sup>9</sup>*

On April 24, 2008, an inter-agency coordination, led by the Ibero-American Union of Bars and Law Societies (UIBA), Costa Rica's Bar Association,<sup>10</sup> the University of Costa Rica, the Ministry of Justice and the Judiciary of Costa Rica agreed to establish social defence in order to grant access to justice and legal assistance to Costa Rican citizens in a vulnerable condition.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

The Pro Bono Declaration for the Americas, spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched in January 2008 by a committee of leading practitioners in

<sup>7</sup> See <http://www.poder-judicial.go.cr/defensapublica/> (last visited on September 4, 2015).

<sup>8</sup> See [http://www.uiba.org/index.php?option=com\\_content&view=article&id=70:la-uiba-y-el-acceso-a-la-justicia-en-iberoamerica&catid=63:general&Itemid=78](http://www.uiba.org/index.php?option=com_content&view=article&id=70:la-uiba-y-el-acceso-a-la-justicia-en-iberoamerica&catid=63:general&Itemid=78) (last visited on September 4, 2015).

<sup>9</sup> See Section 2.1, Brasilia Regulations Regarding Access to Justice for Vulnerable People. Regulation, available at <http://www.osce.org/odihr/68082?download=true> (last visited on September 4, 2015).

<sup>10</sup> Further information available at <http://www.uiba.org/> (last visited on September 4, 2015).



Latin America and the United States. The Congress was attended by representatives from prestigious law firms, law schools, bar associations and NGOs. Signatories, including Costa Rica, endorsed the principle that it is the duty of the legal profession to promote a fair and equitable legal system and respect for human and constitutional rights. The Declaration calls for each signatory to promote an average of at least 20 hours of annual pro bono work per practicing lawyer.<sup>11</sup>

### Bar Association Pro Bono Programs

The Pro Bono Commission of the Bar (*Comisión Pro Bono del Colegio de Abogados*)<sup>12</sup> is Costa Rica's leading clearinghouse for pro bono work and focuses on finding and distributing pro bono opportunities to private lawyers. Founded in 2010, it does not provide direct services to clients but rather serves as a clearinghouse, referring matters to private firms and individual lawyers and developing new pro bono programs for the benefit of non-profit entities, NGOs and private citizens. About 35 law firms currently participate in this initiative.<sup>13</sup>

### Law Firm Pro Bono Programs

BLP Abogados was the first Costa Rican signatory of the Pro Bono Declaration for the Americas and has been recognized by Latin Lawyer as a leading light in pro bono work because of the firm's continued efforts to raise the profile of pro bono work and for being a generous provider of free legal services to those in need. The firm handles most of its pro bono work through the BLP Abogados Pro Bono Foundation, which it established in 2008. BLP Abogados advises over 95 NGOs and charitable organizations. BLP Abogados also works closely with the Costa Rica Bar, helping the Pro Bono Commission to encourage more firms in the country to offer pro bono services.<sup>14</sup>

### University Legal Clinics and Law Students

University Legal Clinics (*Consultorios Jurídicos*) are aimed at providing legal assistance to people with limited financial resources. University Legal Clinics are offered in a few law degrees as an optional subject (except in the case of the University of Costa Rica explained below), although they are neither a degree requirement nor a condition to join the Bar Association. However, in order to obtain a university degree in any field, not just related to law, students must complete 150 hours of College Community Service (*Trabajo Comunal Universitario*).<sup>15</sup>

As an exception, the Faculty of Law of the University of Costa Rica, which is the state university, requires its students to provide, in addition to 300 hours of College Community Service, 208 additional hours of University Legal Clinics. At University Legal Clinics, students provide free assistance to the community, four hours per week for a 13-month period, bringing the total number to 208 hours. The University of Costa Rica has currently 22 University Legal Clinics assigned to the Social Action Area (*Área de Acción Social*), some of which maintain a criterion of exclusivity in relation to the conflicts solved, such as the University Legal Clinic that has an agreement with the National Institute for Women (INAMU) and the Environmental Law Clinic, which mainly deal with women's and environmental issues, respectively.<sup>16</sup>

---

<sup>11</sup> See <http://www.vancecenter.org/vancecenter/images/stories/vancecenter/111811pbda.pdf> (last visited on September 4, 2015).

<sup>12</sup> See <https://comisionprobono.wordpress.com/> (last visited on September 4, 2015).

<sup>13</sup> Some of the member firms: Aguilar Castillo Love, Arias & Muñoz, Batalla Asociados, BLP Abogados, CIS Love Group, Consortium Laclé & Gutiérrez, Facio & Cañas, Fragomen, Global Legal Group, Jurisis, Oller Abogados, Pacheco Coto, Pacheco, Odio & Alfaro, Quirós & Asociados Reyes Consultores, Tompson, Barrientos, Obando y Asociados, Víquez Jara y Asociados, Zurcher, Odio & Raven y Esquivel y Asociados.

<sup>14</sup> See <http://latinlawyer.com/firms/93/ll250/> (last visited on September 4, 2015).

<sup>15</sup> See <http://redprobono.org/wp-content/uploads/2013/10/Costa-Rica-Esp.pdf> (last visited on September 4, 2015).

<sup>16</sup> See <http://www.inamu.go.cr/web/inamu/inicio> (last visited on September 4, 2015).



## Historic Development and Current State of Pro Bono

Historically, most pro bono services were performed by lawyers on a purely altruistic and sporadic basis, rather than as part of structured programs within law firms. This has changed in recent years, especially because the Latin American legal community as a whole has placed an increasing emphasis on pro bono services. This emphasis is evidenced by the implementation of the Pro Bono Declaration for the Americas, pursuant to which, as noted above, signatories commit to provide an average of at least 20 pro bono hours annually per practicing lawyer. As a result of this initiative, the Costa Rica Bar founded the Pro Bono Commission (please see paragraph a. above).

According to a recent survey,<sup>17</sup> 83% of Costa Rican lawyers have done pro bono work as part of their practice, which shows the emerging importance of pro bono in Costa Rica. Nevertheless, there are still many challenges and key obstacles to overcome.

The principal barrier to pro bono services proliferating in Costa Rica is a lack of explicit legal regulations and public cooperation. Additionally, minimum fees for legal services are regulated by the Government in the Decree on Professional Fees for Legal Services<sup>18</sup> which requires those providing legal services to charge fees for their services with an express prohibition against reducing or eliminating such fees. However, the Bar's Professional Ethics Code (*Código de Deberes Jurídicos, Morales y Éticos del Profesional en Derecho*) provides for an exception to this minimum fee rule in respect of pro bono matters allocated to private lawyers by either the Bar or the Social Defence (*Defensoría Social*).<sup>19</sup> However, 'private' pro bono initiatives are not covered under this exception. This slows the creation of new pro bono organisations and opportunities, and may also be the key reason why the majority of pro bono services currently provided by Costa Rican law firms are corporate services to non-profit entities, rather than to individuals.

## CONCLUSION

Pro bono services in Costa Rica are steadily increasing and although the pro bono movement is not yet fully developed, recent years have seen great strides in the promotion of pro bono activities in Costa Rica. The Pro Bono Commission of the Bar was founded in 2010 and many of the top Costa Rican law firms have committed themselves publicly to devoting a percentage of their time to providing pro bono services, and have established programs for doing so. In spite of these advances, much work remains to be done, including the challenge of developing a greater pro bono culture in private firms.<sup>20</sup>

September 2015

Pro Bono Practices and Opportunities in Costa Rica

This memorandum was prepared by Latham & Watkins LLP for the Pro Bono Institute. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>17</sup> See [http://www.ulacit.ac.cr/files/revista/articulos/esp/resumen/80\\_art.elissasttofellistoemachote.pdf](http://www.ulacit.ac.cr/files/revista/articulos/esp/resumen/80_art.elissasttofellistoemachote.pdf) (last visited on September 4, 2015).

<sup>18</sup> Arancel de Honorarios por Servicios Profesionales de Abogacía y Notariado, Decreto N 36562-JP de 18 de mayo de 2011. Available at <http://costarica.eregulations.org/media/Decreto%2036562-JP%20sobre%20honorarios%20profesionales%20de%20abogados.pdf> (last visited on September 4, 2015).

<sup>19</sup> See Article 68 in the Código de Deberes Profesionales del Colegio de Abogados, available at [http://colegiodeabogados.cr/index.php?option=com\\_content&view=article&id=59&Itemid=69](http://colegiodeabogados.cr/index.php?option=com_content&view=article&id=59&Itemid=69) (last visited on September 4, 2015).

<sup>20</sup> See <http://latinlawyer.com/news/article/47497/challenges-remain-pro-bono-latin-america/> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in the Czech Republic<sup>1</sup>

### INTRODUCTION

Since its establishment in 1993, the Czech Republic has enacted a variety of legislation governing the provision of legal aid. However, the regulation of the procedure for granting legal aid has not yet been unified under a comprehensive legal aid act. In January 2015, the Draft Act on Free Legal Aid<sup>2</sup> (the “**Draft Act**”) was presented to the Government. It aimed to create one unified legal regime for the provision of legal aid in court proceedings and proceedings in other governmental and administrative bodies. However, on February 16, 2015 the Cabinet issued a negative advisory opinion on the Draft Act<sup>3</sup> and ultimately the Draft Act was rejected as the Government felt the drafting was not clear and conflicted with provisions of the existing regime. Legal reform in this sector is, however, on the agenda of the Ministry of Justice for 2015. It intends to publish details of its own proposed Draft Act later this year. Should that proposal be accepted, it is likely to take effect in early 2017.

The number of requests for legal aid is increasing and public knowledge of the possibility of applying for free legal aid is more widespread. Indeed, recent trends and improvements are cause for cautious optimism. As the Czech Republic moves away from its Communist past and continues to conform its legal system to the EU and other international obligations, legal aid reform has made headway. Improvements have been made towards streamlining and standardising the processes through which parties may request legal aid from the courts and the Czech Bar Association.

In terms of pro bono legal work, several non-governmental organizations (“**NGOs**”) have become firmly established in the country, providing free legal assistance, particularly in the areas of asylum and immigration. However, the Czech Republic lacks an entrenched pro bono culture and while attorneys may undertake an occasional pro bono case, such activities are not widespread.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Czech legal system is a civil law system based on the Austro-Hungarian codes. The current Constitution of the Czech Republic was adopted on December 16, 1992 (the “**Constitution**”), just before Czechoslovakia peacefully split into the Czech and Slovak Republics.<sup>4</sup> The Czech Republic joined NATO in March 1999 and the EU in May 2004, and these developments brought new international influences and obligations to the structure of the Czech legal system.<sup>5</sup>

---

<sup>1</sup> This chapter was originally drafted in 2012 with the support and assistance of Kinstellar and updated in 2015 with the support and assistance of the Prague office of Havel, Holásek & Partners s.r.o.

<sup>2</sup> See [http://www.psp.cz/sqw/text/orig2\\_sqw?idd=112513](http://www.psp.cz/sqw/text/orig2_sqw?idd=112513) (last visited on September 4, 2015) for the Draft Act proposed by a group of Members of the Parliament.

<sup>3</sup> See <http://www.vlada.cz/cz/clenove-vlady/pri-uradu-vlady/jiri-dienstbier/aktualne/vlada-zamitla-dva-poslanecke-navrhy-akonou-126803/> (last visited on September 4, 2015).

<sup>4</sup> Constitution of the Czech Republic.

<sup>5</sup> See e.g. Martindale-Hubbell Law Digest, Czech Republic Law Digest 1 (LexisNexis Martindale-Hubbell 2007).



## Courts System

### Types and levels of courts

The court hierarchy in the Czech Republic comprises of district, regional and superior courts. With a few exceptions, matters of first instance are heard before one of the 86 district courts, and appeals are heard in the eight regional courts and two superior courts. The Supreme Court is the highest court in all matters except constitutional and administrative matters, which are heard by the Constitutional Court and the Supreme Administrative Court, respectively. All three courts of last instance have their seat in Brno.<sup>6</sup>

Although the Constitutional Court serves as the ultimate judicial instance in the Czech Republic, where the European Convention for the Protection of Human Rights and Fundamental Freedoms (the “**Convention**”) is breached, applicants may bring complaints against their state before the European Court of Human Rights. If this Court declares that a violation of the Convention has occurred the applicant is usually awarded compensation and Czech law provides for renewal of the relevant domestic proceedings. There are only about a dozen of such cases in the Czech Republic annually.

### Judges

To be eligible for appointment as a judge in the Czech Republic each candidate must meet the following criteria:

- be a Czech national;
- have full legal capacity and be of good character;
- have a university degree;
- have suitable personal experience and moral qualities;
- pass a professional judicial examination; and
- take the oath of a judge before the President of the Czech Republic.<sup>7</sup>

On meeting each of the above conditions, a judge will be appointed by the President of the Czech Republic and assume office on taking the oath. Judges may join the Judicial Union of the Czech Republic, a voluntary professional association. The general meeting of the Judicial Union has adopted the Ethical Principles of the Conduct of Judges as moral principles in judicial activities.<sup>8</sup>

## The Practice of Law

### Education

To become an attorney in the Czech Republic, the candidate needs to meet the following criteria:

- be registered on the publicly accessible list of lawyers maintained by the Czech Bar Association;
- have full legal capacity;
- have a university degree in law obtained at one of the four accredited law faculties in the Czech Republic;
- have at least three years’ prior legal experience as an articulated clerk;
- be of good character;
- pass a professional examination for lawyers; and
- take an oath before the Chairperson of the Czech Bar Association.

There are no pro bono requirements to register as an attorney.<sup>9</sup>

---

<sup>6</sup> Id. at 7. See also zákon č. 6/2002 or Michal Bobek, An Introduction to the Czech Legal System and Legal Resources Online (August 2006), available at [http://www.nyulawglobal.org/globalex/czech\\_republic.htm](http://www.nyulawglobal.org/globalex/czech_republic.htm) (last visited on September 4, 2015).

<sup>7</sup> See [http://ec.europa.eu/civiljustice/legal\\_prof/legal\\_prof\\_cze\\_en.htm](http://ec.europa.eu/civiljustice/legal_prof/legal_prof_cze_en.htm) (last visited on September 4, 2015).

<sup>8</sup> Id.

<sup>9</sup> See [http://ec.europa.eu/civiljustice/legal\\_prof/legal\\_prof\\_cze\\_en.htm](http://ec.europa.eu/civiljustice/legal_prof/legal_prof_cze_en.htm) (last visited on September 4, 2015).



## Demographics

Since the fall of Communism in the Czech Republic, the number of Czech attorneys has increased quickly. In 1989 there were only 600 attorneys, but as of June 1, 2015 there were 12,092 practising attorneys and 3,371 legal trainees registered with the Czech Bar Association.<sup>10</sup> Approximately 3,500 attorneys in the Czech Republic are eligible to provide legal aid.

## Licensure

A lawyer qualified in one of the member states of the EU may practise law in the Czech Republic, either as a visiting or settled European attorney. Visiting attorneys do not need to be registered with the Czech Bar Association but they may only provide legal services temporarily.<sup>11</sup> Other foreign lawyers may become members of the Czech Bar Association by passing a recognition exam but they are limited to providing legal services in the Czech Republic on international law and other areas, which are governed by the laws of the jurisdiction(s) of their qualification.

## Legal Regulation of Lawyers

The Czech legal profession is regulated by the Advocacy Act, passed in 1996.<sup>12</sup> It established the Czech Bar Association, the only bar association in the country. Membership is mandatory for all attorneys practising in private practice (but not for those working in-house or for the government).

# LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

## The Right to Legal Assistance

There are several different acts and regulations that provide for the right to free legal aid in the Czech Republic.<sup>13</sup> Of the existing provisions relating to legal aid, the most basic one is the broad right to legal aid, found in the Charter on Fundamental Rights and Freedoms, which is part of the constitutional laws of the Czech Republic.<sup>14</sup> The Charter also guarantees the right to free court-appointed counsel in criminal proceedings.<sup>15</sup> The existing provisions provide access to free legal aid only in court proceedings, making it difficult for clients who cannot afford a lawyer to obtain legal advice in anticipation of litigation.<sup>16</sup>

---

<sup>10</sup> According to the Czech Bar Association, see [http://www.cak.cz/assets/komora/zapis\\_19\\_predstavenstvo\\_2015\\_06\\_08.pdf](http://www.cak.cz/assets/komora/zapis_19_predstavenstvo_2015_06_08.pdf) (last visited on September 4, 2015).

<sup>11</sup> Id.

<sup>12</sup> Zákon č. 85/1996 Sb. (Law No. 85/1996 Coll., the Advocacy Act as amended); Czech version available at <http://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=44102&nr=85~2F1996&rpp=15#local-content> (last visited on September 4, 2015).

<sup>13</sup> See [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_cze\\_en.htm#2](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_cze_en.htm#2) (last visited on September 4, 2015).

<sup>14</sup> Charter on Fundamental Rights and Freedoms, article 37(2).

<sup>15</sup> Charter on Fundamental Rights and Freedoms, article 40(3).

<sup>16</sup> See Veronika Kristková and the Public Interest Law Institute (“PILI”), The Tradition and Current Opportunities for Pro Bono Legal Services in the Czech Republic 10 (unpublished paper on pro bono opportunities in the Czech Republic) (hereafter referred to as: “Kristková and PILI”).

## State-Subsidised Legal Aid

### Eligibility Criteria

Section 18 of the Advocacy Act stipulates that the Czech Bar Association appoints attorneys for free legal aid purposes.<sup>17</sup> The Czech Bar Association publishes information about legal aid on its website.<sup>18</sup> The Act does not set out the eligibility criteria for qualifying to receive free legal aid. Instead, any applicant can submit a petition to the Czech Bar Association detailing their personal financial situation, including the value of their assets and personal income, and the income of any dependents. That information is then assessed by the Czech Bar Association on a case-by-case basis.<sup>19</sup>

### Civil Procedure Act

The Civil Procedure Act states that an individual may apply to the court for counsel, and the court may grant the request if “necessary for [the] protection of [that individual’s] interests.”<sup>20</sup> This Act allows courts to appoint free legal counsel for defendants and victims of crime who can “prove [that] they do not have sufficient means to cover the expenses of their defense.” However, no counsel may be appointed if “the matter is an obviously unsuccessful exercise of, or defense of, a right.”

### Advocacy Act

The Advocacy Act stipulates that a disadvantaged party may apply to have a lawyer appointed by the Czech Bar Association.<sup>21</sup> If the Czech Bar Association considers the case is warranted, it may appoint an attorney to work for free or at a reduced rate. Following amendments to the Advocacy Act in 2006, an individual has the right to obtain an attorney through the Czech Bar Association only after the court has rejected an individual’s request for legal aid.<sup>22</sup> The individual must provide evidence that at least two attorneys have previously refused to provide them with legal services.<sup>23</sup> Furthermore, an attorney so appointed may enquire into the financial status of the applicant and the merits of the case and may, upon notifying the Czech Bar Association and the applicant, refuse to represent the individual if the aid sought is “obviously unreasonable.”<sup>24</sup> Public awareness of the opportunity to apply to the Czech Bar Association for legal aid is also low and the Czech Bar Association does not advertise it widely.<sup>25</sup>

<sup>17</sup> See <http://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=44102&nr=85~2F1996&rpp=15#local-content> (last visited on September 4, 2015).

<sup>18</sup> See <http://www.cak.cz/scripts/detail.php?id=1680> (last visited on September 4, 2015). Statistics showing the number of appointed free legal representatives for 2005 to 2011 are available at [http://www.cak.cz/assets/statistika\\_urcovani\\_a.pdf](http://www.cak.cz/assets/statistika_urcovani_a.pdf) (last visited on September 4, 2015).

<sup>19</sup> See <http://www.cak.cz/scripts/detail.php?id=1680> (last visited on September 4, 2015). Statistics showing the number of appointed free legal representatives for 2005 to 2011 are available at [http://www.cak.cz/assets/statistika\\_urcovani\\_a.pdf](http://www.cak.cz/assets/statistika_urcovani_a.pdf) (last visited on September 4, 2015).

<sup>20</sup> Zákon č. 99/1963 Sb. (Law No. 99/1963 Coll., Civil Procedure Act) §§30, 138, available at <http://www.czechlegislation.com/en/99-1963-sb> (last visited on September 4, 2015).

<sup>21</sup> Zákon č. 85/1996 Sb. §18(2).

<sup>22</sup> Id.

<sup>23</sup> See European Commission, Legal Aid – Czech Republic, at question 3, available at [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_cze\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_cze_en.htm) (last visited on September 4, 2015). This can be a difficult requirement to meet, as lawyers frequently fail to provide documentation that they refused to represent the potential client in question. See Kristková and PILI at 9.

<sup>24</sup> Zákon č. 85/1996 Sb. §§18(2), 19. In addition, only one attorney may be assigned to each case.

<sup>25</sup> See Kristková and PILI. The Czech Bar Association also sponsors free legal counselling hours at the seat of each regional court. This is a purely voluntary service that is not widely publicised. See <http://www.cak.cz/> (last visited on September 4, 2015).

The Advocacy Act distinguishes among “Czech attorneys,” “visiting European attorneys,” “settled European attorneys” and “foreign attorneys.”<sup>26</sup> Attorneys in the first three categories will not encounter barriers to providing legal aid. It may be more difficult for foreign attorneys to provide a range of legal services, including legal aid.

However, “legal services” are defined under the Advocacy Act as representation in courts, legal counselling and legal drafting, regularly and for remuneration. Thus, arguably, it is possible for foreign attorneys to participate in pro bono work (see below) without meeting the above requirements, as this is not work for remuneration.<sup>27</sup> While foreign attorneys will not be permitted to appear in court, they can still be involved in support work for NGOs in areas such as legal research and drafting, as well as providing assistance in understanding foreign legal systems for use before the European Court of Human Rights or international tribunals.

### Criminal Procedure Act and other legislation

Other legal aid provisions are found in the Criminal Procedure Act,<sup>28</sup> the Administrative Procedure Act<sup>29</sup> and the Constitutional Court Act.<sup>30</sup> In the 2004 amendments to the Criminal Procedure Act, legal aid practices were elaborated upon and improved in relation to criminal representation. Prior to 2004, the sole legal aid provision of the Criminal Procedure Act simply permitted courts to determine that a defendant had a right to free legal aid if the defendant could prove a lack of financial means.<sup>31</sup> The Act did not specify any process for the appointment of lawyers – even in mandatory defence cases, where the defendant is required under Czech law to be represented by an attorney. The Act also did not specify the extent of legal aid available for indigent defendants in non-mandatory defence cases.<sup>32</sup>

The 2004 amendment to the Criminal Procedure Act established a mechanism for selecting attorneys to be appointed by courts in mandatory defence cases. Attorneys who volunteer to provide free legal defence and who reside in a particular jurisdiction are kept on an alphabetical waiting list and appointed by courts as the need arises in that jurisdiction. Courts also keep a second list of all attorneys in the district, in case no volunteer attorney from the first list is available.<sup>33</sup> Similarly, procedures regarding legal aid in non-mandatory defense cases have become more precise. Another 2004 amendment addressed the problem of defendants who have requested and are granted free legal aid but have difficulty finding a lawyer. The amendment allows the court to appoint an attorney for the defendant at his or her request immediately upon granting them legal aid.<sup>34</sup>

---

<sup>26</sup> Zákon č. 85/1996 Sb.

<sup>27</sup> Id.

<sup>28</sup> Zákon č. 141/1961 Sb. (Law No. 141/1961 Coll., Criminal Procedure Act).

<sup>29</sup> Zákon č. 150/2002 Sb. (Law No. 150/2002 Coll., Administrative Procedure Act). Attorneys may be appointed for plaintiffs who lack sufficient financial means. However, the plaintiff’s claim must not be “manifestly frivolous.”

<sup>30</sup> Zákon č. 182/1993 Sb. §83 (Act No. 182/1993 Coll., Constitutional Court Act). The Constitutional Court may grant legal aid if justified by the applicant’s interests, particularly if she lacks the means to obtain counsel.

<sup>31</sup> Zákon č. 150/2002 Sb. §35, Czech version of zákon č. 150/2002 Sb., available at <http://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=53360&nr=150~2F2002&rpp=15#local-content> (last visited on September 4, 2015).

<sup>32</sup> Mandatory defence cases include cases where the sentence allows for imprisonment of more than five years; proceedings involving a juvenile or fugitive; and cases where the accused is in custody or serving a prison sentence. See Karabec, Diblicová, and Zeman, National Criminal Justice Profiles: Czech Republic, 43-44 (2002), available at <http://www.heuni.fi/en/index/publications/nationalcriminaljusticeprofiles/czechrepublic.html> (last visited on September 4, 2015).

<sup>33</sup> Zákon č. 283/2004 Sb. (Act No. 283/2004 Coll., Amendment of the Criminal Procedure Act).

<sup>34</sup> Zákon č. 539/2004 Sb. (Act No. 539/2004 Coll., Amendment of the Criminal Procedure Act); Czech version available at <http://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=30139&nr=141~2F1961&rpp=15#local-content> (last visited on September 4, 2015).



Despite the procedural improvements and developments in the sector, only a small number of those defendants entitled to free legal aid actually request it. Thus, there is clearly significant room for improving defendants' awareness of the right to request free legal aid.

### Draft Act on Free Legal Aid

Attempts to adopt a comprehensive legal aid law have not yet been successful, although the concept of such legislation has been discussed several times at government level. The Draft Act on Free Legal Aid (the "**Draft Act**") signified an attempt to develop comprehensive and uniform legal aid legislation in judicial proceedings. For example, it set forth a standardised means test to be used by the courts in determining the financial status of a party requesting legal aid.

However, the only success to date was the enactment of a narrow section pertaining to cross-border disputes.<sup>35</sup> As adopted, it provides for legal aid only in the limited instance where a citizen of another EU member state participates in a cross-border dispute in front of a Czech court, or where a Czech citizen participates in a procedure in front of a court of another EU member state.<sup>36</sup> To apply for legal aid in cross-border disputes, the same procedure as set out above applies, i.e. the applicant needs to file a petition with the Czech Bar Association.

### Mandatory assignments to Legal Aid Matters

Attorneys are generally required to accept matters assigned to them by the Czech Bar Association unless a conflict of interest exists.

Attorneys acting for clients on legal aid matters which have been assigned to that attorney by the court are compensated for their work by the Ministry of Justice. Legal aid matters assigned to the attorney by the Czech Bar Association are compensated by the Czech Bar Association. The amount of such compensation correlates to the value of the claim and varies from CZK 300 to CZK 5,000 per each legal step, depending on the complexity of the case.

No data is available to assess whether the current state subsidised legal aid scheme is able to meet the legal needs of indigent and marginalised individuals and NGOs in the Czech Republic.

### Alternative Dispute Resolution

The main type of alternative dispute resolution in the Czech Republic is arbitration (including financial arbitration). Arbitration takes place under the control of the participants on the basis of a written agreement in which the participants provide that their dispute will be resolved by a designated independent party. This could be either a freelance arbiter (any capable adult who is competent in legal matters) or a permanent arbitration body (in the Czech Republic for example, the Arbitration court is attached to the Economic chamber of the Czech Republic and Agricultural Chamber of the Czech Republic). Arbitration is used mainly for civil property disputes.<sup>37</sup>

The office of the Ombudsman in the Czech Republic also provides advice and support to people in situations when authorities and other institutions have acted illegally or contrary to the principles of a democratic legal state and good administration, or where such authorities are inactive.<sup>38</sup>

---

<sup>35</sup> The Law was approved on November 11, 2004, as zákon č. 629/2004 Sb. (Law No. 629/2004 Coll., Law on the Provision of Legal Aid in Cross-Border Disputes within the European Union).

<sup>36</sup> See, e.g., zákon č. 629/2004 Sb.; or Pavel Šturma, Report on the Situation of Fundamental Rights in the Czech Republic, EU Network of Independent Experts on Fundamental Rights 90, available at [http://ec.europa.eu/justice/doc\\_centre/rights/charter/docs/network\\_commentary\\_final%20\\_180706.pdf](http://ec.europa.eu/justice/doc_centre/rights/charter/docs/network_commentary_final%20_180706.pdf) (last visited on September 4, 2015).

<sup>37</sup> See [http://ec.europa.eu/civiljustice/adr/adr\\_cze\\_en.htm](http://ec.europa.eu/civiljustice/adr/adr_cze_en.htm) (last visited on September 4, 2015).

<sup>38</sup> See <http://www.ochrance.cz/en/> (last visited on September 4, 2015).

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

The Czech Republic lacks an entrenched pro bono culture. While attorneys may undertake the occasional pro bono case, such activities are not widely systematised.<sup>39</sup>

#### NGOs

Several Czech NGOs that provide free legal services have become established over the last 22 years. Most of these NGOs limit their legal assistance to counselling and provide pro bono advice online, without providing actual legal representation. The exceptions are asylum and immigration cases, which have been brought by NGO lawyers in the administrative courts. The Asylum Act provides that “[a] participant in the proceedings shall be entitled to request the assistance of a legal entity or private individual who provides legal assistance to refugees.”<sup>40</sup> The funding for such legal aid may be provided by the Ministry of the Interior.<sup>41</sup> Prominent NGOs include the Organization for Aid to Refugees, the Counselling Center for Refugees and the Society of Citizens Assisting Migrants.<sup>42</sup> The Organization for Aid to Refugees also runs legal clinics for asylum seekers and has partnered with large international law firms on various pro bono projects.<sup>43</sup>

NGOs are also involved in the legislative process. The Pro Bono Alliance, for example, was a member of a working group within the Ministry of Justice developing the text of the Draft Act. The Pro Bono Alliance also ensured the consultation and participation of civil society during the drafting process. The work on the Draft Act still continues and the Pro Bono Alliance continues to lobby for its adoption.<sup>44</sup>

#### Private attorneys

In addition to working with NGOs that provide legal services, attorneys interested in pro bono opportunities may get involved in legal reform and public interest organisations. For example, the Counselling Center of Citizenship, Civil and Human Rights works to raise public legal awareness in general, while the Open Society Fund focuses on judicial reform and access to justice.<sup>45</sup> Organizations like the League of Human Rights focus on specific aspects of citizens’ rights, such as health care,

---

<sup>39</sup> See Kristková and PILI.

<sup>40</sup> Zákon č. 325/1999 Sb. §21(1) (Act No. 325/1999 Coll., Asylum Act).

<sup>41</sup> Id.

<sup>42</sup> See Organization for Aid to Refugees, <http://www.opu.cz/en/> (last visited on September 4, 2015); Counselling Center for Refugees, <http://www.migrace.com/en/mission/assistance> (last visited on September 4, 2015); Society of Citizens Assisting Migrants, <http://www.soze.cz/> (last visited on September 4, 2015).

<sup>43</sup> See Organization for Aid to Refugees; Refugee Law Clinic Resources: Prague, available at <http://www.opu.cz/> (last visited on September 4, 2015).

<sup>44</sup> See <http://www.probonoalliance.cz/en/access-to-legal-help/law-on-legal-aid-scheme> (last visited on September 4, 2015).

<sup>45</sup> See Counselling Center of Citizenship, Civil and Human Rights, [http://poradna-prava.cz/poradna/documents\\_comments\\_convention.htm](http://poradna-prava.cz/poradna/documents_comments_convention.htm); Open Fund Society, [www.osf.cz](http://www.osf.cz) (last visited on September 4, 2015).



education, and international human rights.<sup>46</sup> In the past many of these NGOs have also worked on issues of discrimination, particularly against Czech Roma.<sup>47</sup>

International law firms interested in engaging in pro bono work in the Czech Republic should also contact the Pro Bono Alliance (formerly the Public Interest Lawyers Association (“PILA”)), which assists law firms in establishing pro bono programs.<sup>48</sup>

The Pro Bono Centrum, a project of the Pro Bono Alliance, was set up to support the development of pro bono legal services. Through this organization, pro bono legal aid is provided to clients of NGOs and not-for-profit organizations. So far, the Pro Bono Centrum has established cooperation with more than 60 attorneys and law firms, and over 50 not-for-profit organizations, and met more than 200 requests for pro bono legal services from not-for-profit organizations and their clients.<sup>49</sup>

Law firms are involved in an increasing amount of pro bono work (including consultancy to not-profit organisations and involvement in the legislative process). As of 2009 the Czech Bar Association added the “Pro Bono Lawyer of the Year” category amongst its annual awards. A number of towns and cities hold regular sessions for their residents where they have an opportunity to ask a volunteering lawyer their legal questions and discuss their disputes. All these recent developments prove that the sector is evolving and new technologies and international influence enhance the provision of free legal aid.

## Historic Development and Current State of Pro Bono

The Pro bono legal market started to evolve only recently in the Czech Republic. This development has been intensified by the accession of the Czech Republic to the EU and the Czech legal system becoming more influenced by developments in other European countries. The strong presence of international law firms in the Czech Republic with established pro bono programs has also contributed towards developments in this market.

## Barriers to Pro Bono Work and Other Considerations

### Laws and Regulations Impacting Pro Bono

There are no separate rules directly governing pro bono in the Czech Republic. There is also no explicit prohibition on free legal services or legal advertising or the solicitation of pro bono work.

Every attorney in the Czech Republic must have professional indemnity legal insurance – it is one of the pre-requisites to be eligible to practise law in the Czech Republic. Such indemnity insurance would also cover any pro bono work.

It is important to note that in-house counsel in the Czech Republic are typically employed on the basis of a labor contract, and as such are excluded from membership of the Czech Bar Association. In-house lawyers would also typically not have professional indemnity insurance as they tend to be employees.

As noted earlier, foreign lawyers wishing to engage in pro bono work are limited to only providing legal services in the Czech Republic on international law and areas, which are governed by the laws of the jurisdiction(s) of their qualification.

---

<sup>46</sup> See League of Human Rights, available at [http://ec.europa.eu/justice\\_home/daphnetoolkit/html/organisations/dpt\\_org\\_cz\\_54193\\_en.html](http://ec.europa.eu/justice_home/daphnetoolkit/html/organisations/dpt_org_cz_54193_en.html) (last visited on September 4, 2015); see also, e.g., Czech Helsinki Committee, <http://www.helcom.cz/en/> (last visited on September 4, 2015).

<sup>47</sup> See, e.g. League of Human Rights; Multicultural Center Prague, <http://www.mkc.cz/en/home.html> (last visited on September 4, 2015).

<sup>48</sup> See Pro Bono Alliance, <http://www.probonoalliance.cz/cz/> (last visited on September 4, 2015).

<sup>49</sup> See <http://www.probonoalliance.cz/en/access-to-legal-help/pro-bono> (last visited on September 4, 2015).

### Socio-Cultural Barriers to Pro Bono or participation in the Formal Legal System

There are public concerns about the legal system in the Czech Republic.<sup>50</sup> According to a 2015 research opinion published by the Center for Public Opinion Research of the Academy of Sciences of the Czech Republic, only 51% of the people surveyed trusted the courts. According to a 2013 research opinion published by Transparency International, 71% of the people surveyed had the opinion that public officials and civil servants were corrupt.

#### Pro Bono Resources

The following organisations, amongst others, provide pro bono services and/or run legal clinics in the Czech Republic:

- **Asociace občanských poraden:** <http://www.obcanskeporadny.cz/> (last visited on September 4, 2015) (in Czech only). Provides independent and free legal advice in the form of consultations only and does not provide legal representation in court.
- **Česká Advokátní Komora (Czech Bar Association):** <http://www.cak.cz/en/> (last visited on September 4, 2015). Provides free legal advice in its regional centers.
- **Český helsinský výbor (Czech Helsinki Committee):** <http://www.helcom.cz/cs/en/> (last visited on September 4, 2015). Provides legal counselling and representation.
- **Legal Clinic - Faculty of Law, Palackého University in Olomouc:** <http://www.pf.upol.cz/menu/struktura-pf/centra/centrum-pro-klinicke-pravni-vzdelavani/informace-pro-klienty-studentske-pravni-poradny/> (last visited on September 4, 2015) (in Czech only). Law students provide free legal aid to disadvantaged clients (excluding criminal and commercial law advice), under the supervision of the Faculty of Law.
- **Liga lidských práv (Human Rights League):** <http://llp.cz/en/> (last visited on September 4, 2015). Provides legal services, including representation, in cases involving patient rights, rights of people with mental disabilities, coercive sterilizations, segregation in education and placement of children in institutions, and police violence.
- **Organizace pro pomoc uprchlíkům (Organization for Aid to Refugees):** <http://www.opu.cz/en/we-offer/legal-couselling> (last visited on September 4, 2015). Provides legal advice to refugees mainly on immigration and related legal issues.
- **Právní Akademický Spolek Juristi:** <http://www.juristi.cz/ppp/> (last visited on September 4, 2015) (in Czech only). Run by a students' organization, Juristi, where law students provide online legal counselling in all major legal areas.
- **Pro Bono Alliance:** <http://www.probonoalliance.cz/en/access-to-legal-help/law-on-legal-aid-scheme/> (last visited on September 4, 2015). Promotes better access to legal aid and socially responsible lawyering.
- **Poradna pro občanství, občanská a lidská práva:** <http://www.poradna-prava.cz> (last visited on September 4, 2015) (in Czech only). Provides legal services in person in Prague or via email to immigrants, senior citizens, ethnic minorities, offenders and victims of discrimination.
- **Sdružení pro integraci a migraci (Association for Migration and Integration):** <http://www.migrace.com/en/mission/assistance/pravni-poradenstvi> (last visited on September 4, 2015). Provides legal and social counselling to foreigners, such as asylum seekers, refugees, labor migrants, undocumented migrants and their families.
- **Transparency International:** <http://www.transparency.cz/legal-advice-centre/> (last visited on September 4, 2015). Provides legal counsel free of charge to citizens who have encountered corrupt practices and are willing to report it, e.g. whistleblowers.

## CONCLUSION

While further legal aid reform is needed, and awareness must be raised regarding the existence of free legal aid, recent years have witnessed moderate improvements to the legal aid system. More

<sup>50</sup> See <http://cvvm.soc.cas.cz/instituce-a-politici/> (last visited on September 4, 2015).



improvements may come as the Czech legal system adjusts to meet new international standards. To date, pro bono work has not figured prominently in the legal profession. However, proactive Czech and European attorneys seeking pro bono representation opportunities can register with the courts and the Czech Bar Association. Non-Foreign attorneys may face greater obstacles in getting involved in pro bono work, however they may consider assisting various local NGOs. There have been some instances of international law firms successfully partnering with NGOs in the past, which bodes well for future pro bono opportunities.

September 2015

Pro Bono Practices and Opportunities in the Czech Republic

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Denmark<sup>1</sup>

### INTRODUCTION

The provision of pro bono legal services in Denmark is not as established or widespread as in the United States or the United Kingdom. Pro bono opportunities exist for individuals and law firms to participate through the legal aid institutions, *Advokatvagten* and *Retshjælpen* (as described below), which are dependent on volunteer lawyers. In addition, pro bono opportunities exist through partnerships with various national and international NGOs.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### The Constitution and Governing Laws

There are not, as in many European Union states, any civil codes in Denmark. Rather, civil law rules, including those with respect to legal aid, are found in specific legislation or are established by practice. Cooperation between the Nordic countries has also played a key part in the development of Danish law.

##### The Courts

Only lawyers (*advokater*) are able to practice law in the Danish courts. The court system in Denmark has three basic levels: the district courts, the high courts and the Supreme Court (the court of last instance).<sup>2</sup> In most instances the Danish legal system provides for a two-tiered justice system, whereby the ruling of one court may be appealed to a higher court.<sup>3</sup> Cases will typically be brought first in one of the country's 24 district courts and then, if appealed, to one of the two regional high courts.<sup>4</sup> In special instances, and if the Appeals Permission Board so decides, a case from the high court may be appealed to the Supreme Court, thus providing a third tier of justice in limited instances.<sup>5</sup> The Supreme Court also hears appeals from Denmark's specialized court, the Maritime and Commercial Court.<sup>6</sup> There are approximately 380 judges within the Danish courts.<sup>7</sup> Judges are appointed by the monarch on recommendation of the Minister of Justice.

---

<sup>1</sup> This chapter was drafted with the support of Malene Frost Larsen and Lars Lindencrone Petersen of Bech-Bruun.

<sup>2</sup> THE DANISH COURT ADMINISTRATION, A Closer Look at the Courts of Denmark 5-6, Version 1.0 (Jul. 2, 2010), available at [https://www.domstol.dk/om/otherlanguages/english/publications/Publications/Domstolsst\\_profilbrochure\\_UK.pdf](https://www.domstol.dk/om/otherlanguages/english/publications/Publications/Domstolsst_profilbrochure_UK.pdf) (last visited on September 4, 2015).

<sup>3</sup> See *id.*

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*

<sup>6</sup> See *id.* There are two specialized courts in Denmark, the Maritime and Commercial Court and the Land Registration Court. Only cases from the Maritime and Commercial Court may be appealed to the Supreme Court. The Maritime and Commercial Court hears international commercial cases and bankruptcy cases. The Land Registration Court hears matters relating to the registration of real estate. In addition to Denmark's two specialized courts, there also exist the Court of the Faroe Islands (rulings of which may be appealed to a high court) and the Courts of Greenland (appeals from which may be brought before the Supreme Court with the permission of the Appeals Permission Board).

<sup>7</sup> See *id.*



## The Practice of Law

### Education

In order to become a lawyer (*advokat*) in Denmark, you must fulfill the educational requirements (a Danish Bachelor's and Master's degree in Law), complete the practical requirements (three years of practical legal work experience) and pass the state sponsored exam.<sup>8</sup> As a result of a recent change in the Administration of Justice Act, trainee lawyers may count a proportion of their hours working for legal aid clinics towards their mandatory *advokat* training commitments. After meeting these requirements and submitting to a hearing with the Danish Bar and Law Society, an individual may then apply to the Minister of Justice for admission to practice law and gain the title "*advokat*."<sup>9</sup> Lawyers in Denmark may practice either as sole practitioners, in house lawyers or in groupings of lawyers, usually in established law firms.

### Licensure

In Denmark, there is no distinction between barristers and solicitors - they are all "lawyers." Whilst you do not need to be a lawyer to provide legal assistance out-of-court, lawyers have a monopoly when it comes to representing a client in the courts.

Lawyers from other EU Member States may practice in Denmark using their homeland title. Representing a client in court, however, requires that you appear together with a Danish lawyer. Lawyers from other countries may provide legal advice out-of-court.

### Demographics

There were approximately 6,000 lawyers registered with the Danish Bar and Law Society (*Advokatsamfundet*) in 2009.<sup>10</sup> No figures exist regarding the number of legal aid lawyers per capita.

### Legal Regulation of Lawyers

The Danish Bar and Law Society (the "**Danish Bar**"), an organization fully independent from the state, was established in 1919 to "ensure that lawyers adhere to the legal and ethical rules regulating the legal profession." To this end, the Danish Bar adopted a Professional Code of Conduct (*Advokatetiske Regler*), which applies to all lawyers and which largely mirrors the provisions of the Code of Conduct for Lawyers in the EU provided by the Council of Bars and Law Societies of the European Union (the "**CCBE**"). The General Council of the Bar supervises compliance with the Code of Conduct, and a 21 person Disciplinary Board (*Advokatnævnet*) hears complaints about attorneys pursuant to the provisions of the Administration of Justice Act. The Disciplinary Board is chaired by a Supreme Court judge and the members are representatives of the public and the legal profession. The chairman and the vice chairmen are appointed by the president of the Supreme Court.

Under the Danish Bar's Code of Conduct, attorneys must preserve absolute independence, comply with confidentiality rules, serve the client's interests diligently, conscientiously and promptly, and cannot act in situations where a conflict of interest exists. Furthermore, attorneys' fees must be "fair and reasonable" pursuant to Section 126(2) of the Administration of Justice Act, and attorneys must keep their clients informed of the basis for their fees, and respond promptly to any fee queries. In accordance with the CCBE Code of Conduct, attorneys cannot enter into a *pactum de quota litis*, or an arrangement in which the attorney's fee is a share of whatever is to be recovered.

---

<sup>8</sup> DANISH BAR AND LAW SOCIETY, Rules of the Danish Bar and Law Society (Translating Relevant Sections of the Administration of Justice Act), Sec. 119 (Jan. 1, 2008), available at <http://www.advokatsamfundet.dk/Service/English/Rules/Bye-laws.aspx> (last visited on September 4, 2015) (hereinafter "Danish Bar Rules").

<sup>9</sup> DANISH BAR AND LAW SOCIETY, Sec. 5.

<sup>10</sup> DANISH BAR AND LAW SOCIETY, The Danish Bar and Law Society, Sec. 1, available at <http://www.advokatsamfundet.dk/Service/English/Organization.aspx> (last visited on September 4, 2015) (hereinafter "Danish Bar and Law Society").



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

In certain circumstances an individual may be eligible for state-sponsored legal aid for in-court proceedings (*fri process*) in Denmark.<sup>11</sup> Legal aid for in-court proceedings covers court costs, an appointed attorney, costs of expert opinions and witnesses (if appropriate), and exemption from paying the legal fees of the opponent if the case is lost.<sup>12</sup> This type of legal aid is available most often in matrimonial or custody cases, as well as in cases where the person seeking aid is a tenant, an employee or the injured party.<sup>13</sup> Legal aid is only exceptionally granted for libel actions, in cases arising from a party's independent commercial enterprises, and in cases concerning the enforcement of undisputed claims. Before granting aid for in-court proceedings, it must be established that you have good reason to pursue the case and a good chance of succeeding. This decision is made by the Civil Law Agency (*Civilstyrelsen*) under the Ministry of Justice and, if denied, may be appealed to the Board of Appeal Permission (*Procesbevillingsnævnet*), whose decision is final.<sup>14</sup> Free legal aid for appellate proceedings is granted by the appeal court, whose decision can be appealed to the Supreme Court, if permitted by the Appeals Permission Board. However, if a party submits a new claim under the appeal proceedings, legal aid for appeal proceedings is granted by the Civil Law Agency and the Appeals Permission Board as the competent instance of recourse.

Many legal aid clinics will not assist in matters arising out of a person's ongoing commercial enterprises, cases concerning the sale of real estate, or defendants in criminal cases. However most of the legal advisory clinics (*Advokatvagten*) offer advice on such matters free of charge and without regard to income.

In addition to free legal aid for in-court proceedings, a legal aid regime established under Section 323(1) of the Administration of Justice Act sets forth three different "steps" in the provision of legal aid. "Step 1" is made up of free legal advisory clinics (*Advokatvagten*), established by the Danish Legal Aid Society, which are open to all people and are not subject to any income limitations. In these clinics, volunteer lawyers make themselves available to offer free, anonymous legal advice on everyday legal issues. Denmark has 88 of these legal aid bureaus. While the clinics have been successful and are used by many, they have faced challenges in maintaining enough volunteer lawyers to sustain the system.

"Steps 2 and 3" in the legal aid regime involve access to oral legal consultation, counseling in regard to negotiation of disputes, and assistance with basic written communications. These services are available at a nominal fee, with the government subsidizing the remainder of this cost. For example, in 2015, Level two assistance would require an individual to pay a fee of DKK 257.50 (VAT included) and the government would then pay a subsidy of DKK 772.50. These private legal aid institutions (*Retshjælpen*) can be found in Denmark's larger towns and most of these institutions will require a person to meet the same financial eligibility requirements as applicants for full legal representation (see above).

Additionally, under "Steps 2 and 3," a lawyer may provide free legal aid directly. A number of lawyers are affiliated with each court and are appointed in cases where free legal aid has been granted. A recipient of free legal aid can request the appointment of a specific lawyer to the case. As a result of a recent change

---

<sup>11</sup> DANISH BAR AND LAW SOCIETY, Public Legal Aid (2009), available at <http://www.advokatsamfundet.dk/Service/English/Organisation/Presentation.aspx> (last visited on September 4, 2015).

<sup>12</sup> See id.; see also DANISH BAR AND LAW SOCIETY, Sec. 4.4.

<sup>13</sup> See id.

<sup>14</sup> See id.; See also THE DANISH COURT ADMINISTRATION, The Appeals Permission Board, <http://www.domstol.dk/om/otherlanguages/english/thedanishjudicialsystem/appealspermissionboard/Pages/default.aspx> (last visited on September 4, 2015).



in the Administration of Justice Act, trainee lawyers may count a proportion of their hours working for legal aid clinics towards their mandatory training commitments.

## State-Subsidized Legal Aid

### Eligibility Criteria

#### Immigration Status

There are no eligibility limitations based on immigration status in Denmark.

#### Financial Means

To be eligible for free legal aid in court proceedings, a party must have an annual gross income that is below a certain limit (DKK 289,000 for unmarried individuals, DKK 357,000 for married couples, with an increase limited to DKK 50,000 per child under 18 years of age).<sup>15</sup> Furthermore, persons who hold private legal costs insurance are ineligible for legal aid.<sup>16</sup> There are also free legal advisory clinics (*Advokatvagten*), established by the Danish Legal Aid Society, which are open to all people and are not subject to any income limitations.

#### Merits

Before granting aid for court proceedings, it must be established that you have good reason to pursue the case and a good chance of succeeding, which is determined by the Civil Law Agency.

#### Legal Issues/Case Type

Legal aid at "Steps 2 and 3" in the legal aid regime is not granted to: suspects or defendants in public criminal cases; active business owners' cases of a predominantly commercial nature; cases regarding rescheduling of debt; or cases regarding or cases that are being treated by an administrative authority or a private complaints board or appeals committee approved by the Minister of Family and Consumer Affairs.<sup>17</sup>

#### Applicant Type

Only individuals are granted legal aid.

#### Mandatory Assignments to Legal Aid Matters

At each court in Denmark there is a number of lawyers who have volunteered to represent clients and persons who are charged with criminal offences. These lawyers have to accept the matters assigned to them. Outside of this system, a lawyer is free to accept or decline a representation.

A lawyer assigned to a free legal aid party receives his fee plus VAT from the public purse. The fee is fixed by independent decision by the court that assigned the lawyer. A lawyer may not accept any additional fee from the client to whom he has been assigned.<sup>18</sup>

### Unmet Needs and Access Analysis

Jonathan Smith, Executive Director, Legal Aid Society of DC in 2009 said: "People living in poverty have dramatically increased needs for legal aid caused by rising unemployment, foreclosures, increased reliance on public benefits, and economic insecurity. At the same time, funding for legal aid programs has

---

<sup>15</sup> COPENHAGEN LEGAL AID, Who Can We Help, available at <http://www.retshjaelpen.dk/eng/who-can-we-help> (last visited on September 4, 2015).

<sup>16</sup> DANISH BAR AND LAW SOCIETY, Public Legal Aid (2009), available at <http://www.advokatsamfundet.dk/Service/English/Organisation/Presentation.aspx> (last visited on September 4, 2015).

<sup>17</sup> Denmark, Administration of justice act, 2008, Section 323.

<sup>18</sup> ERIC WERLAUFF, Civil procedure in Denmark, Second Revised Edition, p. 104 2009.



been cut by 25%. Rising need and decreasing services is a crisis for the legal community and will create long-lasting problems for the Courts, agencies, and private bar.”<sup>19</sup>

## Alternative Dispute Resolution

### Mediation and Arbitration

There are institutes offering both mediation and arbitration in Denmark. Arbitration has a long tradition, while mediation is a relatively new phenomenon. The institute providing arbitration service is The Danish Institute of Arbitration,<sup>20</sup> which also provides mediation services. There also is an institute specializing in mediation.<sup>21</sup>

### Ombudsman

If a Danish citizen seeks redress against acts of public authorities, he may be entitled to legal support through the Danish Ombudsman (*Folketingets Ombudsmand*). The Danish Ombudsman can initiate actions based on complaints about decisions of authorities or the treatment of citizens in specific cases. Access to review by the Ombudsman is free, and the review may result in a recommendation that legal aid be granted in a case under the auspices of the Ombudsman.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

Private attorneys are not mandated to either engage in pro bono work or report it.

#### Law Firm Pro Bono Programs

Lassen Ricard law firm provides pro bono legal services to a number of entrepreneurial organizations, such as Stardust-DTU, a student-run organization that supports entrepreneurship at the Danish Technical University, CSE-Lab and the Foundation for Entrepreneurship.<sup>22</sup> It also provides various free legal services to Kofoeds Skole, which helps the unemployed; the Foundation Allehånde, an employment initiative for the hearing impaired; and the National Association for Multiple System Atrophy.

Lassen Ricard is also strongly engaged in the “India Today/Copenhagen Tomorrow” project. The purpose of India Today/Copenhagen Tomorrow is to link the people of India and Denmark by promoting an exchange of culture, science and trade between the two countries.

In addition, Lassen Ricard has, for example, been very active in the five-year project, called the “Diversity Project” (*Mangfoldighedsprojektet*). The project seeks to promote inclusion of all ethnical and social minorities via education, role models, organized debates and workshops, essay competitions and a stipend to minorities pursuing a legal education.

Plesner law firm provides legal advice in collaboration with law students selected by the association of law students at the University of Copenhagen under the heading “Student Volunteers” for the purpose of supporting law studies in Denmark and making the students aware of the importance of pro bono work.<sup>23</sup>

---

<sup>19</sup> BISNOW, Copenhagen Insider pro bono challenges (Dec. 23, 2009) , available at <https://www.bisnow.com/archives/newsletter/dc-legal/copenhagen-insider-pro-bono-challenges> (last visited on September 4, 2015).

<sup>20</sup> See <http://voldgiftsinstituttet.dk/en/> (last visited on September 4, 2015).

<sup>21</sup> See <http://mediationsinstituttet.dk/> (last visited on September 4, 2015) - only available in Danish.

<sup>22</sup> LASSEN RICARD (law firm), pro bono/public service, <http://www.lassenricard.dk/en/the-firm/pro-bonopublic-service/> (last visited on September 4, 2015).

<sup>23</sup> PLESNER(law firm), Provide free legal advice (pro bono). See [http://www.plesner.com/cms/Pro\\_bono-2908.aspx](http://www.plesner.com/cms/Pro_bono-2908.aspx) (last visited on September 4, 2015)



## Bar Association Pro Bono Programs

There are no legal department or Bar Association pro bono programs in Denmark.

## Non-Governmental Organizations (NGOs)

There has recently been an increase in pro bono work for NGOs and similar organizations, as is more common in the United States and the United Kingdom. This trend is particularly noticeable in the case of attorneys at large firms in larger cities. The Association of Danish Law Firms has been moving this trend forward by encouraging Danish law firms to join the United Nations Global Compact (“**UNGC**”).<sup>24</sup> While the UNGC does not directly advise its members to undertake pro bono work, it does encourage them to undertake partnerships with other stakeholders in order to advance UN goals.<sup>25</sup> To this end, many law firms have undertaken partnerships with NGOs, both local and international, with the aim of strengthening their commitment to the ten principles underlying the UNGC.<sup>26</sup>

In the Spring of 2010, the Minister of Justice established a group to examine the reason for the decrease in legal aid cases. At present, the Danish bar is considering whether it should recommend or require lawyers and law firms to provide free legal services through the existing system of legal aid clinics<sup>27</sup> or whether law firms and lawyers should be free to direct their pro bono activities to NGOs and similar organizations. This debate is related to the future funding of the local Danish legal aid system and, in particular, to the practical implementation of Section 323(1) of the Administration of Justice Act, pursuant to which all persons have the right to free legal aid.

## University Legal Clinics and Law Students

There are no Pro Bono University Legal Clinics in Denmark.

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

There have never really been obstacles to pro bono in the form of legislative or systemic hindering in Denmark. The reason that pro bono has not been seen much in Denmark in the past is that it simply was something that lawyers did not think about. With the expansion and growing prevalence of NGOs and similar organizations, as well as increased attention being paid to CSR and the like, the transition to increased pro bono services being rendered to NGOs and similar organizations has been fairly seamless.

---

<sup>24</sup> DANSKE ADVOKATER (The Association of Danish Law Firms), Communications on Progress: Implementing UN Global Compact Principles in The Association of Danish Law Firms 2010, available at [http://www.unglobalcompact.org/system/attachments/13471/original/COP\\_-\\_Danske\\_Advokater.pdf?1324289661](http://www.unglobalcompact.org/system/attachments/13471/original/COP_-_Danske_Advokater.pdf?1324289661) (last visited on September 4, 2015).

<sup>25</sup> UNITED NATIONS GLOBAL COMPACT, The Inspirational Guide to Implementing the Global Compact (Jul. 2007), available at [http://www.unglobalcompact.org/docs/news\\_events/8.1/Inspirational\\_Guide.pdf](http://www.unglobalcompact.org/docs/news_events/8.1/Inspirational_Guide.pdf) (last visited on September 4, 2015).

<sup>26</sup> BECH-BRUUN, A Driving Force Behind Responsibility; Corporate Social Responsibility 2012, available at <http://www.bechbruun.com/resources/Corporate%20Responsibility/Maj%202012/En/index.html> (last visited on September 4, 2015).

<sup>27</sup> In a 2009 statement, the Danish Bar and Law Society expressed a preference for pro bono work being directed through the legal clinic work of individual attorneys. (Advokatrådets retssikkerhedsprogram 2009: “Advokatrådet er af den opfattelse, at såvel den enkelte advokat som professionen som sådan har pligt til at medvirke til at sikre borgernes adgang til juridisk rådgivning og hjælp til tvistløsning i såvel den offentlige forvaltning som i retsplejen. Advokaterne i Danmark løser denne opgave ved at give anonym og gratis retshjælp til tusindvis af mennesker om året i advokatvakterne. Hertil kommer, at mange enkeltadvokater vederlagsfrit giver en helt indledende rådgivning til personer, som søger deres råd.”).



## Current State of Pro Bono including Barriers and Other Considerations

The legal aid institutions, *Advokatvagten* and *Retshjælpen*, described above depend on volunteer lawyers to subsist. These institutions can be found throughout Denmark and pro bono opportunities at these institutions exist both for individuals and law firms. By way of example, Copenhagen Legal Aid received 15,000 inquiries from clients in 2010 and sent two to three cases per week to law firms that provided legal aid. In addition, individual lawyers and law students provide more than 40 volunteer hours per day.<sup>28</sup> However, there has been a decrease in legal aid.

According to June Kress, Executive Director, Council for Court Excellence in 2009, “despite an increasing need for legal services, clinics are reducing their hours and staff in the face of dwindling donations. Yet we hear that inside law firms, if you are available for non-billables, you may be considered expendable. If lawyers are not stepping up to the plate, we’re in trouble.”<sup>29</sup>

As discussed above, there has also recently been an increase in pro bono work for NGOs and similar organizations in Denmark, as is more common in the United States and the United Kingdom.

### Laws and Regulations Impacting Pro Bono

#### “Loser Pays” Statute

If the party in possession of free legal aid loses the case, the costs awarded to the other party are also paid by the public purse. If the other party loses the case, he/she must pay costs to the public purse as if there were no legal aid. The other party must also pay a fixed amount assessed to equal the court costs which would have been payable in the absence of legal aid.<sup>30</sup>

#### Statutorily Mandated Minimum Legal Fee Schedule

The fee which is paid by the state is, in principle, DKK 1,650/hour (approx. € 220/\$ 230). There is no requirement for lawyers to charge a minimum fee for their services.

#### Practice Restrictions on Foreign-Qualified Lawyers

Lawyers from other EU Member States may practice in Denmark using their homeland title. Representing a client in court, however, requires that you appear together with a Danish lawyer. Lawyers from other countries may provide legal advice out-of-court.

#### Concerns About Pro Bono Eroding Public Legal Aid Funding

No widespread concerns have been raised about pro bono eroding Public Legal Aid funding in Denmark.

#### Regulations Imposing Practice Limitations on In-House Counsel

There are no laws nor regulations that prohibit in-house counsel working on pro bono work. The only restriction would come from individual company policy.

#### Availability of Professional Indemnity Legal Insurance Covering pro bono activities by Attorneys

For many years it has been a requirement that a lawyer is covered by professional indemnity insurance. These policies also cover pro bono work.

#### Availability of Legal Insurance for Clients

Household insurance policies typically include coverage for certain legal expenses.<sup>31</sup> The majority of people in Denmark have such insurance policies, and therefore, within certain limits, many are covered for legal expenses relating to matters arising in their private life (whereas business-related

---

<sup>28</sup> COPENHAGEN LEGAL AID, Statistics, available at <http://www.retshjaelpen.dk/eng/statistics> (last visited on September 4, 2015).

<sup>29</sup> December 23, 2009, Copenhagen Insider pro bono challenges, available at <https://www.bisnow.com/archives/newsletter/dc-legal/copenhagen-insider-pro-bono-challenges> (last visited on September 4, 2015).

<sup>30</sup> ERIC WERLAUFF, *Civil procedure in Denmark*, Second Revised Edition, p. 104 2009.

<sup>31</sup> THE DANISH COURT ADMINISTRATION, *Free Legal Aid*.

disputes are typically not covered).<sup>32</sup> Furthermore, trade unions will often take employment related cases to court for their members.<sup>33</sup> Thus, legal costs in Denmark are spread across various institutions, making the country's legal aid institutions most useful as a first-stop resource for people contemplating legal action and for those who are most in need.

### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

There are no widespread public concerns about the formal legal system in Denmark. The reason why parties choose arbitration instead of going to the courts may, of course, vary, but it would not be correct to assume that this choice is due to some degree of mistrust in the formal dispute resolution system.

There is also no direct opposition from the Bar but as mentioned above there has been a debate about whether the Danish Bar should recommend or require lawyers and primarily law firms to provide free legal services through the existing system of legal aid clinics<sup>34</sup> or whether law firms and lawyers should be free to direct their pro bono activities to NGOs and similar organizations.

### Pro Bono Resources

There are several entities engaged in pro bono in Denmark including:

- List of *Advokatvagten* offices throughout Denmark: <http://www.advokatsamfundet.dk/Default.aspx?ID=11780> (last visited on September 4, 2015) (Danish)
- *Retshjælpen* legal aid institutions in Denmark:  
Copenhagen: <http://www.retshjaelpen.dk/eng/> (last visited on September 4, 2015)  
Odense: <http://www.retshjaelpenivestergade.dk/> (last visited on September 4, 2015) (Danish)  
Aarhus: <http://www.aarhusretshjaelp.dk/> (last visited on September 4, 2015) (Danish)  
Esbjerg: [http://www.advokathuset-esbjerg.dk/a-22,Retshjaelp\\_\\_hvad\\_er\\_det.html](http://www.advokathuset-esbjerg.dk/a-22,Retshjaelp__hvad_er_det.html) (last visited on September 4, 2015) (Danish)

## CONCLUSION

In Denmark, legal aid and some limited free legal advice is available, but no established pro bono culture exists outside of (i) the encouragement of lawyers to contribute time to legal aid clinics; (ii) some limited advice rendered to charitable organizations and other interest groups by certain law firms and some sole practitioners, whose practice area coincides with the focus of such organizations and groups; and (iii) pro bono partnerships between Danish law firms and various national and international NGOs.

The future of legal aid in Denmark is being discussed at the level of the Danish Bar and Law Society. There are individuals within the Danish Bar and Law Society that believe that pro bono activities should primarily be directed towards legal aid clinics and assistance to low income citizens. This may limit the development of pro bono activities of the type known in the United States and the United Kingdom. However, the outcome of this debate is uncertain.

September 2015

Pro Bono Practices and Opportunities in Denmark

---

<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> In a 2009 statement, the Danish Bar and Law Society expressed a preference for pro bono work being directed through the legal clinic work of individual attorneys. (Advokatrådets retssikkerhedsprogram 2009: "Advokatrådet er af den opfattelse, at såvel den enkelte advokat som professionen som sådan har pligt til at medvirke til at sikre borgernes adgang til juridisk rådgivning og hjælp til tvistløsning i såvel den offentlige forvaltning som i retsplejen. Advokaterne i Danmark løser denne opgave ved at give anonym og gratis retshjælp til tusindvis af mennesker om året i advokatvagterne. Hertil kommer, at mange enkeltadvokater vederlagsfrit giver en helt indledende rådgivning til personer, som søger deres råd.")



## LATHAM & WATKINS<sup>LLP</sup>

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



# Pro Bono Practices and Opportunities in the Dominican Republic

## INTRODUCTION

The legal community in the Dominican Republic is increasingly recognizing the value of a pro bono culture and the significant positive impact that pro bono work can have on democracy and justice. The Pro Bono Declaration for the Americas (the “**PBDA**”) is the founding document that is helping to institutionalize pro bono activities by Dominican Republic lawyers, alongside the Pro Bono Foundation RD, which coordinates and enables the pro bono efforts.

## OVERVIEW OF THE LEGAL SYSTEM

### The Justice System

#### Constitution and Governing Laws

Since gaining its independence from Haiti in 1844, the Dominican Republic has had 38 versions of its constitution. The current constitution was adopted and entered into force on January 26, 2010 (*Constitución de la República Dominicana*) (the “**Constitution**”) and is the fundamental and supreme law of the Dominican Republic. It has two primary functions: (i) to establish the government and its powers; and (ii) to recognize the fundamental human rights of individuals and the constitutional procedure to enforce them.

In accordance with the principle of separation of powers there are three governmental branches - the executive, legislative and judiciary. The executive branch has long been the dominant branch in the Dominican governmental system. It is composed of the President and the Vice President of the Dominican Republic (who are elected on the same ticket by popular vote). The president is the Head of State, the Head of Government and Commander in Chief of the armed forces. The Council of Ministers is charged with the administration of the State, ensuring that laws are duly executed and enforced.

The legislative power is exercised by a bicameral National Congress (*Congreso de la República*). The upper house is the Senate (*Senado*) with 32 members, elected for a four-year term in single-seat constituencies. The lower house is the Chamber of Deputies (*Cámara de Diputados*) with 178 members, elected for a four-year term by proportional representation in accordance with each province. One deputy is elected for every 50,000 inhabitants and there are never fewer than two. The legislative branch has the authority to make, amend and repeal laws.

#### The Courts

##### Levels, relevant types and locations

The judicial system consists of the Supreme Court of Justice, the Court of Appeals, the Courts of First Instance, and the Justices of the Peace. Other special courts include the Courts for Minors, Labor Courts, Land Courts and the Tax Court, better known as the *Tribunal Contencioso Tributario*.<sup>1</sup>

The judiciary is charged with administering justice in order to ensure the respect, protection and supervision of rights recognized under the constitution and laws. Its highest organ is the Supreme Court of Justice, which ensures the independence of the judicial branch.

The Supreme Court hears appeals from the lower courts (as a Court of Cassation) and has sole jurisdiction over actions against the President, designated members of his cabinet and members of Congress. It has administrative and financial autonomy. In addition to working as an appeals court for all judgments rendered by judicial courts, the Supreme Court also supervises all judges in the Dominican Republic.

---

<sup>1</sup> See [http://www.nyulawglobal.org/globalex/Dominican\\_Republic.htm](http://www.nyulawglobal.org/globalex/Dominican_Republic.htm) (last visited on September 4, 2015).



### Appointed vs. Elected Judges

The Supreme Court is composed of 16 judges appointed by the National Council of Magistrates, which in turn, chooses members of the lower courts.

### The Practice of Law

#### Education

The only legal requirements to become an attorney in the Dominican Republic are holding a degree in law and being a member of the Bar Association (as set out in Laws No. 821 and 91 of the Judicial Organization).<sup>2</sup>

#### Licensure

the legal regulation of attorneys is established in Law No. 821 of November 21, 1927 of the Judicial Organization and its modifications (*Ley de Organización Judicial, y sus modificaciones*). Article 73 sets out the requirements to practice as a lawyer in the Dominican Republic. These requirements include being a Dominican national and being a member of the Dominican Republic Bar Association (*Colegio de Abogados*).

The Dominican Republic Bar Association is regulated by Law No. 91 (*Ley que crea el Colegio de Abogados*). Law No. 91 establishes the Bar's functions, which include among others, overseeing the attorneys' professional conduct, adopting a professional ethics code and defending attorneys' rights.

#### The Role of Foreign Lawyers

Non-Dominican nationals may practice as attorneys in the Dominican Republic. A foreign lawyer may become a member of the Bar (i) by obtaining a law degree in the Dominican Republic; (ii) by obtaining revalidation of a law degree issued in a foreign country; or (iii) if the government of a jurisdiction in which the foreign national has a license to practice law has an agreement with the Dominican Republic establishing reciprocal treatment for Dominican lawyers.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The obligation to provide legal aid is established in the Constitution in Articles 176 and 177. The former states:

"The Public Defense Service is an organ of the justice system endowed with administrative and functional autonomy, which aims to ensure the effective protection of the fundamental right to defense in the various areas of its competence. The Public Defender is available throughout the national territory according to the criteria of free, easy access, equity, efficiency and quality, for the accused persons who, for whatever reason, are not assisted by a lawyer. The Public Defender Act governs the functioning of this institution."

Article 177 sets out the obligation of the state to provide free legal assistance, in the following terms:

"The State is responsible for organizing programs and services for free legal assistance for people who lack the financial resources to obtain legal representation of their interests, particularly for the protection of the rights of the victim, without prejudice to the powers that correspond to the Public Ministry in the field of criminal proceedings."<sup>3</sup>

The Draft Law of Public Defense was passed on August 12, 2004 with the approval of Act No. 277. This act created the National Public Defender Service and provides for the functional, administrative and financial autonomy of the institution within the judiciary. In 2009, the Public Defender obtained full independence from the judiciary.

Public Defenders provide free advice and guidance before and during judicial proceedings in criminal and civil matters. Their role consists of providing legal representation or legal advice, granting the right of access to justice. Although the main aim is to provide services to individuals who lack sufficient financial

<sup>2</sup> See Article 73 of Law No. 821 and Article 4 paragraphs I and II of Law No. 91.

<sup>3</sup> See <http://republica-dominicana.justia.com/nacionales/constitucion-de-la-republica-dominicana/titulo-v/capitulo-vi/> (last visited on September 4, 2015).



resources, the service is not limited to such individuals. Public Defenders are also available for individuals who for whatever reason do not have an attorney.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

The PBDA, spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched at a congress in January 2008 by a committee of leading practitioners in Latin America and the United States. The congress was attended by representatives from prestigious law firms, law schools, bar associations and NGOs. Signatories, including the Dominican Republic, endorsed the principle that it is the duty of the legal profession to promote a fair and equitable legal system and respect for human and constitutional rights. The PBDA calls for each signatory to promote an average of at least 20 hours of annual pro bono work per practicing attorney.<sup>4</sup>

The Pro Bono Foundation RD (*Fundación Pro Bono RD, Inc*) (the “**Foundation**”)<sup>5</sup> is the Dominican Republic’s leading clearinghouse for pro bono work and focuses on finding and distributing pro bono opportunities to private attorneys. Founded in 2011, the Foundation has two employees and is otherwise staffed by volunteers. In 2013, 11 law firms were members of the Foundation alongside approximately 78 independent practitioners. The volunteers, who are mainly independent practitioners, cover a wide range of legal services, from the defense of human rights to providing legal assistance in criminal, civil, and public law matters.

The Dominican Republic’s pro bono community has begun to engage with its counterparts across the region. On the October 1, 2014 the Foundation organized a two-day conference designed to raise awareness in the country . That conference led to two local firms signing the PBDA. Some firms are very committed to pro bono, however, the practice could be more widespread and the number of hours being completed is low compared to other countries in Latin America. While the practice does not currently appear to be widely institutionalized in firms, all firms acknowledge pro bono when evaluating lawyers. Pro bono cases are mostly sourced from the Foundation or non-profit organisations.

Furthermore, the Foundation, alongside law faculties across the Dominican Republic, is determined to bring the culture of pro bono to law schools, so that at the end of their studies and when practicing as lawyers, graduates use pro bono as a tool for social change and ethical commitment to the community. To this end the Foundation, in collaboration with the Universities, sets up periodic talks and conferences at Law Schools in which they promote the culture of pro bono.

Jiménez Cruz Peña (“**JCP**”), one of the 11 law firms who signed the PDBA in 2013 and one of the main contributors to pro bono in the Dominican Republic, provides legal services and advice, free of charge or at low cost, to individuals, communities and organizations with limited resources.

In August 2014, the Foundation and Russin, Vecchi & Heredia Bonetti, S.R.L. (“**RVHB**”), signed a collaboration agreement to promote access to justice for individuals, communities or groups in a vulnerable situation in public interest cases. By virtue of the collaboration agreement, RVHB, is now part of the Advisory Council of the Foundation, and will work alongside the Foundation on all processes vindicating fundamental rights as part of the contribution to corporate social responsibility by the Dominican Republic’s legal community.

### Historic Development and Current State of Pro Bono

Historically, most pro bono services were performed by attorneys on a purely altruistic and sporadic basis, rather than as part of structured programs within law firms. This has changed in recent years, especially due to the fact that the Latin American legal community as a whole has placed an increasing emphasis on

<sup>4</sup> See <http://www.vancecenter.org/vancecenter/images/stories/vancecenter/111811pbda.pdf> (last visited on September 4, 2015).

<sup>5</sup> See <https://comisionprobono.wordpress.com/> (last visited on September 4, 2015).



pro bono services. This emphasis is evidenced by the implementation of the PBDA, whereby signatories commit to providing an average of at least 20 pro bono hours annually per practicing attorney. The creation of the Foundation has helped to establish a pro bono culture in the Dominican Republic, providing a 'matchmaking' service for lawyers and those in need of free legal services.

JCP and Headrick Rizik Álvarez & Fernández Abogados y Consultores estimate that between 25-30% and 51-75% of their lawyers, respectively, participated in pro bono cases in 2013. They also estimate that each lawyer invested between 20 to 30 hours to such cases. Although there are no national statistics, this gives an approximate picture of the pro bono efforts law firms in the Dominican Republic are making.

Nevertheless, there are still many challenges and key obstacles to overcome. The principal barrier to pro bono services in the Dominican Republic is a lack of explicit legal regulations and a lack of public cooperation. This has slowed the progress of creating new pro bono organizations and it may be one of the key reasons why only a small number of law firms are signatories to the PBDA and are therefore not actively investing in pro bono cases.

In addition, the Decree on Professional Fees for Legal Services (a government regulation), requires that lawyers providing legal services in court proceedings charge a fee for their services. The Decree contains an express prohibition against reducing or eliminating such fees. However, and as mentioned above, the State is obliged to provide free legal assistance for people who lack the financial resources to obtain legal representation. This limits, to a certain extent, the type of legal aid that can be provided on a pro bono basis.

### Pro Bono Resources

As noted above, the Foundation is the Dominican Republic's leading clearinghouse for pro bono work and focuses on finding and distributing pro bono opportunities to private attorneys. It was founded in 2011 and over 11 law firms currently participate in this initiative, as well as an important number of independent practitioners (see <http://www.probonord.org/>).

Two of the Dominican Republic's main law firms are committed providers of pro bono in the Dominican Republic, RVHB and JCP (as described above)

## CONCLUSION

Pro bono services in the Dominican Republic are steadily increasing, although the pro bono movement is not yet fully developed, despite having a legal system that recognizes a right of free access to justice for all citizens. Through the Pro Bono Foundation RD, there is a clearinghouse to distribute pro bono cases and many of the top law firms in the nation have publicly committed themselves to devoting a percentage of their time to providing pro bono services, and have established programs for doing so. Despite these advances, much work remains to be done, including the challenge of developing a pro bono culture in firms, the financial sustainability of clearinghouses and clarity on how pro bono work should be rewarded.<sup>6</sup>

September 2015

Pro Bono Practices and Opportunities in the Dominican Republic

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>6</sup> See <http://latinlawyer.com/news/article/47497/challenges-remain-pro-bono-latin-america/> (last visited on September 4, 2015) and <http://www.vancecenter.org/vancecenter/images/stories/vancecenter/pro%20bono%20survey%202014.pdf> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in Ecuador<sup>1</sup>

### INTRODUCTION

The legal community in Ecuador historically has not been involved in pro bono, nor are attorneys required to do pro bono work once they are admitted to practice. However, the Ecuadorian government has recently made great strides in ensuring that persons deprived of financial resources or otherwise unable to retain legal counsel may receive free legal assistance.

The enhanced role of the Public Defenders' Office has been particularly noteworthy, as is the obligation imposed on law schools to maintain a legal clinic providing services to the general public. However, the Ecuadorian government requires the Public Defenders' Office to authorize and oversee the activity of organizations rendering free advice to the general public, which may discourage the ability of certain entities interested in enhancing pro bono work in Ecuador, such as NGOs and pro bono clearinghouses, to develop further. There are encouraging signs that law firms are taking more interest in pro bono, such as the commitment of certain leading law firms to adhere to the goals set by the Pro Bono Declaration for the Americas sponsored by the Cyrus R.Vance Center for International Justice of the New York City Bar Association.

### OVERVIEW OF LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Ecuadorian constitution, enacted in 2008 (the “**Constitution**”), states that Ecuador is a decentralized republic organized in regions, provinces, cantons and rural parishes with a national administration.<sup>2</sup> Ecuador has a legislative, executive and a judicial branch of government (which includes justice for indigenous persons), and two autonomous branches. One oversees elections (*Función Electoral*), to ensure political transparency and the other is concerned with social development (*Función de Transparencia y Control Social*).<sup>3</sup>

##### The Courts

The judicial power is exercised mainly by the National Court of Justice, the highest appellate court of civil, criminal, labor, public, tax, commercial and family law matters in Ecuador.<sup>4</sup> There are lower courts of law with jurisdiction on such matters within each province. The Constitutional Court is the sole court having jurisdiction on constitutional-related matters.<sup>5</sup> The Constitution acknowledges the ability of indigenous communities to set up their own courts (which belong to the judicial branch) which enforce such communities' own laws within their territory, which must not be contrary to the Constitution or to human rights protected by international conventions.<sup>6</sup>

---

<sup>1</sup> This chapter was drafted with the support of Mr. Roberth Puertas from Fundación Fabián Ponce Ordóñez, a foundation set up by the law firm Pérez Bustamante & Ponce in 1987 to render pro bono services to the general public. Fundación Fabián Ponce Ordóñez is involved in an average of 1000 cases and devotes more than 5,000 hours of pro bono work per year. More information about it may be found at [www.fundacionfpo.org](http://www.fundacionfpo.org) (last visited on September 4, 2015).

<sup>2</sup> Ecuadorian constitution, articles 1 and 242.

<sup>3</sup> Ecuadorian constitution, articles 118, 141, 167, 204 and 217.

<sup>4</sup> Ecuadorian constitution, article 177.

<sup>5</sup> Ecuadorian constitution, article 429.

<sup>6</sup> Ecuadorian constitution, article 177.



Judges of all courts of law in the country are appointed by the Judiciary Council, a body in charge of the administration of the Ecuadorian courts, based on their merits and following a public competition procedure.<sup>7</sup> The Public Defenders' Office is a separate office belonging to the judicial branch, formed by public servants<sup>8</sup>, entrusted with the role of ensuring that persons of limited resources and those unable to retain their own legal counsel have full and equal access to the judicial system.<sup>9</sup>

## The Practice of Law

### Education

To practice law in Ecuador, an attorney must hold a law degree from a licensed Ecuadorian university and have worked with either a public body or an indigenous community with its own court of law for one year providing free legal advice. This one year period mandatory public service requirement may be waived if a law graduate is able to evidence a minimum two-year period working at a free legal clinic (*consultorio jurídico*) sponsored by a university, or an equivalent period working as a law clerk in a judicial body. Law schools are required to maintain a legal clinic to provide free legal advice to persons that cannot retain their own legal counsel, subject to a prior authorization from the Public Defenders' Office.<sup>10</sup>

### Licensure

In order to represent a client before a court of law, an attorney must also be registered with the Judiciary Council.<sup>11</sup> However, a law graduate is not required to be a member of a local Bar Association in order to practice law.<sup>12</sup> There is no minimum pro bono work requirement imposed on licensed attorneys or special professional credits available for the performance of pro bono work.

A holder of a law degree from a foreign law school may be admitted into practice in Ecuador to the extent that such degree is duly recognised by the Ecuadorian authorities and the mandatory one-year public service requirement has been fulfilled. Foreign attorneys cannot work on pro bono cases, unless they are able to meet the requirements to be admitted to practice in Ecuador. There are no rules allowing foreign attorneys to practice law in Ecuador on an extraordinary basis (e.g. in connection with a specific pro bono case).

### Demographics

As per the last demographic statistics available, there are 37,373 attorneys in Ecuador, averaging approximately 2.6 attorneys per 1,000 inhabitants.<sup>13</sup>

---

<sup>7</sup> Ecuadorian constitution, articles 170, 176 and 178.

<sup>8</sup> The attorneys working at the Public Defenders' Office are admitted in the public service after passing a public exam (*oposiciones*).

<sup>9</sup> Ecuadorian constitution, articles 178 and 191. The Public Defenders' Office currently has 166 branches in the 24 Ecuadorian provinces. It is expected that the Public Defenders' Office will have branches in each canton of Ecuador (221) by 2018.

<sup>10</sup> Ecuadorian constitution, article 193. Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 292. See <http://www.defensoria.gob.ec/index.php/component/k2/item/109-directorio-cj> (last visited on September 4, 2015) for a list of the universities authorized to have a legal clinic.

<sup>11</sup> Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 324.

<sup>12</sup> In that regard, Ecuadorian laws required registration at a Bar Association as a pre-condition to practice law. The Ecuadorian Supreme Court has ruled such requirement contrary to the constitution in 2007, though. After the enactment of the Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*) in 2009, such requirement was formally derogated from Ecuadorian laws.

<sup>13</sup> 2010 Census authored by the Ecuadorian Institute of Statistics and Census (*Instituto Ecuatoriano de Estadísticas y Censos – INEC*). The total population of Ecuador in 2010 has 14,483,499. According to recent forecasts, the population of Ecuador is expected to reach 16,278,844 in 2015.



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The Constitution ensures that any individual is entitled to receive legal assistance in judicial proceedings. Where a person cannot secure their own legal representation due to economic, social or cultural handicaps, a public defender (*defensor público*) shall be appointed by a court or through an application filed directly before the Public Defenders' Office.<sup>14</sup> A court can only appoint public defenders to act for such persons.

There is no limitation on the type of matters public defenders may work on, however, they are required to prioritise lawsuits relating to alimony payments (even when a private attorney has been involved in an early stage of the lawsuit), family law matters, labor law, criminal law (including criminal lawsuits related to family violence) and real estate (such as the recognition of ownership rights over land not unlawfully occupied, and advice to tenants).<sup>15</sup>

The Public Defenders' Office is required to give priority of legal representation to, among others, the following groups of individuals: (i) children and teenagers; (ii) pregnant women and mothers of children under two years old; (iii) disabled persons; (iv) senior citizens; (v) persons belonging to Indian or African communities; (vi) illiterate persons; (vii) persons resident in rural areas; and (viii) exiles.<sup>16</sup>

### Alternative Dispute Resolution

Ecuador's constitution acknowledges the possibility of applying arbitration, mediation and other alternative conflict resolution procedures in transactional matters.<sup>17</sup>

Public Defenders may be involved in arbitration procedures, and the Public Defenders' Office has a mediation center that specializes in mediation cases. Private attorneys may also engage in mediation and arbitration proceedings.

Certain legal work may also be done by the Public Ombudsman's Office (a body within the Transparency and Social Development branch of government) in specific cases. In particular, the Ombudsmen may sponsor collective lawsuits, *habeas corpus* request, lawsuits requesting access to public information or *habeas data* and other complaints generally related to unlawful or defective performance of private or public services before the Ecuadorian courts. In addition, the Ombudsmen are empowered to act in cases where due process of law is jeopardized, and where violation of human and civil rights has occurred.<sup>18</sup>

---

<sup>14</sup> Ecuadorian constitution, articles 76 and 191. Organic Code of the Judicial Branch (Código Orgánico de la Función Judicial), articles 285 to 292.

<sup>15</sup> Additional information on the role of the Public Defenders' Office may be found (in Spanish) at <http://www.defensoria.gob.ec/index.php/defensoria-publica/que-hacemos> (last visited on September 4, 2015).

<sup>16</sup> See 2012 Circular issued by the Public Defenders' Office <http://biblioteca.defensoria.gob.ec/bitstream/37000/839/1/Patrocinio%20Social%20-%20Registro%20Oficial%20812.pdf> (last visited on September 4, 2015).

<sup>17</sup> Ecuadorian constitution, article 190. In particular, it is accepted that controversies arising under contracts with public administration bodies may be solved by means of an arbitration procedure, provided that recourse to arbitration is previously approved by the State Attorney's Office (Procuraduría General del Estado).

<sup>18</sup> Ecuadorian constitution, articles 214 and 215.



## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Attorneys and law firms in Ecuador are not required to perform pro bono and nor has such a pro bono culture been prevalent to date. Certain features of local laws are conducive to the expansion of pro bono services among the Ecuadorian legal profession, such as the absence of a “loser-pays” statute (except in case of frivolous or baseless litigation), the ability of lawyers to render free legal services or the fact that there is no limitation on advertising or soliciting pro bono work. Nonetheless, local law firms have generally tended to perform pro bono services on a sporadic (and limited) basis, predominately focusing on the supply of corporate services for the benefit of non-profit entities.

There are some noteworthy exceptions. The law firm Pérez Bustamante & Ponce is a pioneer of pro bono in Ecuador, which set up a foundation in 1987 (*Fundación Fabián Ponce Ordóñez*) devoted exclusively to pro bono projects. Among such projects is a mediation center that solves more than 300 cases a year, and the supply of psychological assistance to abused persons.<sup>19</sup>

Certain prestigious Ecuadorian law firms have signed the Pro Bono Declaration for the Americas sponsored by the Cyrus R. Vance Center for International Justice of the New York City Bar Association.<sup>20</sup> Signatories to the Pro Bono Declaration for the Americas agree that its practicing attorneys shall perform an average of 20 hours of pro bono work on an annual basis, and collaborate with the Cyrus R. Vance Center and with certain prestigious legal magazines (such as *Latin Lawyer*) in surveys that attempt to monitor the status of pro bono in Ecuador.<sup>21</sup>

### Historic Development and Current State of Pro Bono

As noted above, there is no legal requirement imposed on law firms or Ecuadorian attorneys to render pro bono services. However, the legal infrastructure exists to provide legal assistance to those unable to access private legal assistance through law school legal clinics and the Public Defenders’ Office, and some law firms have been active in this respect.

While Ecuador has taken great strides to allow persons in need of legal assistance to retain legal counsel for free through its government sanctioned programs, the current regulations are more limited with respect to pro bono activities undertaken by other entities such as NGOs.

According to the regulations on the role of the Public Defenders’ Office (*Reglamento de Funcionamiento de los Consultorios Jurídicos Gratuitos de la Defensoría Pública*), every organization belonging or sponsored by universities, public bodies, community organizations, corporations, associations, foundations and non-for-profit organizations that render free legal services to the general public must obtain an authorization from the Public Defenders’ Office to take part in pro bono activities, and their legal services should be supervised by the Public Defenders’ Office (which must also evaluate the quality of such services).<sup>22</sup> Authorizations must be renewed on an annual basis.

---

<sup>19</sup> More information and statistics of cases undertaken by the Fabián Ponce Ordóñez foundation may be found at [www.fundacionfpo.org](http://www.fundacionfpo.org) (last visited on September 4, 2015).

<sup>20</sup> Such Ecuadorian law firms are the following: Andrade Veloz & Asociados, Bustamante y Bustamante, Consulegis Abogados, Corral y Rosales, Pérez Bustamante & Ponce Abogados and Vivanco & Vivanco. An updated list of such law firms may be found at [http://www.vancecenter.org/vancecenter/images/stories/pdfs/signatarios\\_july-30-2014.pdf](http://www.vancecenter.org/vancecenter/images/stories/pdfs/signatarios_july-30-2014.pdf) (last visited on September 4, 2015).

<sup>21</sup> The most recent edition of such survey may be found at <http://latinlawyer.com/features/article/47540/latin-lawyer-vance-center-2014-pro-bono-survey/> (last visited on September 4, 2015).

<sup>22</sup> Ecuadorian constitution, article 193. Organic Code of the Judicial Branch (Código Orgánico de la Función Judicial), article 286.



In practice, the need for prior authorization and ongoing oversight by the Public Defenders' Office has been regarded as troublesome by some NGOs. As of July 2015, only one NGO has been registered as an authorized free legal services supplier before the Public Defenders' Office.

## CONCLUSION

Recent years have seen an increase in pro bono legal services in Ecuador, mainly due to the increased role of the Public Defenders' Office and to university-sponsored legal clinics. However, the current level of regulation imposed on pro bono, which requires prior approval and ongoing supervision of pro bono services by the Public Defenders' Office is regarded as a limiting factor in the set-up of local pro bono clearinghouses or NGOs. While some top law firms in Ecuador have publicly committed themselves to devoting a percentage of their time to providing pro bono services, much work remains to be done and more flexibility on the regulation of pro bono services rendered by NGOs would be welcome. Nonetheless, there is reason for optimism given the recent trajectory of pro bono services in Ecuador.

September 2015

Pro Bono Practices and Opportunities in Ecuador

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in El Salvador<sup>1</sup>

### INTRODUCTION

The provision of pro bono services in El Salvador has been increasing in the recent years with both NGOs and private law firms providing pro bono services to individuals and other organizations. Nevertheless, underfunding, lack of information and lack of legislation promoting pro bono practices are the major reasons for the unavailability, lack of use and under-exploitation of this resource.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

El Salvador is a Civil Law jurisdiction with each of its bills and regulations subordinate to the precepts established by its Constitution. The Supreme Court of Justice (*Corte Suprema de Justicia*) is the institution responsible for the administration of Justice.

##### Courts

The Courts and Jurisdictions for litigation in El Salvador are divided into: the Constitutional Court, the Administrative Court, the Criminal Court, the Labor Court, the Civil/Commercial Court, the Transit Court, the Environmental Court and the Family Court. In this regard, the Supreme Court is authorized to rule over any matter in its corresponding division.

##### The practice of law

The Supreme Court of Justice is responsible for the granting of licenses to practice law in El Salvador. Such a license grants the individual the title of advocate or attorney (*abogado*). The requirements to obtain a license include having a bachelor's degree in law and a completion of legal practice.

The practices and representation of Salvadoran attorneys at court is currently governed by the Organic Law of the Judicial Branch (*Ley Orgánica Judicial*). The legal profession is subject to mandatory regulation under different governmental institutions that are subordinated to the judicial branch, such as the Professional Investigation Section (*Sección de Investigación Profesional*) and the Notarial Section (*Sección de Notariado*).

### LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

#### The right to legal assistance

Under Salvadoran constitutional principles, access to justice must be free and everyone has the right to be represented by an attorney and to be granted an attorney chosen by the relevant court when no other attorney has been appointed.<sup>2</sup> Accordingly, regardless of the nature of the case and the economic status of the victim or citizen, the State of El Salvador must grant access to justice with no cost to the interested party.

---

<sup>1</sup> This chapter was drafted with the support of Rafael Medina and Marcela Deras at Arias & Muñoz

<sup>2</sup> For more information, refer to Constitución de la República de El Salvador, available at <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/constitucion-de-la-republica> (last visited on September 4, 2015).



## State-subsidized legal aid

The Office of Public Defense (*Procuraduría General de la República*) is the institution responsible for the representation of any indigent Salvadoran citizen or resident that requires legal representation in any type of procedure.

## Unmet needs and access analysis

While the Office of Public Defense is an effective institution, the need for additional public defenders is rising with the current workload of the public defenders exceeding capacity, affecting the quality of the legal representation provided.<sup>3</sup>

## NGOs and Legal Aid

There are NGOs throughout El Salvador that concentrate on providing the impoverished with legal representation in different kinds of legal proceedings. Certain NGOs provide legal assistance in obtaining the required documentation to proceed and represent the victims through the whole process. The more prominent NGOs in this area are outlined below.

According to the Constitution, any civil or commercial dispute can be resolved through arbitration or other alternative dispute resolution such as mediation or conciliation. However, a practical and significant barrier to pursuing alternative dispute resolution is that the costs involved are payable by the parties and legal aid does not extend to cover these costs. Everyone that does not have enough financial capacity has the right to be represented in the Salvadoran Courts through the Office of Public Defense (*Procuraduría General de la República*).

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Under Salvadoran law, all law students must provide pro bono legal assistance<sup>4</sup> as a requirement for being admitted as attorneys by the Salvadoran Supreme Court. Accordingly, most universities in El Salvador have created legal offices or clinics for the provision of legal assistance. All pro bono assistance provided at such offices or clinics is supervised and executed by a qualified attorney.

Certain State institutions also run their own pro bono programs on various issues.

Most of the major private law firms in El Salvador have established their own pro bono programs and many NGOs in the country run different pro bono programs focused on their particular sphere of activity.

### Barriers to Pro Bono

The exercise of legal representation in El Salvador is limited only to those who have a valid license as an attorney (except for university legal clinics, where advice is provided by law students under the supervision of an attorney). Otherwise, there are no laws that restrict an attorney from providing pro bono assistance. In particular, there is no mandatory or minimum fee schedule applicable in El Salvador.

One barrier to pro bono practices is the lack of advertising for available options. While every private attorney, private law firm and NGO that provides these services advertises the pro bono program on their own website, there is no official site or entity in charge of gathering and making information available to interested parties.

---

<sup>3</sup> For more information, refer to the webpage of Procuraduría General de la República, available at <http://www.pgr.gob.sv/> (last visited on September 4, 2015).

<sup>4</sup> The pro bono legal assistance may be also executed working in a Governmental institution.



Finally, the greatest barrier that pro bono practices in El Salvador face is the lack of financial aid or funding for pro bono organizations. The underfunding of NGOs and the compromised funding of private law firms severely limits the volume of pro bono services that can be undertaken, placing greater strain on the State's legal aid provision.

## CONCLUSION

The practice of pro bono is very likely to continue developing over the next few years. The amount of hours provided as pro bono by private lawyers and law firms is rapidly increasing, while the regional NGOs are consistently becoming more visible in El Salvador. The problems of underfunding and lack of legislation promoting pro bono practices still remain, but more pro bono initiatives have been developing and the focus in providing free access to quality justice remains a priority.

September 2015

Pro Bono Practices and Opportunities in El Salvador

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in England & Wales

### INTRODUCTION

Pro bono legal services are of increasing importance for attorneys and law firms within England and Wales. There has been a growing commitment by the legal profession to the importance of pro bono legal services, and various organizations and institutions within England and Wales continue to work to foster and develop pro bono legal activity. The estimated value of pro bono work provided by private practice attorneys in 2014 was £601 million, an increase of 13.83% from 2013.<sup>1</sup> While individual attorneys provide pro bono legal services at least in part because of a personal desire to help people, law firms in England and Wales are also becoming increasingly aware of the value their existing and prospective clients may place on a firm's pro bono activities.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

England and Wales is part of the United Kingdom of Great Britain and Northern Ireland (“UK”). The four principal sources of UK law are legislation (primarily Acts of Parliament), common law, European Union law and the European Convention on Human Rights.

##### The Courts

The court system in England and Wales is divided into criminal and civil divisions as established by the Judicature Acts passed in the 1870s. The court system is also split into superior and subordinate courts. The subordinate courts include the Magistrates' Court (which hears minor criminal cases), the Family Proceedings Court, the Youth Court and the County Courts (which have a purely civil jurisdiction). There are also small claims courts that have jurisdiction over private disputes in which large amounts of money are not at stake. The routine collection of small debts forms a large portion of the cases brought to small-claims courts, as well as evictions and other disputes between landlords and tenants.

The Crown Court is a criminal court of both original and appellate jurisdiction that also handles a limited number of civil cases both at first instance and on appeal. There are 91 locations in England and Wales at which the Crown Court regularly sits. The High Court of Justice functions both as a civil court of first instance and a criminal and civil appellate court for cases from the subordinate courts. It consists of three divisions: the Queen's Bench, the Chancery and the Family divisions. The High Court of Justice is based at the Royal Courts of Justice on the Strand in the City of Westminster, London (the “**Royal Courts of Justice**”). It has district registries across England and Wales and almost all High Court proceedings may be issued and heard at a district registry.

The Court of Appeal, located at the Royal Courts of Justice, deals only with appeals from other courts or tribunals, and is divided into the Civil Division, which hears appeals from the High Court and County Court and the Criminal Division, which hears appeals from the Crown Court connected with a trial of indictment. The Supreme Court (formerly the House of Lords) is the highest appeal court and is housed in Middlesex Guildhall in the City of Westminster.

Most judges are appointed. Since April 2006, judicial appointments have been the responsibility of an independent Judicial Appointments Commission (the “**Commission**”). All appointments are made by open competition as part of a more transparent process for appointing judges than previously existed. The Commission recommends candidates to the Lord Chancellor, who has a very limited power of veto.

---

<sup>1</sup> See THE LAW SOCIETY, The pro bono work of solicitors: PC Holder Survey 2014.



## The Practice of Law

The legal profession is comprised of solicitors and barristers.

### Education

#### Solicitors<sup>2</sup>

There are a number of routes via which to qualify to practise as a solicitor in England and Wales. Applicants either need to: (i) obtain a law degree, complete the Legal Practice Course to develop skills needed to work in a firm (the “LPC”), work for two years as a trainee solicitor in a firm or other organization authorized to take trainees (the “Training Contract”), and complete the Professional Skills Course to build on the vocational training provided in the LPC (the “PSC”); (ii) obtain a degree in a subject other than law, complete the Common Professional Examination/Graduate Diploma in Law, then complete the LPC, the Training Contract and the PSC; or (iii) if an applicant already works in a legal office, join the Chartered Institute of Legal Executives (“CILEx”), which is the governing body for chartered legal executives and pass certain examinations required by CILEx before completing the PSC.

#### Barristers<sup>3</sup>

The initial stages of qualifying as a barrister are identical to becoming a solicitor – either an applicant obtains a law degree, or obtains a degree that is not in law and completes the Common Professional Examination/Graduate Diploma in Law. Following completion of these steps, an applicant needs to pass the Bar Professional Training Course (“BPTC”), a course designed to ensure that students intending to become barristers acquire the skills, knowledge and competence to prepare them, in particular, for the more specialised training in the following 12 months of “pupillage.” Pupillage is the final stage of qualification as a barrister, in which the pupil barrister gains practical training under the supervision of an experienced barrister. Pupillage is divided into two parts: a non-practising six months and a practising six months.

### Licensure

#### The Role of Barristers

Barristers are less likely to provide generalist legal advice and are generally more specialized. They act primarily as advocates in litigation. Barristers are generally reached only through solicitors.

#### The Role of Solicitors

Solicitors provide advice on a wide range of commercial and personal matters, from drafting wills to property conveyancing to completing commercial transactions, though each solicitor is likely to be a specialist in one or two areas of practise. Solicitors may work in private practice; in house in a company or charity; or in the public sector, for a local authority.

#### The Role of Foreign Lawyers

Foreign lawyers are prohibited from providing advice as to the laws of England and Wales, and must inform potential recipients of legal advice where they are qualified to practice law. To qualify to practice in England and Wales as a solicitor, those who have already qualified as a lawyer overseas must fulfill the requirements of the SRA Qualified Lawyers Transfer Scheme Regulations 2011.

### Demographics

Over 167,000 solicitors are qualified to work in England and Wales,<sup>4</sup> with the number of barristers in 2014 at 15,716<sup>5</sup>.

---

<sup>2</sup> See LAW SOCIETY, Routes to qualifying, available at <https://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Routes-to-qualifying/> (last visited on September 4, 2015).

<sup>3</sup> See BAR STANDARDS BOARD, Qualifying as a barrister <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/> (last visited on September 4, 2015).

<sup>4</sup> May 2015 figure. See THE SOLICITOR’S REGULATION AUTHORITY: Population of Practising Solicitors From July 2009 to May 2015, available at [http://www.sra.org.uk/sra/how-we-work/reports/data/population\\_solicitors.page](http://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page) (last visited on September 4, 2015).



### Legal Regulation of Lawyers

All solicitors are governed by the Law Society and Solicitors Regulatory Authority (the “**SRA**”) under the SRA Practice Framework Rules 2011, which specifies professional duties in carrying out all types of work, including pro bono. The SRA also sets the entry and training requirements for solicitors.

The Bar Standards Board (“**BSB**”) regulates barristers in England and Wales. It is responsible for setting the standards of conduct for barristers, authorising barristers to practise, monitoring the service provided by barristers, setting the education and training requirements for barristers and handling complaints against barristers and taking enforcement or other action where appropriate.<sup>6</sup>

## LEGAL AID AND ASSISTANCE

### The Right to Legal Assistance

In criminal proceedings, individuals have the right to free legal advice at a police station if called in for questioning. Additionally, persons under 16 years of age (or under 18 and in full time education) or on certain benefits automatically qualify for legal aid. Otherwise, an individual’s ability to receive legal aid depends on the individual meeting certain eligibility requirements.

### State-Subsidized Legal Aid - Eligibility Criteria

Legal aid is administered by the Legal Aid Agency (“**LAA**”). Legal aid in England and Wales is only available to individuals for civil and criminal matters under certain circumstances, although legal aid is much more limited scope in respect of the former as a result of recent changes to the legislation governing legal aid. Legal aid is only available to individuals and not to organizations. Eligibility is determined based on whether an applicant’s case meets the “Interests of Justice” Test (broadly, how serious are the consequences of conviction) and whether the applicant passes a financial means test.<sup>7</sup> Information regarding eligibility is available from the Citizens Advice or Law Centre (outlined below) or by using the legal aid checker on the GOV.UK website.

#### In Civil Proceedings

Civil cases are handled by the Civil Legal Advice division (“**CLA**”). The UK government website<sup>8</sup> and the CLA national helpline<sup>9</sup> maintain a list of solicitors who provide legal aid. Legal aid is available for many types of civil cases, including those involving debt (where a person’s home is at risk), housing, domestic abuse, family problems if a person has been in an abusive relationship, special educational needs, discrimination and issues around a child being taken into care. Notable exceptions include libel, and cases associated with the running of a business.

#### In Criminal Proceedings

Criminal cases are handled by the Public Defender Service (“**PDS**”) which employs solicitors and barristers to provide criminal defense services to members of the public who have been charged with a crime. Legal aid is available for most types of criminal cases. Notable exceptions include most personal injury cases (which are now dealt with under conditional fee agreements).

---

<sup>5</sup> <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/> (last visited on September 4, 2015).

<sup>6</sup> See <https://www.barstandardsboard.org.uk> (last visited on September 4, 2015).

<sup>7</sup> For more information concerning eligibility and other factors, see the Gov.UK website at <https://www.gov.uk/work-out-who-qualifies-for-criminal-legal-aid> (last visited on September 4, 2015).

<sup>8</sup> See <http://find-legal-advice.justice.gov.uk/> (last visited on September 4, 2015).

<sup>9</sup> See <https://www.gov.uk/civil-legal-advice> (last visited on September 4, 2015).

## Unmet Needs and Access Analysis

The legal aid system in England and Wales is one of the most comprehensive and expensive systems of its kind in the world (£39 per person was spent on legal aid compared to around £5 per person in each of Spain, France and Germany).<sup>10</sup> Consequently, the Government has sought to reform legal aid through a series of consultations and proposals which resulted in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“**LAPSO**”), which came into force in April 2013. The aim of the reforms was (i) to ensure legal aid targets the highest priority cases and those in greatest need of legal aid services, (ii) to encourage the use of mediation to resolve disputes (which can be cheaper and faster) and (iii) to introduce price competition in criminal legal aid to ensure value for money.

To reduce the cost and burden on the legal system of certain matters, and to target the highest priority cases, LAPSO has removed from the scope of legal aid coverage certain matters which could be resolved in alternative ways without legal expertise. As a result, the following cases no longer qualify for legal aid: (i) family cases where there is no proof of domestic violence, (ii) forced marriage or child abduction, (iii) immigration cases that do not involve asylum or detention, (iv) housing and debt matters unless they constitute an immediate risk to the home, (v) welfare benefit cases (except appeals to the upper tribunal or high court), (vi) almost all clinical negligence cases (other than where a child has been severely injured during birth or in the first eight weeks of its life), and (vii) employment cases that do not involve human trafficking or a contravention of the Equality Act 2010.

As a consequence of LAPSO, between April 2013 and April 2014, the number of civil cases granted legal aid dropped by 62%. Social welfare and family law have been most affected, with drops of 80% and 60% respectively.<sup>11</sup>

Additionally, LAPSO’s introduction of price competition in criminal legal aid, combined with government cuts to the legal aid budget, have resulted in solicitors and barristers refusing to take on new legal aid cases.<sup>12</sup> As a result of LAPSO, it is becoming increasingly apparent that the newly reformed public legal aid system does not adequately meet the demand for legal services.

## Alternative Dispute Resolution<sup>13</sup>

To assist complainants in resolving their disputes outside court in relation to goods and services, a complainant may consider using an alternative dispute resolution (“**ADR**”) scheme rather than taking court action.

### Conciliation, Mediation and Arbitration

In consumer disputes, conciliation is the first stage in the arbitration process and the conciliator is usually a member of the trade association. Any decision is not binding and will not prevent the complainant from taking court action. There is usually no charge for conciliation.

Arbitration is a procedure for settling disputes in which both the complainant and the supplier usually agree to accept the decision of the arbitrator as legally binding. The arbitrator will make a decision based

<sup>10</sup> See <https://www.gov.uk/government/publications/2010-to-2015-government-policy-legal-aid-reform/2010-to-2015-government-policy-legal-aid-reform> (last visited on September 4, 2015).

<sup>11</sup> See <http://www.theguardian.com/law/datablog/2014/sep/09/legal-aid-in-england-and-wales-what-is-changing> (last visited on September 4, 2015).

<sup>12</sup> See <http://www.independent.co.uk/news/uk/home-news/criminal-courts-across-england-and-wales-could-grind-to-a-halt-as-lawyers-protest-legal-aid-cuts-10346409.html> (last visited on September 4, 2015).

<sup>13</sup> See <https://www.citizensadvice.org.uk/Documents/Advice%20factsheets/Consumer%20Affairs/c-alternative-dispute-resolution.pdf> (last visited on September 4, 2015) and [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/288199/bis-14-575-implementing-alternative-dispute-resolution-directive-and-online-dispute-resolution-regulation-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288199/bis-14-575-implementing-alternative-dispute-resolution-directive-and-online-dispute-resolution-regulation-consultation.pdf) (last visited on September 4, 2015).



on the written evidence presented by the complainant and the supplier. The complainant will have to pay a registration fee which may be refunded if the complainant is successful.

If a mediation scheme is used, the mediator will help the complainant and the supplier to reach an acceptable agreement and will act as a go-between if the complainant and the supplier do not want to meet.

## Ombudsman

Many services have an Ombudsman scheme that the complainant can use. For example, services provided by insurance companies, banks and building societies are all covered by the Financial Ombudsman Service. The complainant will only be able to refer the matter to the Ombudsman after they have completed the supplier's internal complaints procedure. The Ombudsman will make a recommendation or a ruling which is usually accepted by the supplier, but isn't legally binding. Hence the complainant can still take court action if they are not satisfied with the decision. However, the court will take the Ombudsman's ruling into account when deciding the complainant's claim. All the Ombudsman schemes are free.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys, Law Firm and Legal Department Pro Bono Programs

Many solicitors practising privately, whether as individuals or as part of a law firm or company with a legal department, will provide pro bono services alongside their fee paying work. Indeed, the rise of pro bono programs by law firms and legal departments, particularly those with a close connection to the United States, where pro bono is more deeply ingrained as a social and working norm, has been significant in recent years. There is, however, no mandate that solicitors or barristers provide pro bono services.

#### Non-Governmental Organizations (NGOs)

##### Free Representation Unit

The Free Representation Unit ("**FRU**") is a registered charity providing pro bono legal advice. The FRU was established in 1972 and continues to play a leading role in the pro bono community. The FRU prepares cases and provides legal advice, case preparation and advocacy in employment, social security and some criminal compensation tribunal cases.<sup>14</sup> The FRU is based chiefly in Greater London (but also has a partnership with Nottingham Law School). The FRU provides services to those who cannot obtain them privately or through legal aid.<sup>15</sup> The FRU can only be accessed by members of the public through a referral by an agency such as Citizens Advice, Law Centres, or firms of solicitors. As of March 31, 2013, the FRU had provided representation for 737 clients in just under 1,000 cases, with some 496 volunteers involved.<sup>16</sup>

The FRU is staffed by volunteers who tend to be law students and graduates possessing the minimum qualifications of being an LLB graduate, an LLM student or a GDL student. Social security work may also be undertaken by LLB students in their penultimate year of study. Further, CILEx students (students training to obtain a professional qualification to be a solicitor's clerk) can also volunteer if they have completed their level three diploma. In some cases, persons who do not meet any of these criteria, but

---

<sup>14</sup> See <http://www.thefru.org.uk/about-fru> (last visited on September 4, 2015).

<sup>15</sup> For further information see <http://www.thefru.org.uk/> (last visited on September 4, 2015).

<sup>16</sup> See FRU's Annual Report 2013, available at <http://www.thefru.org.uk/annual-reports> (last visited on September 4, 2015).



who have practical experience of representing clients in the tribunals that the FRU assists with, may be able to volunteer.<sup>17</sup>

#### National Pro Bono Centre

Since 2010, the National Pro Bono Centre (the “Centre”) has housed LawWorks (described further below), the Bar Pro Bono Unit and CILEx Pro Bono Trust (the pro bono organization staffed by legal executives). It has recently added space for:

- (1) the Access to Justice Foundation, a collaboration between the Bar Council, Chartered Institute of Legal Executives, Law Society and the voluntary sector (represented by Advice Services Alliance), supported by the Judiciary, the Ministry of Justice and the Attorney General's Office, to help in the overall effort to provide practical “access to justice” to those unable to afford help,<sup>18</sup>
- (2) London Legal Support Trust which supports law centers and legal advice agencies in London and the South East by providing them with grant funding alongside other forms of support,<sup>19</sup>
- (3) the Centre for Criminal Appeals which is a non-profit criminal law practice<sup>20</sup>
- (4) the Pro Bono Community, a charity that has developed a specialised training program for law students, trainees and junior lawyers aimed at preparing them for volunteering in Law Centres and other advice agencies and
- (5) PILnet which provides lawyers with the tools they need to challenge injustice, strengthen the ability of citizens to shape law and policy and connect a global community of activist lawyers who are using law to advance change.<sup>21</sup> The Centre is designed to be a hub for pro bono charities, offering end-to-end service for clients through pro bono assistance and referral to a network of partner agencies.<sup>22</sup> In 2011, the first legal executives worked with barrister colleagues through the Joint ILEX Pro Bono and Bar Pro Bono Unit (JIB) scheme.

The Centre is a valuable resource for lawyers who are able to refer clients they are unable to assist directly. For pro bono charities, the Centre offers meeting facilities in the heart of the legal community free of charge.

#### Bar Association Pro Bono Programs

##### Solicitors Pro Bono Group

In 1997, a group of solicitors founded the Solicitors Pro Bono Group (“SPBG”), a registered charity whose mission is “to increase the delivery of voluntary legal services to clients, individuals and communities in need by encouraging, supporting and facilitating lawyers to do pro bono work.”<sup>23</sup> SPBG does not take on pro bono cases itself but instead acts as a resource for those seeking pro bono services or seeking to become involved in pro bono activities.

LawWorks is the operating name of SPBG and is the leading national pro bono charity for solicitors. The aim of LawWorks is to connect solicitors wanting to provide pro bono legal services with clinics or agencies offering such services.<sup>24</sup> LawWorks also runs the LawWorks for Community Groups project that

---

<sup>17</sup> See <http://www.thefru.org.uk/volunteers/are-you-eligible> (last visited on September 4, 2015).

<sup>18</sup> See <http://www.atif.org.uk/about-us.html> (last visited on September 4, 2015).

<sup>19</sup> See <http://www.londonlegalsupporttrust.org.uk/about-us/> (last visited on September 4, 2015).

<sup>20</sup> See <http://www.criminalappeals.org.uk> (last visited on September 4, 2015).

<sup>21</sup> See <http://www.pilnet.org/public-interest-law.html> (last visited on September 4, 2015).

<sup>22</sup> See <http://www.nationalprobonocentre.org.uk/about-us> (last visited on September 4, 2015).

<sup>23</sup> See [www.probonogroup.org.uk/lawworks/jobs/spbginfo.doc](http://www.probonogroup.org.uk/lawworks/jobs/spbginfo.doc) (last visited on September 4, 2015).

<sup>24</sup> LAWWORKS SOLICITORS PRO BONO GROUP, Law Works Clinics, available at <http://lawworks.org.uk/clinics> (last visited on September 4, 2015).



acts as a direct clearinghouse for legal projects, matching those in need of legal services (generally non-profit organizations) with law firms or in-house legal departments of large companies.<sup>25</sup> Members of the LawWorks for Community Groups project provide advice on issues relating to matters as diverse as property, charity, corporate matters, employment, intellectual property, tax and data protection. Other projects run by LawWorks include (i) LawWorks Individuals, which offers legal advice clinics and self-help resources and (ii) LawWorks Mediation, which is the only pro bono civil and commercial mediation provider in England and Wales.

#### Bar Pro Bono Unit

The Bar Pro Bono Unit (the “**PBU**”) is a registered charity, established in 1996 to provide pro bono legal advice and representation to individuals who are unable to obtain it privately or through legal aid. There are over 3,600 barristers who offer pro bono services through the PBU<sup>26</sup>, encompassing virtually every area of the law. Besides advising on the law, the PBU provides representation in any court or tribunal in England and Wales and assists with mediation. All cases are referred to the PBU by advice agencies (such as Citizens Advice Bureaus, law centres, local MPs and legal advice clinics) or by solicitors. In determining which cases to accept, the PBU assesses whether the matter requires a barrister (who may act without a solicitor where none is necessary), the legal merits of the case, whether the applicant can reasonably obtain legal services elsewhere (such as legal aid or paying privately) and whether the work will take longer than three days.<sup>27</sup>

Barristers wishing to volunteer for the PBU must be willing to assist with cases for a minimum of three days per year, including preparation time for hearings. The PBU provides assistance on a step-by-step basis, however, and may help with several pieces of work within a case that together add up to more than the three-day total. Additionally, the PBU asks that barristers make the same effort and apply the same level of commitment to its pro bono cases as to their paid work.<sup>28</sup> The PBU has also developed a panel of firms that provide solicitors’ services where needed. For professional, insurance and practical reasons, solicitors joining the panel may only do so through their firm. Once the firm has joined, any solicitor at that firm is permitted to join the PBU’s panel. Due to the nature of the cases taken on by PBU, however, solicitors are rarely called upon. The PBU is funded solely by donations.<sup>29</sup>

In addition, the Bar Council has a registered charity, named Bar in the Community (“**BIC**”). BIC encourages volunteering by barristers, other legal professionals and law students. Under this initiative volunteers serve on management committees of various voluntary organizations. Barristers use the skills they have learned in the profession to give back to the community in a management role, rather than providing legal advice per se.

#### University Legal Clinics and Law Students

Students in England and Wales are able to get involved with pro bono work through universities, law schools and organizations such as LawWorks. Several law schools and universities have established pro bono centers and clinics where students have the opportunity to participate directly in pro bono work while being supervised by qualified solicitors and/or barristers. For example, BPP Law School has set up

---

<sup>25</sup> LAWWORKS SOLICITORS PRO BONO GROUP, LawWorks for Community Groups, available at <http://lawworks.org.uk/community-groups> (last visited on September 4, 2015).

<sup>26</sup> See <http://www.barprobono.org.uk/overview.html> (last visited on September 4, 2015).

<sup>27</sup> See BAR PRO BONO UNIT, Do you need help?:available at <http://www.barprobono.org.uk/do-you-need-help.html> (last visited on September 4, 2015).

<sup>28</sup> See PRO BONO UNIT at: [http://www.barprobono.org.uk/pro\\_bono\\_protocol.html](http://www.barprobono.org.uk/pro_bono_protocol.html) (last visited on September 4, 2015).

<sup>29</sup> See PRO BONO UNIT, How to Help available at <http://www.barprobono.org.uk/donations.html> (last visited on September 4, 2015).



three centers within England and Wales providing legal information, advice and assistance to members of the public.<sup>30</sup>

LawWorks' student initiative provides information for students on pro bono opportunities and seeks to encourage involvement by offering guidance on pro bono projects.<sup>31</sup> Several English law firms assist in managing this initiative. Other organizations, such as FRU, also provide students with pro bono opportunities.

### Advice Agencies

There is a national network of advice agencies staffed primarily by volunteers within England and Wales. The two most prominent advice agencies are Citizens Advice (previously the Citizens Advice Bureau, "CA") and the Law Centres Federation. CA is a charity that provides free advice to the public on topics that include legal matters. CA offices are located throughout England and Wales. Advisers, which include over 2,000 volunteers, help clients fill out forms, write letters, negotiate with creditors and connect clients with local lawyers who can represent them in courts or tribunals. CA is funded mainly by government and local authority grants, with contributions from lottery funds, corporations and charitable trusts.

The Law Centres Federation operates under the business name Law Centres. The Law Centres Federation is a registered charity whose mission is to champion free legal advice and representation and to seek justice for the poorest and most disadvantaged in society through the development of a national network of Law Centres.<sup>32</sup> There are 44 Law Centres in England, Wales and Northern Ireland which provide free legal advice to needy individuals within Law Centre's coverage area. Law Centres provide legal advice through lawyers, apprentices and trainees, on multiple subjects, provide education and information on the law and individual rights, and lobby for improvements to existing laws. Law Centres are funded through a number of different sources including charitable foundations, law firms, lottery funding and donations by individuals.<sup>33</sup>

### Historic Development and Current State of Pro Bono

Although the amount of pro bono undertaken by solicitors has increased over the years, practical barriers remain for solicitors engaging in pro bono work. These barriers include a lack of time while also trying to balance fee-paying client work and the pressure to meet the hourly billing targets of their law firm. Some law firms however, include pro bono hours of work within these billing targets, thus encouraging their lawyers to participate. One example of this is the collaborative plan for pro bono in the UK, an initiative pursuant to which participating firms collaborate with each other in order to improve access to justice through pro bono in the UK, including through incorporating an aspirational target of 25 pro bono hours on average per fee-earner in the UK each year.<sup>34</sup>

Another issue encountered by solicitors who volunteer to carry out pro bono work is that the cases referred to them may not be in their area of experience. For example, corporate law firms (who house a great many of the profession's solicitors) may not necessarily have lawyers experienced in dealing with individuals as clients or in the types of matters that affect individuals, including employment and housing/tenancy issues.

---

<sup>30</sup> Further information is available at <http://www.bpp.com/bpp-university/pro-bono/advice> (last visited on September 4, 2015).

<sup>31</sup> Further information is available at <http://www.lawworks.org.uk/students> (last visited on September 4, 2015).

<sup>32</sup> The Law Centres Federation Annual Report 2007 – 2008.

<sup>33</sup> See <http://www.lawcentres.org.uk/our-work/our-funders> (last visited on September 4, 2015).

<sup>34</sup> See <http://news.trust.org/spotlight/Collaborative-Plan-for-Pro-Bono-uk/?tab=introduction> (last visited on February 15, 2016).



## Laws and Regulations Impacting Pro Bono

### “Loser Pays” Principle

The rules relating to costs in England and Wales are governed by the Civil Procedure Rules 1998 and the general principle behind them is that the loser pays the costs of the claim. This general rule remains in place in multi track cases where damages in excess of £25,000 are claimed. In lower value claims there are fixed costs regimes and qualified one way costs shifting, meaning that a losing claimant may not have to pay the defendant's costs. Essentially, if a claimant recovers damages from a defendant for, say, £30,000 then he or she will be awarded costs, on the standard basis, to be paid by the defendant. If the claimant loses their claim then they would be ordered to pay the defendant's costs of defending the claim successfully.

### Rules Directly Governing Pro Bono Practice and Regulations Imposing Practice Limitations on In-House Counsel

Lawyers practicing in-house are able to participate in pro bono work. As an in-house lawyer, however, there are also other factors to be considered, including the fact that in-house lawyers are barred from acting for clients other than their employer. There is an exception in the rules for pro bono work, provided that the work is covered by indemnity insurance and that fees are not charged.<sup>35</sup>

The Legal Services Act 2007 also applies to in-house pro bono practice, restricting the practice of certain reserved activities, including advocacy, conducting litigation, conveyancing, probate activities, notary activities and the administration of oaths. There are some exemptions to these restrictions but advice relating to these would be best sought from the SRA. LawWorks is lobbying to try to amend section 15 of the Legal Services Act 2007 so as to alleviate the restrictions it imposes on in-house solicitors engaging in pro bono work.

In-house legal teams may opt to join LawWorks, as LawWorks will provide professional indemnity insurance coverage, enabling in-house lawyers to work on LawWorks programs. Companies may also set up internal pro bono programs. In such cases, however, it is important to consider issues such as regulatory and compliance requirements and costs agreements (strictly controlled for pro bono under section 194 Legal Services Act 2007) to ensure that correspondence with clients is tailored correctly and with appropriate letterhead and compliance with the SRA accounting rules, which must be observed when dealing with client money.

### Practice Restrictions on Foreign-Qualified Lawyers

As mentioned above, unless regulated by the SRA as a solicitor, or permitted to practice at the Bar as a barrister, foreign lawyers are prohibited from providing advice as to the laws of England and Wales, and must inform potential recipients of legal advice where they are qualified to practice law.

### Concerns About Pro Bono Eroding Public Legal Aid Funding

While pro bono services are increasing in England and Wales, there continues to be a less robust pro bono system than in other countries due to the availability of a system of legal aid that uses public funds to pay for legal services for those in need. Concerns have been voiced that increasing pro bono activities could result in reductions in the availability and provision of legal aid.

### Availability of Professional Indemnity Legal Insurance Covering Pro Bono Activities by Attorneys

Pro bono work undertaken by lawyers at law firms is generally covered under the Professional Indemnity Insurance (“PII”) of that law firm. For in-house solicitors or barristers, however, it is not possible for them to conduct work on a pro bono basis in the course of their practice for a client other than where their employer provides PII.<sup>36</sup> Such insurance can, however, be expensive for an employer. Possible solutions include an in-house legal team joining a project of a law firm and obtaining coverage via that firm's insurance policy, or joining LawWorks, which provides professional

<sup>35</sup> See Rule 4.10 of the SRA Practice Framework Rules 2011, available at <http://www.sra.org.uk/solicitors/handbook/practising/part2/rule4/content.page> (last visited on September 4, 2015).

<sup>36</sup> See <http://www.lawsociety.org.uk/support-services/advice/articles/when-do-in-house-lawyers-need-pii/> (last visited on September 4, 2015).



indemnity insurance coverage to in-house legal teams for pro bono activities undertaken via the LawWorks programs.<sup>37</sup> The Association of British Insurers provides a useful guide on this topic, which can be found at <https://www.abi.org.uk/Insurance-and-savings/Products/Business-insurance/Liability-insurance/Professional-indemnity-insurance/Solicitors-professional-indemnity-insurance>.

## Pro Bono Resources

- Citizens Advice: <https://www.citizensadvice.org.uk/> (last visited on September 4, 2015).
- The Law Centres Federation: <http://www.lawcentres.org.uk/> (last visited on September 4, 2015).
- Bar Pro Bono Unit: [www.barprobono.org.uk](http://www.barprobono.org.uk) (last visited on September 4, 2015)
- Free Representation Unit: <http://www.thefru.org.uk/> (last visited on September 4, 2015)
- Business in the Community: [www.bitc.org.uk](http://www.bitc.org.uk) (last visited on September 4, 2015)
- National Council for Civil Liberties: <https://www.liberty-human-rights.org.uk/> (last visited on September 4, 2015).

## CONCLUSION

The changes to the provision of legal aid in England and Wales brought about by LAPSO have been met with strong criticism, both in the media and the legal profession. Developments should continue to be monitored, especially in relation to any potential change in Government, which may amend LAPSO, and improvement to the public finances which may increase the money available for legal aid. The next UK general elections are not however scheduled to take place until May 2020.

Pro bono legal work, however, continues to gain importance in England and Wales. Many organizations are expanding their efforts to promote pro bono access, thereby creating opportunities for both individuals and firms to become involved. It is evident that the amount of pro bono work undertaken within the English legal structure has grown tremendously in previous years and looks like it will continue to grow in the future.

September 2015

Pro Bono Practices and Opportunities in England and Wales

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>37</sup> See [www.lawworks.org.uk](http://www.lawworks.org.uk) (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in Finland<sup>1</sup>

### INTRODUCTION

When Finland declared independence from the Russian empire in 1917, the new state had a long history of Swedish rule (from the 12th century until 1809) and of being an autonomous Grand Duchy of the Russian Empire (from 1809 until 1917). Their common history with Sweden is the basis of the similarities between the Finnish and Swedish societies – similarities that can be seen in the culture as well as in political structures and legal systems, including with respect to the provision of legal aid. Due in large part to Finland's comprehensive state system, pro bono work is not widespread or a significant part of the legal culture in Finland.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### The Constitution and Governing Laws

The Constitution is the basis of all legislation and exercise of government power. It provides the fundamental rules, values and principles of Finnish democracy. The latest iteration of the Constitution, which entered into force on March 1, 2000, is not a single law, but rather can be seen as a consolidation of four Constitutional Acts. The Constitution provides that the sovereign power lies with the people represented by the Parliament, with decisional power being divided amongst the Parliament, the Government and the President of the Republic. In addition to the Constitution, regular Acts of Parliament, Presidential Decrees, Government Decrees, Ministry Decrees and various types of other subordinate regulation govern the country and are published in the *Suomen säädöskokoelma*.

##### The Courts

Finland has a dual court system, which includes general courts overseeing civil and criminal law, as well as administrative courts overseeing disputes between private persons and public authorities. General courts are divided into three tiers. District Courts operate as the courts of first instance, with jurisdiction over all civil and criminal cases within their territorially limited districts. There are 27 District Courts.<sup>2</sup> At the appellate level, there are five Courts of Appeal.<sup>3</sup> The Supreme Court in Helsinki acts as the court of final appeal.<sup>4</sup> On the other hand, administrative courts operate on two tiers. Six regional Administrative

---

<sup>1</sup> This chapter was drafted with the support of Juha-Pekka Mutanen and Henrik Sajakorpi of Dittmar & Indrenius.

<sup>2</sup> The judicial districts of the District Courts generally follow regional boundaries and the names of the District Courts correspond to the names of the regions. See <http://www.oikeus.fi/tuomioistuimet/karajaoikeudet/en/index/yhteystiedot.html> (last visited on September 4, 2015).

<sup>3</sup> The five Courts of Appeal – Eastern Finland, Helsinki, Rovaniemi, Turku and Vaasa – hear appeals against the decisions of the district courts in their region. See <http://www.oikeus.fi/tuomioistuimet/hovioikeudet/en/index.html> (last visited on September 4, 2015).

<sup>4</sup> The Supreme Court's case law is available on its website, <http://www.kko.fi/> (last visited on September 4, 2015).



Courts<sup>5</sup> deal with claims against administrative acts of public authorities, and the judgments of these courts may be appealed to the Supreme Administrative Court in Helsinki.<sup>6</sup>

Under the Act on Judicial Appointments, judges are appointed by the President of the Republic on recommendation from the Government.<sup>7</sup> The Government is advised by a Judicial Appointments Board, however the Judicial Appointments Board has no jurisdiction regarding the appointment of judges to the Supreme Court or the Supreme Administrative Court. Instead, aspiring judges to these courts of final instance make their own appointment proposals directly to the President of the Republic, who is the sole decision-maker in these instances.<sup>8</sup> In the District Courts, judicial offices are held by laymen judges who hold no legal qualification, known as “Lay Judges,” in addition to legally qualified judges. Lay Judges are appointed by local municipal councils and are most typically employed in serious criminal cases.

## The Practice of Law

### Education

In Finland, advocates, public legal aid attorneys or licensed counsel may all serve as attorneys or counsel. Furthermore, lawyers can be divided into two categories: members of the Finnish Bar Association (advocates or *asianajaja*, and some public legal aid attorneys) and non-members of the Bar (jurists and some public legal aid attorneys). Advocates are required to complete a Master of Laws degree in Finland (but not a master of international and comparative law degree) or complete a law degree outside of Finland that is approved by the Finnish National Board of Education.<sup>9</sup> Advocates must then complete a four-year apprenticeship, two years of which must be spent under the supervision of a law firm or equivalent setting.

### Licensure

The Finnish Bar Association is regulated by the Advocates Act of 1958 (the “**Advocates Act**”), and only its members are entitled to use the professional title “advocate.” In contrast to most legal systems in the European Union, a party to a court proceeding in Finland is not obligated to employ an advocate. Following the Act on Licensed Attorneys (*Laki luvan saaneista oikeudenkäyntiavustajista 715/2011*), which entered into force in January 2013, only advocates, public legal aid attorneys and jurists that have obtained the proper licenses<sup>10</sup> may represent a party to a court proceeding in a general court.

In addition to the academic legal training mentioned above, advocates must also pass an examination in professional ethics and an Advocates Examination offered by the Bar.<sup>11</sup> Advocates must be known to be honest and, in respect of his or her other characteristics and way of life, suitable for the profession of advocate. Lastly, advocates must have their full legal capacity and not be bankrupt.

---

<sup>5</sup> The six courts are: The regional Administrative Courts of Helsinki, of Hämeenlinna, of Itä-Suomi, of Pohjois-Suomi, of Turku and of Vaasa. In addition to these six regional ones Ahvenanmaa, ie. The Åland Islands which is a monolingually Swedish-speaking and autonomous region of Finland, has its own Administrative Court (Ålands förvaltningsdomstol). See <http://www.oikeus.fi/tuomioistuimet/hallintooikeudet/fi/index.html> (last visited on September 4, 2015).

<sup>6</sup> Administrative Judicial Procedure Act (Hallintolainkäyttölaki, 586/1996), § 7. The Supreme Administrative Court’s decisions are available on its website, <http://www.kho.fi/en/index.html> (last visited on September 4, 2015).

<sup>7</sup> Act on Judicial Appointments 205/2000, Ch. 2 § 2.

<sup>8</sup> Id. at §§ 5(1)-(2).

<sup>9</sup> Advocates Act 496/1958, § 3(2).

<sup>10</sup> To obtain such license, an individual must (1) hold a Finnish master’s degree in law, other than a master of international and comparative law degree, or completed a law degree outside of Finland that is approved by the Finnish National board of Education; (2) obtain a sufficient amount of experience to act as a trial counsel; (3) be considered as honest and not ill-suitable; and (4) not be bankrupt or have one’s individual legal capacity restricted. However, Chapter 15 Section 2 of the Finnish Act on Procedure (Oikeudenkäymiskaari 1.1.1734/4) provides for a few exceptions to the license requirement.

<sup>11</sup> Id.



Under Section 5 of the Advocates Act, an advocate shall fulfill the tasks entrusted to him honestly and conscientiously and observe the Rules of Proper Professional Conduct for Advocates (*Hyvää asianajajatapaa koskevat ohjeet/Vägledande regler om god advokatsed*). The requirements of proper professional conduct are defined in the Advocates Act, various statutes and, above all, by governing and executive bodies of the Finnish Bar Association.<sup>12</sup> In practice, many disciplinary decisions taken by the Board of the Finnish Bar Association are reflected in the Rules of Proper Professional Conduct for Advocates, which have become very important guidelines for practicing advocates.

Unlike advocates, jurists are not members of the Finnish Bar Association and therefore not subject to all of the above requirements. However, since the beginning of 2014, attorneys that are not advocates or public legal aid attorneys, such as jurists, need a license in order to act as an attorney in the general courts.<sup>13</sup> Licenses to act as an attorney are granted by the Licensed Attorneys Board, subject to the Act on Licensed Attorneys.

With the exception of being a member of the Finnish Bar Association and receiving the title of *asianajaja*, jurists are fully capable of representing clients. Licensed jurists must observe similar ethical rules as advocates and public legal aid attorneys and are monitored by the Disciplinary Board of the Finnish Bar Association and the Licensed Attorneys Board.

Public legal aid attorneys engage in advocacy before courts of law. Public legal aid attorneys have a widely varied practice, often dealing with urgent clients who are experiencing crises in their lives. Most public legal aid attorneys hold the title *varatuomari*, which means that they have completed a judicial traineeship at a District Court and obtained a judicial qualification.

Public legal aid attorneys are appointed by the leading public legal aid attorney, who is appointed by the Minister of Justice. While not required to be members of the Finnish Bar Association, public legal aid attorneys engage in advocacy before courts of law and are obligated to observe proper advocacy conduct in their practice, making them subject to the Bar's disciplinary powers. In all, more than half of these attorneys are members of the Finnish Bar Association.<sup>14</sup>

### Demographics

There are approximately 21,000 lawyers in Finland, and about 75% of Finnish lawyers (or approximately 16,000 lawyers) are members of the Association of Finnish Lawyers.<sup>15</sup> The Association of Finnish Lawyers is the general professional organization of most lawyers in Finland, not only those admitted to the Finnish Bar Association. Finnish lawyers may practice as sole practitioners, in partnerships or in limited companies.<sup>16</sup>

### Legal Regulation of Lawyers

As indicated above, lawyers in Finland are regulated by the Finnish Bar Association, the Advocates Act, Rules of Proper Professional Conduct for Advocates, The Association of Finnish Lawyers and the Licensed Attorneys Board.

---

<sup>12</sup> Rules of Proper Professional Conduct for Advocates (*Hyvää asianajajatapaa koskevat ohjeet/Vägledande regler om god advokatsed*), Introduction.

<sup>13</sup> See <http://www.oikeus.fi/en/index/laatikot/vaihtuvateema.html> (last visited on September 4, 2015).

<sup>14</sup> Id.

<sup>15</sup> According to the Association of Finnish Lawyers' website, <http://www.lakimiesliitto.fi/> (last visited on September 4, 2015).

<sup>16</sup> Practicing lawyers may not form partnerships or companies with non-lawyers, unless the Board of the Association of Finnish Lawyers grants a specific permit. See Advocates Act 496/1958, § 5.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The System

The Constitution of Finland provides a right to be heard in a competent court of law.<sup>17</sup> In Finland, persons with limited means may be granted legal aid, whereby legal expenses are provided from public funds. Legal aid is regulated by the Legal Aid Act, 2002/257 (*Oikeusapulaki/Rättshjälpslagen*), the Act on State Legal Aid Offices, 2002/258 (*Laki valtion oikeusaputoimistoista/Lag om statliga rättshjälpsbyråer*) and various government decrees that have been issued based on these acts.<sup>18</sup> The Public Legal Aid Office, which is under the authority of the Ministry of Justice, is charged with responsibility for legal aid. Legal aid must be applied for at one of the 27 legal aid offices, which are located in areas in which it is deemed that legal aid will be most required, normally in the same municipalities as the District Courts in Finland. In these offices, legal aid work is undertaken by public legal aid attorneys. Legal aid matters may, however, also be handled by private attorneys, such as advocates and jurists, subject to certain exceptions and requirements as described herein. Legal aid includes legal advice, necessary measures and representation in court or other authorities, and release from certain expenses relating to the case.<sup>19</sup>

The legal aid system is known as a so-called dual system in that legal aid is provided by both public legal aid offices and private attorneys. However, private attorneys only give legal aid in court cases, whereas public legal aid attorneys provide assistance in all kinds of cases.

In criminal proceedings and pretrial investigations, the defendant is, under certain circumstances, entitled to a public defender regardless of his or her financial situation. A public defender will be appointed on request for a suspect of an aggravated offense and for a person who has been arrested or detained. Moreover, according to the Criminal Procedure Act, a court may appoint an attorney for the injured party in a criminal investigation involving certain offenses. The court may on its own initiative appoint a public defender for a person under 18 years of age or for a person incapable of seeing to his or her own defense. The fee of the public defender is paid by the State. If the defendant is convicted of an offense, he or she is obligated to reimburse the State for the public defender's fee.<sup>20</sup> If, however, the means of the defendant are such that he or she would be entitled to legal aid, the obligation to reimburse the State will be adjusted accordingly. The attorney or the support person may be appointed regardless of the means of the victim, and their fees and expenses are paid by the State.

### State-Subsidized Legal Aid: Eligibility Criteria

Legal aid may be granted to an individual whose case is being heard in a Finnish court or whose place of residence is in Finland, as well as citizens of a Member State of the EU or the European Economic Area.

<sup>17</sup> FINLAND CONST. 1999/731, § 21.

<sup>18</sup> For example Government Decree on Legal Aid 388/2002 (Valtioneuvoston asetus oikeusavusta /Statsrådets förordning om rättshjälp); Government Decree on Legal Aid Fee Criteria 290/2008 (Valtioneuvoston asetus oikeusavun palkkioperusteista/Statsrådets förordning om grunderna för arvoden vid allmän rättshjälp), Decree 425/2002 of the Ministry of Justice on the location of legal aid offices and their branches and sub-branches (Oikeusministeriön asetus valtion oikeusaputoimistojen sekä niiden sivutoimistojen ja sivuvastaanottojen sijainnista/Justitieministeriets förordning om förläggningkommunerna för de statliga rättshjälpsbyråerna samt deras filialbyråer och filialmottagningar) and Decree 1089/2011 of the Ministry of Justice on legal aid districts and their relevant districts and the location of legal aid offices (Oikeusministeriön asetus oikeusapupiireistä sekä oikeusaputoimistojen toimipaikoista ja edunvalvontapiireistä/Justitieministeriets förordning om rättshjälpsdistrikten samt om rättshjälpsbyråernas verksamhetsställen och intressebevakningsområden).

<sup>19</sup> Legal Aid Act, Ch. 1, § 1.

<sup>20</sup> Criminal Procedure Act 1997/689, §§ 10-11.



Legal aid is granted for free or against a deductible, on the basis of the financial means of the applicant.<sup>21</sup> The financial means of the applicant are calculated based on the monthly income, necessary expenses and maintenance liability of the applicant and his or her spouse or partner. However, legal aid will not be granted to a person who benefits from legal expense insurance in relation to a matter, except if the maximum amount to be paid out under the policy has been exceeded.

Although the merits of success are not a barrier to receiving legal aid, such assistance will not be provided if the matter is (i) of minor importance to the applicant; (ii) it would be manifestly pointless in proportion to the benefit to the applicant; (iii) pleading the case would constitute an abuse of process; or (iv) the matter is based on an assigned right and there is reason to believe that the purpose of the assignment was to receive legal aid.<sup>22</sup>

In Finland, legal aid covers all types of legal matters, such as family and employment law related issues, contract law, assistance to suspected offenders and to victims of crime, and various appeals (e.g., relating to welfare and social security payments). The services covered by legal aid in any given case depend on the nature and importance of the matter.

Companies or associations are not eligible for legal aid. Individual entrepreneurs may receive legal aid on business matters that do not involve a court case only if there are special reasons that require such aid, as decided by the legal aid office.<sup>23</sup>

### Mandatory Assignments to Legal Aid Matters

Ordinarily, legal aid is provided by public legal aid attorneys. However, in matters to be heard in court, a private attorney may voluntarily consent to represent a candidate. In addition, private attorneys may be appointed in cases referred to in section 10 of the Act on State Legal Aid Offices (258/2002); *laki valtion oikeusaputoimistoista*).<sup>24</sup> Only an advocate or licensed attorney referred to in the Act On Licensed Attorneys (715/2011; *laki luvan saaneista oikeudenkäyntiavustajista*) may be appointed as a private attorney.

Private attorneys are paid a reasonable fee for the measures they are required to take based on time spent on the matter as well as travel costs, for their services.<sup>25</sup> In a case heard by a court of law, the court shall determine the fees and compensation payable from state funds to a private attorney. To this end, the work of an attorney can be compensated for a maximum of 80 hours, unless the court determines that continued legal aid is appropriate. In cases not heard by a court, the legal aid office determines the fees and compensation of a private attorney.

Given the generous eligibility criteria for legal aid, full or partial legal aid is available to approximately 75% of the population.<sup>26</sup> The overall budget for legal aid services has maintained a steady level since the 1990s, and in 2014, the legal aid budget for civil and criminal matters was €67.7 million.<sup>27</sup> In terms of access, the legal aid offices deal with some 50,000 legal aid matters every year, and employ

---

<sup>21</sup> The means of the applicant are determined based on a calculation of the funds available to him or her per month. Legal aid may be granted where the available means of a single person are below €1,300 or of spouses €1,200 per person. The amount of the basic deductible is determined based on the applicant's means (Government Decree on Legal Aid). For more information, see Millä tuloilla oikeusapu myönnetään/ Med vilka inkomster beviljas rätts hjälp, available at <http://www.oikeus.fi> (last visited on September 4, 2015).

<sup>22</sup> Legal Aid Act, Ch. 1, §§ 7(1)-(4).

<sup>23</sup> Id. at § 2(3).

<sup>24</sup> Id. at Ch. 2, § 8(2).

<sup>25</sup> Id. at Ch. 3, § 17(1).

<sup>26</sup> See <http://www.oikeus.fi/en/index/laatikot/Legalassistance.html> (last visited on September 4, 2015).

<sup>27</sup> See [http://www.opensocietyfoundations.org/sites/default/files/eu-legal-aid-finland-20150427\\_0.pdf](http://www.opensocietyfoundations.org/sites/default/files/eu-legal-aid-finland-20150427_0.pdf) (last visited on September 4, 2015).



approximately 220 public legal aid attorneys.<sup>28</sup> Defense lawyers have a right to attend investigations and police questioning, as well as request additional pre-trial investigative measures. In light of the system's favorable eligibility requirements, steady budget, and extensive access in criminal matters, the waiting time to receive legal aid may vary. Generally, the decision from the legal aid office of whether an applicant qualifies takes one or two days. However, the applicant may then have to wait further before the assigned lawyer can meet with them. In the very early stage of proceedings, suspects may choose not to request legal aid due to the uncertainty surrounding the timing and the possibility that they will have to partially or fully contribute to their services.

## Alternative Dispute Resolution

In addition to court proceedings, legal aid covers other legal services such as legal advice, settlement negotiations with an opposing party, inventories of decedent's estates, assistance in asset distributions and estate distributions, drafting of documents and filing of appeals and complaints. Of note, these other legal services are provided as legal aid only by public legal aid attorneys, not by private attorneys.

Following the Swedish model, the Finnish government has also established Ombudsman offices and agencies where individuals can bring complaints against private companies and authorities. There are numerous ombudsmen, the most prominent of which is the Parliamentary Ombudsman,<sup>29</sup> who ensures that authorities and officials observe the law and fulfill their duties. Anyone, regardless of citizenship, is entitled to turn to the Parliamentary Ombudsman should the complainant believe that an authority, public official or public body has acted in a manner that violates his rights. Other Ombudsman offices monitor compliance with specific laws or policies, such as laws protecting the rights of minorities, women, children and consumers. Furthermore, other agencies are empowered to settle disputes between private persons and undertakings. For example, the Consumer Complaint Board represents consumers and businesses and issues recommendations concerning disputes involving consumer and housing transactions. The services of the Parliamentary Ombudsman and the various Ombudsman offices and agencies are generally free of charge to the complainant. Although many of these offices/agencies issue nonbinding recommendations only, their opinions often serve as important guidelines for other authorities and courts. Filing a complaint is therefore an inexpensive and often effective remedy for private persons.

## PRO BONO ASSISTANCE

Due to the fulsome, well developed and broad system of public welfare services, the need for pro bono services is limited. Nevertheless, the Finnish Bar Association encourages lawyers to become involved in pro bono activities.

### Private Attorneys

There is no mandatory pro bono requirement for lawyers in Finland. However, according to a 2012 survey conducted by the Finnish Bar Association (*Asianajajatutkimus 2012*), 75% of the 651 advocates that responded to the survey discharged their duties either free of charge or gave a considerable discount for their services from time to time.

### Law Firms

Medium sized and large Finnish law firms also engage in some pro bono or charitable work, particularly as the influence of American and English firms continues to grow. Apart from the *Asianajajapäivystys*, pro bono work often involves assisting different charity organizations, foundations and other nongovernmental

---

<sup>28</sup> See <http://www.oikeus.fi/oikeusapu/en/index/oikeusavustaja/publiclegalaidoffices.html> (last visited on September 4, 2015).

<sup>29</sup> Details about the Parliamentary Ombudsman program are available at <http://www.oikeusasiames.fi/> (last visited on September 4, 2015).



organizations, rather than private persons. Some of the big commercial law firms, for instance, have board representatives in foundations and thereby provide continuous legal assistance free of charge. Finnish law firms have also established pro bono partnerships that have become more publicly known during the past few years.

## Bar Association Pro Bono Programs

The Finnish Bar Association also runs a program, *Asianajajapäivystys/Advokatijouren*, in which advocates provide oral advice free of charge in relation to various legal questions. The purpose of the program is to help private persons assess their need for further legal advice and to help them identify advocates with relevant experience and/or competent authorities where further advice is required. Currently, *Asianajajapäivystys* operates in 12 locations in Finland for a few hours at a time once or twice a week. In 2013, free advice was given to some 1,300 persons. In practice, attorneys from law firms of all sizes participate in the program. In 2006, the Finnish Bar Association set up a project to educate young people about the Finnish legal system. Under the *Oikeuskasvatusprojekti/Projekt om juridiskt lärande*, lawyers go to schools to speak with 14-16 year olds about the basics of the legal system in Finland, the foundations of civil and criminal law, as well as rights and responsibilities of children and young people in society.<sup>30</sup>

## Current State of Pro Bono

As noted above, due to Finland's well developed and broad system of public welfare services, including state funded legal services, Ombudsman offices and other agencies, the need for pro bono services in Finland is limited, and therefore so are the opportunities. However, there are few barriers to pro bono work from a statutory perspective or under the Rules of Proper Professional Conduct. Accordingly, there is room for Finnish law firms to continue to develop more initiatives to encourage participation in pro bono work outside of the state sponsored volunteer opportunities.

## Laws and Regulations Impacting Pro Bono

### "Loser Pays" Statute:

Finland follows the English Rule for attorney fees, in that the party who loses the case is liable for all reasonable legal costs incurred by the necessary measures of the opposing party, unless otherwise provided by the Code of Judicial Procedure.<sup>31</sup>

### Practice Restrictions on Foreign-Qualified Lawyer

The Finnish National Board of Education renders decisions on the eligibility of candidates who complete a law degree outside of Finland, in accordance with the Act on the Recognition of Professional Qualifications (1093/2007 as amended) or the Act on the Eligibility Provided by Foreign Higher Education Degrees for Public Posts in Finland (531/1986 as amended).<sup>32</sup>

### Concerns About Pro Bono Eroding Public Legal Aid Funding

As indicated above, the annual budget for legal aid services has remained steady since the 1990s. Moreover, given the strong public welfare and legal aid programs, there is little risk of pro bono encroaching on legal aid's funding.

---

<sup>30</sup> More information about the Bar Association's pro bono initiatives is available at <http://www.asianajajaliitto.fi> (last visited on September 4, 2015).

<sup>31</sup> CODE OF JUDICIAL PROCEDURE, Ch. 21, § 1.

<sup>32</sup> Advocates Act 496/1958, § 3(2).



## Availability of Legal Insurance for Clients

Legal aid is not provided to applicants who have legal expenses insurance that cover their matters.<sup>33</sup> However, in a matter heard in court, the court may grant legal aid in so far as the costs exceed the maximum cover stated in the insurance policy.

## Pro Bono Resources

- Directory of legal aid offices: <http://www.oikeus.fi/> (last visited on September 4, 2015)
- Finnish Bar Association's on call legal assistance program: <http://www.asianajaliitto.fi/asianajotoiminta/asianajajapaivystys> (last visited on September 4, 2015)
- Finnish Refugee Advice Centre (*Pakolaisneuvonta/Flyktrådgivningen*), advising asylum seekers, refugees and other foreigners with regard to their legal rights: <http://www.pakolaisneuvonta.fi/> (last visited on September 4, 2015)
- Finnish League for Human Rights (*Ihmisoikeusliitto/Förbundet för mänskliga rättigheter*), providing wide ranging advice in relation to human rights in general: <http://www.ihmisoikeusliitto.fi/> (last visited on September 4, 2015)
- Feminist Association Union (*Naisasialiitto Unioni/Kvinnosaksförbundet Unionen*), advising on issues related to women's rights: <http://www.naisunioni.fi/> (last visited on September 4, 2015)

## CONCLUSION

The positive approach of the Finnish Bar Association to pro bono work is favorable to a more widespread pro bono practice in Finland. However, due to their well-developed social welfare system, which includes state funded legal services, pro bono work in Finland is likely to remain focused on volunteering to provide legal assistance through the *Asianajapäivystys*, or assisting nonprofit foundations and charity organizations in achieving their objectives.

September 2015

Pro Bono Practices and Opportunities in Finland

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>33</sup> Legal Aid Act, Ch. 1, § 3(b).



## Pro Bono Practices and Opportunities in France

### INTRODUCTION

France has a long-standing tradition of providing legal aid to indigent clients. This can mainly be explained by the strong support of the welfare state in France. As a result, and given the strict restrictions on advertising until 2014, pro bono has not yet reached the same level of popularity as in Anglo-Saxon countries. Pro bono practice has however experienced rapid development in the last decade thanks to various kinds of private initiatives and to the involvement of the French Bar and specifically the Paris Bar.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### The Constitution and Governing Laws

The current French Constitution was adopted in 1958 and established the French V<sup>th</sup> Republic, a democracy based on the separation of powers. Its preamble directly refers to three other fundamental texts: the Declaration of the Rights of Man and of Citizens of 1789, the 1946 French Constitution's preamble, and the Environment Charter of 2004. These four texts constitute the so-called the Body of Constitutional Rules (*Bloc de Constitutionnalité*), the French supreme standard with which each law must comply.

In order to safeguard French fundamental principles, the Constitutional Council (*Conseil Constitutionnel*) was created in 1958 to review the constitutionality of the law. In order to do so, two means are at its disposal: the Constitutional Council can conduct an advanced verification of the law before the law is enacted following a referral from the President of the Republic, the Prime Minister or by 60 deputies or 60 senators. Since 2008, the Constitutional Council can also undertake its verification once the law has been enacted through the *Question Prioritaire de Constitutionnalité* procedure.

The Constitutional Council has the power to interpret the highest French and international norms. It also ensures that the Constitution, the Constitutional Texts and Principles are upheld. By interpreting article 55 of the Constitution, the Constitutional Council has indicated that international and European treaties are the highest standards. Therefore, the Constitution must be reviewed if it is contrary to any treaty prior to their ratification.

France has a civil legal system stemming from Roman law and based upon codified laws. This is a dual legal system; one branch, Public law (*Droit public*), defines the principles of operation of the State and public bodies. The other system, private law (*Droit privé*), applies to private individuals and private bodies.

##### The Courts

The French Court system is divided into two distinct branches, one handling administrative matters and the other handling judicial matters. The two branches are independent from one another and organized under separate rules.

With respect to judicial matters, there are two sub-branches: the civil courts and the penal courts. The civil branch concerns litigation between individuals whereas the criminal branch concerns public action by French society against criminal behavior. Civil matters can be brought to different first-level courts dealing with cases of different types, scales and significance: the District Court (*Tribunal d'Instance*), Regional Court (*Tribunal de Grande Instance*), Commercial Court (*Tribunal de Commerce*), Labor Court (*Conseil des Prud'hommes*) and the Social Security Court (*Tribunal des Affaires de la Sécurité Sociale*). The penal trial courts are divided into three different instances according to the gravity of the infringement: the Police Tribunal (*Tribunal de Police*), the Criminal Court (*Tribunal Correctionnel*), and the Assize Court (*Cour d'Assises*). For both civil and penal matters, decisions are subject to appeal to the Court of Appeal. The French judicial Supreme Court is the Court of Cassation (*Cour de Cassation*), which has jurisdiction over any final decisions.



The decisions of the French first-level Administrative Tribunal (*Tribunal Administratif*) are subject to appeal to the Administrative Court of Appeal (*Cour Administrative d'Appel*). Finally, the Court of Appeal's decisions are subject to appeal to the Council of State (*Conseil d'Etat*), the administrative Supreme Court.

In line with the democratic principle of the separation of powers, the French judiciary is independent of the executive and legislative powers. Judicial judges (*Juges*, also called *Magistrats*) in France are appointed by the President of the Republic on a proposal from the Minister of Justice. *Magistrats* are highly qualified professionals. Every judge may be appointed during their career at judging functions and/or at the office of the prosecutor (in accordance with the principle of unity of the judiciary). Unlike prosecutors, judges are not submitted to the hierarchical principle and have security of tenure such that any new assignment requires consent. To become a judge, a candidate must first pass a selective exam to enter the national school of magistrature where they will receive a 31-month special training. However, in two specific fields, judges have to be elected. Judges in the Commercial Court are elected by their peers. Judges from the *Conseil des Prud'hommes*, the French labor tribunal, are elected on a national scale through professional elections. Penal court proceedings can be overseen by an investigative judge (*juge d'instruction*). The investigative judge is appointed to a case and is in charge of preparing the case and assessing whether it should come to court. The penal system is known as inquisitorial. As for administrative judges, they are all appointed after passing specific and selective exams, mainly the *Ecole Nationale d'Administration* ("ENA") and the Administrative Tribunal Advisor exams.

## The Practice of Law

### Education

The traditional path to becoming an attorney (*avocat*) in France is to enter a law program to pursue a three-year *licence* (the Bachelor's French equivalent) and a two-year master's degree during which students usually specialize in a specific branch of law. At least a first year master's degree is required to take the bar. The French legal education does not involve any specific pro bono specific rules or requirements.

### Licensure

- French Law Students: Bar exam (minimum master's 1) followed by the French Bar Admission Course lasting 18 months, out of which two semesters are dedicated to professional experience. French legal education is finally attested by the Professional Lawyer's Certificate (Certificat d'Aptitude à la Profession d'Avocat).
- Procedure for EU Attorneys: Foreign attorneys who are EU nationals are given a choice: they can either take the French law exam (*Examen d'aptitude en droit français*) dedicated to foreign attorneys willing to have their professional title recognized in France, or be exempted from taking such exam and instead take the same Professional Lawyer's Certificate exam, as any French law student.<sup>1</sup>
- Procedure for Foreign Attorneys: Two conditions must be satisfied: (i) being an attorney in one's home country and (ii) the reciprocity of the procedure for French attorneys in such home country. Foreign attorneys are exempted from taking the Professional Lawyer's Certificate exam, but they do need to pass the French Law exam.<sup>2</sup>
- In-House Counsel: No specific license is required to become an in-house counsel but a 2<sup>nd</sup> year master's degree is highly recommended.

### Demographics

There were 60,223 attorneys in France as of January 2014, which equated to 92.7 attorneys per 100,000 inhabitants. However, great disparities are observed between the different regions, with Paris accounting

---

<sup>1</sup> See Decree of November 27, 1991, No. 91-1197, Art. 99.

<sup>2</sup> See Decree of November 27, 1991, No. 91-1197, Art. 100.



for the greatest number of attorneys (41% of French attorneys were members of the Paris Bar in 2014).<sup>3</sup> Overall, the number of attorneys in France has increased by 41% in the last ten years.

### Legal Regulation of Lawyers

Lawyers are currently regulated by the following laws and regulations in France:<sup>4</sup>

- The Law No. 90-1259 of December 31, 1990 amending Law No. 71-1130 of December 31, 1971 on reform certain legal and judiciary professions and its implementing Decree No. 91-1197 of November 27, 1991.
- The National Internal Regulation (in its consolidated version of December 5, 2014), including the European Code of Ethics, merges into a single text the various internal rules adopted by local bars.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The contemporary legal aid system in France has two components: (a) *accès au droit*, which gives all indigents the necessary resources to have equal access to legal information and (b) *aide juridictionnelle*, which coordinates funding public legal representation to those who fall below a certain financial threshold. Both systems grew out of a legislative initiative to systematize the legal assistance program in France, beginning with the Law of January 3, 1972,<sup>5</sup> and then the Law of July 10, 1991.<sup>6</sup>

### The Right to Legal Assistance

The first category of legal aid, the *accès au droit*, provides clients in need with consultations and assistance to help them make informed legal decisions.<sup>7</sup> For several years now the French Bar has provided free anonymous and confidential consultations by volunteer attorneys, regardless of the client's financial situation, intended to guarantee equal access to legal information.<sup>8</sup> General consultations under the *accès au droit* program are available, in particular, at the courthouse (*Palais de Justice*), in each of the 20 *arrondissements* in Paris, in the *Maisons de la Justice et du Droit* ("MJD" Justice and Law Houses) and in the *Points d'accès au droit* ("PAD" Access Points to Law). Specific legal advice is available in tax law, entrepreneurial law, employment law, family law, immigration/naturalization law, criminal law, juvenile law, elderly law, and general victims' rights.<sup>9</sup> In addition, the Paris Bar, in partnership with Paris town hall, has implemented free legal consultations provided by volunteer attorneys at the *Maison des Entreprises et de l'Emploi and Espaces pour l'Insertion*.

The *accès au droit* form of legal work, unlike *aide juridictionnelle*, is unpaid and completely voluntary. One problem that has emerged in recent years for some French attorneys is the inability of those who donate their time to perform a conflict-of-interest check for each individual client. Despite this difficulty, the *accès au droit* program has been such a success that the Paris Bar has been forced to turn away many attorneys who have volunteered.

---

<sup>3</sup> See the Paris bar website available at [http://cnb.avocat.fr/Les-Chiffres-cles-de-la-profession-actualises-pour-l-annee-2012--Observatoire-du-Conseil-national-des-barreaux--Mai\\_a1642.html](http://cnb.avocat.fr/Les-Chiffres-cles-de-la-profession-actualises-pour-l-annee-2012--Observatoire-du-Conseil-national-des-barreaux--Mai_a1642.html) (last visited on September 4, 2015).

<sup>4</sup> See the Paris Bar Website available at [http://cnb.avocat.fr/Etre-avocat-en-France-Reglementation-professionnelle-Les-textes\\_a1449.html](http://cnb.avocat.fr/Etre-avocat-en-France-Reglementation-professionnelle-Les-textes_a1449.html) (last visited on September 4, 2015).

<sup>5</sup> See Law of January 3, 1972, No. 72-11.

<sup>6</sup> See Law of July 10, 1991, No. 91-647.

<sup>7</sup> See Law of July 10, 1991, art. 53.

<sup>8</sup> See the Paris Bar website, available at <http://www.avocats.paris/particulier/acces-au-droit-et-a-la-justice-2/consultations-gratuites-2.html> (last visited on September 4, 2015).

<sup>9</sup> Id.



There are approximately 70 PAD in Paris, coordinated by the association *Accès aux Droits Solidarité Paris*, in partnership with the Paris town hall and the association *Droit d'Urgences*. Every year, around 30,000 interventions are provided by volunteer attorneys in Paris.<sup>10</sup> In addition, there are 137 MJD in France that carry out different kinds of actions according to the nature of the dispute. As far as criminal matters are concerned, they promote preventive actions regarding delinquency and provide an appropriate answer to petty crime with alternative measures to prosecution.<sup>11</sup> As for civil matters, MJD provides assistance to everyday-disputes resolution through mediation and conciliation.

## State-Subsidized Legal Aid

The second category of legal aid, the *aide juridictionnelle*, allows indigents to receive legal representation from a qualified attorney who is paid by the State.<sup>12</sup> The program, run by the French Bar, has created an entire market of French attorneys whose practice focuses on cases referred through the *aide juridictionnelle* system. The work these attorneys receive tends to be individualized and often concerns smaller daily matters from clients who cannot afford any other form of representation.

In 2013, 919,625 matters were referred to the *aides juridictionnelles* in France.<sup>13</sup> In 2014, 26,174 attorneys were engaged in at least one *aide juridictionnelle* matter.<sup>14</sup>

### Eligibility Criteria

#### Immigration Status

Legal aid can be claimed by French citizens or European citizens, foreigners whose legal and habitual residence is located in France and asylum seekers. However legal aid will be given to any foreigner if he/she (i) is kept in waiting zones, (ii) is temporarily detained for the verification of his/her right of residence, (iii) was refused a temporary residence card or residence permit, (iv) is the subject of an expulsion measure, (v) is detained in migrants detention centers, (vi) is a minor, (vii) is subject to the status of “*témoin assisté*,” “*mis en examen*,” “*accusé*,” “*prévenu*” or “civil party,” (viii) is a condemned foreigner, (ix) is benefiting from a protection order against violent partners, or (x) is subject to a plea bargaining procedure.

#### Financial Means

The essential criterion for receiving *aide juridictionnelle* is financial need. The system distinguishes between full and partial aid, depending on the claimant's financial situation. If full legal aid is granted, it will cover all the costs of the proceedings, including the fees paid directly to the attorneys or other practitioners (bailiff, notary, etc.). People who benefit from specific welfare benefits (namely the Solidarity Allowance for Elderly, the Income of Active Solidarity or the Temporary Waiting Allowance) and victims of particularly serious crimes (torture, rape, etc.) do not need to provide proof of income and can automatically benefit from the *aide juridictionnelle*. For others, the evaluation will be carried out on the basis of their available resources and the number of dependents they have.

In 2015, applicants with total resources (excluding family allowances and certain welfare benefits) of less than €941 per month qualify for full aid. Partial Aid covers between 15 and 85% of the costs incurred, with

---

<sup>10</sup> See *Accès aux Droits Solidarité Paris* website available at <http://www.accesdroit.org/> (last visited on September 4, 2015).

<sup>11</sup> See the Ministry of Justice website available at <http://www.justice.gouv.fr/la-justice-du-21e-siecle-12563/acces-au-droit-27911.html> (last visited on September 4, 2015).

<sup>12</sup> The Law of January 3, 1972 has instituted the *aide juridictionnelle*, involving the state in the remuneration of the attorneys. As this system was still insufficient, the Law of July 10, 1991, modified it.

<sup>13</sup> See the Ministry of Justice website available at <http://www.justice.gouv.fr/budget-et-statistiques-10054/chiffres-cles-de-la-justice-10303/> (last visited on September 4, 2015).

<sup>14</sup> See the Paris Bar website available at [http://cnb.avocat.fr/Les-Chiffres-cles-de-la-profession-actualises-pour-l-annee-2014--Observatoire-du-Conseil-national-des-barreaux--Mars\\_a2222.html](http://cnb.avocat.fr/Les-Chiffres-cles-de-la-profession-actualises-pour-l-annee-2014--Observatoire-du-Conseil-national-des-barreaux--Mars_a2222.html) (last visited on September 4, 2015).



the maximum rate applying to those with resources in a bracket between €942 to €984, and the lowest rate to a bracket between €1,305 to €1,411. Four other intermediate brackets exist, corresponding to reimbursement rates of 25, 40, 55 and 70%. In the case of partial aid, the applicant has to pay a supplementary fee agreed between the applicant and the attorney, but reviewable by the Chairman of the Bar in the event of a dispute. For both full and partial aid, the financial thresholds are raised by €169 for each of the first two dependents the household comprises and by €107 for each additional dependent.<sup>15</sup>

### Merits

The likelihood of a case succeeding will never be taken into account when allocating legal aid. However, in some exceptional circumstances, if the resources of the applicant exceed the limits, the applicant may still be eligible to receive legal aid if their action is particularly worthy of interest given its subject matter and the likely cost.<sup>16</sup>

### Legal Issues/Case Type

Legal aid is given in contested and non-contested matters in all courts. Aid can be given for all or part of the proceedings and to assist with settlement proceedings before trial. Legal aid is given provided the action is not manifestly inadmissible or devoid of substance. This condition does not apply to defendants, to persons liable civilly, to witnesses, to persons under examination, charged or accused, or to persons convicted.

The case types concerned are trials, internal appeals, transactions, the implementation of a court decision, pleas of guilty, procedures conducted in another EU State member and cases that involved a minor being heard by a judge.

### Applicant Type

Legal aid is given to claimants and defendants, whether they are natural persons or not-for-profit legal persons whose head office is located in France.

## Mandatory assignments to Legal Aid Matters

As far as legal aid is concerned, private attorneys cannot be required to accept matters assigned to them. The assignment is made on a voluntary basis by registering on a list of volunteers or by signing a letter of acceptance of the legal aid matter.

Under the system of *aide juridictionnelle*, attorneys who donate their time receive compensation from the Bar according to a level set by the State.<sup>17</sup> The amount paid for each matter is based on the Decree of December 19, 1991, which establishes a coefficient for each legal procedure and a base unit value which, multiplied together, determines the payment.<sup>18</sup> The base unit of value, equivalent to 30 minutes of *aide juridictionnelle* work, is determined each year by the Finance Act. The base unit value set by the 2014 Finance Act was €22.84.<sup>19</sup> This payment, however, is insignificant in comparison to what many attorneys in Paris typically receive.<sup>20</sup>

---

<sup>15</sup> See <http://vosdroits.service-public.fr/particuliers/F18074.xhtml> (last visited on September 4, 2015)

<sup>16</sup> See Law of July 10, 1991, art. 6.

<sup>17</sup> Id. at art. 27.

<sup>18</sup> See Decree of December 19, 1991, No. 91-1266. For example, the unit value is €22.50 (VAT excluded) since 2007, and the coefficient for a divorce proceeding is 36 (2009/2010), so the attorney would be paid €765.

<sup>19</sup> See the Paris Bar website available at [http://cnb.avocat.fr/Loi-de-finances-pour-2014-nouvelles-dispositions-sur-laide-juridique\\_a1880.html](http://cnb.avocat.fr/Loi-de-finances-pour-2014-nouvelles-dispositions-sur-laide-juridique_a1880.html) (last visited on September 4, 2015).

<sup>20</sup> See Alain Balsan, GUIDE PRATIQUE DE L'AIDE JURIDICTIONNELLE. The base unit value varies from €22.84 to €25.90 (depending on the Bars), and the coefficients vary from four to 36 for civil matters, two to 50 for criminal matters, and three to 20 for administrative matters.



In addition, according to Article 37 of the Law of July 10, 1991 as recently modified by the 2014 Finance Act, and in cases where the losing party is not eligible to *aide juridictionnelle*, attorneys ought to ask the judge to order the losing part to pay them compensation in place of State compensation.

### Unmet Needs and Access Analysis

The French Legal Aid system has evolved over the years and manages to meet the legal needs of indigent people efficiently. Since 1992, when the French Legal Aid system entered into force, there has been a tremendous increase in the number of *aides juridictionnelles* allocated to indigent people; from 348,587 in 1992, almost 800,000 were allocated 15 years later and more than 900,000 in 2012.<sup>21</sup>

However, although efficient, the French Legal Aid system suffers from a lack of financial resources which raises questions about its long-term viability. Since the 2014 Finance Act exempted *aide juridictionnelle* beneficiaries from payment of stamp duty,<sup>22</sup> the French government has been urged to fill the resulting financial gap between an increasing demand and limited State resources. The 2015 Finance Act has thus worked on finding new financial sources, among which the taxation of legal expenses insurance contracts have been targeted.<sup>23</sup>

### Alternative Dispute Resolution

#### Mediation, Conciliation and Arbitration

Civil Mediation involves a moral or legal person mandated by a judge hearing a civil dispute for which mediation seems possible. The judge sets the duration of the mediation during which the mediator tries to find an agreement between the parties. The parties can also mandate their own mediator without the intervention of the judge. If an agreement is found, they can then ask the judge to recognize it. The mediator's remuneration is set by the judge and entirely borne by the parties. However the *aide juridictionnelle* can cover a party's cost if such party is eligible.<sup>24</sup>

As far as penal mediation is concerned, the aim is to find an alternative to prosecution in the context of a penal dispute. The mediator seeks to find an agreement between the parties in order to repair the damage. Penal mediation does not apply to crimes and serious offenses but only to minor offenses such as deteriorations, minor acts of violence or minor family disputes. Penal mediation is instigated at the initiative of the Public Prosecutor.<sup>25</sup> It is free of charge for both the victim and the offender, and an *aide juridictionnelle* can be provided to eligible parties in order to hire an attorney.<sup>26</sup>

Conciliation is very similar to mediation both in terms of procedure and scope of application. However, the conciliation procedure can be imposed by the judge on the parties within mediation. In addition, conciliation is completely free of charge for both parties.

Arbitration offers an alternate dispute resolution process that is limited to cases where the parties have agreed to resort to arbitration. In addition, arbitration is limited to certain fields, for instance, it is not used in penal matters, divorce issues, violation of public order issues etc. The arbitrator is appointed by the parties. The arbitration process is praised for the fast and discreet justice it provides, but can be extremely expensive in practice and that cost is not assisted by the *aide juridictionnelle*.

<sup>21</sup> See the Senate website available at <http://www.senat.fr/rap/r07-023/r07-0232.html> (last visited on September 4, 2015).

<sup>22</sup> See the Paris Bar website available at [http://cnb.avocat.fr/Loi-de-finances-pour-2014-nouvelles-dispositions-sur-l-aide-juridique\\_a1880.html](http://cnb.avocat.fr/Loi-de-finances-pour-2014-nouvelles-dispositions-sur-l-aide-juridique_a1880.html) (last visited on September 4, 2015).

<sup>23</sup> See the Paris Bar website available at [http://cnb.avocat.fr/Loi-de-finances-pour-2015-nouvelles-dispositions-relatives-a-l-aide-juridique\\_a2126.html](http://cnb.avocat.fr/Loi-de-finances-pour-2015-nouvelles-dispositions-relatives-a-l-aide-juridique_a2126.html) (last visited on September 4, 2015).

<sup>24</sup> See the French Government official website available at <http://vosdroits.service-public.fr/particuliers/F1805.xhtml> (last visited on September 4, 2015).

<sup>25</sup> Id. See <http://vosdroits.service-public.fr/particuliers/F1824.xhtml> (last visited on September 4, 2015).

<sup>26</sup> See the Ministry of Justice website available at [http://www.justice.gouv.fr/publication/fp\\_mediation\\_penale.pdf](http://www.justice.gouv.fr/publication/fp_mediation_penale.pdf) (last visited on September 4, 2015).



### Ombudsman

The French Ombudsman (*Défenseur des Droits*) can be solicited by anyone, regardless of their age or nationality, and the Ombudsman's intervention is completely free of charge. The Ombudsman's scope of intervention is limited to disputes questioning a public service.<sup>27</sup> The Ombudsman enjoys important information and investigative powers. The Ombudsman also enjoys specific prerogatives regarding discrimination issues and children's rights protection. Their sanctioning powers are, however, limited: they can offer a transaction to the applicant and also make recommendations and direct the respondent to comply with them.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

In France, participation in pro bono initiatives is done on a voluntary basis and is not a mandatory requirement for attorneys. The Paris Bar promotes individual involvement in pro bono activities. It launched the lawyer solidarity leave initiative (*Congé de solidarité libéral*) in partnership with the association *Planète Urgence*. This is intended to allow all Paris attorneys who wish to implement social, educational or legal projects for the poorest populations in France and abroad during their annual leave.

#### Law Firm Pro Bono Programs

In France, pro bono programs carried out by law firms generally take two forms; financial aid through donations or endowment funds, or direct assistance provided by attorneys to associations, which generally consists of legal advice.

Most of the pro bono initiatives in France come from international law firms or networks. There are still few domestic law firms promoting pro bono initiatives. Some domestic law firms chose not to centralize their pro bono activities contrary to most international law firms whose pro bono programs are often monitored by a dedicated team.<sup>28</sup> By contrast, some medium-sized law firms in France rely on their attorneys to initiate pro bono activities, allowing them to work on issues of personal interest.

Pro bono projects can concern economically-oriented activities such as social entrepreneurship and fair-trade project management or the development of French local entrepreneurship. Pro bono projects can also relate to international human rights in France, for example, representing individual clients before international bodies, defending individuals before the ECHR, as well as asylum seekers or victims of trafficking.

International law firms may expand their presence within the *accès au droit* framework. The *accès au droit* form of public legal aid is the area in which most law firms have provided U.S.-style pro bono aid to the community. Many attorneys at large firms have opted to donate some of their time on a weekly or monthly basis to one or more of the consulting services. Firms can systematize their participation within specific *accès au droit* programs, such as by offering a rotation for young attorneys through an already established consultation agency.

#### Corporate Pro Bono Programs

Specific pro bono programs within corporate legal departments are rare in France. However, a new perspective of pro bono has recently been developing, driven by economic development and innovation, and based on the concept of skills-sponsorship. To this end, employees are made available to carry out

---

<sup>27</sup> See the French government website available at <http://vosdroits.service-public.fr/particuliers/F13158.xhtml> and the dedicated website of the French Ombudsman: <http://www.defenseurdesdroits.fr/> (both last visited on September 4, 2015).

<sup>28</sup> See the study conducted by Village de la Justice, available at <http://www.village-justice.com/articles/cabinets-avocat.10959.html> (last visited on September 4, 2015).



activities of public interest, leveraging the skill sets of the relevant attorneys to advance a project. Skills-sponsorship is experiencing a substantial rise in popularity, especially among mid-cap companies, with 46% of them practicing skills-sponsorship.<sup>29</sup> For example, the Pro Bono Lab association provides other associations of social utility with volunteers with the specific skills they need to build their respective project. To this end, Pro Bono Lab regularly organizes its so-called “Pro Bono Marathons” that mobilize teams of professional volunteers during one day. Specific Pro Bono partnerships between French enterprises, including Carrefour, Bouygues, and Société Générale, and schools as HEC or SciencesPo, have been developed for these events.<sup>30</sup>

### Bar Association Pro Bono Programs

To provide legal services to the most destitute, the Paris Bar has developed partnerships with public interest aid groups. Starting in March 2003 with the association *Droits d’Urgence*,<sup>31</sup> the *Barreau de Paris Solidarité* provides an effective comprehensive service for those in extreme difficulty. To this end, the Paris Bar Solidarity Bus was formed, which is an actual functional bus that drives throughout the city five days a week with volunteer attorneys in order to provide free legal consultations in various locations of Paris. The scope of the legal assistance provided is vast, including employment, housing, health, education, citizenship, asylum, entrepreneurial law, and microfinance. This initiative has experienced increasing success, with 4,551 beneficiaries in 2012, which corresponds to a 17% growth in only one year.<sup>32</sup> In 2013, 756 consultations took place involving 228 attorneys.<sup>33</sup>

In addition, on February 1, 2012, the Paris Bar officially launched the Solidarity Endowment Fund of the Paris Bar (*Fonds de dotation Barreau de Paris Solidarité*). The Fund’s purpose is to centralize, strengthen and improve the structure of existing initiatives (such as the *Paris Bar Solidarity Bus*), to encourage members of the Paris Bar and NGOs to participate in financial, legal and logistical operations of humanitarian and social works, and to ensure the promotion of these activities. The Fund focuses on the development of *accès au droit*, legal culture, human rights, and the environment in France and abroad. Furthermore, in 2012, the *Barreau de Paris Solidarité* created the *Trophées Pro Bono* that reward every year several pro bono projects undertaken by French law firms and individual attorneys.

Finally, the Paris Bar has also developed several partnerships between public entities and the Paris Town Hall and the City of Paris to launch various pro bono projects, such as The Lawyer in the City (*L’Avocat dans la Cité*), consisting of an event taking place each year for one week in Paris. At such events, people are provided free legal consultations with volunteer attorneys as well as a guided tour of the Lawyer Museum, students meetings, etc.

### University Legal Clinics and Law Students

Student pro bono initiatives are another opportunity for pro bono in France. More and more students from the French Bar Admission have been getting involved in pro bono activities recently, either independently or within a specific program. For example, a partnership has been developed between the French Bar Admission, the association Pro Bono Lab and the *Barreau de Paris Solidarité*, resulting in regular events during which students and attorneys provide free legal assistance. Two French Bar Admission students won the *Trophée Pro Bono 2014* for the creation of the association “Printemps International des Droits de l’Homme” aiming at rising awareness among students of the defense of human rights, which illustrates students’ increasing involvement in pro bono activities.

---

<sup>29</sup> Further information available at <http://www.pro-bono.fr/2015/01/mecenas-competences-seduit-les-eti-entreprises-taille-intermediaire/> (last visited on September 4, 2015).

<sup>30</sup> See the Pro Bono Lab website available at <http://probonolab.org/> (last visited on September 4, 2015).

<sup>31</sup> See Droits d’Urgence website available at <http://www.droitsdurgence.org> (last visited on September 4, 2015).

<sup>32</sup> See the Barreau de Paris Solidarité 2013 Report available at [http://www.barreausolidarite.org/pdf/rapport\\_final\\_2012\\_2013.pdf](http://www.barreausolidarite.org/pdf/rapport_final_2012_2013.pdf) (last visited on September 4, 2015).

<sup>33</sup> See the Barreau de Paris Solidarité 2014 Trophées Pro Bono Report available at <http://dl.avocatparis.org/com/mailling2014/bps/probono/laureats.pdf> (last visited on September 4, 2015).



Although emerging in the French educational system, legal clinics remain unusual in France. It is still a very recent and uncommon trend among French universities. The first legal clinic in France opened at the University of Caen in 2009 as the *Centre de Recherche sur les Droits Fondamentaux et les Evolutions du Droit* (the Centre of Research on Fundamental Rights and Law Development).<sup>34</sup> Some other universities followed, including the Paris II Law Faculty that created the “*Maison du Droit*” providing free legal consultations organized in Paris with volunteer attorneys and selected students. Similarly, the SciencesPo Law School launched its own legal clinic organized around four main programs: Accès au Droit, Asylum and Immigration, Corporate Social Responsibility and Human Rights, Economic Development and Globalization. Finally, the Paris 8 Law Faculty won the 2014 Pro Bono Trophy for its project The Legal Clinic (*La Clinique Juridique*) in which students provide free legal assistance.<sup>35</sup>

### Lawyers’ Pro Bono Networks

In addition to law firm pro bono programs, more and more attorneys organize themselves, independently to undertake pro bono activity. Justice for Cambodia is a good example of such initiatives. The organization is an association of attorneys created in 2003 to represent some of the Khmer Rouge regime’s victims before the Extraordinary Chambers in the Courts of Cambodia. The *Collectif d’AvocatEs ExpertEs BénévolEs* is a more recent example. This group of female attorneys was rewarded last year by the 2014 Pro Bono Trophy for their work on prostitutes’ rights.

### Non-Governmental Organizations

When involved in pro bono programs, initiatives by NGOs can take two forms: partnerships with law firms or companies as mentioned above, or within the framework of their own activity. Many NGOs are established in France, including *Médecins sans frontières France*, *Handicap International* or *Action contre la Faim*.

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

Pro Bono was introduced in France in the early 2000s and has not reached comparable prevalence to that seen in Anglo-Saxon countries. Although there has been an increase in the number of firms with offices in France that take part in pro bono, they are almost all international law firms.<sup>36</sup> In fact, for many centuries, the French *bâtonnier* (Chairman of the Bar) assumed the responsibility for organizing pro bono activities, with little or no state help or financial sponsorship.

This evolution has mainly been influenced by U.S. parent companies that promote pro bono culture among their French subsidiaries. In addition, the recent emphasis put on corporate social responsibility in France has enabled pro bono to infiltrate the corporate sector and become more integrated in French culture.

Furthermore, the restriction on legal advertising which ended in 2014 has undoubtedly impeded an effective communication of pro bono activities in France. Until last year, it was illegal to solicit legal work in any form, either by going to the residence or workplace of a potential client or by sending a personalized proposition of work without having been properly invited beforehand. Advertising was only permissible in order to convey strictly necessary information to the public. In this respect, the law of March 17, 2014 is a great step forward towards better external communication for attorneys. This law now permits attorneys to advertise their services and solicit legal work under certain conditions. Nothing now

---

<sup>34</sup> See the University of Caen website available at <http://www.unicaen.fr/recherche/mrsh/crdefed/clinique> (last visited on September 4, 2015).

<sup>35</sup> See La Clinique Juridique website available at <http://lacliniquejuridique.fr/> (last visited on September 4, 2015).

<sup>36</sup> See the Thomson Reuters Foundation website available at <http://www.trust.org/spotlight/pbi15/?tab=data> (last visited on September 4, 2015).



prevents attorneys and law firms from communicating the pro bono services they provide and from soliciting individuals and associations to offer pro bono services.

## Current State of Pro Bono

### Laws and Regulations Impacting Pro Bono

One problem facing pro bono practices in France is the lack of a specific tax regime for pro bono hours and initiatives. First, in France, an attorney's fees are increased by the standard VAT rate (currently 20%). Although access to law and justice is a fundamental right, citizens who defend themselves or get legal advice pay VAT at a full rate. Through the end of 2010, a reduced rate of 5.5% VAT was applicable to attorneys' fees when provided as part of *aide juridictionnelle*. However, the French legislator<sup>37</sup> replaced it by the standard VAT rate for these services following a ruling by the Court of Justice on June 17, 2010.<sup>38</sup>

In addition, article 238 bis of the General Taxes Code introduces, in case of donation, a tax reduction of 60% of any donation. However, this does not apply to pro bono initiatives provided by law firms. Not taking into account pro bono activities in a specific tax regime constitutes an incentive to move away from pro bono activities in favor of other economic choices such as endowment funds.

Finally, there is no professional indemnity legal insurance covering pro bono activities available for attorneys in France. Legal insurance is available for clients under the name of "*Assurance Protection Juridique*,"<sup>39</sup> but such insurance usually provides limited legal assistance and does not target indigent people.

### Socio-Cultural Barriers

One of the main challenges that pro bono faces in France is the strong support of the welfare state. In French culture, the public good is in principle not the private sector's responsibility, which explains the substantially well-developed state-subsidized legal aid system while pro bono is having difficulties integrating into the culture of French domestic law firms.

In addition, some attorneys in France rely on the income they get from legal aid assignments and are thus reluctant to support international law firms' pro bono initiatives. However, the system's lack of financial resources makes it essential to find new viable solutions in the private sector.

Finally, most French law firms refuse to integrate their pro bono achievements in their marketing strategy and provide very limited communication about pro bono on their website. The Pro Bono Trophies established 2012 have counterbalanced this trend and made law firms realize the positive impact communication could have on them as well as on pro bono expansion.

### Pro Bono Resources

Information on legal aid and pro bono opportunities in France can be found on the following websites, mostly in French:

- Paris Bar: [www.avocatparis.org](http://www.avocatparis.org)
- Conseil National des Barreaux: [http://cnb.avocat.fr/Acces-au-droit-et-a-la-justice\\_a135.html](http://cnb.avocat.fr/Acces-au-droit-et-a-la-justice_a135.html) (last visited on September 4, 2015)
- Ministry of Justice: <http://www.vos-droits.justice.gouv.fr/aide-a-laccess-au-droit-11952/aide-juridictionnelle-20262.html> (last visited on September 4, 2015)
- Paris City Hall: [www.paris.fr/pratique/aides-allocations-demarches/aide-juridique-gratuite/p6918](http://www.paris.fr/pratique/aides-allocations-demarches/aide-juridique-gratuite/p6918) (last visited on September 4, 2015); [www.v2asp.paris.fr/commun/pdf/acces\\_en.pdf](http://www.v2asp.paris.fr/commun/pdf/acces_en.pdf) (last visited on September 4, 2015) (brochure in English)
- Fonds de dotation Barreau de Paris Solidarité: <http://www.barreausolidarite.org/> (last visited on September 4, 2015)

---

<sup>37</sup> See Law of December 29, 2010, No. 2010-1658.

<sup>38</sup> See judgment of the Court of Justice of June 17, 2010, *Commission v French Republic*, C-492/08, [2010] I-5471.

<sup>39</sup> More information is available under the following link: <http://vosdroits.service-public.fr/particuliers/F3049.xhtml> (last visited on September 4, 2015).



- Défenseur des droits : <http://www.defenseurdesdroits.fr/> (last visited on September 4, 2015)
- Centre français des fonds et fondations: [www.centre-francais-fondations.org](http://www.centre-francais-fondations.org)
- Pro Bono Lab: <http://probonolab.org/> (last visited on September 4, 2015)
- NGO:
  - Droits d'urgence: [www.droitsdurgence.org](http://www.droitsdurgence.org) (last visited on September 4, 2015)
  - Médecins du Monde: [www.medecinsdumonde.org](http://www.medecinsdumonde.org) (last visited on September 4, 2015)
  - Adie: [www.adie.org](http://www.adie.org) (last visited on September 4, 2015)
  - Restaurants du Coeur: [www.restosducoeur.org](http://www.restosducoeur.org) (last visited on September 4, 2015)
  - PlaNet Finance: [www.planetfinancegroup.org](http://www.planetfinancegroup.org) (last visited on September 4, 2015)
  - Planète Urgence: [www.planete-urgence.org](http://www.planete-urgence.org) (last visited on September 4, 2015)

## CONCLUSION

The French legal aid system attempts to create an exhaustive system run by the Bar to assist the indigent community. The *aide juridictionnelle* system gives all clients in need an attorney, paid for by the Bar, to represent their interests in a courtroom. The *accès au droit* system seeks to ensure that the indigent community is sufficiently well-informed to make proper legal decisions by organizing consultations with unpaid volunteer lawyers. At the same time, pro bono has played an increasingly important role in France in recent years with the development of individual, student and corporate initiatives. The emphasis put on communication in the last few years as well as ending the restrictions on advertising have contributed considerably to such pro bono expansion. Finally, considering the financial difficulties currently experienced by the French *aide juridique* system, the integration of pro bono practices within French culture is particularly welcome as a viable compliment to State-subsidized legal aid in the future.

September 2015

Pro Bono Practices and Opportunities in France

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Georgia<sup>1</sup>

### INTRODUCTION

Georgia's legal system has been transforming since it gained independence at the end of the twentieth century. Prior to that, pro bono culture in the legal profession was nonexistent. With the gradual progress made in the development of the legal system, strengthening pro bono initiatives has also become an important part of the reform agenda. To date, most pro bono opportunities are offered by non-governmental organizations (“NGOs”), university law clinics and law firms. However, these practices exist in a context where no state regulations or voluntary standards are in place to support pro bono in Georgia.

### OVERVIEW OF THE LEGAL SYSTEM OF GEORGIA

#### The Judicial System

The Constitution of Georgia is the supreme law. It provides for the separation of powers among the legislative, executive and judicial branches of the government. The judicial system consists of the Constitutional Court of Georgia and courts of general jurisdiction. The Constitutional Court of Georgia is governed by the Organic Law of Georgia on the Constitutional Court and chiefly hears cases regarding compliance with laws and bylaws that are adopted by public agencies with the provisions of the Constitution.

Pursuant to the Organic Law of Georgia on the Courts of General Jurisdiction, courts of general jurisdiction hear cases from all fields of law. However, there can be specialized panels of judges within these courts that hear criminal, civil or administrative cases. The courts of general jurisdiction have three instances: (1) the regional (city) courts are first instance courts; (2) the Tbilisi and Kutaisi courts of appeal are second instance courts and (3) the Supreme Court of Georgia is the third and final instance court. Members of the Supreme Court are elected by Parliament for ten years, whereas judges of the courts of appeal and the regional (city) courts are appointed by the High Council of Justice.<sup>2</sup>

#### The Practice of Law

Georgian legislation refers to licensed attorneys as “advocates”. All remaining persons who have legal education are usually referred to as “jurists”. Anyone of legal capacity may provide legal representation in the courts of first instance, but only “advocates” are authorized to do so in the court of appeal and the Supreme Court. Among the requirements to qualify as an “advocate” one must: (1) be a Georgian citizen; (2) have received higher legal education; (3) have passed one of the state bar exams; and (4) have at least one year of professional experience as a jurist or as a paralegal with an “advocate”. If a person meets these criteria, he/she must file the relevant documents with the Georgian Bar Association and take an oath. Admission to the Bar means that the person may start his/her practice as an “advocate”.

A legal education is an essential requirement to become a licensed attorney in Georgia. Proof of legal education is required to be able to sit the bar exam. There are two types of exams: general and specialized. The specialized exam can be either in civil or criminal law. The general exam tests both. Passing the general bar exam allows the attorney to practice in all areas of law, whereas attorneys who have passed specialized exams may practice only in that area of law.

Licensed attorneys are subject to the Law of Georgia on Advocates and the Professional Ethics. This Law provides that an “advocate” is a member of a free profession and must comply only with the law and the

---

<sup>1</sup> This chapter was drafted with the support of BGI Law Firm.

<sup>2</sup> The High Council of Justice is a body which oversees the entire judicial system. For more, see at: <http://hcoj.gov.ge/en/home> (last visited on September 4, 2015).



professional ethics regulations. As of June 2015, there are 4,021 licensed attorneys in Georgia which has a total population of 3.7 million inhabitants.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### State-Subsidized Legal Aid

#### The Right to Legal Assistance

Under Article 42 of the Georgian Constitution, the right to defense in the courts is guaranteed for any person. The same right is established under Article 38 of the Criminal Procedure Code of Georgia whereby all persons accused of a crime have the right to be represented by an “advocate”. However, state-funded legal representation is provided only to certain categories of persons that vary in criminal or civil/administrative cases. In general, the provision of state legal representation is largely dependent on the financial means of the applicant, and such applicant being a permanent resident of Georgia. However, if there is an instance where a mandatory defense is required in a criminal proceedings (please see section c below), then any person without an attorney, regardless of nationality and financial status, may receive state-funded legal representation.

#### State-Subsidised Legal Aid

Pursuant to the Law of Georgia on Legal Aid of 2007, the Georgian State provides state-sponsored legal aid through the Legal Aid Service.<sup>3</sup> In general, this institution provides two types of services: (1) legal advice (consultation) which it provides to any interested person and (2) legal aid (i.e. drafting legal documents and court representation) which it may provide to categories of people who are unable to afford such a service or, in a few instances in criminal proceedings, where a mandatory defense is required under the law. The criteria to qualify for the latter are provided under the legislation and includes the indigent population which is determined according to the state database of socially vulnerable persons. To be eligible, a person has to reside legally and permanently in Georgia (i.e. be a permanent resident of Georgia).

More specifically, under the legal aid criteria, a person is considered to be unable to pay for legal services if s/he is either: (1) a socially vulnerable person and his/her ranking point in the database is 70,000 or less,<sup>4</sup> or (2) a socially vulnerable person and his/her ranking point in the database is 100,000 or less and s/he is either: (a) a member of a family with three or more children under the age of 18; (b) a veteran of war or the military forces; (c) a person with disabilities who is under the age of 18; (d) an adult with distinct or significant disabilities; (e) a person with distinct, significant or moderate disabilities, if this disability existed from childhood; (f) an orphan under the age of 18; or (g) an internally displaced person as a result of the Russian military aggression against Georgia.

However, in exceptional cases, where a person who is not included in the database is determined to be unable to pay for legal services or where some other specific qualifying circumstances exists, that person may receive legal assistance from the Legal Aid Service.

---

<sup>3</sup> See at: <http://www.legalaid.ge/index.php?action=0&lang=eng> (last visited on September 4, 2015).

<sup>4</sup> Under the Georgian legislation, social assistance is provided to socially vulnerable (indigent) families (households). That status is determined in accordance with a Government-adopted methodology for assessment of social-economic conditions of families. The methodology considers a myriad of factors and contains complex algorithms that are both social and economic in nature. On the basis of this assessment, a certain number of points is assigned to each household. The lower the number, the more severe is that household’s social vulnerability and, accordingly, they may be entitled to broader state assistance programs. The information on households and their assigned points are registered in a database held by the Ministry of Labor, Health and Social Affairs and is used by various state institutions for the purposes of their social programs.



## Legal Assistance in Criminal Cases

In criminal proceedings, the state will appoint a defense attorney in two main instances: first, when the defendant is indigent according to the state criteria and, second, when a mandatory defense must be provided. The first instance has been discussed above. Unlike the first, in the second instance, any person without any distinction based on nationality, residency or financial means may receive state-funded legal representation in a determined set of cases in order to guarantee the criminal procedural rights of all. These cases include where a defendant without an attorney: (a) is a juvenile; (b) does not speak the language of the criminal proceedings; (c) has a physical or mental disability that prevents him/her from defending himself/herself; (d) has had a court order (ruling) ordering mental examination rendered in respect of them; (e) is accused of a crime for which the Criminal Code of Georgia provides for life imprisonment as a punishment; (f) is in the process of negotiating a procedural agreement; or (g) is charged with a crime for which this Code provides for a jury trial.

## Legal Assistance in Civil and Administrative Cases

Historically, legal assistance has been provided only in criminal cases. However, since April 2015 the Legal Aid Service also provides legal aid for certain categories of civil and administrative cases. Such assistance is provided if the person cannot afford legal representation as per the criteria provided under the legislation and if the case is important and complex. There is however no official criteria to determine whether a case is important and complex.

The categories of civil and administrative cases that are eligible for legal aid include the following general categories: (1) family disputes (marriage, divorce, alimony, etc.); (2) inheritance disputes; (3) social allowance and pension; (4) rights of internally displaced persons; (5) healthcare issues and rights of patients; (6) social protection of families of veterans and persons who died in war hostilities; (7) the social protection of victims of political repressions; and (8) the social protection of persons with disabilities additionally, certain laws specifically note that the indigent persons may benefit from legal aid in cases involving amongst others: (1) a person with psychosocial needs when a court assesses whether to recognize him/her as a recipient of supported decision-making; (2) protection of victims of domestic violence; (3) compulsory psychiatric assistance when the person is to be placed in a hospital; (4) disciplinary proceedings of prisoners; and (5) administrative misdemeanors which as a penalty entail an administrative arrest.

## Alternative Dispute Resolution

There are a few notable alternative dispute resolution mechanisms available in Georgia. Among them are mediation services in juvenile justice and the inquiry functions of the Ombudsman of Georgia.

### Mediation in Juvenile Justice

The newly adopted Code on Juvenile Justice sets out the concept of mediation which is defined as a process of dialogue, led by a mediator, between a delinquent minor and a victim. According to the Code, the mediation is led and coordinated by an independent and qualified mediator. A legal representative, a psychologist, a social worker, a prosecutor and/or other persons may also participate in the mediation. The goal of the process is to reconcile the minor with the victim and to resolve the conflict. This measure may be applied if the state prosecutor decides that a delinquent minor should be diverted from court proceedings. Such mediation is not subject to a state fee or taxation.

### Ombudsman of Georgia

The Ombudsman of Georgia examines applications and complaints of citizens of Georgia, foreign citizens and persons without citizenship, legal entities established under private law, and political and religious associations, regarding actions or acts of state and local self-government authorities, public agencies and officials that violate the rights and freedoms provided under the Constitution and laws of Georgia. Such applications and complaints are not subject to any state fee or taxation and the Ombudsman's services are provided free of charge. The services may include inspection of the facts and making a recommendation to the state agency involved.



## PRO BONO ASSISTANCE

### Pro bono Opportunities

Pro bono opportunities in Georgia are in most part provided through law firm initiatives, NGOs, and university law clinics.

In recent years law firms have been taking more and more steps to develop a pro bono culture in the country. For instance, on June 27, 2014, some of the leading law firms, members of the Association of Law Firms of Georgia, signed the Pro bono Declaration<sup>5</sup> whereby they agreed to provide pro bono services in a more coordinated manner. Later, a memorandum of understanding (**MoU**) was signed between the Association and the Legal Aid Service of Georgia. According to the MoU, signatories undertook to provide legal representation in civil and administrative cases free of charge for, in particular, priority cases such as defending the rights of the disabled persons and victims of domestic violence.

Additionally, much of the pro bono opportunities in Georgia are provided by NGOs in both their field of specialization and beyond. Set out below is an indicative list of such services among others provided by NGOs. These opportunities are financed by international donors and partners of the organizations. In many cases the pro bono services are tailored to local priorities and the organizations' profiles.

Most recently, one of the fastest developing fields in this area has been university law clinics. At this point practically all major universities in Georgia have some type of a law clinic. According to unofficial advice from some of the universities, the law school students are required to participate in the clinics as a mandatory requirement for graduation with the law degree.

### Current State of Pro Bono

Despite these initiatives, so far, international standards and practices of pro bono are not well-established in Georgia. No regulations or general voluntary standards apply to pro bono work in Georgia. Further private initiative will be required to develop a pro bono culture in the country that is in line with the best practices of the world. The discussions as to what the State and the private sector may be able to do in this area are only the beginning.

### Pro bono Resources

#### Law Firms:

Association of Law Firms of Georgia – in the area of civil and administrative cases which are provided to it by the Legal Aid Service of Georgia – website: <http://alfg.ge/?lang=en> (last visited on September 4, 2015)

#### NGOs:

- Transparency International – Georgia – mainly in the area of administrative law relating to property rights and dismissal cases of civil servants – website: <http://www.propertyrights.ge/site/en> (last visited on September 4, 2015)
- Georgian Young Lawyers' Association - mainly in the area of human rights and other cases as determined under the criteria adopted by the organization - <https://gyla.ge/geo/news> (last visited on September 4, 2015)
- Article 42 of the Constitution – in nearly all fields provided mainly to vulnerable groups of the population – website: [http://www.servat.unibe.ch/icl/gg00000\\_.html](http://www.servat.unibe.ch/icl/gg00000_.html) (last visited on September 4, 2015)
- Anti-violence Network of Georgia – mainly in the area of domestic violence – website: <http://www.avng.ge/> (last visited on September 4, 2015)

---

<sup>5</sup> See at: [http://alfg.ge/archives/portfolio\\_page/declaration?lang=en](http://alfg.ge/archives/portfolio_page/declaration?lang=en) (last visited on September 4, 2015).



- Partnership for Human Rights – mainly in the area of human rights – website: <http://phr.ge/> (last visited on September 4, 2015)
- Human Rights Education and Monitoring Center – mainly in the area of human rights - website: <http://www.emc.org.ge> (last visited on September 4, 2015)
- Identoba – mainly in the area of LGBT rights – website: <http://identoba.com/> (last visited on September 4, 2015)
- Eurasia Partnership Foundation – in the area of consumer rights – website: <http://www.mkidveli.ge/2> (last visited on September 4, 2015)

Law School Clinics:

Free University of Tbilisi – various clinics in the areas of business, administrative, criminal and constitutional law – website: <http://freeuni.edu.ge/node/522> (last visited on September 4, 2015)

Professional Associations:

Georgian Trade Unions Confederation – in the area of labor rights – website: <http://www.eng.gtuc.ge/> (last visited on September 4, 2015)

September 2015

Pro Bono Practices and Opportunities in Georgia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

## Pro Bono Practices and Opportunities in Germany

### INTRODUCTION

Generally, public opinion in the Federal Republic of Germany (“**Germany**”) considers pro bono practice as a positive recent development. However, legal and cultural obstacles to pro bono work still exist. This may partly be due to the different definitions of “pro bono” that are used by attorneys on the one hand and the government on the other. Attorneys engaged in pro bono activities regard the concept of pro bono as gratuitous legal counselling for a good and mostly charitable cause.<sup>1</sup> The government seems to expand its definition of pro bono to the provision of legal services free of charge regardless of the underlying motives.<sup>2</sup>

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The German Constitution<sup>3</sup> stipulates democracy, social solidarity, republicanism, the rule of law and federalism as constitutional principles of Germany.<sup>4</sup> As a consequence of these constitutional principles, particularly the rule of law, the Constitution guarantees a comprehensive right to justice, especially the right to a fair trial and the right to effective judicial protection.<sup>5</sup>

Among the set of laws governing the German justice system are the procedural codes, particularly the Code of Criminal Procedure (*Strafprozessordnung* (“**StPO**”)) and the Code of Civil Procedure (*Zivilprozessordnung* (“**ZPO**”)). The procedural codes also contain provisions on legal aid for indigent persons.

##### The Courts

The observance of the rule of law is ensured effectively and efficiently by the German court system which is divided into five well-functioning specialty branches: ordinary courts (criminal and civil disputes), administrative law courts, tax law courts, labor law courts and social law courts. Each branch is organized hierarchically. For example, the branch of ordinary courts consists of local courts (*Amtsgerichte*), regional courts (*Landgerichte*), higher regional courts (*Oberlandesgerichte*) and the Federal Court of Justice (*Bundesgerichtshof*) as the court of supreme instance.<sup>6</sup> The lower courts of each branch are organized regionally in each Federal State (Bundesland), meaning that distances between citizens and competent courts are relatively short.

In addition to the specialty branches, there are constitutional courts, i.e. the Federal Constitutional Court (*Bundesverfassungsgericht*) and each State’s Constitutional Court (*Landesverfassungsgerichte*), that have jurisdiction over decisions regarding alleged violations of constitutional law only.<sup>7</sup>

<sup>1</sup> See <http://www.pro-bono-deutschland.org/en/pro-bono-legal-advice/> (last visited on September 4, 2015)

<sup>2</sup> Explanatory Memorandum to the Act amending the legal aid and legal advice aid regulations (Entwurf eines Gesetzes zur Änderung des Prozesskostenhilfe- und Beratungshilferechts), BT-Drucks. 17/11472, p. 49.

<sup>3</sup> Grundgesetz der Bundesrepublik Deutschland (“**GG**”).

<sup>4</sup> GG Article 20.

<sup>5</sup> GG Article 19 (4).

<sup>6</sup> Courts Constitution Act (Gerichtsverfassungsgesetz („**GVG**”)) § 12.

<sup>7</sup> Cf. regarding the Federal Constitutional Court the Federal Constitutional Court Act (Bundesverfassungsgerichtsgesetz (“**BVerfGG**”)).



In the lower instances of the specialty branches, the court divisions consist of professional and of lay judges. However, professional judges oversee the proceedings and the oral hearing and usually determine the verdict. In the higher instances, the court divisions consist of professional judges only. All judges are appointed by the Federal States and the Federal Republic, as the case may be, rather than being directly elected by the people.

### The Practice of Law

Each German legal practitioner has to pass two State Examinations (*Staatsexamina*). The First State Examination marks the end of university education. The Second State Examination concludes a mandatory two-year legal clerkship (*Referendariat*) consisting of several internships in courts, public authorities, law firms etc. The legal clerkship and both State Examinations are organized by the respective state, acting through the regional or higher regional courts.

German legal education, i.e. legal university education as well as the legal clerkship, does not require law students or law clerks to participate in pro bono activities. However, in recent times, German law students have had more and more opportunities to engage in pro bono activities, especially in university legal clinics (see below IV.a.vi.). Dependent on the respective university's curriculum, the participation in university legal clinics may be rewarded with credit points that count towards the law students' academic degrees. However, it is ultimately left to the law students to decide whether they will volunteer in university legal clinics or other pro bono institutions.

The admission to practice as an attorney (*Rechtsanwalt*) in each state is awarded by the local bar association (*Rechtsanwaltskammer*). Aside from the completion of both State Examinations and the non-existence of a criminal record, there are almost no further pre-conditions for admission to the bar.<sup>8</sup> There are specific regulations and certain exemptions for qualified lawyers from European Union ("EU") and EFTA<sup>9</sup> member states wishing to practice in Germany.<sup>10</sup> The completion of pro bono activities is not required to obtain or to retain licensure as an attorney.

Currently, 163,000 licensed lawyers practice in Germany<sup>11</sup>, amounting to a median number of attorneys per capita of roughly one to 490.

According to a recent survey, two thirds of German lawyers provide pro bono legal services and an active pro bono lawyer handles on average nine matters per year without charge. According to the results of the survey, pro bono in Germany is particularly common in small local law firms as well as in big international law firms. Although the survey was conducted among a large number of lawyers, the validity of its results may be questionable as the survey did not apply a consistent definition of pro bono.

### Legal Regulation of Lawyers

The practice of law is regulated by various, especially federal, laws. The most important among them is the Federal Attorneys Services Act (*Rechtsanwaltsdienstleistungsgesetz* ("RDG")), stipulating who may render which types of out-of-court legal services, and the Federal Attorneys Code (*Bundesrechtsanwaltsordnung* ("BRAO")) providing rules of professional conduct and responsibility. The BRAO is complemented by the Ordinance for the Legal Profession (*Berufsordnung für Rechtsanwälte* ("BORA")), adopted by an assembly of elected representatives of the local bar associations. Those local bar associations are also the regulators for the attorneys with respect to matters of professional ethics.

The Federal Attorneys Compensation Act regulating the compensation of lawyers (*Rechtsanwaltsvergütungsgesetz* ("RVG")) provides statutory fees for attorneys. Although, in most cases

---

<sup>8</sup> BRAO §§ 6 et seq.

<sup>9</sup> European Free Trade Association.

<sup>10</sup> Act on the Activities of European Attorneys in Germany (Gesetz über die Tätigkeit europäischer Rechtsanwälte ("EuRAG")).

<sup>11</sup> See [http://www.brak.de/w/files/04\\_fuer\\_journalisten/statistiken/2015/06\\_anl.1\\_grafik\\_entwgesamtzugelrae-bis2015-.pdf](http://www.brak.de/w/files/04_fuer_journalisten/statistiken/2015/06_anl.1_grafik_entwgesamtzugelrae-bis2015-.pdf) (last visited on September 4, 2015).



attorneys are free to negotiate a fee arrangement (e.g., hourly rates) with their clients, practically, the fee structure stipulated by the RVG is the standard fee most lawyers, particularly sole practitioners and small law firms, charge.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The German state, i.e. the Federal Republic and the Federal States taken together, provides a comprehensive system of legal assistance to indigent persons. Such legal assistance is provided through either public or semi-public institutions funded by the state or through independent attorneys compensated by the state to advise and represent the indigent clients.

#### Legal Advice

Indigent persons and legal entities are eligible for general legal advice and out-of-court representation in all areas of law at no or very low cost.<sup>12</sup> Similar conditions as regards eligibility for legal aid in civil proceedings (see below III.a.ii., III.b.) apply.<sup>13</sup> The modalities of the provision of legal advice to indigent persons differ between states. Whilst the City of Hamburg and the City of Bremen provide advice through Public Legal Advice and Settlement Offices (*Öffentliche Rechtsauskunft- und Vergleichsstellen*), the other states issue vouchers that the indigent person may use with the attorney of their choice.

#### Legal Aid in Civil Proceedings

An indigent litigant in civil proceedings before the ordinary courts as well as in proceedings before the administrative law, labor law and social law courts is, under certain conditions (see below III.b.), entitled to receive legal assistance under the Legal Aid Scheme (*Prozesskostenhilfe*).

If eligible for legal assistance under the Legal Aid Scheme, the indigent litigant may freely choose his or her attorney. The competent state agencies waive the court fees and cover the fees of the indigent litigant's attorney. However, if the indigent litigant loses the case, he or she must still bear the costs for the opponent's attorney. Consequently, a certain financial risk remains for the indigent litigant.

#### Legal Assistance in Criminal Proceedings

A defendant in criminal proceedings is, in certain cases, entitled to a public defender (*Pflichtverteidiger*). This includes in particular cases where the defendant is charged with a felony and where the defendant is held in remand detention or provisional placement.<sup>14</sup> The public defender is appointed by the court. If the defendant requests a certain defender, this defender has to be appointed unless there is an important reason for not doing so. Otherwise, the court chooses the public defender.

The competent state agencies will cover the public defender's fees, in the first instance, regardless of the financial situation of the defendant. However, if the defendant is found guilty of the crime he or she was accused of, the defendant will ultimately have to bear his or her defender's costs.

---

<sup>12</sup> For instance, at the Public Legal Advice and Settlement Offices (*Öffentliche Rechtsauskunft- und Vergleichsstellen*) in Hamburg, the fee for legal advice in one matter amounts to 10 € or to 3 € for persons with a very low income, cf. available at <http://www.hamburg.de/rechtsberatung/> (last visited on September 4, 2015).

<sup>13</sup> Act on Legal Advice Aid (*Beratungshilfegesetz* („BerHG“) §§ 1 et seq.

<sup>14</sup> Cf. for the full list of cases, StPO §§ 140 et. seq.



## State-Subsidized Legal Aid: Main Eligibility Criteria

Both individuals and legal entities (including NGOs) are generally eligible for legal assistance under the Legal Aid Scheme. However, different eligibility criteria apply.<sup>15</sup>

### Eligibility Criteria for Individuals

German citizens and foreign citizens, regardless of their nationality or immigration status, are generally eligible for legal assistance under the Legal Aid Scheme.<sup>16</sup>

The financial assessment criteria are basically in line with those for receiving social security benefits. In essence, the applicant must have no or only very limited financial means. Consequently, only a minority of individuals may benefit from the Legal Aid Scheme. Considering that in 2013 only 377,000 people were eligible for social security benefits, which amounts to 0.4% of the population in Germany, only a small percentage of people actually meet the strict criteria and may be eligible for Legal Aid. The applicant for legal aid must disclose income and assets to demonstrate indigence.

In order to qualify for legal aid, the action that the applicant intends to bring or the defense against an action that has been brought against the applicant (i) must have sufficient prospects of success and (ii) must not appear frivolous.<sup>17</sup> The “sufficient prospects of success”-test requires a judge to determine the claim’s merits. It is not required that the claim / defense has a strong chance of success but it is sufficient that it has a reasonable basis. In practice, only “hopeless” claims / defenses are denied legal aid.

The second requirement provides that the applicant will not receive legal aid in cases where he or she can achieve his objective in a more straightforward and cost-efficient manner, e.g. through summary proceedings for a payment order (*Mahnverfahren*).<sup>18</sup>

Finally, if litigation is to take place before a local court, where representation by an attorney is not mandatory, legal assistance will only be granted if the judge deems it necessary (e.g., due to the complexity of the matter) or if the opponent is already represented by an attorney.<sup>19</sup>

### Legal Entities

Legal entities, like NGOs and charitable organizations are only entitled to legal aid if they are based in Germany or in another EU or EFTA member state. The applying entity must be unable to fund the proceedings. Furthermore, the applying entity’s inability to fund the proceedings and the resulting failure to commence or defend against an action, as the case may be, must contradict public interest. This is the case if substantial parts of the population or the economy as a whole would otherwise be affected negatively.<sup>20</sup> Finally, as with legal aid for individuals, the action or defense, as the case may be, must have sufficient prospects of success and must not appear frivolous.

## Mandatory assignments to Legal Aid Matters

In Germany, attorneys largely benefit from freedom of profession (*Berufsfreiheit*). Thus, mandatory assignments are confined to mandatory appointments as a public defender in criminal proceedings. Attorneys may not refuse such appointments unless he or she has a sound reason (e.g., a conflict of interest in the person of the accused). In practice, however, there is usually a sufficient number of lawyers actively seeking court appointments and, consequently, involuntary appointments remain the exception. If

---

<sup>15</sup> ZPO §§ 114 et. seq.

<sup>16</sup> Kießling, in: Saenger, ZPO § 114 margin no. 9.

<sup>17</sup> ZPO § 114.

<sup>18</sup> ZPO §§ 688 et. seq.

<sup>19</sup> ZPO § 121.

<sup>20</sup> ZPO § 116.



an attorney is mandatorily appointed as a public defender, his scheduled statutory fees are lower than the statutory fees of the defender of a self-paying (non-indigent) client, but are fully covered by the competent state agencies.

## Unmet Needs and Access Analysis

There is a need for pro bono work in Germany despite the existing legal aid system. Low income individuals, like single parents, who cannot afford legal costs insurance (*Rechtsschutzversicherung*) but are not “sufficiently poor” to qualify for assistance under the Legal Aid Scheme always run the risk of being deprived of their rights.

Furthermore, NGOs and charitable organizations often struggle to fulfill the requirements of the Legal Aid Scheme. International NGOs and charitable organizations are often not entitled to legal aid at all as they are not resident in Germany, the EU or EFTA. Others usually struggle to prove that failure to commence or defend against an action, as the case may be, contradicts public interest, i.e. negatively affects substantial parts of the population or the economy as a whole. This often forces charitable organizations to choose between abandoning professional legal services completely or diverting funds from charitable purposes to cover legal expenses.

Finally, very complex cases may be unsatisfactorily dealt with under the legal aid system. Lawyers working for the reduced legal aid fees are likely to allocate less time and efforts to these cases, ultimately resulting in unjust results. Furthermore, some potential pro bono cases cannot be handled on a legal aid basis because special expertise or manpower is required, for example, cases with cross-border implications.

In line with this reasoning, the Federal Constitutional Court, already in December 2006, recognized that the legal aid system in Germany may not be sufficient to provide legal services in all cases in which such services would be necessary.<sup>21</sup>

## Alternative Dispute Resolution

### Mediation and Arbitration

In Germany, mediation is still not a common means for dispute resolution. The same applies to arbitration by private courts / judges. There are certain public, semi-public or private institutions offering mediation and arbitration services. A good example are the Public Legal Advice and Settlement Offices (*Öffentliche Rechtsauskunft- und Vergleichsstellen*) in Hamburg.<sup>22</sup> These offices offer mediation and conflict resolution services in all areas of private law. Disputes in the areas of family law, legacy law or employment law are especially common. The mediation and conflict resolution services include legal advice, but no legal representation in court or out of court. The services are not reserved to indigent persons or residents of Hamburg. The Public Legal Advice and Settlement Offices charge fees that are based on the value in dispute, but are generally moderate. In addition, fees are reduced or even waived for indigent parties.<sup>23</sup>

Another example, based on private initiative and privately financed, are mediation or arbitration committees of tenants’ organizations such as the German Tenants’ Protection Association (*Mieterschutzbund*).<sup>24</sup> The German Tenants’ Protection Association’s local branches provide alternative dispute resolution possibilities for tenants, neighbors and landlords. The decisions of the committee are

---

<sup>21</sup> See Judgment of the Federal Constitutional Court, file no. 1 BvR 2576/04, Dec. 12, 200- juris, mn. 100 et. seq.

<sup>22</sup> See <http://www.hamburg.de/oera/> (last visited on September 4, 2015).

<sup>23</sup> For example, the Public Legal Advice and Settlement Office Hamburg charges a fee of 25 € when the value in dispute amounts to 200 €, cf. available at <http://www.hamburg.de/streitschlichtung/> (last visited on September 4, 2015).

<sup>24</sup> See <http://www.berliner-mieterverein.de/recht/infoblaetter/fl138.htm> (last visited on September 4, 2015).



binding provided that both parties have agreed either beforehand or afterwards. For members of the German Tenants' Protection Association, arbitration services are covered by their annual membership fee;<sup>25</sup> other parties are charged quite moderate fees.

## Ombudsmen

Ombudsmen have become more common in Germany recently and allows for cost-efficient alternative dispute resolution in various fields of law. Ombudsmen receive and handle complaints and, in some cases, organize mediation and arbitration proceedings.

A notable example is the ombudsmen in public child and youth services which have been established in some states.<sup>26</sup> These ombudsmen give advice to children and adolescents with respect to entitlement to child and youth benefits or welfare services free of charge.

Another example for private dispute resolution is the German Conciliation Body for Public Transport (the "GCBPT").<sup>27</sup> The GCBPT offers arbitration services aiming to settle disputes between consumers and transport providers regarding travel by train, bus, airplane or ship. The GCBPT may hear the case if the respective transport company has joined the GCBPT and a prior complaint by the consumer has been unsuccessful. Airlines are required by law to join the GCBPT or to establish their own conciliation board.<sup>28</sup> So far, all major airlines have joined the GCBPT. The arbitration proceedings are free of charge for the consumer.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

Private attorneys are not legally required to handle pro bono cases. However, it is quite common that private attorneys partially or completely waive the fees for indigent or other clients. Private attorneys also have a range of opportunities to engage in pro bono activities such as participation in the services of the Public Legal Advice and Settlement Offices (see III.a.i. above) or participation in the legal services of non-profit organizations such as the Tenants' Protection Association (see III.e. above).

#### Law Firm Pro Bono Programs

32 law firms have founded the Pro bono Deutschland e.V.,<sup>29</sup> a registered association to promote pro bono work in Germany. These law firms, which are mostly of Anglo-American origin, each have a pro bono program. Their main focus is on advising national and international NGOs, because individuals, being the other category of potential pro bono clients, are more likely to have access to state legal aid.

#### Legal Department Pro Bono Programs

In Germany, corporate legal departments' rarely have pro bono programs. Corporations themselves cannot be retained to provide pro bono legal advice. This means that advising counsels in legal departments are personally liable for professional malpractice, and typically do not carry professional

---

<sup>25</sup> The annual membership fee amounts to 75 €.

<sup>26</sup> See the webpage of the Ombudsman of North Rhine-Westphalia, available at <http://ombudschaft-nrw.de/> (last visited on September 4, 2015).

<sup>27</sup> See <https://soep-online.de/> (last visited on September 4, 2015).

<sup>28</sup> Air Traffic Act (Luftverkehrsgesetz („LuftVG“)) § 57.

<sup>29</sup> See <http://www.pro-bono-deutschland.org/de/> (last visited on September 4, 2015).

liability insurance to cover this. However, some corporate legal departments cooperate with law firms in pro bono cases or advise charity projects run or funded by the respective corporation.<sup>30</sup>

### Non-Governmental Organizations (NGOs)

Several NGOs offer very basic and initial legal advice in the context of their primary activities. For example, organizations working with victims of domestic violence may provide them with some initial information on their rights against the offender under the Protection Against Violence Act (*Gewaltschutzgesetz*) or provide legal counseling regarding social welfare benefits and services. Other NGOs such as churches or charitable societies cooperate with law firms or university law clinics and refer clients when they are confronted with a legal issue or a client seeking legal advice. In this respect, a number of NGOs serve as clearing houses. Some NGOs, especially church organizations and church communities, have founded law clinics in cooperation with attorneys willing to work pro bono. In such law clinics, the attorneys provide initial legal advice and, as appropriate, refer the client to another attorney who will apply for legal aid on behalf of the client and pursue the case.

### Bar Association Pro Bono Programs

Pro bono programs by local bar associations or the Federal Bar Association (*Bundesrechtsanwaltskammer*) do not exist. However, certain representatives of local bar associations encourage their members to offer pro bono advice and support university law clinics.

### University Law Clinics and Law Students

The number of university law clinics run by law students has risen significantly over the past few years. There are now approximately 70 university legal clinics in Germany providing legal advice to individuals. This has been facilitated by a reform of the RDG which now allows laymen to provide free legal advice under the supervision of a qualified attorney.<sup>31</sup> Consequently, law students in university law clinics offer advice under the supervision of, often, specialized attorneys. When a case requires the legal representation of the client in court, often the supervising attorney applies for legal aid on behalf of the client and represents him officially, while the university legal clinic and its law students serve as the “back office” undertaking legal research and drafting documents. Often, university legal clinics cooperate with NGOs. For example, the Bucerius Law Clinic in Hamburg<sup>32</sup> cooperates with the social services organization of the German Protestant Church (*Diakonie*) and the Law Clinic of the University of Göttingen<sup>33</sup> cooperates with the local food bank. Most university legal clinics specialize in one field such as social security law or refugee law in order to ensure high quality advice.

### Others

Several non-profit foundations and trusts, e.g. the *Harold H. und Ingeborg L. Hartog-Stiftung*, support pro bono work and university law clinics financially.

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

It seems likely that individual attorneys in Germany have always provided their services and advice in certain cases “for the common good” i.e. *pro bono publico*, in one way or another. However, only with the emergence of regional and international law firms in the 1990s were institutional pro bono programs established and brought to the public’s attention.

---

<sup>30</sup> Juve Rechtsmarkt, ed. 12/2012, pp 53 et seq.

<sup>31</sup> RDG § 6.

<sup>32</sup> See <http://www.law-school.de/deutsch/lehre-forschung/law-clinic/> (last visited on September 4, 2015).

<sup>33</sup> See <http://www.uni-goettingen.de/de/studentische-rechtsberatung/514334.html> (last visited on September 4, 2015).

One of the main obstacles to such pro bono programs was the unfounded concern that these might constitute a breach of the minimum legal fee requirement (*Verstoß gegen Gebührenunterschreitungsverbot*) or, in other words, be misused as a means of conducting unfair competition. This and other prejudices and obstacles were overcome by the German pro bono community establishing and following high ethical standards in their pro bono programs. In particular Pro bono Deutschland e.V. promotes such high ethical standards in pro bono matters by living up to its definition of pro bono which reads as follows:

“Pro bono legal advice is gratuitous legal counselling for a good cause and consists of the counselling and representation of non-profit organizations, non-governmental organizations, trust funds and needy individuals who pursue legitimate causes yet do not benefit from the statutory legal aid system, as well as engagement to promote and spread the rule of law and human rights. The aim of pro bono legal counselling is to make the professional expertise and resources of a law firm available for a good cause, in most cases a charitable cause, and to therewith develop civic engagement as a part of the professional activities. Pro bono legal advice is committed to meeting the same professional quality standards as fee-based legal services. In principle, pro bono legal services are also only rendered in those cases for which no or a very limited “market” exists. Parties requesting such advisory services are mostly not in a position to bear the costs of legal counselling due to their economic situation or by-laws, or are unwilling to do so on grounds of a preferential use of their funds for their own charitable purposes.”<sup>34</sup>

## Current State of Pro Bono including Barriers and Other Considerations

### Laws and Regulations Impacting Pro Bono

Laws and regulations, especially with respect to the minimum legal fee requirement, still exist today. However, the pro bono community in Germany and the majority of scholars agree that the minimum legal fee requirement is not applicable to pro bono work. Pro bono work is therefore permissible.<sup>35</sup>

There are a number of other rules and regulations impacting specific forms and aspects of pro bono legal services:

- Practice restrictions on Foreign-Qualified Attorneys: Foreign-qualified attorneys may be prevented from providing pro bono legal services in Germany, because they may not be allowed to render legal services at all. This restriction applies to attorneys from outside the EU and Switzerland who cannot obtain a practice license and can thus only work in Germany in a supporting role to German attorneys. In contrast, attorneys from other EU member states and Switzerland can obtain permission as a “European Lawyer” in Germany<sup>36</sup> and are then also allowed to engage in pro bono activities.
- Availability of Professional Indemnity Legal Insurance Covering Pro Bono activities by Attorneys: Professional indemnity insurance covers all liabilities originating from an attorney’s professional activities<sup>37</sup> and, consequently, include liabilities from the provision of pro bono legal services. The attorney-client relationship in a pro bono case resembles the attorney-client relationship in a fee-based mandate, because the client’s dependency on the attorney’s superior knowledge remains the same. Accordingly, the attorney’s responsibilities and the resulting liability risks stay the same. As such, an attorney’s pro bono activities are covered by professional indemnity insurance to the same extent as his regular fee-based activities.<sup>38</sup> On another note, an attorney and his pro

<sup>34</sup> See <http://www.pro-bono-deutschland.org/en/pro-bono-legal-advice/> (last visited on September 4, 2015).

<sup>35</sup> There is no apparent case law or administrative order to that end, and a few scholars suggest otherwise. However, given the apparent need for pro bono legal advice and the fact that there is no risk of unfair competition, we think that our opinion would be upheld if ever tested in court.

<sup>36</sup> See <http://www.erkennung-in-deutschland.de/html/de/rechtsanwalt.php> (last visited on September 4, 2015).

<sup>37</sup> BRAO § 3.

<sup>38</sup> Baelz/Moelle/Zeidler, *Neue Juristische Wochenschrift* 2008, p. 3383 et seq., especially p. 3387, Legal advice pro bono publico in Germany – a review (Rechtsberatung pro bono publico in Deutschland – eine

bono client may agree to limit, but not completely exclude, the attorney's liability in accordance with general rules of German statutory law.<sup>39</sup>

- Availability of Legal Insurance for Clients: Legal expense insurance policies (*Rechtsschutzversicherungen*) are widespread in Germany and cover a great variety of areas of legal disputes. The insurance services cover the court fees, statutory legal fees, expert reports and the legal fees of the other party, if the policy holder has to bear them. Most policies contain deductibles which are far below the actual fees in a legal dispute. Sometimes, the sum covered is limited; however, the usual policy is sufficient to cover the costs of the initial legal dispute and any first instance appeal.

### Socio-Cultural Barriers to Pro Bono

Although a majority of German attorneys frequently works pro bono, this does not always happen within institutionalized pro bono programs. In this regard, the pro bono culture in Germany is significantly less well-developed in comparison to many other, especially Anglo-American, countries. One reason may be that the Legal Aid Scheme provides a fairly comprehensive mechanism to assure access to justice for the poor, so that some legal professionals and members of the public do not consider institutionalized pro bono programs necessary. There have also been concerns that the pro bono work of large law firm creates competition with a segment of the German bar, since work under the Legal Aid Scheme provides a meaningful source of income to some attorneys.

However, the main development regarding pro bono has been a shift in the legal culture. There has been widespread press coverage and discussion of pro bono work,<sup>40</sup> and the word itself has already become established as part of the German attorney vocabulary. The profession has changed profoundly in recent years due to the globalization of finance and commerce, the arrival of international, and in particular American and British law firms and a prolonged wave of consolidations among German law firms. Pro bono work has become more common in Germany, especially by international law firms.

German attorneys therefore increasingly recognize the need (see section III.d above) for pro bono legal services in addition to the traditional financial contributions to charitable and civic organizations. In this context, a so-called "round table" has been established in which German lawyers discuss the potential to establish and extend pro bono work in Germany. Local bar associations have responded favorably to this development and is supported by the Federal Constitutional Court which considers that the German system of legal aid does not cover every situation in which free legal assistance would be desirable.<sup>41</sup> The Federal Government has also expressed commitment to extend the possibilities for attorneys to render pro bono legal services.<sup>42</sup>

### Pro Bono Resources

This section lists some potential points of contacts for attorneys willing to provide pro bono services. In particular, this sections takes account of the emergence of German clearing houses such as startsocial e.V. and Proboneo gGmbH (see below), which is a relatively new but promising development:

---

Bestandsaufnahme); Dux, *Anwaltsblatt* 2/2011, p. 90 et seq., especially p. 96, Attorneys' pro bono activities in Germany (*Anwaltliche pro bono-Tätigkeit in Deutschland*).

<sup>39</sup> BRAO § 51a.

<sup>40</sup> See, e.g., Westenerger, *BRAMagazin*, 6/2009, Pro bono – Do good and talk about it (Pro bono – Tue Gutes und rede darüber); Budras, *Frankfurter Allgemeine Zeitung*, October 6th, 2007, Advocates in favor of good cause (Advokaten für die gute Sache); Amann, *Financial Times Deutschland*, March 31, 2006; In favor of good cause and for a positive image (Für die gute Sache und das gute Image); Baelz/Moelle/Zeidler, *Neue Juristische Wochenschrift* 2008, p. 3383 et seq., Legal advice pro bono publico in Germany – a review (Rechtsberatung pro bono publico in Deutschland – eine Bestandsaufnahme).

<sup>41</sup> Judgment of the Federal Constitutional Court, file no. 1 BvR 2576/04, Dec. 12, 200- juris, mn. 100 et. seq.

<sup>42</sup> Explanatory Memorandum to the Act amending the legal aid and legal advice aid regulations (Entwurf eines Gesetzes zur Änderung des Prozesskostenhilfe- und Beratungshilferechts), BT-Drs. 17/11472, p. 49.

- **Pro bono Deutschland e.V.**<sup>43</sup> has been founded by several national and international law firms, including Latham & Watkins LLP, and aims to advocate engagement in the area of pro bono legal advice. Pro bono Deutschland works to achieve greater recognition and more widespread implementation of the concept of pro bono legal advice among lawyers in private practice in Germany. The association itself does not render any legal services and does not coordinate the pro bono activities or solicit pro bono cases for its members. However, Pro bono Deutschland is a useful resource for information on pro bono legal services in Germany and provides the opportunity to share experiences of pro bono work and to advocate the cause of pro bono legal advice in Germany.
- **startsocial e.V.**<sup>44</sup> is a non-profit-organization under the patronage of German chancellor Angela Merkel and sponsored and supported by major German corporations. In essence, startsocial helps selected small and medium-sized social projects to improve their project structure and management and, ultimately, to pursue their cause effectively. To this end, startsocial matches social projects with an advisory teams consisting of professionals from the private, non-profit or public sector who pass on their experience, establish valuable contacts etc. In this context, startsocial also provides clearing between social projects and law firms willing to provide pro bono legal advice.
- **Proboneo gGmbH**<sup>45</sup> is an initiative by the BMW foundation Herbert Quandt which aims to bring together social organizations on the one hand and managers and professionals on the other hand to provide social organizations with professional services pro bono. Among others, Proboneo brokers pro bono legal services and is becoming increasingly successful and well-known in this field.
- **Auridis gGmbH**<sup>46</sup> is a non-profit-organization funded by retail giant Aldi Süd seeking to support young families and young children. Auridis provides social projects in the area of family support and early education with funds, networking opportunities and free counselling, also, in cooperation with external pro bono lawyers, regarding legal issues.
- There are several network organizations of German university law clinics that provide information on their work and an **overview of existing legal clinics** in Germany on their websites.<sup>47</sup> Many university law clinics look for qualified attorneys willing to supervise law students and to work pro bono in this way.

## CONCLUSION

Germany has come a long way from individual attorneys providing their services and advice in certain cases on a pro bono basis to law firms providing pro bono legal advice within well-established institutional pro bono programs. In particular, by establishing high ethical standards for pro bono work, Pro bono Deutschland e.V. helped to overcome the unfounded concern that pro bono programs might constitute a means of unfair competition.

September 2015

Pro Bono Practices and Opportunities in Germany

---

<sup>43</sup> See <http://www.pro-bono-deutschland.org/de/> (last visited on September 4, 2015).

<sup>44</sup> See <https://www.startsocial.de/> (last visited on September 4, 2015).

<sup>45</sup> See <https://www.proboneo.de/> (last visited on September 4, 2015).

<sup>46</sup> See <https://unternehmen.aldi-sued.de/de/verantwortung/gesellschaft/auridis/> (last visited on September 4, 2015).

<sup>47</sup> Umbrella association of German universities' law students' associations (Bundesfachschaft Jura): see <http://bundesfachschaft.de/der-verband/die-ausschusse/koordination-und-besondere-aufgaben/legal-clinics/> (last visited on September 4, 2015); Association of student legal advisors (Bundesverband studentischer Rechtsberater): see <http://b-s-r-b.de/> (last visited on September 4, 2015); Refugee Law Clinic Network: see <http://rlc-network.org/> (last visited on September 4, 2015).



This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Ghana

### INTRODUCTION

Pro bono is a new concept in Ghana. This chapter describes the Ghanaian legal system, pro bono and legal aid work and what has been done to increase access to justice.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Ghanaian legal system is based on a number of different sources, including (i) the 1992 Constitution of Ghana, (ii) enactments made by or under the authority of the Parliament of Ghana, (iii) any orders, rules and regulations made by any person or authority under a power conferred by the Constitution, (iv) existing law (the written and unwritten laws of Ghana as they existed immediately before the Constitution), (v) any act, decree, law or statutory instrument issued or made before that date, which came into force on or after that date, and (vi) the common law.<sup>1</sup>

Ghana's Constitution came into force on April 28, 1992, and states that "justice emanates from the people and shall be administered in the name of the Republic by the Judiciary, which shall be independent and subject only to the constitution."<sup>2</sup> The Judiciary has jurisdiction in all matters both civil and criminal, including matters relating to the Constitution, as well as any other jurisdiction that Parliament may by law confer upon it.<sup>3</sup>

##### The Courts

##### Levels, relevant types and locations

The Chief Justice is the head of the Judiciary in Ghana and is responsible for its administration and supervision. The Ghanaian judicial system is made up of the Superior Courts (Supreme Court, the Court of Appeal, the High Court and the Regional Tribunals) and the Lower Courts (Circuit Court and the District Courts).<sup>4</sup>

The Supreme Court is the final court of appeal in Ghana. It has appellate jurisdiction and exclusive original jurisdiction in all matters relating to the enforcement or interpretation of the Constitution, including matters relating to whether an enactment was made in excess of powers conferred under the Constitution. The Supreme Court also has supervisory jurisdiction over all courts and over any adjudicating authority. There are also specialized courts, including family tribunals, Gender courts and juvenile courts. District and circuit courts hear all cases.

##### Appointed vs. Elected Judges

In Ghana, judges are appointed. In order to be appointed, applicants, who are qualified lawyers, are required to write an examination and also attend an interview.

##### The Practice of Law

##### Education

Ghana has a formal legal education system which lasts between two to four years at the undergraduate level (depending on the background of the student). Currently there are 11 law faculties in Ghana. These

---

<sup>1</sup> Article 11 of the 1992 Constitution of Ghana.

<sup>2</sup> Article 125(1) of the 1992 Constitution of Ghana.

<sup>3</sup> Article 125(5) of the 1992 Constitution of Ghana.

<sup>4</sup> See the Courts Act, 1993(Act 459).



are attached to the various universities in the country, including the University of Ghana School of Law, Kwame Nkrumah University of Science and Technology (KNUST), and the Ghana Institute of Management and Public Administration (GIMPA).

To be qualified as a lawyer one can enroll in any of the 11 faculties and go through the Bachelor of Laws (LL.B) program for two years to four years. After completion of an LL.B course, students are required to enroll at the Ghana School of Law for their professional Law Course.

### Licensure

The legal profession allows a qualified lawyer to practice as both a solicitor<sup>5</sup> and a barrister in all courts in Ghana.<sup>6</sup> Foreign trained lawyers are required to do a "Post Call" Law Course to enable them to practice in Ghana. There are no specific rules and requirements incorporated in the Ghanaian legal education program for pro bono work at this time.

### Demographics: number of lawyers per capita; number of legal aid lawyers per capita

According to the General Council of the Ghana Bar Association, as of April 10, 2015, there were 6,759 lawyers in good standing in Ghana<sup>7</sup> for a population of over 24 million.<sup>8</sup> Most of these lawyers are concentrated in the main cities, namely Accra-Tema, Kumasi, Takoradi and the other capital towns.

### Legal Regulation of Lawyers

Activities of lawyers are governed by the Legal Profession Act of 1960 (Act 30). The General Legal Council of Ghana is mandated by law to regulate and discipline the activities of lawyers in the country.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Ghana's Justice system does not guarantee free legal services for the poor and less privileged. However, some legal resources are made available for those who cannot afford the services of a lawyer in the form of legal aid. This is different from pro bono work, which is provided by private legal practitioners, but does include representation by a lawyer, including all such assistance as is given by a lawyer, in the steps preliminary or incidental to any proceedings or arriving at or giving effect to a compromise to avoid or to bring to an end any proceedings.<sup>9</sup>

The Legal Aid Board oversees the operations of the officials of the Legal Aid Board. The Legal Aid Board was established by Act 542 in 1987.<sup>10</sup> It is state-funded. There are Regional Offices in all ten regions of Ghana, located in the regional capitals as well as a few district offices in some regions. The Legal Aid Board may rely on its own discretion when deciding to take on cases.

### In Civil Proceedings

The Legal Aid Board works through the Legal Aid Scheme.<sup>11</sup> Their cases include enforcing provisions of the Constitution, family related issues including child paternity issues, child maintenance, divorce cases,

---

<sup>5</sup> To practice as a solicitor in Ghana, you must hold a valid annual licence issued by the General Legal Council pursuant to section 8 of the Legal Profession Act, 1960 (Act 32) known as "Practising Certificate".

<sup>6</sup> Section 2 of the Legal Profession Act, 1960(Act 32).

<sup>7</sup> See <http://www.ghanabar.org/members/index.html> (last visited on September 4, 2015).

<sup>8</sup> See <http://www.statsghana.gov.gh/> (last visited on September 4, 2015).

<sup>9</sup> Article 294(4) of the Constitution.

<sup>10</sup> Article 294 of the 1992 Constitution of Ghana and section 2 of the Legal Aid Scheme Act, 1997 (542).

<sup>11</sup> See <http://www.legalaidghana.org/web/index.php/about-us/cases-we-work-on> (last visited on September 4, 2015).



inheritance and property sharing disputes, landlord and tenant issues, insurance disputes and debt recovery issues.

### In Criminal Proceedings

Some of the criminal cases accepted by the Legal Aid Board include stealing, assault (rape, child molestation), robbery, burglary, manslaughter, murder and nuisance (disturbing the public peace). It is not clear if a person who has been charged with an offence such as treason can benefit from legal aid.

## State-Subsidized Legal Aid

### Eligibility Criteria

A person is entitled to legal aid in Ghana for the purposes of enforcing any provision of the Constitution,

- if he earns the Government minimum wage or less and desires legal representation in any criminal matter; or civil matter relating to landlord and tenant, insurance, inheritance with particular reference to the Intestate Succession Law, 1985 (P. N. D. C. L. 111), maintenance of children and such other civil matters as may from time to time be prescribed by Parliament; or
- if in the opinion of the Legal Aid Board the person requires legal aid.

Section one of the Legal Aid Scheme Act, 1997(Act 542) establishes the Legal Aid Scheme. The purpose of the Legal Aid Scheme is to develop a comprehensive legal aid program and policy to be carried out throughout Ghana, to supervise the general administration of the Legal Aid program, and to approve the selection of lawyers for participation in the Legal Aid program.<sup>12</sup>

Under the Legal Aid Scheme Act (§24), apart from an applicant who has been indicted for an offence punishable by death or life imprisonment, any other person who wishes to apply for legal aid under the Scheme must complete the prescribed form and pay the requisite fee. The application must be approved by the Selection Committee appointed under the Act.

If an applicant's application for legal aid is rejected by the Selection Committee, there is a limited appeal process, first to the Regional Committee and then by appeal from the decision of the Regional Committee to the Board of Legal Aid Scheme.

An applicant whose application is approved (or who successfully appeals) is exempted from paying the prescribed fee in respect of the filing of relevant court documents and the cost of preparing appeal records. The Board of the Legal Aid Scheme may also instruct the Director of the Legal Aid Scheme to pay on behalf of the applicant all or part of the expenses of the applicant's case, at the Board's discretion. Where an award is made in favour of the applicant, the Board may however recover from the applicant at its discretion, some or all of the costs and expenses funded by the Legal Aid Scheme in relation to the application.<sup>13</sup> According to the Western Region Director of the Legal Aid Board, the Legal Aid Board does not consider this to be a commission. Rather, it is a way of raising funds internally to help in its activities. Per section 26(1) of the Legal Aid Scheme Act, 1997 (Act 542), the funds for the operation of the Scheme include, (i) money provided by Parliament, (ii) donations, (iii) gifts, and (iv) fees paid by applicants.

Gifts and donations are accepted from different sources, individuals and organizations as well as local and foreign sources.

## Mandatory Assignments to Legal Aid Matters

Sometimes cases are assigned to lawyers by judges. It is considered an honor to be assigned a case by a judge and so lawyers rarely turn down such a request. Unfortunately, lawyers are not compensated for such assigned matters. During court proceedings, when a client has been unable to secure his/her own lawyer, and the judge realizes that the case merits legal help, he calls one of the lawyers present in his

<sup>12</sup> Section 5 of the Legal Aid Scheme Act, 1997 (542).

<sup>13</sup> Section 25 of Act 54.



court and requests that they take the case pro bono and help the client. Normally, a lawyer does not turn down a request from a judge. The judge is careful in making such a request. The judge does not request just any lawyer to take up a case pro bono. He gives it to a lawyer who he has determined, from past experiences in the court room, will provide adequate representation.

## Unmet Needs and Access Analysis

The Legal Aid Scheme is underfunded, understaffed and over-reliant on the goodwill of lawyers, and other benevolent persons and organizations. This means that the level of funding at any particular time is unpredictable, which stifles the ability of the Legal Aid Scheme to discharge its constitutional mandate effectively.<sup>14</sup>

According to an article on the Legal Aid Scheme website, manning regional offices is one of the biggest difficulties for the Legal Aid Scheme in Ghana. There is inadequate equipment and infrastructure and just a few personnel made up of 11 lawyers handling cases in the regional offices. Some regions in Ghana are without any lawyers. Some attorneys who have previously done work for the Legal Aid Scheme are threatening lawsuits because they have yet to be remunerated.<sup>15</sup> As a result, the majority of Ghanaians are denied access to legal representation and many suspects languish in cells and jails—some for long as ten years for lack of representation.

## Alternative Dispute Resolution

The Alternative Dispute Resolution Act 2010<sup>16</sup> can be traced as far back as 1998 when the Ghanaian government established a task force on alternative dispute resolution, motivated in part by concerns that the case load of the Ghanaian courts was reaching unmanageable levels. The Act recognizes and upholds the general principle of party autonomy. It allows parties to choose arbitration and to determine how such arbitration will be conducted. The Act provides for the courts of Ghana to play a significant role in relation to arbitrations, both in upholding the right to arbitrate and in facilitating the just and effective conduct of the arbitration itself. The Act is expected to support the needs of the domestic and international construction industry in Ghana.

### Ombudsmen

The office of the Ombudsman in Ghana has been replaced by The Commission on Human Rights and Administrative Justice.

### Commission on Human Rights and Administrative Justice

The Commission on Human rights and Administrative Justice (“**CHRAJ**”)<sup>17</sup> was established under the 1992 Constitution of Ghana by the CHRAJ Act, 1993 [Act 456]. It has three broad mandates; human rights, administrative justice and anti-corruption. CHRAJ serves as the National Human Rights Institution of Ghana, The Ombudsman of Ghana, and an anti-Corruption Agency & Ethics Office for the Public Service of Ghana. All its work is further documented in the section on pro bono assistance.

---

<sup>14</sup> See <http://www.modernghana.com/news/241178/1/bar-association-committed-to-efficient-legal-aid-s.html> (last visited on September 4, 2015).

<sup>15</sup> See <http://www.legalaidghana.org/web/index.php/news/latest-news> (last visited on September 4, 2015).

<sup>16</sup> See [https://m.mayerbrown.com/Files/Publication/5ee12231-1295-4559-8167-89d93cdf2a06/Presentation/PublicationAttachment/91e048fe-67d4-4e3f-9d10-8bbf9861e753/ArbitrationGhana\\_Sarkodie.pdf](https://m.mayerbrown.com/Files/Publication/5ee12231-1295-4559-8167-89d93cdf2a06/Presentation/PublicationAttachment/91e048fe-67d4-4e3f-9d10-8bbf9861e753/ArbitrationGhana_Sarkodie.pdf) (last visited on September 4, 2015).

<sup>17</sup> See [www.chrajghana.org](http://www.chrajghana.org) - Human Right Mandate (last visited on September 4, 2015).



## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

There are numerous opportunities for attorneys to take on pro bono work in Ghana, although few do. While most lawyers offer voluntary services to their families, friends and acquaintances, there is no formalized system of pro bono work.

The Ghana Bar Association is encouraging lawyers to offer pro bono services. In 2013, a number of lawyers were honored by the Ghana Bar Association at its Annual Conference at Ho, in the Volta Region, for providing pro bono services.<sup>18</sup> The lawyers were Mr. Sam Okudzeto, Nana Adjei Ampofo and Mr. Ahuma Ocansey.

Mr. Sam Okudzeto was honored for instituting in his name an action at the high court of justice against the Attorney General challenging the powers of the President to abolish all boards including the board of the Bank of Ghana on the assumption of office as President. The judgment delivered upheld his claim that the Bank of Ghana was independent from the President and Ministry of Finance, and the President could not dissolve the board of the bank of Ghana at his pleasure. Mr. Okudzeto was honored and recognized for his outstanding performance and contribution to the Jurisprudence in the Area of Constitutionalism and public law. Nana Adjei Ampofo was honored for instituting two actions in the Supreme Court in his name. One for a declaration that the continuous use and employing of Ghanaian citizens to carry human excreta in pans on their heads is an affront to the dignity of such persons, cruel, inhuman and degrading and should be abolished. The second, striking down as unconstitutional, the criminal sanctions prescribed for refusal to heed to the call of a chief. The Supreme Court in both cases upheld his submissions and gave an ultimatum to the Metropolitan authorities to replace pan latrines and abolish their use in all homes and further struck down the legislation in the chieftaincy Act as unconstitutional. He was commended and congratulated by Sophia Akuffo Justice of the Supreme Court for instituting at his own expense, the instant action, seeking the interest of the general public. Mr. Ahuma Ocansey was honored for instituting an action in his name and inviting the Supreme Court to determine the question of violation of remand conditions and a convicted persons' right to vote. The Lady Chief Justice who presided over the case commended Mr. Ocansey for taking up this constitutional case on behalf of prisoners and for this work that was done pro bono in a legal regime where pro bono is virtually non-existent. Hopefully the honor conveyed on these people will encourage other lawyers to offer and undertake pro bono services.

#### Current State of Pro Bono Including Barriers and Other Considerations

##### **Laws and Regulations Impacting Pro Bono Work**

The Accessibility of Legal Aid resources is a significant problem facing citizens of Ghana. This has a disproportionate effect on the lower socio-economic classes. In addition to a lack of money, there is a lack of lawyers to provide representation in the more rural areas of Ghana and an absence of a formal requirement for lawyers to do pro bono work. With the exception of services provided through the work of NGOs, as set out below under Pro bono Resources, there is not an established formal structure under which lawyers can elect to provide pro bono services. The Legal Aid Scheme Act (§22) requires that the legal personnel providing legal services under the Legal Aid Scheme consist of selected and approved legal practitioners. Further, the National Service Board is required to assign to the Board a certain number of lawyers liable to do national service as the Board may request. This is supplemented by the fact that the Ghana Bar Association of each Region is supposed to, with the approval of the General Council of the Bar, select legal practitioners who shall, subject to the approval of the Board, make their services available to the Scheme. In practice, it does not appear that the above combination of strategies results in a significant number of lawyers providing pro bono legal services.

---

<sup>18</sup> Ghana Bar Association Citations of Honour-2012-2013.



### **Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System**

The Culture of providing free legal service is still developing in Ghana. Although most lawyers may from time to time provide some free legal service, this is not a priority for many.

### **Pro Bono Resources**

Local and International Non-governmental organizations (“NGOs”) provide some resources and support for pro bono work in Ghana. Some of the key NGOs are HelpLaw Ghana, the Legal Resource Centre, Women’s Initiative for Self-Empowerment, FIDA, CHIRAJ, The Ark Foundation and the Pro Bono Lawyer Network (PBLN)

#### **Help Law Ghana**

HelpLaw Ghana provides free legal and related services to the poor and the less-privileged in Ghanaian society. It focuses on representing indigent criminal defendants in criminal proceedings.

#### **Legal Resource Center**

The Legal Resource Center seeks to ensure human rights for all. It works towards the promotion and protection of the rights to health, education, housing, work, participatory democracy, personal liberty and criminal/civil justice. These are carried out through public human rights education, community mobilization activities, legal aid, alternative dispute resolution services, action research, advocacy and publication. Central to the Legal Resource Center’s work are the campaigns and projects for the promotion and protection of human rights through innovative community mobilization strategies, public interactive human rights education, lawyering techniques and research and advocacy at the local, national and international levels.

#### **Women's Initiative for Self-Empowerment ("WISE")**

WISE provides support services, including legal aid, to women and children who have suffered violence of any kind. WISE provides individual and group counseling services for survivors of violence, as well as training in counseling and support for direct service providers. WISE set up the WISE Wellness Centre in Accra to provide survivors of violence with counseling, medical, legal and other socio-economic support services.

#### **International Federations of Women and Lawyers ("FIDA")**

FIDA has a free legal aid program for women and children who cannot afford legal services of any kind. The scope of their legal aid includes counseling, settlement, mediation and court representation. Although services are free, the recipients of the legal aid are usually required to pay filing fees involved in prosecuting their cases before the courts.

#### **Commission on Human Rights and Administrative Justice ("CHIRAJ")**

CHRAJ was established pursuant to the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456). The functions of the CHRAJ are:

- (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;
- (b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Co-ordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those services or fair administration in relation to those services;
- (c) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution;
- (d) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) through such means as are fair, proper and effective, including: (i) negotiation and compromise between the parties concerned, (ii) causing the complaint and its finding on it to be reported to the superior of an offending person, (iii) bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment



or alteration of the offending procedures; and (iv) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;

(e) to investigate allegations that a public officer has contravened or has not complied with a provision of the Code of Conduct for Public Officers of the Constitution; and

(f) to investigate all instances of alleged or suspected corruption and the misappropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigation.

CHRAJ bears all costs and expenses related to the investigations it conducts into a complaint. CHRAJ has branches in all ten regions of Ghana and about 100 district capitals of the country.

**The Ark Foundation (The Ark)**

The Ark was established in 1994, registered in 1995 and began full operation in February 1999. It was founded by Angela Dwamen-Aboagye, a Ghanaian lawyer. It is an independent human rights, advocacy based non-governmental, not-for-profit organization. The Ark was founded to increase the awareness of the Ghanaian public, decision makers and Government on the human rights of women, children and other disadvantaged groups and to actively promote these rights through advocacy, training, public education and service delivery to the identified beneficiaries.

**Pro Bono Lawyer Network (PBLN)**

The PBLN was launched in December 2010. Its primary objective is to provide free legal representation to the survivors of human rights abuses in Ghana. The PBLN gives the poor and vulnerable victims of human rights violations and other abuses the opportunity to seek justice without any barriers.

## CONCLUSION

Slowly, pro bono is finding its feet in Ghana. While some attorneys provide voluntary services for family, church members and friends, pro bono is not formalized and must be encouraged by the various legal bodies in Ghana and should not be left solely in the hands of NGOs. Law firms should encourage and reward lawyers who offer pro bono services. The pro bono culture has to be introduced and formally included in legal education in Ghana to create an awareness of giving back to society while still in law school. By the time these law students are done with law school they will be more willing to provide voluntary services. The Ghana Bar Association indicated its intention to continue to give out annual awards to deserving lawyers as a way of motivating them to do more pro bono work.

September 2015

Pro Bono Practices and Opportunities in Ghana

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

## Pro Bono Practices and Opportunities in Greece

### INTRODUCTION

Greece does not have a strong tradition of providing pro bono legal services. There is, however, a legal aid scheme in place under which people who cannot afford to pay for legal fees are entitled to legal assistance. Legal aid is available before all civil, criminal and administrative courts. In recent years, following the wave of immigrants and refugees arriving in Greece, legal aid services have developed to assist refugees seeking asylum and the protection of their human rights.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The highest binding law in Greece is the Constitution, which was first adopted in 1975. The Constitution prevails over all domestic legal instruments, and in order of precedence, it is followed by statute law, presidential orders and administrative measures. International laws and conventions that have been ratified by statute and have entered into force in accordance with their provisions, also form an integral part of domestic Greek law and take precedence over any other provision of national law that contradicts them, apart from the Constitution.<sup>1</sup> The founding treaties of the EU are also at the same formal level as the Constitution. Unlike the common law system, court rulings do not constitute a source of law, but are rather an important source of interpretation of existing laws.

Parliament along with the President of Greece have legislative power vested in them by the Constitution. The President of Greece, acting on the proposal of a competent Minister, issues the decrees necessary to implement laws and may not suspend the implementation of laws or exempt anyone from their application.<sup>2</sup> For the regulation of more specific matters, or matters of local interest or of a technical or detailed nature, regulatory decrees may be issued by the Government on the basis of special authorization given by law, within the limits laid down in the authorization. Regulatory acts may also be issued by other administrative bodies.

##### The Courts

##### Types and levels of courts

There are three major types of courts in Greece: administrative (*Διοικητικά δικαστήρια*), civil (*Πολιτικά δικαστήρια*) and criminal (*Ποινικά δικαστήρια*).<sup>3</sup> Disputes of an administrative nature fall under the jurisdiction of the Council of State (*Synvoulío tis Epikrateias* or *STE – Συμβούλιο της Επικρατείας*) and the administrative courts (courts of first instance and appeal). Disputes of a civil nature and voluntary jurisdiction are dealt with by the civil courts. Criminal courts deal with crimes and the adoption of all measures required by criminal laws. The Court of Cassation or Hellenic Supreme Court of Civil and Penal Law (*Άρειος Πάγος – Άρειος Πάγος*) is the supreme judiciary body dealing with civil and criminal law matters. It only examines legal issues, not factual issues.<sup>4</sup>

<sup>1</sup> Greek Constitution, Article 28.

<sup>2</sup> Greek Constitution, Article 43.

<sup>3</sup> See European e-Justice Portal <[https://e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states-16-el-en.do?member=1](https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-el-en.do?member=1)> (last visited on September 4, 2015).

<sup>4</sup> See European e-Justice Portal <[http://ec.europa.eu/civiljustice/org\\_justice/org\\_justice\\_gre\\_en.htm](http://ec.europa.eu/civiljustice/org_justice/org_justice_gre_en.htm)>(last visited on September 4, 2015).

### Appointed judges

Law school graduates may be appointed as judges after they have passed the relevant oral and written examination, and completed a course at the National School of Judges. For ordinary civil and criminal matters, the entry-level grade is associate judge of a court of first instance. The subsequent hierarchical positions are: judge of a court of first instance, president of a court of first instance, judge of an appeal court, president of a court of appeal, judge of the Supreme Court (*Áρειος Πάγος – Άρειος Πάγος*), vice-president of the Supreme Court, and president of the Supreme Court.

Ordinary administrative courts have a similar hierarchical system from first instance bodies to the Council of State, or Supreme Court of administrative law (*Symboulío tis Epikrateias or STE – Συμβούλιο της Επικρατείας*), and the Court of Auditors, which mainly audits public spending. In addition, the justices of peace are a special category of judges in the field of civil and criminal justice, and to become a justice of the peace, they must pass the relevant oral and written examination.<sup>5</sup>

### The Practice of Law

#### Education

Any Greek citizen holding a law degree from a Greek university or who has completed equivalent studies at a recognized foreign university may register with any Bar Association as a trainee lawyer (*askoumenos dikigoros – ασκούμενος δικηγόρος*). For 18 months, the trainee lawyer must then practise under the supervision of a qualified lawyer or the Legal Council of the State.<sup>6</sup> At the end of this, the trainee lawyer is entitled to take part in the Bar examination in order to obtain a lawyer's licence. All successful candidates will then enter the legal profession.<sup>7</sup> There are no specific requirements for trainee lawyers to provide pro bono services as part of the trainee lawyer practice.

#### Licensure

The legal profession in Greece is regulated by different Bar Associations (*δικηγορικοί σύλλογοι*), which a lawyer must register with. There are 63 Bar Associations – one per seat of each court of first instance (*Protodekeion – πρωτοδικείο*). There are no CLE or education requirements for qualified lawyers in Greece.

Lawyers are initially admitted to plead before the courts of first instance and justices of the peace (*Protodekeion – πρωτοδικεία*). Then after five years of practice, they may be admitted before the courts of appeal (*Efeteion – εφετεία*). Finally, after a further five years and depending on how long a lawyer has been in practice and the type of cases they have acted on,<sup>8</sup> they may be admitted before the Supreme Court (*Ários Pagos – Άρειος Πάγος*).<sup>9</sup>

In Greece, lawyers (*δικηγόροι*) are not required to specialise in a field of law. There is no distinction between barristers and solicitors as lawyers also serve as legal advisers (*νομικοί σύμβουλοι*). With some exceptions,<sup>10</sup> parties cannot appear before a court without a lawyer representative.

<sup>5</sup> See European e-Justice Portal <[http://ec.europa.eu/civiljustice/legal\\_prof/legal\\_prof\\_gre\\_en.htm](http://ec.europa.eu/civiljustice/legal_prof/legal_prof_gre_en.htm)> (last visited on September 4, 2015).

<sup>6</sup> Another alternative is the trainee lawyer may practise under the supervision of the Courts, but only for a maximum of one semester for each trainee lawyer: Article 33 of Law No. 3910 of February 8, 2011.

<sup>7</sup> See B. Nascimbene and E. Bergamini, *The Legal Profession in the European Union*, Wolters Kluwer, 2009, page 118; available at <<http://www.greeklawdigest.gr/topics/legal-profession-in-greece/item/125-the-legal-profession-in-greece>> (last visited on September 4, 2015).

<sup>8</sup> An alternative to this “further five year” requirement, is that the lawyer only needs to practise for a further two years, if their overall experience is at least 12 years.

<sup>9</sup> B. Nascimbene and E. Bergamini, *The Legal Profession in the European Union*, Wolters Kluwer, 2009, page 120.

<sup>10</sup> The exceptions are before administrative authorities, in criminal cases except those before the Supreme Court and the Court of Appeal, in proceedings before justices of peace, in urgent proceedings or before ecclesiastical courts.



Presidential Order 152/2000 regulates the practice of foreign lawyers in Greece who have obtained their qualification in another member state of the EU (in compliance with the European Directive 98/5/EC). Such lawyers may practise on a permanent basis in Greece, in either a self-employed or a salaried capacity. They must register with the relevant Greek Bar Association and keep chambers in the area in which they practise.

Once their application for registration is accepted, these lawyers are subject to the same obligations and have the same rights as Greek lawyers, but may only integrate fully into the legal profession once they can show that they have actually practised their profession on a regular basis in Greece for three years. During these three years, lawyers wishing to represent a client in court must be assisted by a lawyer entitled to appear before the court hearing that case. Acts or duties which Greek law considers to constitute an exercise of public authority may be performed only by lawyers of Greek nationality. The profession may be pursued jointly by one or more lawyers practising in Greece, under their professional title of origin, as members or associates of a group in their country of origin with a branch or office in Greece.

### Demographics

At the end of 2009, there were approximately 41,000 lawyers registered at all Greek Bar Associations<sup>11</sup> and, in March 2015, there were approximately 21,000 lawyers registered in the Athens Bar Association.<sup>12</sup> In Europe, Greece is one of the countries with the most lawyers per capita, with between 330 and 380 lawyers per 100,000 inhabitants.<sup>13</sup>

In 2014-2015, the Athens Bar Association, together with the Hellenic Bar Association, began to provide training to junior criminal law practitioners. 100 lawyers have enrolled in this program, aspiring to use it as a platform for the certification for legal aid lawyers in the near future.

### Legal Regulation of Lawyers

The provision of legal services in Greece is subject to the Lawyer's Code (*Κώδικας περί Δικηγόρων*), which regulates disciplinary law, fees and general advancement in status. Lawyers in Greece must also comply with a Code of Conduct (*Κώδικας Δεοντολογίας*) and the rules of the Bar Associations (*Εσωτερικοί Κανονισμοί Δικηγορικών Συλλόγων*),<sup>14</sup> which mirror the provisions of the Code of Conduct for Lawyers in the EU provided by the Council of Bars and Law Societies of the EU (the "CCBE").<sup>15</sup>

Lawyers in Greece must at all times preserve absolute independence, comply with confidentiality rules, and serve the clients' interests diligently, conscientiously and promptly. They also cannot act in situations where a conflict of interest exists. According to the Lawyer's Code, an attorney is prohibited from providing legal services without receiving a fee, except if the client is a close relative or can prove that

---

<sup>11</sup> See Council of Bars and Law Societies of Europe <[http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/2010\\_table\\_of\\_lawyer1\\_1337839511.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2010_table_of_lawyer1_1337839511.pdf)> (last visited on September 4, 2015).

<sup>12</sup> See Council of Bars and Law Societies of Europe <[http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/2015\\_Table\\_of\\_Lawyer1\\_1433140834.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2015_Table_of_Lawyer1_1433140834.pdf)> (last visited on September 4, 2015).

<sup>13</sup> J.-P. Jean, *Criminal Justice in Europe* in the 2014 report of the CEPEJ, Dalloz, February 2015.; X.E. Kramer and C.H. ven Rhee, *Civil Litigation in a Globalising World*, (TMC Asser Press, 2012), page 200.; C. Winston, R.W. Crandall and V Maheshri, *First thing we do, let's deregulate all the lawyers* (The Brookings Institution, 2011), page 25.

<sup>14</sup> See Council of Bars and Law Societies of Europe <[http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/code\\_grece\\_elpdf12\\_1187786105.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/code_grece_elpdf12_1187786105.pdf)> (last visited on September 4, 2015).

<sup>15</sup> See Council of Bars and Law Societies of Europe <[http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/EN\\_CCBE\\_CoCpdf1\\_1382973057.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf)> (last visited on September 4, 2015).



they do not have the means to pay for the legal services provided.<sup>16</sup> Attorneys' fees are freely negotiated between the attorney and client with no legally set minimum or maximum fee. In the case of legal aid, beneficiaries are exempt from the advance payment of fees. It is also possible for an attorney to negotiate and receive a monthly salary for legal services provided to a client.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Citizens with low income are entitled to receive legal services without paying fees.<sup>17</sup> Articles 194 to 202 of the Code of Civil Procedure, and 100 and 304 of the Code of Penal Procedure, respectively, also provide for the possibility of receiving legal aid in trial proceedings. In principle, the main costs of a trial have to be borne by the party who brings the action; however, the losing party will be ordered to bear the costs of trial for both parties. Legal aid exempts the applicant from all legal costs, including judicial stamp duty, duty on the writ of execution, surcharges on these stamp duties, solicitor's and bailiff's fees, costs relating to witnesses and experts, and the fees of the lawyers or other representatives.

### State-Subsidized Legal Aid

Legal aid is available before all civil, criminal and administrative courts, both for contentious and non-contentious proceedings, but not for procedures before administrative authorities.

There is no special application form for requesting legal aid. Legal aid is requested from and granted by: (i) the district court; (ii) a single judge at a first instance court; or (iii) the president of the competent court where the proceedings are to be instituted or pending. For matters unrelated to trial, legal aid is granted by the district court of the place of residence of the applicant. The applicant should submit evidence justifying the application at least 15 days before the trial. The competent authority appoints an attorney, who will represent the applicant. The attorney does not have the right to object to the representation.

### Eligibility Criteria

The following persons are eligible for legal aid:

- any national who can show that payment of their legal costs is liable to deprive them and their family of the means necessary for their maintenance;<sup>18</sup>
- corporate bodies that are in the public interest or non-profit-making and groups of persons who have the right to take part in court proceedings if it is shown that payment of the costs of the proceedings would make it difficult or impossible for them to accomplish their aims;
- partnerships or associations, if they cannot pay the costs of proceedings and its members cannot do so without depriving themselves and their families of the means necessary for their maintenance; or
- foreign nationals, provided that there are reciprocal arrangements between Greece and the foreign country, and stateless persons on the same conditions applicable to Greek nationals.

Legal aid may be withdrawn or restricted by the court at the prosecutor's request or by the court's own motion, if the requirements for legal aid are not met or if the circumstances warranting legal aid have changed. If the applicant succeeds in securing legal aid on the basis of false statements or information,

---

<sup>16</sup> Lawyer's Code, Article 175.

<sup>17</sup> Law No. 3226/2004.

<sup>18</sup> Only those with an annual family income of less than 2/3 of the minimum annual personal pay, as stipulated by the national general Collective Labour Agreement, are eligible for legal aid. Based on the 2013 figures, anyone with an annual family income less than €6,597.36 would be eligible. See European e-Justice Portal <[https://e-justice.europa.eu/content\\_costs\\_of\\_proceedings-37-el-maximizeMS-en.do?member=1](https://e-justice.europa.eu/content_costs_of_proceedings-37-el-maximizeMS-en.do?member=1)> (last visited on September 4, 2015).



the court will order the withdrawal of legal aid and will impose a fine, without prejudice to the obligation on the applicant to repay the sums received and with the possibility of criminal prosecution. Furthermore, if the aided party loses a case, the applicant may still have to pay some or all of the costs of the winning party as soon as the aided party's circumstances improve and have been verified.

### Mandatory Assignments to Legal Aid Matters

The attorney undertaking a legal aid case is appointed by the court that granted the aid at the aided person's request, on the basis of lists of attorneys compiled and kept by the local Bar Associations. The attorneys are included on these lists on their own initiative and, if chosen, they are obliged to provide their legal services without receiving fees from the client. In practice, the aided person can however influence the choice of attorney so appointed. The Ministry of Justice will cover the legal fees owed to these attorneys and the amount will be the minimum statutory fee issued by the Ministerial decision.<sup>19</sup>

### Unmet Needs and Access Analysis<sup>20</sup>

Under Greek law, legal aid may be granted during trial proceedings and proceedings before the investigating judge (e.g. bail and remand in custody hearings). Legal aid is not available at the police investigation stage or when the suspect is questioned by the police. In theory, suspects have the right to consult with a lawyer before and during custodial interrogation. The unavailability of legal aid at this stage means that the statutory right to legal services is merely theoretical for most people. The Committee for the Prevention of Torture of the Council of Europe has identified the unavailability of legal aid at this stage as a major issue in Greece and has requested that the Bar Associations extend the existing legal aid mechanism to the police investigation stage.

Legal aid lawyers state that they are often not informed of their appointment until the very day of the hearing, which impacts the quality of their assistance. In addition, it is not possible for a court-appointed lawyer to resign. The compulsory nature of the appointment is especially problematic because the legal aid lawyer is considered to act not only in the interests of their client, but also in the interest of the public and administration of criminal justice. Opinion is divided as to whether this means that legal aid lawyers may be required, in certain circumstances, to act beyond or even against the will of their client.

### Alternative Dispute Resolution (“ADR”)

Various specific provisions under Greek Law regulate the ADR processes, including conciliation, judicial or court-settlement, judicial mediation and mediation, in order to resolve disputes in an amicable, cost-effective and time-effective way.<sup>21</sup>

#### Arbitration

All private law disputes, other than those relating to the provision of dependent labor, can be taken to arbitration, provided that the parties to the arbitration have the authority to dispose freely of the subject matter of the dispute. The parties are even free to make future disputes subject to arbitration. In that case, there must be a written agreement referring to a specific legal relationship from which disputes may originate. An agreement to submit to arbitration may also be made before a court during the hearing of a case. One or several persons or even an entire court may be appointed as arbitrators.<sup>22</sup>

---

<sup>19</sup> Law No. 3226/2004, Article 14.

<sup>20</sup> See Open Society Foundations <<https://www.opensocietyfoundations.org/sites/default/files/eu-legal-aid-greece-20150427.pdf>> (last visited on September 4, 2015).

<sup>21</sup> See European e-Justice Portal <[http://ec.europa.eu/civiljustice/adr/adr\\_gre\\_en.htm#103](http://ec.europa.eu/civiljustice/adr/adr_gre_en.htm#103)> (last visited on September 4, 2015).

<sup>22</sup> Greek Code of Civil Procedure, Chapter Seven, Articles 867 to 903.



International commercial arbitration is governed by the law<sup>23</sup> under which Greece adopted the UNCITRAL Model Law on international commercial arbitration.<sup>24</sup> The Greek Code of Civil Procedure is applicable for international arbitrations, usually on an ancillary basis, if an issue is not directly regulated by Statute No. 2735/1999.<sup>25</sup>

## Mediation

According to Greek law, a mediator must be a lawyer with a special certification.<sup>26</sup> The Mediator Certification Board (*Επιτροπή Πιστοποίησης Διαμεσολαβητών*) operates under the authority of the Ministry of Justice, Transparency and Human Rights and is responsible for certifying mediators. A mediator is certified after passing an examination before a board composed of two members of the Mediator Certification Board and one judicial official. The Legal Profession and Bailiff's Department (*Τμήμα Δικηγορικού Λειτουργήματος και Δικαστικών Επιμελητών*) of the Directorate-General for the Administration of Justice of the Ministry of Justice, Transparency and Human Rights is responsible for certifying mediators and issuing administrative acts required for certification. The Department also ensures that tables of licensed mediator training organizations and certified mediators are drawn up and distributed to courts.<sup>27</sup> Mediated agreements are not subject to judicial stamp costs<sup>28</sup> in order to become enforceable, but only to a procedural fee of € 100.<sup>29</sup>

## Conciliation

The Greek Code Civil of Procedure provides two mechanisms to encourage parties to resolve disputes outside the court with or without the engagement of a third person: one before any complaint has been filed (attempt at conciliation),<sup>30</sup> and the other after the filing and before any court decision (out-of-court settlement).<sup>31</sup> These mechanisms seem however to be rarely used in practice.

For the latter, the parties are required to try to reconcile their interests. The summons to the hearing must also include an invitation to the defendant to attend the office of the plaintiff's lawyer, on a specific day at a specific time to attempt to reach an out-of-court settlement. At the meeting, the parties, with their lawyers or self-represented, and assisted also (if they wish) by a third person chosen jointly, examine the dispute in its entirety, as well as any cross-action by the defendant, without being bound by the provisions of substantive law.

If the parties arrive at a resolution of the dispute in whole or in part, a minute is drawn up, with exemption from duties, stating the content of their agreement and, in particular, the nature of the acknowledged right,

---

<sup>23</sup> Statute No. 2735/1999.

<sup>24</sup> See UNCITRAL <<http://www.uncitral.org/uncitral/en/index.html>> (last visited on September 4, 2015).

<sup>25</sup> See Georgia Karnachoriti and Eleni Daskalaki, 'Arbitration Under Greek Code of Civil Procedure' (Greek Law Digest, January 9, 2012) available at <<http://www.greeklawdigest.gr/topics/judicial-system/item/17-arbitration-under-greek-code-of-civil-procedure>> (last visited on September 4, 2015).

<sup>26</sup> Law No. 3898/2010, which transposes European Directive 2008/52/EC.

<sup>27</sup> Lists of certified mediators may be found on the [website of the Ministry of Justice, Transparency and Human Rights](#).

<sup>28</sup> According to Greek Law No. 4111/2013 such specific costs for filed cases are fixed at 8% of the value of the claim surcharged by 37.4%.

<sup>29</sup> Ministerial Decision No. 85485/2012.

<sup>30</sup> Greek Code of Civil Procedure, Articles 208 to 214.

<sup>31</sup> Greek Code of Civil Procedure, Article 214A provides that suits concerning disputes in private law which by reason of their subject-matter fall within the jurisdiction of the multi-member court of first instance in ordinary proceedings, and in respect of which conciliation is permissible under substantive law, may not be heard unless there has been a prior attempt to find an out-of-court settlement. When drawing up the record of the filing of the suit and setting the date of the hearing, the registrar shall affix a clear stamp on the original and the copies stating that the case cannot be heard if there has not been a prior attempt to achieve an out-of-court settlement of the dispute.



the sum attaching to the due performance and any terms under which the performance will be fulfilled. The minute is dated and signed by the litigants or their lawyers and ratified by the court of first instance before which the action is pending. If an agreement is not reached, a minute noting the failure of the attempt to find an out-of-court settlement, in which the causes of the failure may be set out, is drawn up and signed.

### Ombudsman<sup>32</sup>

The Greek Ombudsman (*Συνήγορος του Καταναλωτή*) is a constitutionally sanctioned Independent Authority. It was founded in October 1998 and operates under the provisions of Law No. 3094/2003. The Ombudsman provides its services to the public free of charge, and received more than 8,500 complaints in 2011.<sup>33</sup>

The Greek Ombudsman investigates individual administrative actions or omissions or material actions taken by government departments or public services that infringe upon the personal rights or violate the legal interests of individuals or legal entities. Complaints can be submitted by any citizen, regardless of nationality, who has an issue with a Greek public service anywhere in Greece or abroad. Before submitting a complaint to the Greek Ombudsman, the complainant should first come into contact with the public service involved with his or her case. Only if the issue is not resolved by the service concerned should a complaint be submitted to the Ombudsman.

The main mission of the Greek Ombudsman is to mediate between the public administration and citizens, in order to help citizens exercise their rights effectively. The Greek Ombudsman also defends and promotes children's rights, promotes equal treatment and fights discrimination in the public sector based on race or ethnicity, religious or other conviction, disability, age or sexual orientation, and promotes and monitors the equal treatment of men and women in matters of employment both in the public and the private sector. The Greek Ombudsman also makes recommendations and proposals to the public administration. The Ombudsman does not impose sanctions or annul illegal actions by the public administration.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys – Law Firm Pro Bono Programs

There is typically no pro bono legal assistance provided by lawyers in Greece.<sup>34</sup> However, some law firms undertake to provide pro bono legal services to charitable organizations and non-profit institutions (advising, in particular, on the formation, ongoing governance and compliance requirements of such organizations), as well as individuals and start-up companies created by young entrepreneurs.<sup>35</sup> Some firms encourage their lawyers to take part in pro bono work through firm-wide policies, but these initiatives remain isolated instances.

---

<sup>32</sup> See The Greek Ombudsman <<http://www.synigoros.gr/?i=stp.en.home>> (last visited on September 4, 2015).

<sup>33</sup> See The Greek Ombudsman <<http://www.synigoros.gr/resources/docs/oi-drasthriothtes-ths-xronias.pdf>> (last visited on September 4, 2015) (in Greek only).

<sup>34</sup> See European e-Justice Portal <[https://e-justice.europa.eu/content\\_access\\_to\\_justice\\_in\\_environmental\\_matters-300-EL-en.do?clang=en](https://e-justice.europa.eu/content_access_to_justice_in_environmental_matters-300-EL-en.do?clang=en)> (last visited on September 4, 2015).

<sup>35</sup> See e.g. initiatives from Greek law firms available at: Papapolitis & Papapolitis <<http://www.papapolitis.com/about-us/pro-bono/>> (last visited on September 4, 2015), Dalakos Fassolis Theofanopoulos <<http://dftlaw.gr/pro-bono/>> (last visited on September 4, 2015), Felios & Associates <<http://www.felioslawfirm.gr/en/firm/pro-bono-work/>> (last visited on September 4, 2015) and Lykourezos Law Offices <<http://lykourezoslawoffices.gr.s85244.gridserver.com/?p=1056>> (last visited on September 4, 2015).



Recent examples of pro bono legal services provided by Greek law firms include worthwhile non-profit and non-governmental initiatives such as:

- Greece Debt Free (GDF) aimed at reducing Greece's national debt;<sup>36</sup> and
- the Hellenic Initiative launched by the Greek diaspora to support economic revival in Greece through entrepreneurship and business development. In collaboration with the Libra Group, the Hellenic Initiative established the Hellenic Entrepreneurship Award program, which awards money to Greek entrepreneurs for their original thinking and entrepreneurship.

In addition, various groups of lawyers have been constituted in an effort to provide help to migrants and refugees, to ensure respect for their rights. One example is the "Group of Lawyers for the Rights of Migrants and Refugees" (*Ομάδα Δικηγόρων για τα δικαιώματα προσφύγων και μεταναστών*) which is a group of lawyers who work on a volunteer basis. Their objective is to provide legal consultation, covering all issues emerging from the current Greek legal framework relating to migrants' and refugees' status. This group also provides pro bono court representation in particular cases.<sup>37</sup>

### Non-Governmental Organizations ("NGOs")

The only cases of pro bono court representation are those provided by certain human rights NGOs in cases concerning migrants and refugees. Because of the particular geographical location of Greece, and the numerous migrants and refugees it has been receiving lately, a special niche for pro bono legal services in relation to their rights has been created.

According to 2014 UNHCR statistics, 42,432 refugees and individuals in refugee-like situations (including asylum seekers and stateless persons) were residents in Greece.<sup>38</sup> In July 2015, UNHCR stated that 77,100 people had arrived in Greece by sea since the beginning of 2015. The UN Refugee Agency also reported that an average of 1,000 refugees were arriving in the Greek islands every day, thereby creating an unprecedented emergency for Greece and other countries.<sup>39</sup>

The following are examples of foundations or programs that are active in providing pro bono legal services to refugees:

The Marangopoulos Foundation for Human Rights ("**MFHR**"),<sup>40</sup> established in 1978, offers free legal services to people (without any discrimination as to race, religion, sex, language, nationality or social origin) whose fundamental human rights and freedoms have been infringed and who are unable to pay for legal counsel. MFHR has accepted many different cases, including the following:

- offering legal assistance to refugees and asylum seekers by submitting asylum applications and assisting in the procedures for determining refugee status in accordance with the provisions of the 1951 Geneva Convention. Although the implementation of Greek law on political asylum is strict, MFHR has achieved a positive outcome for a satisfactory number of cases;
- supporting detainees and prisoners by providing legal aid and defending them before the court;
- examining the conditions and terms under which detainees and prisoners are being kept, especially in mental hospitals, in addition to taking action to ensure that their rights are not being violated;
- Greeks of Northern Epirus have received special attention and assistance concerning their settlement in Greece, residence, and work permits, including procedures to obtain Greek citizenship;

---

<sup>36</sup> See Greece Debt Free <<http://www.greecedebtfree.org/>> (last visited on September 4, 2015).

<sup>37</sup> See <<http://omadadikigorwn.blogspot.com/>> (last visited on September 4, 2015) (in Greek only).

<sup>38</sup> See UNHCR <<http://www.unhcr.org/pages/49e48e726.html>> (last visited on September 4, 2015).

<sup>39</sup> See UNHCR <<http://www.unhcr.org/559fe2ef6.html>> (last visited on September 4, 2015).

<sup>40</sup> See Marangopoulos Foundation for Human Rights <<http://www.mfhr.gr/?ln=1>> (last visited on September 4, 2015).



- intervening in deportation cases wherever necessary and preventing the deportation of foreigners who are in danger of torture or physical and psychological oppression in their own countries;
- offering assistance to the homeless and those outside the social security system; and
- assisting individuals to resolve problems with Greek public authorities.

The Ecumenical Refugee Program (“ERP”)<sup>41</sup> is a special service of the Holy Synod of the Orthodox Church of Greece that assists refugees, asylum seekers and migrants. ERP runs different projects that have been funded by various sources, including the European Commission, UNHCR, European Refugee Fund and the Greek Ministry of Health. The ERP provides primarily legal and social assistance, translation facilities and legal representation to asylum seekers in the Athens area and is one of the main organizations in this field in Greece. Advocacy is also a primary goal of this organization. Since March 2011, ERP is a partner of UNHCR within the Asylum Reform Project in Greece in the areas of legal assistance and representation of asylum seekers in Greece. ERP is a member of the legal, social, national and European networks in the field of refugee protection and advocacy.

The NGO AITIMA<sup>42</sup> (Greek word for “Request”) was founded in December 2008 to defend human rights and protect the environment by providing free legal advice and consultation to vulnerable groups, including refugees, minority and newly arrived communities, delivering training, education, cultural events and conferences, conducting research, and appealing to the judiciary system.

The Greek Council for Refugees (“GCR”)<sup>43</sup> is a Greek NGO, founded in 1989 to support refugees and asylum seekers in Greece. Through various psychosocial and legal services, it assists with their integration in Greece. The GCR works with diverse partners at various levels – from ministries and local governments to international organizations, and offers legal support and representation services. In case other organizations do not respond, the Greek Council for Refugees promises to respond when contacted.<sup>44</sup>

#### Others

In 2010, the General Secretariat for Youth of the Greek State launched a program called “Youth Legal Aid” aiming to provide free legal aid to minors and socially vulnerable target groups of young citizens (up to 30 years old). Legal services are provided by young lawyers (up to 35 years old). The program seeks to serve two purposes: (i) to fight against social discrimination and isolation often experienced by the program’s target groups; and (ii) to encourage and support young lawyers to undertake similar cases.<sup>45</sup>

The program deals with criminal-law related cases (abuse, intra-family violence, human trafficking, drug-related offences), civil cases, administrative cases and labor law-related cases. This program, which focuses on the youth, is supplementary to the general legal aid system in place in Greece.

### Historical Development and Current State of Pro Bono

The provision of pro bono legal services in Greece is not well-established or widespread.

---

<sup>41</sup> See UNHCR <<http://www.unhcr.org/4ea917d211.html>> (last visited on September 4, 2015).

<sup>42</sup> See Aitima NGO <<http://www.aitima.gr/>> (last visited on September 4, 2015).

<sup>43</sup> See Greek Council for Refugees <<http://www.gcr.gr/index.php/en/>> (last visited on September 4, 2015).

<sup>44</sup> See also International Refugee Rights Initiative – Greece Pro Bono Directory available at <<http://www.refugeelegalaidinformation.org/greece-pro-bono-directory#sthash.s3hagT1O.dpuf>> (last visited on September 4, 2015).

<sup>45</sup> See General Secretariat for Youth <<http://www.neagenia.gr/frontoffice/portal.asp?cpage=RESOURCE&cresrc=1287&cnode=1>> (last visited on September 4, 2015) and <<http://www.neagenia.gr/frontoffice/portal.asp?cpage=RESOURCE&cresrc=140&cnode=48&cuser=E22A303F-23CE-49EC-A3A4-92096D4D24A0>> (last visited on September 4, 2015).



## Barriers to Pro Bono and Other Considerations

The economic situation in Europe has had an impact on the capacity and readiness of many countries to strengthen their protection systems. Austerity measures have also hit civil society organizations that provide services to asylum-seekers and refugees. Xenophobia and intolerance have led to incidents of discrimination and violence. States have responded by concentrating on curbing irregular movements, including through tighter border controls and detention or penalization for illegal entry.<sup>46</sup>

Greece's volatile economic situation, combined with the increasing number of new arrivals of refugees, is putting a severe strain on small Greek island communities that lack the basic infrastructure and services to adequately respond to the growing humanitarian needs. UNHCR stated that the number of people arriving in Greece was now so high that, despite all efforts, the authorities and local communities can no longer cope.<sup>47</sup> This situation creates an even more important need for pro bono initiatives directed towards refugees and asylum seekers that cannot be fully addressed by the existing NGOs initiatives.

The Greek judiciary system suffers from inefficiency. Delays in the judicial system are vast and often deleterious. The increasing number of new lawsuits filed combined with the sluggish disposal of cases contributes to a growing backlog. In May 2011, there were 140,000 cases pending in the administrative court of first instance and 11,000 pending in the court of appeals. Trial lengths, which add to this build-up, are in turn adversely impacted by the backlog they help to cause.<sup>48</sup> It is therefore necessary to implement structural reforms to the judicial system aimed at streamlining and speeding up the processes to facilitate the provision of pro bono legal services in Greece.

## Laws and Regulations Impacting Pro Bono

There is an explicit prohibition on providing free legal services in Greece: indeed, according to Article 175 of the Lawyer's Code, attorneys should always receive fees for the provision of legal services. The exceptions to these principles are very concrete and on applicant who wishes to benefit should provide all the necessary documentation showing the lack of necessary means to cover the legal services provided.

As stated earlier, there is also a "Loser Pays" statute applicable in Greece, whereby the losing party in court proceedings will be ordered to bear the legal costs for both parties.

## Pro Bono Resources

The following organizations may provide pro bono opportunities for lawyers in Greece:

- The Marangopoulos Foundation for Human Rights: <http://www.mfhr.gr/?ln=1> (last visited on September 4, 2015)
- The Ecumenical Refugee Program: <http://www.unhcr.org/4ea917d211.html> (last visited on September 4, 2015).
- The NGO AITIMA: <http://www.aitima.gr/> (last visited on September 4, 2015).
- The Greek Council for Refugees: <http://www.gcr.gr/index.php/en/> (last visited on September 4, 2015).

## CONCLUSION

The number of applicants requesting legal services free of charge in Greece has increased in recent years, due mainly to the number of immigrants and refugees arriving in Greece and the recent severe economic crisis. Although legal aid and some limited free legal advice is available, there seems to be no established pro bono culture and further legal reform in this area is necessary.

---

<sup>46</sup> See UNHCR <http://www.unhcr.org/pages/49e48e726.html> (last visited on September 4, 2015).

<sup>47</sup> See UNHCR <http://www.unhcr.org/559fe2ef6.html> (last visited on September 4, 2015).

<sup>48</sup> See The Inefficiencies of the Greek Legal System by Megan Colville available at <https://martindale.cc.lehigh.edu/sites/martindale.cc.lehigh.edu/files/Inefficiencies.pdf> (last visited on September 4, 2015).



September 2015

Pro Bono Practices and Opportunities in Greece

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Guatemala<sup>1</sup>

### INTRODUCTION

Many Guatemalan lawyers have long provided free legal work to people in need, but a pro bono practice as such has only started integrating into the legal culture in recent years. Violence, corruption and the culture of impunity has limited the development of pro bono, in a country where a significant part of the population resorts to informal dispute resolution. However, despite these obstacles, there seems to be an encouraging development of pro bono practice among law firms and the civil society.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

The current Guatemalan Constitution (*Constitución Política de la República de Guatemala*) was issued on May 30, 1985 and entered into effect on January 14, 1986. It is the supreme law of the country. The Constitution organises the State into three branches: legislative, judicial and executive.

The Guatemalan political system is divided into three branches, the executive power headed by the President of the Republic Otto Pérez Molina, the legislative power shared by the government and the Congress of the Republic, and the judicial power. Guatemala consists of 22 departments, each run by a governor appointed by the President, and 330 municipalities, each run by a mayor or elected councils.

The judicial branch is run by the Judicial Body (*Organismo Judicial*) and is regulated by the Law of the Judicial Body (*Ley del Organismo Judicial*).<sup>2</sup> There are two main branches: the Administrative branch and the Judicial branch. The Supreme Court of Justice (*Corte Suprema de Justicia*) is the supreme body of the Judicial Body (*Organismo Judicial*).

#### The Courts

##### Levels, relevant types and locations

The Judicial Body is the State independent entity in charge of the judiciary. Administrative matters (disputes involving individuals and State entities) are managed by the presidency of the Judicial Body and by specialized units of first-level tribunals and courts of appeal. The Supreme Court of Justice (*Corte Suprema de Justicia*) is the supreme body for administrative matters. The Constitutional Court (*Corte de Constitucionalidad*) rules on the constitutionality of the law.

First tier courts are the Peace Courts (*Juzgados de Paz*) and the next courts in the hierarchy are the First Instance Courts (*Juzgados de Primera Instancia*). The former have jurisdiction over matters of lesser materiality, while the latter, depending on their assigned authority, rule on criminal matters, family issues, children matters, labor matters, civil and commercial matters and criminal matters. The Appeal Courts (*Cortes de Apelaciones*) are the second tier courts. They are organised into seven chambers: criminal, civil and commercial, regional, family, labor, children, conflicts of judicial competence and administrative disputes. The Supreme Court of Justice (*Corte Suprema de Justicia*) is the final appellate court and has supreme jurisdiction. It includes a civil and commercial chamber, a criminal chamber, and a protection and preliminary trial (*amparo y antejuicio*) chamber.

The aforementioned Peace Courts play an important role in Guatemala. They are competent to hear disputes of lesser seriousness that are only punishable by a fine. Each capital city of a Department (*cabecera Departamental*) and tribunal of Guatemala must have a Peace Court. In principle, each municipality should also have a Peace Court but the Supreme Court may extend a Peace Judge's

---

<sup>1</sup> This chapter was written with the contribution of José Augusto Toledo, associate at Arias & Muñoz (Guatemala).

<sup>2</sup> Decree 2-89.



jurisdiction to several municipalities considering their proximity and number of inhabitants. In total, there are 370 peace judges in Guatemala organised around three type of matters: (i) itinerant peace courts in charge of civil cases less than US\$6,500; (ii) criminal and duty peace tribunals (*tribunals de turno*), which operate 24 hours a day during the whole year; and (iii) community and mixed peace tribunals, which are in charge of local-customs related issues, general principles of the law disputes and equity issues. Community and mixed peace tribunals are the result of great progress in coordinating the customs-based law of indigenous people<sup>3</sup> and are composed of three persons recognized as “honourable” in the community where the tribunal is located, each of them being able to communicate both in Spanish and in the local language. The scope of these tribunals is limited to conciliation, approving agreements between the parties, receiving first statements of accused and, applying opportunity criteria.

Furthermore, the Execution Criminal Courts (*Juzgados de Ejecución Penal*) in Guatemala City are in charge of supervising the enforcement of rulings. Ruling Tribunals (*Tribunales de Sentencia*) deal with oral procedures and hear the rulings.

### Appointed vs. Elected Judges

Judges of the Supreme Court of Justice and of the Appeal Courts are elected by the Parliament from a list presented by the Nomination Commission, which consists of university deans, representatives of the judiciary and representatives of bar associations. The last election took place in 2014 amidst criticism of serious irregularities<sup>4</sup> that allegedly jeopardised the independence of the judiciary.

## The Practice of Law

### Education

Attorneys need to obtain a specialised university degree (*Licenciatura en Ciencias Jurídicas y sociales y los títulos de Abogado y Notario*). It is then necessary to pass an admission exam (*Examen Técnico Profesional*) and register with the single bar association of the country (*Colegio de Abogados y Notarios de Guatemala*).<sup>5</sup>

### Licensure

As far as foreign attorneys are concerned, their title can be recognized in Guatemala by the University of San Carlos (*Universidad de San Carlos de Guatemala*) according to Article 87 of the Guatemalan Constitution. Foreign attorneys can get their title recognized in Guatemala in two different ways. They can either choose to take the Admission Exam (*Examen de incorporación*) or complete a year of social services (corresponding to 1,600 hours of service) in a public services institution. Contrary to Guatemala nationals who are granted both the titles of attorney and notary once they have passed the admission exam, foreign attorneys can only practice as an attorney in Guatemala. Only those professionals who have been duly admitted to the bar can practice law.

Attorneys are regulated by a specific law (*Ley de Colegiación Profesional Obligatoria*)<sup>6</sup> and they need to abide by the bar rules. In addition, attorneys are subject to the Code of Ethics of Lawyers and Notaries,<sup>7</sup> and their fees are regulated by Decree 111-96.

---

<sup>3</sup> In this respect, see Art 66 of the Constitution that recognizes and promotes the organisation, cultures and customs of the various communities of Guatemala, and Art 58 of the Constitution that recognizes the right to cultural identity.

<sup>4</sup> It is presumed that they have aligned themselves with certain groups of power, which exert undue influence on the elections.

<sup>5</sup> See <http://www.cang.org.gt/> (last visited on September 4, 2015).

<sup>6</sup> Decreto 72-2001 del Congreso de la República de Guatemala.



There are no pro bono requirements for attorneys.

## Demographics

According to the College of Lawyers and Notaries (*Colegio de Abogados y Notarios*), there are about 21,797 attorneys registered in Guatemala, 17,788 of whom are actively practicing law.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The right to legal assistance is laid down in Article 12 of the Constitution. Article 89 of the Civil and Commercial Code (*Código Procesal Civil y Mercantil*) guarantees indigent people the right to legal assistance. Article 90 states that people eligible for legal assistance benefit from the free assistance of an attorney and are exempted from any cost incurred in the proceeding.

### State-Subsidized Legal Assistance

The Institute of Public Criminal Defence (*Instituto de Defensa Pública Penal*) (**IDPP**) is a public independent body that provides state-subsidized legal aid in criminal proceedings, with a special focus on cases involving gender and family violence and violations of human rights. It is financed by the state budget and is regulated by the Law of the Public Criminal Defence Service.<sup>8</sup>

The IDPP was created in 2005 in response to the serious shortfalls from which the judicial system suffers in Guatemala that perpetuate a culture of impunity. These shortfalls are described, for instance, in the current Government's Agenda for Change (*Agencia del Cambio 2012-2016*): "*The institutions of the Security and Judicial System do not have the capacity to undertake all the necessary functions to enforce law and reduce impunity. An insufficient budget to cover the totality of tasks related to investigation, law enforcement, and enforcement of rulings has increased the levels of impunity resulting in an increase of illegal activities in light of the close-to-zero possibility of being punished*".<sup>9</sup>

The IDPP provides public legal aid through public defenders (*defensores públicos*). There are two types of public defenders: *defensores de planta*, who are civil servants working exclusively for the IDPP, and private attorneys (*defensores de oficio*). In June 2012, there were 151 *defensores de planta* and 275 private attorneys providing public legal aid.<sup>10</sup>

Both *Defensores de planta* and private attorneys must belong to the bar association. *Defensores de planta* must have experience in criminal proceedings and receive a monthly salary. The IDPP compensates private attorneys for the services provided on the basis of a pre-established compensation grid, and sanctions by the bar association can be imposed on private attorneys who abandon a case that has been allocated to them in their capacity as a public defender. University law students may assist in public defence.

---

<sup>7</sup> See the « Código de ética del colegio de abogados y notarios de Guatemala » available at <http://www.foroderechoguatemala.org/wp-content/uploads/2011/07/varia022.pdf> (last visited on September 4, 2015).

<sup>8</sup> Ley del Servicio Público de Defensa Penal Decreto 129-97 available at ([http://www.aidef.org/wtksite/cms/conteudo/50/Ley\\_del\\_Servicio\\_Publico\\_de\\_Defensa\\_Penal.pdf](http://www.aidef.org/wtksite/cms/conteudo/50/Ley_del_Servicio_Publico_de_Defensa_Penal.pdf)).

<sup>9</sup> IDPP's Strategic Plan for 2015 – 2019 available at ([http://descargas.idpp.gob.gt/Data\\_descargas/leydeacceso/PEI2015.pdf](http://descargas.idpp.gob.gt/Data_descargas/leydeacceso/PEI2015.pdf)) (last visited on September 4, 2015); Agenda for the Change 2012 – 2016 available at (<http://www.vdocshop.com/doc/insayd/agenda-para-el-cambio-2012-2016/2011052301/3.html#8>) (last visited on September 4, 2015).

<sup>10</sup> AIDEF, La defensa pública autónoma en Guatemala available at (<http://www.aidef.org/wtksite/cms/conteudo/360/GUATEMALA.pdf>) (last visited on September 4, 2015).



There is a legal obligation for all public defenders (*defensores de planta* and *defensores de oficio*) to accept cases allocated to them by the IDPP, with limited exceptions such as physical or psychological disability affecting their ability to provide such legal assistance, or being over 65 years old.<sup>11</sup> Usually a private attorney involved in a public defence will have volunteered to be allocated. Where no such attorneys are available, the IDPP can allocate a case to any private attorney.

Public legal defence is guaranteed by law in all criminal proceedings across Guatemala<sup>12</sup> to persons earning less than three times the minimum wage. Nevertheless, the Guatemalan judicial order recognizes the fundamental right to public criminal defence for everyone, as soon as assistance is requested. Defendants can contest the public defender that has been assigned to them in cases of conflict of interest, serious negligence in the provision of legal services and manifest inadequacy for the role.

The IDPP has a presence in the 22 departments of the country and in 14 towns, registering a total of 36 defence coordination units (*Coordinaciones de Defensoría*) across the country. Between 2012 and 2014, the IDPP provided public defence in 226,051 cases, with an increase of approximately 13% each year.<sup>13</sup> Although the IDPP has since its creation met the objectives it had set for each working period, it is aware that its budget, size, structure and coverage in terms of matters and territory are still insufficient to meet all the needs for public legal defence in the country, which are increasing, as expressed in its Strategic Plan for 2015-2019.<sup>14</sup> In light of this, its mission is to continue working on the development of the public defence system to expand and improve its impact and coverage.<sup>15</sup>

## Alternative Dispute Resolution

### Mediation by the Unidad de Resolución Alternativa de Conflictos

As in many other Latin American countries, Guatemala has seen the rise of mediation as an institutionalised means of resolving disputes in light of the serious shortfalls of the judicial system described in section II above. Since 1998, the Alternative Conflict Resolution Unit (*Unidad de Resolución Alternativa de Conflictos*) (RAC) is in charge of planning, promoting, coordinating, implementing, monitoring and evaluating the free resolution of disputes by means of mediation.<sup>16</sup> The RAC belongs to

---

<sup>11</sup> See Art. 32 of the Ley del Servicio Público de Defensa Penal, available at [http://www.aidef.org/wtksite/cms/conteudo/50/Ley\\_del\\_Servicio\\_Publico\\_de\\_Defensa\\_Penal.pdf](http://www.aidef.org/wtksite/cms/conteudo/50/Ley_del_Servicio_Publico_de_Defensa_Penal.pdf) (last visited on September 4, 2015).

<sup>12</sup> AIDEF, Buenas Prácticas y Experiencias sobre la Defensa Pública, page 154 available at ([http://www.aidef.org/wtksite/cms/conteudo/435/PRESENTACION\\_FINAL\\_PARA\\_ENTREGAR\\_A\\_LA\\_OEA.pdf](http://www.aidef.org/wtksite/cms/conteudo/435/PRESENTACION_FINAL_PARA_ENTREGAR_A_LA_OEA.pdf)) (last visited on September 4, 2015).

<sup>13</sup> IDPP, Memoria de Labores 2014, page 6 available at ([http://descargas.idpp.gob.gt/Data\\_descargas/Memoria/memorialaboresidpp2014Parte1.pdf](http://descargas.idpp.gob.gt/Data_descargas/Memoria/memorialaboresidpp2014Parte1.pdf)) (last visited on September 4, 2015).

<sup>14</sup> See IDPP's Strategic Plan for 2015-2019, pages 12 -19 available at ([http://descargas.idpp.gob.gt/Data\\_descargas/leydeacceso/PEI2015.pdf](http://descargas.idpp.gob.gt/Data_descargas/leydeacceso/PEI2015.pdf)) (last visited on September 4, 2015). For instance, for the period 2015-2019, the budget finally allocated to the IDPP is only 50% of the budget initially requested (page 16).

<sup>15</sup> See IDPP's Strategic Plan for 2015-2019, pages 30 and sq. See also detailed list of objectives of the Access to Justice strategic planning in pages 53-54.

<sup>16</sup> The RAC was created by the Acuerdo 21/998 of the Presidency of the Judicial Body (Presidencia del Organismo Judicial) of September 2, 1998. It was partially financed by the Swedish Government and the United Nations Development Program (UNDP). The RAC is further regulated by Regulation 22/998 of September 24, 1998.



the Judicial Body (*Organismo Judicial*) and offers free mediation through the 79 mediation centres across the national territory, that are mostly housed in Peace Courts and First Instance Courts.<sup>17</sup>

The RAC centres provide mediation before or in the course of judicial proceedings, where the case is referred by a judge in agreement with the parties or where the parties request it directly. RAC centres mediate in less serious cases, mostly regarding civil disputes, but also in labor, family, commercial and agricultural cases. Although some cases relate to potential crimes (e.g. calumny (defamation), threat, aggression, fraud, etc.), in general, the mediation centres do not deal with criminal cases as these need to be heard by a judge.<sup>18</sup> The impact and use of mediation centres has increased dramatically since its creation. In 2010, 86,265 cases in total were registered at the RAC centres, compared to 8,144 in 2005, representing an increase of 40%. In 2010, 8,098 cases were resolved with an agreement compared to 3,254 in 2005. The RAC centres are perceived as more effective than ordinary justice.<sup>19</sup>

### The Ombudsman

The Ombudsman (*Procurador de los Derechos Humanos*) is established by the Constitution and elected by a vote of two thirds of the Parliament. The Ombudsman must be independent and can investigate cases of potential abuse by the State as well as any other case involving potential violations of human rights, free of charge. In addition, he/she can issue public denunciations and initiate actions before the competent authority.<sup>20</sup>

## PRO BONO ASSISTANCE

### Pro bono Opportunities

While the Latin American legal community as a whole increasingly has placed emphasis on pro bono services in recent years, as shown for instance, by the implementation of the Pro bono Declaration for the Americas,<sup>21</sup> pro bono practice is still very limited in Guatemala. Most initiatives are led by national or international NGOs and institutes, particularly those that promote human rights.

### Private Attorneys

Attorneys have no pro bono obligations in Guatemala. There is a long tradition of providing legal services free of charge in light of the serious problems that the country faces, mainly corruption and gender-based violence and the lack of resources of the majority of the population to permit them traditional access to the legal system. Such provision of free legal services has depended historically on the good will of individual attorneys.

---

<sup>17</sup> According to statistics for December 2014 of the Judiciary (Organismo Judicial) available at [http://www.oj.gob.gt/index.php?option=com\\_phocadownload&view=category&id=134:estadisticas-rac-diciembre-2014&Itemid=525#](http://www.oj.gob.gt/index.php?option=com_phocadownload&view=category&id=134:estadisticas-rac-diciembre-2014&Itemid=525#) (last visited on September 4, 2015).

<sup>18</sup> Asociación de Investigación y Estudios Sociales, *Los Centros de Mediación de la Unidad de Resolución Alternativa de Conflictos del Organismo Judicial, Estado de Situación enero 2005 – marzo 2011, October 2013*, page 30.

<sup>19</sup> *Ibid.* page 93.

<sup>20</sup> See Art 13 of Decree N° 54-86 available at [http://www.pdh.org.gt/accesinfo/images/downloads/2012/decreto\\_54-86\\_ley\\_del\\_procurador.pdf](http://www.pdh.org.gt/accesinfo/images/downloads/2012/decreto_54-86_ley_del_procurador.pdf) (last visited on September 4, 2015).

<sup>21</sup> The Pro bono Declaration of the Americas is an initiative by the Cyrus R. Vance Center for International Justice Initiatives of the New York City Bar, an association of international lawyers for the promotion of pro bono in Latin America. Signatory law firms and other legal organizations commit to undertake annually an average of at least 20 hours of pro bono work for each attorney working there.



## Law Firm Pro bono Programs

Although some law firms engage in pro bono initiatives, these are still limited. Law firms that provide pro bono assistance usually do so in association with NGOs and institutes in areas such as enforced disappearance (dating back to the civil war that took place between 1960 and 1996), family and gender-based violence, protection of children and teenagers, immigration, access to education, and support to local communities. However, there has been a rise in the interest in pro bono with more law firms integrating pro bono into their day-to-day activities. Law firms are getting more involved in local communities, support groups and initiatives of local and international NGOs. A number of law firms have already signed the Pro bono Declaration of the Americas.

## Legal Department Pro bono Programs

Based on public information, most companies in Guatemala do not appear have pro bono programs.

## Non-Governmental Organizations (NGOs) (i.e., charities, nonprofits, community-based organizations, etc.)

When involved in pro bono programs, NGO initiatives can take two forms; either a partnership with law firms, as mentioned above, or within the framework of their own activity. Among their varied activities, some NGOs choose to focus on the legal field by improving access to justice. Lawyers Without Borders Canada has been particularly involved in establishing a Guatemalan law firm specialising in Human Rights.<sup>22</sup> There have been an increasing number of grass-roots initiatives aimed at fighting the corrupt legal system and its culture of impunity to receive local justice for those in need. For example, a Guatemalan citizen developed an advocacy project at the Villa Nueva Justice Centre to fight against domestic violence. Helped by the Women's Legal Right Initiative, she has been training community leaders to provide women in need with certified paralegals specialised in gender-based violence.<sup>23</sup>

## Bar Association Pro bono Programs

The *Colegio de Abogados y Notarios de Guatemala* does not appear actively to promote pro bono work. However, the bar associations of Central American countries, including Guatemala, recently met to discuss how to increase pro bono initiatives and they signed the Pro bono Declaration of the Americas.<sup>24</sup> This signals an increased emphasis on pro bono in the Guatemalan legal community and hopefully will translate into greater instances of pro bono initiatives lead by law firms. Recently, the *Colegio* ratified the Inter-institutional Cooperation Covenant aiming at promoting the commitment of attorneys to defend labor rights.<sup>25</sup>

## University Legal Clinics and Law Students

Universities have created *Bufetes Populares* which provide legal assistance free of charge to indigents. They often do so in association with a local or international NGO to support specific projects. These are not regulated by the bar association and do not require any qualification other than being a student at the university. Four universities in Guatemala made participation to *Bufetes Populares* compulsory: the University of San Carlos, the University of Rafael Landívar, the Rural University and the University of Mariano Gálvez.

---

<sup>22</sup> See the Lawyers without borders Canada website available at <http://www.asfcanada.ca/fr/asf-en-action/programmes/14/guatemala> (last visited on September 4, 2015).

<sup>23</sup> See the USAID's article on the topic, available at [http://www.usaid.gov/sites/default/files/success/files/fp\\_gtm\\_vilma.pdf](http://www.usaid.gov/sites/default/files/success/files/fp_gtm_vilma.pdf) (last visited on September 4, 2015).

<sup>24</sup> See <http://www.vancecenter.org/vancecenter/index.php/library/enotes/343> (last visited on September 4, 2015); and <http://latinlawyer.com/features/article/47540/latin-lawyer-vance-center-2014-pro-bono-survey/> (last visited on September 4, 2015).

<sup>25</sup> See <http://www.mintrabajo.gob.gt/index.php/nota-principal/244-mintrab-y-cang-fortalecen-la-legalidad-laboral.html> (last visited on September 4, 2015).



## The World Bank Judicial Reform Project

The World Bank Judicial Reform Project existed from 1999 to 2006 and brought substantial improvements in the Guatemalan legal system. 177 Peace Tribunals were created, and two itinerant courts were put in place that provide free mediation and information services to people in remote areas. In addition, the Judicial Reform Project allowed the implementation of anti-corruption training and the promotion of female judges, which represented 3% of all judges in Guatemala at the beginning of the project and increased to 17% by 2006.<sup>26</sup>

## Historic Development and Current State of Pro bono

The pro bono movement in Guatemala is still developing, but has shown strong signs of growth, partly as a result of the increased visibility of pro bono work throughout Latin America in recent years, encouraging the creation of local initiatives

## CURRENT STATE OF PRO BONO INCLUDING BARRIERS AND OTHER CONSIDERATIONS

### Laws and Regulations Impacting Pro bono

#### Statutorily Mandated Minimum Legal Fee Schedule (as applicable)

Attorneys' fees are strictly regulated by Decree 111-96. Article one refers to a specific legal threshold below which attorneys cannot set their fee rate. Article 6 establishes the percentage that an attorney can claim on a general basis, subject to variation in accordance with certain exceptions defined in the following articles of the Decree. The basic percentage is 15% of the total amount involved in the dispute for first-level litigation up to GTQ 100,000, and a percentage of 5% is then applied to the amount above this. In the case of disputes involving amounts below GTQ 100,000, the attorney cannot receive less than GTQ. 200 in fees. If the amount involved cannot be determined in advance, Article 7 sets a range of fees amount, from GTQ 500 to GTQ 15,000, according to the importance of the case.<sup>27</sup>

Article 2 of Decree 111-96<sup>28</sup> regulating attorneys' fees in Guatemala considers the two parties involved in a legal dispute as co-debtors. In this respect, the losing party can be required to pay the other party's attorney's fees. The winning party has the right to pursue remedies against him once the dispute has been subject to final decision.

#### Rules Directly Governing Pro bono Practice

Article 10 of the Lawyers' Code of Ethics<sup>29</sup> prohibits attorneys from soliciting clients, either directly or indirectly, and from offering their services or giving their opinion on a dispute without having been solicited beforehand by the client. As far as advertisement is concerned, Article 11 only allows attorneys to advertise their name, address and fields of practice. Attorneys are also forbidden to give legal advice

---

<sup>26</sup> See the World Bank report available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/01/20/000333037\\_20150120213527/Rendered/PDF/9243702006Apr20e0PUBLIC0Box0385367B.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/01/20/000333037_20150120213527/Rendered/PDF/9243702006Apr20e0PUBLIC0Box0385367B.pdf) (last visited on September 4, 2015).

<sup>27</sup> Ibid.

<sup>28</sup> See Decree 111-96 available at [https://www.rgp.org.gt/docs/legislacion\\_registral/Arancel%20de%20abogados.pdf](https://www.rgp.org.gt/docs/legislacion_registral/Arancel%20de%20abogados.pdf) (last visited on September 4, 2015).

<sup>29</sup> See the « Código de ética del colegio de abogados y notarios de Guatemala » available at <http://www.foroderechoguatemala.org/wp-content/uploads/2011/07/varia022.pdf> (last visited on September 4, 2015).



through television, newspaper, radio or social networks. As a consequence, people are unaware of pro bono services offered by law firms.

### Socio-Cultural Barriers to Pro bono or Participation in the Formal Legal System

Access to justice in Guatemala is heavily limited by corruption and the inefficiency of the legal system causing people to prefer informal dispute resolution. Guatemala was ranked 115 out of 175 countries in 2014 with regards to the level of corruption,<sup>30</sup> and was reported by the Inter-American Commission on Human Rights (IACHR) to have an impunity rate of 98%, according to publicly available statistics.<sup>31</sup> There is therefore a lack of public trust in the justice system, particularly with respect to women and children's rights. The literature on the topic frequently highlights the lack of training regarding gender-related abuses, and the consequent extremely low rate of prosecution. The statistics are alarming with 705 women having been reported killed in 2011.<sup>32</sup>

### Pro bono Resources

- The *Bufete Popular Universidad San Carlos de Guatemala* provides legal assistance to indigents (<http://bufetepopular.usac.edu.gt/contactenos.html>) (last visited on September 4, 2015))
- *Bufete Popular Universidad Rafael Landívar* provides legal assistance to indigents ([http://www.url.edu.gt/PortalURL/Principal\\_01.aspx?s=76](http://www.url.edu.gt/PortalURL/Principal_01.aspx?s=76)) (last visited on September 4, 2015))
- The *Instituto de Estudios Comparados en Ciencias Penales* is an academic institute that undertakes legal research and provides legal assistance in areas such as justice, criminal policy, democratic security and human rights (<http://www.iccg.org.gt>) (last visited on September 4, 2015))
- The *Colegio de Abogados y Notarios de Guatemala* is the country's bar association and although it does not seem to act as a clearinghouse for pro bono matters, it may be more implicated in the future following its signature in 2015 of the Pro bono Declaration of the Americas.
- The Judicial Body (*Organismo Judicial de la Republica de Guatemala*) is the State entity in charge of the judiciary power (<http://www.oj.gob.gt/>)

## CONCLUSION

The integration of pro bono practice in the Guatemalan legal culture is gaining momentum, partly as a result of the increased practice and attention of pro bono work throughout Latin America in recent years. An increasing number of NGOs and law firms are getting involved in pro bono programs by focusing on access to justice, and have signed the Pro bono Declaration for the Americas, committing to 20 hours of free legal services per year and per attorney.<sup>33</sup> However, Guatemala still suffers from the inefficiency of its legal system and wide spread corruption in its institutions, impeding further development of pro bono practice. In addition, Guatemala is still one of the most violent countries in the world with a rate of 48 homicides per 100,000 inhabitants. There is therefore an urgent need for better access to a more reliable justice system, as well as pro bono initiatives from the civil and the international community.

September 2015

Pro Bono Practices and Opportunities in Guatemala

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client

---

<sup>30</sup> See the Transparency International organization's statistics available at <http://www.transparency.org/country#GTM> (last visited on September 4, 2015).

<sup>31</sup> See the Press Release of March 27, 2012 available at [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/033.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/033.asp) (last visited on September 4, 2015).

<sup>32</sup> Ibid.

<sup>33</sup> See the Latin Lawyer and Vance Center Pro bono Survey 2014.



relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Haiti

### INTRODUCTION

The Haitian legal system suffers from numerous structural problems that restrict the adoption and promotion of a pro bono culture. Since the disastrous 2010 earthquake, reforming the judiciary has been a secondary priority behind resolving the economic and structural devastation caused by the earthquake. However, an increasing number of entities, both international and domestic, are focusing on improving access to justice in respect of the prolific instances of human rights violations within Haiti.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Haiti's constitution was adopted on March 10, 1987. It directly refers in its preamble to fundamental rights and democracy.

Haitian law has been influenced by French Law and, in particular, the French Civil Code and, as such, is a civil law system.<sup>1</sup>

Despite the existence of democratic presidential elections since 1990, the Haitian political system remains unstable and still lacks legitimacy among the civil society. It is divided into three branches: the executive power headed by the President of the Republic, the legislative power including a Senate and a Chamber of Deputies, and the judiciary.

##### The Courts

##### Levels and relevant types

The Haitian legal system distinguishes between criminal and civil matters.

The first-level civil courts are the Peace Tribunals (*Tribunaux de Paix*) and the First-Instance Tribunals (*Tribunaux de Première Instance*). The Peace Tribunals (*Tribunaux de Paix*) have limited competence in civil matters as first-level tribunals (only covering personal and property disputes up to 5,000 gourdes), though their competence is extended when hearing a dispute as a second-level tribunal (covering personal and property disputes up to 25,000 gourdes). Peace judges are also police officers and can issue warrants of infringement and hear witnesses' statements. The First-Instance Tribunals have competence in all other civil disputes of greater seriousness.<sup>2</sup>

There are three first-level criminal courts. Firstly, the Police Tribunals (*Tribunaux de Police*) have competence in criminal disputes punishable by a fine. In addition, the Correctional Tribunals (*Tribunaux Correctionnels*) have competence in punishing criminal offences. Lastly, the Criminal Tribunals (*Tribunaux Criminels*) have competence in certain crime-related issues.<sup>3</sup>

The decisions of both civil and criminal first-level jurisdictions are subject to appeal before the Appellate Court (*Cour d'Appel*), except for the decisions of the Criminal Tribunal, which can be appealed directly before the Court of Cassation (*Cour de Cassation*). In turn, the decisions of the Appellate Court are also

---

<sup>1</sup> See the IDEF website available at <http://www.institut-idef.org/La-justice-haitienne-structure.html> (last visited on September 4, 2015).

<sup>2</sup> See the Center of Research and Legal Information available at <http://haitijustice.com/crij/systemejudiciare> (last visited on September 4, 2015).

<sup>3</sup> See the Haitian Ministry of Justice website available at <http://www.mjsp.gouv.ht> (last visited on September 4, 2015).



subject to appeal before the Court of Cassation. Moreover, the Haitian Court of Cassation is in charge of reviewing the constitutionality of the law. This review is carried out *a posteriori* and by way of a plea.<sup>4</sup>

There is no clear distinction between judicial and administrative orders in the Haitian legal system. The Supreme Court of Auditors and Administrative Litigation (*Cour Supérieure des Comptes et du Contentieux Administratifs*) is the only tribunal with competence to hear administrative disputes, but its decisions are subject to appeal before the Court of Cassation.<sup>5</sup>

#### Appointed vs. Elected Judges<sup>6</sup>

Judges from the Court of Cassation (*Cour de Cassation*) are appointed for ten years by the President of Haiti, from a list submitted by the Senate.

Judges from the Court of Appeal (*Cour d'Appel*) are appointed for ten years by the President of Haiti from a list submitted by the Department Assembly (*Assemblée Départementale*) concerned.

Judges from the First Instance Tribunals (*Tribunaux de Première Instance*) are appointed for seven years by the President of Haiti from a list submitted by the Department Assemblies (*Assemblée Départementale*) concerned.

Finally, peace judges are appointed by the President of Haiti from a list submitted by the relevant Communal Assemblies (*Assemblées Communales*).

### The Practice of Law

#### Education

To become an attorney in Haiti, one must be a Haitian national of at least 18 years old. Moreover, one must have completed a law license (equivalent to a Bachelor's) at the State University of Haiti or any foreign license recognized in Haiti as equivalent and submit a certificate of good moral conduct (*certificat de bonne vie et moeurs*).<sup>7</sup>

#### Licensure

Registration with one of the Bars of Haiti is necessary, as well as completion of a two-year internship in a Haitian Bar. Attorneys must also pass an admission exam called *Certificat d'Aptitude à la Profession d'Avocat*.<sup>8</sup>

### The Role of Foreign Lawyers

Based on public information, it does not seem possible for non-Haitian nationals to practice as attorneys in Haiti. Article 5 of the Decree of March 29, 1979 states Haitian nationality among the required conditions, without mentioning any alternative methods for non-Haitian nationals to practice law in Haiti.<sup>9</sup>

### Legal Regulation of Lawyers

The profession of lawyer in Haiti is regulated by the Decree of March 29, 1979.

---

<sup>4</sup> See the Center of Research and Legal Information available at <http://haitijustice.com/crij/systemejudiciare> (last visited on September 4, 2015).

<sup>5</sup> Ibid.

<sup>6</sup> See Art. 175 of the Haitian Constitution.

<sup>7</sup> See the Decree of March 29, 1979 available at <http://cabinetjacquesetassocies.com/new/wp-content/uploads/2015/03/decret-du-29-mars-1979-reglementant-la-profession-d-avocat.pdf> (last visited on September 4, 2015).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid., Art 5.



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### State-Subsidized Legal Aid

The idea of legal aid was contemplated in a law of 1864 but only implemented in the early 2000s upon the initiative of the Haitian lawyer René Magloire. A National Legal Aid System project was put in place in 2007 with the collaboration of a Swedish NGO, the International Legal Assistance Consortium (ILAC), and the United Nations' Mission in Haiti (MINUSTAH).<sup>10</sup> The Legal Aid Bureaus were established to provide indigent people with free legal assistance, ranging from alternative dispute resolution to representation before courts. They work in collaboration with the Haitian Bar Associations that provide almost the entirety of their staff.<sup>11</sup>

There are currently four Legal Aid Bureaus established in Port-au-Prince, and four new bureaus are anticipated to be established imminently.<sup>12</sup>

### Eligibility Criteria

#### Financial Means

The allocation of legal aid is only based on financial means and does not take into account the likelihood of a case succeeding.<sup>13</sup>

#### Legal Issues/Case Type

The Legal Aid Bureau's activity is limited to penal matters. For criminal matters, the attorney will be directly solicited by the tribunal concerned rather than requiring the applicant to request the legal aid, as is the case for correctional matters.<sup>14</sup> Legal aid can be given for all or part of the proceedings, from provisional detention to trials before the Court of Cassation.<sup>15</sup> In addition, Legal Aid Bureaus provide free of charge legal consultations on all kinds of legal matters (civil law, labor law, commercial law etc.)

#### Applicant Type

Legal aid is available for any physical persons, either underage or adult, defendant or applicant.<sup>16</sup>

### Mandatory assignments to Legal Aid Matters

Are Private Attorneys Required to Accept Matters Assigned to Them by A Court or Legal Aid Scheme, or are Assignments Voluntary?

Legal aid is provided by attorneys who are members of the Legal Aid Bureaus. They are helped by a dozen trainees whose commitment is counted as part of the mandatory internship required to become an

---

<sup>10</sup> See the Barreau de Liège study available at <http://open.barreaudeliège.be/2013/06/06/laide-legale-en-haiti/2/> (last visited on September 4, 2015).

<sup>11</sup> See the MINUSTAH website available at <http://www.minustah.org/bureaux-daide-legale-la-justice-pour-les-plus-demunis/> (last visited on September 4, 2015).

<sup>12</sup> See the press article from the « Haiti Libre » website, available at <http://www.haitilibre.com/article-14350-haiti-justice-4-nouveaux-bureaux-d-assistance-legale.html> (last visited on September 4, 2015).

<sup>13</sup> See the Barreau de Liège study available at <http://open.barreaudeliège.be/2013/06/06/laide-legale-en-haiti/2/> (last visited on September 4, 2015).

<sup>14</sup> The Haitian penal system distinguishes between three types of penal infringements according to their level of seriousness :crime (criminal matters), délit (correctional matters),and contravention (police tribunal).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.



attorney.<sup>17</sup> In view of the available information on the topic, the attorneys seem to be required to accept legal aid matters when so allocated by the Chairman of the Bar.

### Are Private Attorneys Compensated, Even at A Reduced Fee, for Such Assigned Matters?

The attorney members of the Legal Aid Bureaus are remunerated by the State, and earn around US\$300 per month.<sup>18</sup>

### Unmet Needs and Access Analysis

The legal aid system in Haiti is an innovative solution to Haitian society's lack of access to justice. However, considering the tremendous volume of work that needs to be done, the system is not sufficient to cope with all the demands of indigent people. According to public sources, the members of the Legal Aid Bureaus are overwhelmed as non-member attorneys are not permitted to provide legal aid.<sup>19</sup>

Furthermore, the Haitian legal aid system is an unstable solution as it is completely dependent on international aid for funding. Although the National Legal Aid System project has no official legal existence, the Haitian Ministry of Justice has been associated with the project from its creation, and is meant to gradually take over the financing of the legal aid system. However, when the ILAC and the UNASUR, the two main contributors, stopped funding the National Legal Aid System in 2012, all the bureaus located outside Port-au-Prince shut down.<sup>20</sup>

### Alternative Dispute Resolution

#### Mediation, Arbitration, Etc.

The Chamber of Conciliation and Arbitration of Haiti (*Chambre de Conciliation et d'Arbitrage d'Haïti (CCAH)*) was created on October 29, 2007 by the Chamber of Commerce and Industry (*Chambre de Commerce et d'Industrie*), through a partnership with the European Union and the Inter-American Development Bank. It aims to promote alternative dispute resolution.<sup>21</sup>

A mediation procedure is carried out if the contract from which the dispute arises contains a mediation clause, or if the parties commonly agree to proceed to mediation before any legal action within the courts. The mediation procedure can also be proposed to the parties by the CCAH upon a request for arbitration. The mediator is selected by the Designation and Ratification Commission of the CCAH, and his/her fees are set according to a tariff grid and are borne by the parties. The duration of the mediation procedure cannot exceed two months.<sup>22</sup>

In arbitrations, arbitrators are selected by the Designation and Ratification Commission of the CCAH on a proposal from the parties. The number of arbitrators is decided by either the parties or the Designation and Ratification Commission of the CCAH. Awards are expected to be rendered within

---

<sup>17</sup> Ibid.

<sup>18</sup> See the UNDP report available at [http://www.undp.org/content/dam/haiti/docs/emancipation\\_des\\_femmes/UNDP\\_HT\\_Haiti%20Report%20-Assistance%20legale-Avril2013.pdf](http://www.undp.org/content/dam/haiti/docs/emancipation_des_femmes/UNDP_HT_Haiti%20Report%20-Assistance%20legale-Avril2013.pdf) (last visited on September 4, 2015).

<sup>19</sup> See the Barreau de Liège study available at <http://open.barreauliege.be/2013/06/06/laide-legale-en-haiti/2/> (last visited on September 4, 2015).

<sup>20</sup> Ibid.

<sup>21</sup> See the Chamber of Commerce and Industry website available at <http://www.ccih.org.ht/home/presentation-de-la-ccih/la-chambre-darbitrage/> (last visited on September 4, 2015).

<sup>22</sup> See the Alternative Dispute Resolutions Regulation regarding mediation available at [http://adresources.com/docs/adr/3-0-902/2007\\_haiti\\_ccah\\_mediation\\_rules\\_fr.pdf](http://adresources.com/docs/adr/3-0-902/2007_haiti_ccah_mediation_rules_fr.pdf) (last visited on September 4, 2015).



six months and may be appealed except in the case of internal arbitration where both parties are Haitian nationals.<sup>23</sup>

### Ombudsman

The Haitian Ombudsman, established in 1987, is called the *Protecteur du citoyen et de la citoyenne*. The Ombudsman is selected by the President of Haiti, the President of the Senate and the President of the Chamber of Deputies, for a term of seven years. The role is to ensure that the State keeps its international commitments regarding human rights, as well as to protect citizens against all forms of abuses from the public administration. In this regard, the Ombudsman can conduct investigations if they believe a citizen was aggrieved by the public administration, or if a complaint has been submitted. In addition, they can make a recommendation to fix the damage done to the citizen, and propose any reform which might improve the functioning of the public administration.<sup>24</sup>

## PRO BONO ASSISTANCE

### Pro bono Opportunities

#### Private Attorneys

Pro bono initiatives are usually carried out individually by lawyers who have received specific training in human rights, either in Haiti or abroad. There are very few restrictions imposed on the legal profession, in particularly regarding advertisement. This allows for proactive work in defending vulnerable people who would not otherwise have access to a lawyer.

Over time, a number of platforms have been created that facilitate pro bono work by private attorneys. An example is the International Attorneys Bureau (*Bureau des Avocats Internationaux* (BAI)),<sup>25</sup> based in Port-au-Prince. It was created in 1995 and works closely with the Institute for Justice and Democracy in Haiti (IJDH). It aims to provide legal assistance to victims of human rights violations, mainly by helping them engage with judicial authorities and representing them before international courts. The BAI's most prominent case was the Raboteau Massacre trial, during which 57 defendants were convicted. In addition, the BAI also provides assistance to NGOs, mainly in the form of legal analysis and training. Finally, the BAI has been very involved in training Haitian human rights lawyers to defend vulnerable people in Haiti efficiently.

The Lawyers' Earthquake Response Network is a humanitarian project consisting of international attorneys working in Haiti. They aim to provide assistance to victims of the 2010 earthquake, mainly orphans and women, who live under the constant threat of sexual abuses in displacement camps.

Lastly, the *Défenseur des Opprimés* (the Advocate of the Oppressed) is a Haitian organization based in Port-au-Prince, consisting of Haitian lawyers who provide legal assistance to people in need.

#### Law Firm Pro bono Programs

Based on public information, law firms do not generally have established pro bono programs. Considering the very small number of domestic law firms and the absence of international law firms in the territory, pro bono initiatives are mostly carried out by private attorneys as noted above.

---

<sup>23</sup> See the Alternative Dispute Resolutions Regulation regarding arbitration available at [http://adresources.com/docs/adr/3-0-905/2007\\_haiti\\_ccah\\_arbitration\\_rules\\_fr.pdf](http://adresources.com/docs/adr/3-0-905/2007_haiti_ccah_arbitration_rules_fr.pdf) (last visited on September 4, 2015).

<sup>24</sup> See the Bureau of the Protection of Citizens website available at [http://www.protectioncitoyenhaiti.org/index.php?option=com\\_content&view=article&id=53&Itemid=64](http://www.protectioncitoyenhaiti.org/index.php?option=com_content&view=article&id=53&Itemid=64) (last visited on September 4, 2015).

<sup>25</sup> See the Institute for Justice and Democracy in Haiti website available at <http://www.ijdh.org/about/> (last visited on September 4, 2015).



## Legal Department Pro bono Programs

Based on public information, legal departments of companies do not generally have pro bono programs.

## Non-Governmental Organizations (NGOs)

Although pro bono has not yet integrated within law firms and companies' practices, many international NGOs get involved in pro bono and humanitarian actions in Haiti, particularly following the 2010 earthquake. Lawyers Without Borders Canada, in association with the Haitian Ministry for Women Rights together with local NGOs, such as SOFA and Kay Famn, have opened legal centres in Port-au-Prince. These have Haitian attorneys who provide legal assistance in both criminal and civil matters.<sup>26</sup>

Furthermore, local NGOs have also been involved in defending human rights in Haiti and advocating immediate change to remediate the shortfalls of the Haitian legal system. The civil society has particularly been involved in defending women's rights. For instance, the KOFVIV (*Komisyon Fanm Viktim Pou Viktim* - the Commission of Women Victims for Victims) is focused on gender-based violence in Haiti and, in March 2011, it participated in the hearing before the Inter-American Commission on Human Rights in Washington, DC regarding the crisis of sexual violence in Haiti.<sup>27</sup> Kay Famn, Famm Deside and SOFA are among the most dynamic organizations and are coordinated by the National Coordination for the Women rights' Advocacy (*Coordination Nationale pour le Plaidoyer pour les droits des Femmes* (CONAP)). These NGOs often provide women with multidisciplinary services such as psychological support, medical care and legal assistance, even though most of the volunteers do not have any legal qualifications.<sup>28</sup>

## Bar Association Pro bono Programs

As mentioned, the Haitian Bar Associations are highly involved in the State-subsidized legal aid system; however, their activities do not, based on public information, seem to extend to pro bono programs.

## Historic Development and Current State of Pro bono

In Haiti, pro bono is still at an early stage of development. As such, there is insufficient evidence from which to draw accurate conclusions regarding its historic development.

## Current State of Pro bono

### Laws and Regulations Impacting Pro bono

#### Statutorily Mandated Minimum Legal Fee Schedule

According to Article 58 of the Decree of March 29, 1979, lawyers are remunerated on the basis of the recovered debt or financial penalty imposed, if any. The decree sets the legal percentage that has to be applied by attorneys when calculating their fees, if not already set in the contract signed by the lawyer and their client. The law authorizes them to claim 20% of the amount allocated to their client. If the dispute was dealt with prior to any proceedings, through mediation for instance, the lawyer is entitled to claim 10% of the amount of money received by the client.<sup>29</sup> Therefore, an attorney may claim less than the percentage introduced in this decree. In addition, the decree does not mention any prohibition on free legal services.

---

<sup>26</sup> See the Lawyers Without Borders Canada website available at <http://www.asfcanada.ca/fr/asf-en-action/programmes/15/haiti> (last visited on September 4, 2015).

<sup>27</sup> See the press article from the « CommonDreams » website available at <http://www.commondreams.org/newswire/2011/03/23/international-human-rights-hearing-rape-epidemic-haiti> (last visited on September 4, 2015).

<sup>28</sup> See the UNDP report available at [http://www.undp.org/content/dam/haiti/docs/emancipation\\_des\\_femmes/UNDP\\_HT\\_Haiti%20Report%20-Assistance%20legale-Avril2013.pdf](http://www.undp.org/content/dam/haiti/docs/emancipation_des_femmes/UNDP_HT_Haiti%20Report%20-Assistance%20legale-Avril2013.pdf) (last visited on September 4, 2015).

<sup>29</sup> See the Art. 58 of the Decree of March 29, 1979.



However, if assigned by the State to a legal aid matter, the lawyer is not allowed to claim any fees from their client.

#### **Rules Directly Governing Pro bono Practice**

Publicly available information does not seem to indicate any legal restriction directly governing pro bono work in Haiti. The Decree of March 29, 1979, which regulates the attorney profession, does not mention any prohibition regarding advertisement.

#### **Regulations Imposing Practice Limitations on In-House Counsel**

Publicly available information does not seem to indicate any regulation imposing practice limitations on in-house counsels.

#### **Socio-Cultural Barriers to Pro bono or Participation in the Formal Legal System**

The inefficient legal system in Haiti is arguably a key barrier to pro bono development. The Haitian justice system suffers from a lack of proper training; most of Haitian attorneys have no knowledge about human rights infringements or gender-related abuses and most of the members of the Legal Aid Bureaus, representing indigent people before trials, are law students or only have a Bachelor's of Law degree.<sup>30</sup> In addition, the legal codes upon which the legal system relies have not been updated since they entered into force, and they do not necessarily reflect current needs. The main reason of this dysfunction, though, is the serious lack of public trust in the judiciary. Alleged corruption, executive control over the judiciary, and systemic inefficiencies has led to a gap between the Haitian legal system and a society reluctant to resort to law. In 2011, 80% of prisoners were held in provisional detention, and one third of them were detained for more than a year, whereas the law clearly states that provisional detention cannot exceed 48 hours.<sup>31</sup> In addition, according to a study led by the United Nations Development Program (UNDP), only 53% of the respondents think that the Haitian tribunals are just and impartial, while 35.7% believe that anyone can escape being sentenced by bribing the magistrates.<sup>32</sup>

#### **Pro bono Resources**

Useful information on legal aid and pro bono opportunities in Haiti can be found on the following websites, mostly in French:

- Ministry of Justice: <http://www.mjsp.gouv.ht/presentation.htm> (last visited on September 4, 2015)
- Chamber of Commerce and Industry: <http://www.ccih.org.ht/home/> (last visited on September 4, 2015)
- MINUSTAH: <http://www.minustah.org/> (last visited on September 4, 2015)
- The Institute for Justice and Democracy in Haiti: <http://www.ijdh.org/about/> (last visited on September 4, 2015)

## CONCLUSION

Given Haiti's inefficient legal system and economic difficulties, especially following the devastating earthquake of 2010, a pro bono practice has not fully integrated into the Haitian legal culture. The mistrust of Haitian people in the administration of their own justice does not provide incentives for pro bono initiatives. Moreover, international NGOs tend to focus more on financial and humanitarian support rather than on law development projects. However, there is some optimism in relation to potential future development of pro bono, as the civil society itself is becoming more aware of the positive impact that law could have on Haitian society. An increasing number of local NGOs are granting more Haitians access to justice, especially with regards to women's rights. Reforming the Haitian legal system and improving

<sup>30</sup> See the Barreau de Liège study available at <http://open.barreauliege.be/2013/06/06/laide-legale-en-haiti/2/> (last visited on September 4, 2015).

<sup>31</sup> See [http://www.memoireonline.com/09/11/4806/m\\_Le-systeme-judiciaire-en-Haiti-et-les-obstacles-qui-paralysent-son-developpement8.html](http://www.memoireonline.com/09/11/4806/m_Le-systeme-judiciaire-en-Haiti-et-les-obstacles-qui-paralysent-son-developpement8.html) (last visited on September 4, 2015).

<sup>32</sup> See the UNDP report available at [http://www.undp.org/content/dam/haiti/docs/emancipation\\_des\\_femmes/UNDP\\_HT\\_Haiti%20Report%20-Assistance%20legale-Avril2013.pdf](http://www.undp.org/content/dam/haiti/docs/emancipation_des_femmes/UNDP_HT_Haiti%20Report%20-Assistance%20legale-Avril2013.pdf) (last visited on September 4, 2015).



lawyers' training seem to be essential conditions to allow further development of pro bono practice in Haiti.

September 2015

Pro Bono Practices and Opportunities in Haiti

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Hong Kong

### INTRODUCTION

The provision of pro bono services is often seen as secondary to the government-funded legal aid system in Hong Kong. However, the term pro bono has become very “topical” in recent years and there is increasing recognition within Hong Kong’s legal community that legitimate legal needs are not being addressed through traditional legal aid. Over the past few years, many international law firms have expanded their pro bono practices in the region. This chapter discusses the legal profession, the legal aid system and pro bono opportunities and considerations in Hong Kong.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The constitutional framework of Hong Kong’s legal system is provided by the Basic Law, which is the constitutional document for Hong Kong, sanctioned by the National People’s Congress of the People’s Republic of China (the “PRC”).<sup>1</sup> The sources of law in Hong Kong include national law, Basic Law, common law and the rules of equity, statute law enacted in Hong Kong, Chinese customary law, and international law.<sup>2</sup>

##### The Courts

The courts of justice in Hong Kong are made up of the following: the Court of Final Appeal, the High Court (which includes the Court of Appeal and the Court of First Instance), the District Court (which includes the Family Court), the Lands Tribunal, the Magistrates’ Courts (which include the Juvenile Court), the Coroner’s Court, the Labor Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal.<sup>3</sup>

The Magistrates’ Courts hear a wide range of criminal offenses, both summary and indictable.<sup>4</sup> The District Court has both a criminal and civil jurisdiction.<sup>5</sup> The High Court comprises the Court of Appeal and the Court of First Instance, and both courts have appellate and original jurisdiction.<sup>6</sup> The Court of Final Appeal is the highest appellate court in Hong Kong.<sup>7</sup> In addition to the courts, there are a large number of tribunals that adjudicate disputes relating to specific subject matters, such as the Lands Tribunal, the Labor Tribunal and the Small Claims Tribunal.

---

<sup>1</sup> MYGovHK, Hong Kong: The Facts, Legal System, available at [http://www.gov.hk/en/about/abouthk/factsheets/docs/legal\\_system.pdf](http://www.gov.hk/en/about/abouthk/factsheets/docs/legal_system.pdf) (last visited on September 4, 2015).

<sup>2</sup> THE DEPARTMENT OF JUSTICE OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, The Legal System in Hong Kong-5<sup>th</sup> Edition, available at [http://www.doj.gov.hk/eng/legal/index\\_5th.html](http://www.doj.gov.hk/eng/legal/index_5th.html) (last visited on September 4, 2015); see also THE DUTY LAWYER SERVICE, HONG KONG SPECIAL ADMINISTRATIVE REGION, Our Aim, <http://www.dutylawyer.org.hk/en/about/aim.asp> (last visited on September 4, 2015).

<sup>3</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Introduction, [http://www.judiciary.gov.hk/en/crt\\_services/pphl/html/guide.htm](http://www.judiciary.gov.hk/en/crt_services/pphl/html/guide.htm) (last visited on September 4, 2015).

<sup>4</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Magistrates’ Courts, [http://www.judiciary.gov.hk/en/crt\\_services/pphl/html/mag.htm](http://www.judiciary.gov.hk/en/crt_services/pphl/html/mag.htm) (last visited on September 4, 2015).

<sup>5</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, The District Court, [http://www.judiciary.gov.hk/en/crt\\_services/pphl/html/dc.htm](http://www.judiciary.gov.hk/en/crt_services/pphl/html/dc.htm) (last visited on September 4, 2015).

<sup>6</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, High Court, [http://www.judiciary.gov.hk/en/crt\\_services/pphl/html/hc.htm](http://www.judiciary.gov.hk/en/crt_services/pphl/html/hc.htm) (last visited on September 4, 2015).

<sup>7</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Court of Final Appeal, [http://www.judiciary.gov.hk/en/crt\\_services/pphl/html/cfa.htm](http://www.judiciary.gov.hk/en/crt_services/pphl/html/cfa.htm) (last visited on September 4, 2015).



The Hong Kong courts fall under the umbrella of the Hong Kong Judiciary, independent from the Executive and the Legislature of the Hong Kong Special Administrative Region (“**HKSAR**”) Government. The Judiciary is headed by the Chief Justice of the Court of Final Appeal who oversees both judicial and administrative matters. As of July 2015, there were over 190 judges and magistrates serving at different levels of the court and tribunal system in Hong Kong.<sup>8</sup> As stipulated by the Basic Law, the Chief Executive of the HKSAR, with recommendation of the Judicial Officers Recommendation Commission, appoints all judges. The Judicial Officers Recommendation Commission is an independent statutory body created pursuant to the Judicial Officers Recommendation Commission Ordinance (Cap. 92) and its membership is drawn from local judges, persons from the legal profession, as well as reputable persons from other sections.

## The Practice of Law

The legal profession in Hong Kong is a self-governing system, where lawyers either practice as barristers or solicitors, but not both.<sup>9</sup>

### Licensure

#### The Role of Barristers

Barristers are legal practitioners, experts in advocacy and litigation.<sup>10</sup> Generally, only barristers have the right of audience<sup>11</sup> in the Court of Appeal and the Court of Final Appeal.<sup>12</sup> Access to barristers is normally granted through solicitors, the Department of Justice, or members of professional bodies recognized by the Hong Kong Bar Association.<sup>13</sup> A candidate becomes a barrister in Hong Kong either via the “solicitor” route or the “overseas lawyer” route.<sup>14</sup> A qualified solicitor in Hong Kong must have been admitted for at least three years before his application for admission as a barrister.<sup>15</sup> In addition to these qualifications, all candidates must also undertake pupillage for six months before they are admitted as barristers, and another additional six months before they are able to practice as barristers.<sup>16</sup>

---

<sup>8</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, List of Judge and Judicial Officers, available at <http://www.judiciary.gov.hk/en/organization/judges.htm> (last visited on September 4, 2015).

<sup>9</sup> THE DEPARTMENT OF JUSTICE OF HONG KONG SPECIAL ADMINISTRATIVE REGION, The Legal System in Hong Kong, <http://www.doj.gov.hk/eng/legal/> (last visited on September 4, 2015).

<sup>10</sup> HONG KONG BAR ASSOCIATION, About Us, <http://www.hkba.org/the-bar/aboutus/index.html> (last visited on September 4, 2015).

<sup>11</sup> A right of audience is a right of lawyers to appear and conduct proceedings in court on behalf of their client.

<sup>12</sup> HONG KONG BAR ASSOCIATION, About Us, *supra* n.17.

<sup>13</sup> HONG KONG BAR ASSOCIATION’S CODE OF CONDUCT, paragraph 50(a), available at <http://www.hkba.org/the-bar/code-of-conduct/code-of-conduct.html> (last visited on September 4, 2015).

<sup>14</sup> The Legal Aid Ordinance § 31, available at <http://www.hklii.hk/eng/hk/legis/ord/159/s31.html> (last visited on September 4, 2015). A barrister shall not be qualified to practise as such- (a) subject to subsection (2), unless he has completed the prescribed qualifying period of active practice; (b) unless he holds a valid practising certificate; (c) having qualified for admission as a barrister by virtue of section 27(1)(a)(i) or (ii) (as that section existed before its repeal by the Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000)), unless he continues to be a barrister in England or Northern Ireland or an advocate in Scotland and is not there suspended from practice as such; (Amended 42 of 2000 s. 12); (d) if he is suspended from practice under section 37; (Amended 61 of 1992 s. 16); (e) if he is on the role of solicitors; (Replaced 70 of 1991 s. 7. Amended 61 of 1992 s. 16; 42 of 2000 s. 12); (f) if he is an employed barrister within the meaning of section 31C(1). (Added 42 of 2000 s. 12).

<sup>15</sup> HONG KONG BAR ASSOCIATION, Admission and Registration Rules, available at <http://www.hkba.org/admission-pupillage/general/> (last visited on September 4, 2015).

<sup>16</sup> *Id.*



### The Role of Solicitors

In contrast to barristers, solicitors may offer a variety of legal services ranging from land and property, personal and family, to commercial and criminal matters. A solicitor's right of audience is traditionally limited to the lower courts. A candidate becomes a solicitor in Hong Kong either via the "trainee solicitor" route or the "overseas lawyer" route. In the "trainee solicitor" route, the candidate first completes a Bachelor of Laws from an eligible institution. Then the candidate needs to complete and pass the Postgraduate Certificate in Laws.<sup>17</sup> The next step in the "trainee solicitor" route requires the candidate to undergo two years of training in a Hong Kong law firm as a trainee solicitor under a trainee solicitor contract, during which time the trainee solicitor is required to gain experience in at least three practice areas.<sup>18</sup> After the trainee solicitor completes his two-year term, he is then able to apply for admission as a solicitor.<sup>19</sup>

### The Role of Foreign Lawyers

A foreign lawyer wishing to practice in Hong Kong without being admitted as a solicitor, may only do so within a Hong Kong firm or a foreign firm.<sup>20</sup> Lawyers qualified in jurisdictions outside Hong Kong may apply to be registered as foreign lawyers. Registered foreign lawyers may only practice the law of their jurisdictions and are prohibited from practicing Hong Kong law.<sup>21</sup>

### Demographics

As of July 2015, there were more than 1,200 barristers in Hong Kong and more than 8,000 solicitors<sup>22</sup> working in more than 800 solicitor law firms<sup>23</sup> in Hong Kong out of a total civilian population of approximately seven million.<sup>24</sup> In addition to barristers and solicitors, there were approximately 1,340 registered foreign lawyers in Hong Kong as of September 2014.<sup>25</sup>

### Legal Regulation of Lawyers

The legal profession in Hong Kong is largely self-regulated. The Hong Kong Bar Association governs affairs relating to the regulation of barristers while the Law Society of Hong Kong is responsible for managing affairs concerning solicitors.

---

<sup>17</sup> Postgraduate Certificate in Laws or PCLL is defined in Section 2(1) of the Legal Practitioners Ordinance as "a Postgraduate Certificate in Laws awarded by the University of Hong Kong, the City University of Hong Kong, the City Polytechnic of Hong Kong or the Chinese University of Hong Kong." The Legal Aid Ordinance § 2, available at [http://www.hkii.hk/eng/hk/legis/ord/159/s2.html#postgraduate\\_certificate\\_in\\_laws](http://www.hkii.hk/eng/hk/legis/ord/159/s2.html#postgraduate_certificate_in_laws) (last visited on September 4, 2015).

<sup>18</sup> LAW SOCIETY OF HONG KONG, *Becoming a Solicitor*, available at [http://www.hklawsoc.org.hk/pub\\_e/admission/AdmissionasaSolicitor/pdf/Booklet\\_on\\_becoming\\_a\\_solicitor.pdf](http://www.hklawsoc.org.hk/pub_e/admission/AdmissionasaSolicitor/pdf/Booklet_on_becoming_a_solicitor.pdf) (last visited on September 4, 2015).

<sup>19</sup> Id.

<sup>20</sup> LAW SOCIETY OF HONG KONG, *Becoming a Solicitor*, available at [http://www.hklawsoc.org.hk/pub\\_e/admission/AdmissionasaSolicitor/pdf/Booklet\\_on\\_becoming\\_a\\_solicitor.pdf](http://www.hklawsoc.org.hk/pub_e/admission/AdmissionasaSolicitor/pdf/Booklet_on_becoming_a_solicitor.pdf) (last visited on September 4, 2015).

<sup>21</sup> Foreign Lawyers Registration Rules, paragraph 12, available at [http://www.hklawsoc.org.hk/pub\\_e/professionalguide/volume2/default.asp?cap=8](http://www.hklawsoc.org.hk/pub_e/professionalguide/volume2/default.asp?cap=8) (last visited on September 4, 2015).

<sup>22</sup> THE LAW SOCIETY OF HONG KONG, *Members with Practising Certificate*, [http://www.hklawsoc.org.hk/pub\\_e/memberlawlist/mem\\_withcert.asp](http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_withcert.asp) (last visited on September 4, 2015).

<sup>23</sup> THE LAW SOCIETY OF HONG KONG, *Hong Kong Solicitors' Firms*, [http://www.hklawsoc.org.hk/pub\\_e/memberlawlist/mem\\_firm.asp](http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_firm.asp) (last visited on September 4, 2015).

<sup>24</sup> HONG KONG BAR ASSOCIATION, *Bar List*, <http://www.hkba.org/the-bar/bar-list/index-new-eng.html> (last visited on September 4, 2015).

<sup>25</sup> THE LAW SOCIETY OF HONG KONG, *Registered Foreign Lawyers*, [http://www.hklawsoc.org.hk/pub\\_e/memberlawlist/mem\\_foreignlawyers.asp](http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_foreignlawyers.asp) (last visited on September 4, 2015).



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### State-Subsidized Legal Aid

Because of high legal fees in Hong Kong, the Hong Kong Government has established programs, such as legal aid services by the Hong Kong Legal Aid Department (the “**Legal Aid Department**”)<sup>26</sup> and the Duty Lawyer Service,<sup>27</sup> in order to provide legal assistance to those individuals who lack financial means. Established by the Legal Aid Ordinance,<sup>28</sup> the Legal Aid Department is a separate administrative department of the Hong Kong Government that provides legal representation to eligible applicants in civil and criminal proceedings.<sup>29</sup> Any person, regardless of his or her residency in Hong Kong, who is involved in legal proceedings in the District Court, the Court of First Instance, the Court of Appeal, the Court of Final Appeal, and committal proceedings in the Magistrates' Courts may apply for legal assistance.<sup>30</sup> However, even when an application for legal aid is accepted, the applicant may be required to contribute towards the costs and expenses incurred by the Legal Aid Department, depending on the financial resources of each applicant.<sup>31</sup> Moreover, in certain cases (e.g. successful recovery or preservation of property or damages), the aided persons in the proceedings are required to reimburse the Legal Aid Department for the costs incurred.<sup>32</sup>

Legal aid may be provided through three different schemes: (1) Ordinary Legal Aid, (2) Supplementary Legal Aid, and (3) Criminal Legal Aid.<sup>33</sup> All three schemes are open to applicants who pass the “means test” and the “merits test,” regardless of whether they are Hong Kong residents.<sup>34</sup> The purpose of the means test is to ensure that the applicant does not otherwise have access to affordable legal services. The standard for the means test differs for each legal aid scheme, as explained further below.<sup>35</sup> The purpose of the merits test is to determine whether an applicant has a reasonable chance of success in the matter in question and whether the grant of legal aid to an applicant is justified.<sup>36</sup> The three legal aid schemes operate differently in significant ways.

### Civil Proceedings

Ordinary Legal Aid provides assisted legal services in civil matters, including family and matrimonial disputes, personal injury claims, employment disputes, contractual disputes, immigration matters and professional negligence claims. Ordinary Legal Aid is not available for certain types of matters. To qualify

---

<sup>27</sup> See mem\_foreignlawyers.asp” [http://www.hklawsoc.org.hk/pub\\_e/memberlawlist/mem\\_foreignlawyers.asp](http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_foreignlawyers.asp) (last visited on September 4, 2015).

<sup>28</sup> The Legal Aid Ordinance § 3, available at <http://www.hklii.hk/eng/hk/legis/ord/91/s3.html> (last visited on September 4, 2015).

<sup>29</sup> GUIDE TO LEGAL AID SERVICES IN HONG KONG at 5, available at [http://www.lad.gov.hk/eng/documents/ppr/publication/guide\\_to\\_legal\\_aid\\_services\\_in\\_hongkong\(e\)\\_lowr.pdf](http://www.lad.gov.hk/eng/documents/ppr/publication/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf) (last visited on September 4, 2015).

<sup>30</sup> LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Overview, available at <http://www.lad.gov.hk/eng/las/overview.html> (last visited on September 4, 2015).

<sup>31</sup> The Legal Aid Ordinance § 3, supra n.34.

<sup>32</sup> LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, FAQ, available at <http://www.lad.gov.hk/eng/las/faq.html> (last visited on September 4, 2015).

<sup>33</sup> The Legal Aid Ordinance § 3, supra n.34.

<sup>34</sup> Id. at 4.

<sup>35</sup> LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, FAQ, <http://www.lad.gov.hk/eng/las/faq.html> (last visited on September 4, 2015).

<sup>36</sup> GUIDE, supra n.35, at 13.



for Ordinary Legal Aid, an applicant must pass the merits test and the means test. Applicants may be required to pay a contribution towards their legal fees, which is calculated in accordance with their financial resources.

Supplementary Legal Aid covers cases involving personal injury or death, as well as medical, dental or legal professional negligence, where the claim for damages is likely to exceed HK\$60,000.<sup>37</sup> It also covers claims under the Employee's Compensation Ordinance. Supplementary Legal Aid requires the applicant to pass the merits test and the means test. Since Supplementary Legal Aid is a self-financing scheme funded by contributions paid and compensation recovered, applicants must pay an initial application fee plus an interim contribution once their application has been accepted.<sup>38</sup>

### Criminal Proceedings

Criminal Legal Aid provides legal services to an accused person in committal proceedings<sup>39</sup> in the Magistrates' Court, cases tried in the District Court and the Court of First Instance and in all criminal appeals. Under the merits test for Criminal Legal Aid, legal representation will be provided to an accused for committal proceedings and for trials in the District Court and the Court of First Instance if it is in the interests of justice to do so.<sup>40</sup> In criminal appeals, legal representation will be provided if there are meritorious grounds for appeal, except for cases involving a charge of murder, treason or piracy with violence, where legal aid must be granted even if there are no meritorious grounds for appeal.<sup>41</sup> The means test for Criminal Legal Aid has a financial eligibility limit.<sup>42</sup> If an applicant's financial resources exceed the limit, the Director of Legal Aid may waive the limit if he determines that it is in the interests of justice to do so.<sup>43</sup>

### Other Forms of Legal Aid

To complement Legal Aid, the Duty Lawyer Service was established in 1978 as an independent organization fully subsidized by the Hong Kong Government.<sup>44</sup> Managed by the Hong Kong Bar Association and the Law Society of Hong Kong, the Duty Lawyer Service provides legal assistance through four schemes: (1) the Duty Lawyer Scheme; (2) the Free Legal Advice Scheme; (3) the Tel-Law Scheme; and (4) the Convention Against Torture Scheme.

The Duty Lawyer Scheme provides legal representation to persons brought before the Magistrates' Courts, Juvenile Courts and Coroner's Courts. The Scheme also assigns volunteer lawyers to defendants facing extradition and hawkers (street sellers) with respect to their appeals to the Municipal Services Appeals Board. Like the Legal Aid schemes, in order to qualify for the Scheme, an applicant must pass a

---

<sup>37</sup> See LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Ordinary Legal Aid Scheme.

<sup>38</sup> LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Supplementary Legal Aid Scheme, available at <http://www.lad.gov.hk/eng/las/lac/slas.html> (last visited on September 4, 2015).

<sup>39</sup> Committal proceedings are proceedings before a Magistrate for determining whether or not there is enough evidence against a defendant for a criminal case to be transferred to the High Court for trial or sentence. LAW AND TECHNOLOGY CENTRE OF THE UNIVERSITY OF HONG KONG, Introduction to Some of the Legal Assistance Available in Hong Kong, available at <http://youth.clic.org.hk/en/usefulInfo/Free-or-subsidized-legal-assistance/Introduction-to-some-of-the-legal-assistance-available-in-Hong-Kong/> (last visited on September 4, 2015).

<sup>40</sup> GUIDE, supra n.35, at 18.

<sup>41</sup> Id. at 19.

<sup>42</sup> Id. at 18-19.

<sup>43</sup> Id. at 19.

<sup>44</sup> Our Aim, supra n.5.



merits test and a means test and pay a fixed handling charge, which may be waived in cases of genuine hardship.<sup>45</sup> In 2014, 27,201 defendants were represented via the Duty Lawyer Scheme.<sup>46</sup>

Under the Free Legal Advice Scheme, volunteer lawyers provide members of the public with preliminary advice on their legal problems. The Scheme has nine district offices located throughout Hong Kong. Much of the advice sought falls into areas including matrimonial, landlord and tenant, employment, estate administration, commercial and property disputes, criminal, personal injuries, bankruptcy and debts. The Scheme does not offer any follow-up services or ongoing representation of clients. There is no means test and the service is provided free of charge.<sup>47</sup> In 2014, 1,107 volunteer lawyers advised 6,727 persons seeking free legal advice.<sup>48</sup>

The Tel-Law Scheme is a 24-hour fully computerized system that provides the general public with free pre-taped legal information over the telephone. There are 80 topics available which fall into eight main categories: (1) family law; (2) land law; (3) criminal law; (4) employment law; (5) commercial, banking and sales of goods law; (6) administration and constitutional law; (7) environmental and tort law; and (8) general legal information. The tapes are available in Cantonese, Mandarin and English.<sup>49</sup> In 2014, the Tel-Law Scheme recorded a total of 23,692 calls.<sup>50</sup>

The Convention Against Torture (“CAT”) Scheme is a pilot program that provides legal services to claimants who have made a petition to the Immigration Department under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Specifically, the CAT scheme provides advice to the claimant regarding procedures, legal rights and merits of the claimant’s petition. Volunteer lawyers assist claimants in completing relevant questionnaires, accompany claimants during interviews and represent claimants at oral hearings.<sup>51</sup> As of December 31, 2014, the CAT Scheme processed a total of 7,574 claims from the Immigration Department.<sup>52</sup>

## Mandatory Assignments to Legal Aid Matters

### Unmet Needs and Other Options

Despite increasing competition within the legal profession, legal expenses are still considered high and unaffordable for a large segment of the Hong Kong community.<sup>53</sup> Hourly rates for high quality legal professionals in Hong Kong can be as high as, if not higher than, those for equivalent professionals in London.<sup>54</sup> Despite Hong Kong’s relatively generous legal aid system and the operations of various free

---

<sup>45</sup> DUTY LAWYER SCHEME, Annual Report 2014, [http://www.dutylawyer.org.hk/en/annual\\_14/overview.asp](http://www.dutylawyer.org.hk/en/annual_14/overview.asp) (last visited on September 4, 2015).

<sup>46</sup> THE DUTY LAWYER SERVICE, Means & Merits Tests, [http://www.dutylawyer.org.hk/en/annual\\_14/scheme.asp](http://www.dutylawyer.org.hk/en/annual_14/scheme.asp) (last visited on September 4, 2015).

<sup>47</sup> THE DUTY LAWYER SERVICE, Free Legal Advice Scheme, <http://www.dutylawyer.org.hk/en/free/free.asp> (last visited on September 4, 2015).

<sup>48</sup> Free Legal Advice Scheme, Annual Report 2014, [http://www.dutylawyer.org.hk/en/annual\\_14/advice.asp](http://www.dutylawyer.org.hk/en/annual_14/advice.asp) (last visited on September 4, 2015).

<sup>49</sup> THE DUTY LAWYER SERVICE, Tel-Law Scheme, [http://www.dutylawyer.org.hk/en/tellaw/tel\\_law.asp](http://www.dutylawyer.org.hk/en/tellaw/tel_law.asp) (last visited on September 4, 2015).

<sup>50</sup> Tel-Law Scheme, Annual Report 2014, [http://www.dutylawyer.org.hk/en/annual\\_14/tel-law.asp](http://www.dutylawyer.org.hk/en/annual_14/tel-law.asp) (last visited on September 4, 2015).

<sup>51</sup> THE DUTY LAWYER SERVICE, Convention Against Torture Scheme, available at <http://www.dutylawyer.org.hk/en/torture/torture.asp> (last visited on September 4, 2015).

<sup>52</sup> THE DUTY LAWYER SERVICE, Convention Against Torture Scheme, Annual Report 2014, [http://www.dutylawyer.org.hk/en/annual\\_14/torture.asp](http://www.dutylawyer.org.hk/en/annual_14/torture.asp) (last visited on September 4, 2015).

<sup>53</sup> Supply Study Report, *supra* n.2, at 3.

<sup>54</sup> *Id.*



legal advice schemes, the number of civil court hearings involving unrepresented litigants continues to increase. For example, more than one-half of the litigants in the District Court are unrepresented.<sup>55</sup> Moreover, even when an application for legal aid is accepted, the applicant may be required to contribute towards the costs and expenses incurred by the Department, depending on the financial capability of each applicant.

## Alternative Dispute Resolution

### Arbitration and Mediation

The Hong Kong judicial system has provided alternative dispute resolution (“ADR”) as a means of conflict resolution that seeks to minimize the costs of dispute resolution by avoiding expensive court costs<sup>56</sup> and to encourage the disagreeing parties to come to an agreement short of litigation. Arbitration and mediation are two of the most common forms of ADR.<sup>57</sup> In arbitration, it is the arbitrator(s), not a court judge, who issue(s) the final and binding arbitral award to the arbitration parties. An arbitration award has a status similar to a court judgment and is enforceable in a similar manner; parties can only challenge these awards in very exceptional circumstances.<sup>58</sup>

Mediation involves the appointment of a mediator, a trained and impartial third person, who helps and encourages the disputing parties to reach an agreement. Unlike arbitral awards which are immediately enforceable, parties in a mediation are not legally required to accept the terms of a settlement proposed in a mediation.<sup>59</sup> The Judiciary has encouraged parties to use mediation in particular aspects,<sup>60</sup> and some organizations, such as the Hong Kong Mediation Council and the Hong Kong Mediation Centre, may provide free mediation services for some cases.<sup>61</sup>

### Ombudsman

The Ombudsman is appointed by the Chief Executive of the HKSAR Government and serves as Hong Kong's watchdog. The Ombudsman handles complaints of maladministration against all Hong Kong government departments and agencies and statutory organizations he or she receives by conducting the needed inquiry, mediation, and/or full investigation. The Ombudsman may charge any person such reasonable fees as he determines in respect of any service approved by the Director of the Administration and provided by the Ombudsman to that person under the Ordinance<sup>62</sup>. In addition, the Ombudsman may also recover any fee payable to him as a civil debt.<sup>63</sup>

---

<sup>55</sup> Edwin Rekosh & Tze-wei Ng, Pro Bono Legal Work Can Help Advance Social Justice in Hong Kong, SOUTH CHINA MORNING POST (May 23, 2014), available at <http://www.scmp.com/comment/insight-opinion/article/1517880/pro-bono-legal-work-can-help-advance-social-justice-hong> (last visited on September 4, 2015).

<sup>56</sup> COMMUNITY LEGAL INFORMATION CENTRE, Alternative Dispute Resolution, <http://www.clc.org.hk/en/topics/ADR/all.shtml> (last visited on September 4, 2015).

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, What is Mediation, available at [http://mediation.judiciary.gov.hk/en/doc/What\\_is\\_Mediation-Eng.pdf](http://mediation.judiciary.gov.hk/en/doc/What_is_Mediation-Eng.pdf) (last visited on September 4, 2015).

<sup>61</sup> Id.

<sup>62</sup> The Legal Aid Ordinance § 9A, available at <http://www.hkllii.hk/eng/hk/legis/ord/397/s9a.html> (last visited on September 4, 2015).

<sup>63</sup> Id.



## PRO BONO ASSISTANCE

### Pro bono Opportunities

In addition to government-funded legal schemes and aids, there are a variety of pro bono opportunities in Hong Kong organized by private organizations to fill the gap in legal needs. One important benefit with pro bono services is that they address a broader spectrum of needs than those covered by Hong Kong legal aid schemes. Therefore, pro bono services may serve a broader social purpose by supporting the work of non-governmental organizations (“**NGOs**”), thus allowing legal professionals to help NGOs to better serve the disadvantaged populations in society. However, for a variety of reasons, many lawyers in Hong Kong do not provide any pro bono services to the public. This section surveys a number of pro bono resources that facilitate the provision of pro bono services in Hong Kong.

#### Private Attorneys

According to a study conducted by the Hong Kong Department of Justice in 2008, about one-half of barristers and one-third of solicitors provided pro bono services to the public in the six months prior to the date of the study.<sup>64</sup> Of those lawyers who provided pro bono services during that period, more than 10% of barristers and close to 40% of solicitors spent more than ten hours per month on pro bono work.<sup>65</sup> Of the pro bono opportunities available in Hong Kong, the most popular program among barristers and solicitors is the Free Legal Advice Scheme provided by the Duty Lawyer Service.<sup>66</sup>

#### Law Firm Pro bono Programs

In recent years, law firms in Hong Kong have become increasingly aware of the need to do more pro bono work. The Justice Centre Hong Kong (formerly Hong Kong Refugee Advice Centre) (the “**Justice Centre**”), a non-profit organization committed to providing human rights legal assistance to refugees, has developed an innovative pro bono working model whereby it encourages law firms to provide financial support and time to assist those with needs.<sup>67</sup> Through its pro bono partnership program, the Justice Centre provides volunteer lawyers from law firms with intensive training in human rights law. Volunteer lawyers, in turn, assist the Justice Centre by providing legal support, either through conducting legal research or assisting refugee protection claimants with their claims.

#### Non-Governmental Organizations (NGOs)

Many Hong Kong lawyers participate in programs organized by NGOs.

The Justice Centre Hong Kong (formerly Hong Kong Refugee Advice Centre) (the “**Centre**”) is an example of an NGO that provides pro bono legal services.<sup>68</sup> As a non-profit organization, the Centre aims to provide high-quality, pro bono legal advice to forced migrants (including refugees and torture survivors) in Hong Kong and to ensure that they have access to fair refugee status determination procedures.<sup>69</sup> Through its Corporate Pro bono Program, the Centre is currently partnered with 11 of Hong Kong’s international law firms, three academic and research institutions, as well as other entities for assistance

---

<sup>64</sup> Supply Study Report, *supra* n.2, at 22, 47.

<sup>65</sup> *Id.* at 23, 48.

<sup>66</sup> *Id.* at 22, 47.

<sup>67</sup> JUSTICE CENTRE OF HONG KONG, Partners, available at <http://www.justicecentre.org.hk/partners/> (last visited on September 4, 2015).

<sup>67</sup> *Id.*

<sup>68</sup> See generally JUSTICE CENTRE HONG KONG, available at <http://www.justicecentre.org.hk/> (last visited on September 4, 2015).

<sup>69</sup> *Id.*



with their casework.<sup>70</sup> Aleta Miller, Executive Director of the Centre, says: “Pro bono partnerships are essential to the Justice Centre’s ability to meet the needs of refugees and torture survivors. High quality legal support can mean the difference between life and death for some of the people we work with. By engaging in pro bono work with us, partners get the opportunity to change the human rights and pro bono landscape in Hong Kong, to use the rule of law to protect one of the most vulnerable groups and to make a tangible difference in the lives of the individuals we support.”<sup>71</sup>

Another NGO that has leveraged the pro bono support and resources of the legal community is Helpers for Domestic Helpers, a non-profit organization offering assistance to foreign domestic helpers.<sup>72</sup> Helpers for Domestic Helpers has partnered up with 50 lawyers from 13 law firms and companies to provide guidance on legal issues to domestic helpers.<sup>73</sup> The NGO has helped over 25,000 domestic workers since its establishment.<sup>74</sup> Holly Alan, who manages the clinic explained: “Many NGOs in Hong Kong, especially those that offer paralegal services like Helpers for Domestic Helpers, largely rely on pro bono legal assistance. We are lucky to have the support of a number of law firms in Hong Kong, increasing our capacity to serve people in need. Together, we endeavour to fulfil our mission of helping domestic workers who cannot possibly afford professional legal assistance to gain access to justice.”<sup>75</sup>

In addition, International NGO PILnet, a global network for public interest law that operates a pro bono clearinghouse pairing up NGOs needing legal services with providers of pro bono services, launched its Hong Kong office at the end of 2013.<sup>76</sup> The next year, PILnet held its inaugural Asia Pro bono Forum on May 23, 2014 in Hong Kong to introduce those with legal resources and knowledge to NGOs on the front lines of rights’ protections.<sup>77</sup> More than 180 entities including NGOs, law firms, and law schools participated in the Forum.<sup>78</sup>

#### Bar Association Pro bono Programs

Lawyers in Hong Kong can also participate in schemes organized by the Hong Kong Bar Association and the Hong Kong Law Society to provide free legal services to the public. For example, the Bar Free Legal Service Scheme, a program sponsored by the Hong Kong Bar Association, is the second most popular program among barristers. Through the program, barristers provide legal advice and representation where Legal Aid assistance is unavailable.<sup>79</sup> The Bar Free Legal Service Scheme mainly provides services that require the principal expertise of a barrister, which is the representation of clients at

---

<sup>70</sup> JUSTICE CENTRE HONG KONG, Partners, supra n.84.

<sup>71</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, available at <http://www.hk-lawyer.org/en/article.asp?articleid=2290&c=111> (last visited on September 4, 2015).

<sup>72</sup> See generally HELPERS FOR DOMESTIC HELPERS, available at <http://www.hdh-sjc.org/> (last visited on September 4, 2015).

<sup>73</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, supra n.90.

<sup>74</sup> HELPERS FOR DOMESTIC HELPERS, Partnership, available at <http://www.hdh-sjc.org/partnership/> (last visited on September 4, 2015).

<sup>75</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, supra n.90.

<sup>76</sup> PILNET: THE GLOBAL NETWORK FOR PUBLIC INTEREST LAW, About PILnet’s Asia Pro Bono Forum, available at <http://probono.hk/about> (last visited on September 4, 2015).

<sup>77</sup> Id.

<sup>78</sup> THE AMERICAN BAR ASSOCIATION JOURNAL, Growing Number of US Lawyers Are Doing Pro Bono Work in Other Countries, available at [http://www.abajournal.com/magazine/article/growing\\_numbers\\_of\\_u.s.\\_lawyers\\_are\\_doing\\_pro\\_bono\\_work\\_in\\_other\\_countries/](http://www.abajournal.com/magazine/article/growing_numbers_of_u.s._lawyers_are_doing_pro_bono_work_in_other_countries/) (last visited on September 4, 2015).

<sup>79</sup> Supply Study Report, supra n.2, at 22, 47.



hearings in courts and tribunals or giving specialist legal advice. Barristers do not have the resources to carry out factual enquiries or to deal with correspondence or court procedures on a client's behalf.<sup>80</sup>

The Hong Kong Law Society is also an example of a successful referral organization. In January 2010, the Law Society established the Pro bono Committee to coordinate pro bono services.<sup>81</sup> Within that year, the committee set up the Manila Helpline immediately after the tragic shooting in August 2010. It has also formed panels of volunteers to the SME Advisory Centre of the Hong Kong Trade and Development Council in addition to participating in the SCOLAR Volunteering Program to teach English to primary students.<sup>82</sup>

### University Legal Clinics and Law Students

Universities in Hong Kong have also set up legal clinics that enable law students to undertake pro bono work under the supervision of qualified legal personnel.<sup>83</sup> For example, the University of Hong Kong offers clinical courses in human rights (launched in 2014) and refugee law (in partnership with Justice Centre Hong Kong).<sup>84</sup> By taking these clinical classes, law students get the opportunity to engage in legal issues while serving the community.<sup>85</sup>

The pro bono program "Law for All" launched in February 2014 with support from the Gallant Ho Experiential Learning Centre and the private sector. HKU's Human Rights Program collaborated with the "Street Law" program in the United States to train 30 law students and pro bono lawyers on interactive teaching methods to, in turn, teach practical law and legal concepts to community members. The students who participated in the inaugural training are engaged in a variety of activities to develop "Law for All" in Hong Kong and throughout Asia.<sup>86</sup>

## Historic Development and Current State of Pro bono

### Historic Development of Pro bono

Historically, there have been a number of obstacles to the growth of Hong Kong's pro bono culture. These include lawyers' concerns about professional insurance coverage for pro bono work, difficulties faced by international law firms in identifying the needs for legal services among the local community and the NGO population and the relative lack of an ingrained culture of pro bono service among law firms in Hong Kong (as opposed to the making of purely financial contributions).<sup>87</sup> The legal community has demonstrated a growing interest to engage in pro bono work, as it provides a rewarding way for lawyers and law students to use their legal skills to benefit the community. There is growing encouragement for lawyers to volunteer their time and services for pro bono projects. External influences from international law firms, NGOs, internationally trained lawyers, the International Bar Association and United Nations agencies etc. have

---

<sup>80</sup> The Hong Kong Bar Association, Bar Free Legal Service Scheme, available at <http://www.hkba.org/the-bar/free-legal-service/free-legal-service2.html> (last visited on September 4, 2015).

<sup>81</sup> THE LAW SOCIETY OF HONG KONG, Pro Bono, Introduction, [http://www.hklawsoc.org.hk/pub\\_e/probono/public/pbs\\_ls.asp](http://www.hklawsoc.org.hk/pub_e/probono/public/pbs_ls.asp) (last visited on September 4, 2015).

<sup>82</sup> Id.

<sup>83</sup> THE UNIVERSITY OF NEW SOUTH WALES, Hong Kong Refugee Law Clinic, <http://www.law.unsw.edu.au/current-students/law-action/clinics/hong-kong-refugee-law> (last visited on September 4, 2015); see also HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, supra n.90.

<sup>84</sup> CENTRE FOR COMPARATIVE AND PUBLIC LAW OF UNIVERSITY OF HONG KONG, Consulting, available at <http://www.law.hku.hk/ccpl/cons/clep/> (last visited on September 4, 2015).

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> Deborah Papworth, Pro Bono: Lawyers Making a Difference, Hong Kong Lawyer, available at <http://www.hk-lawyer.org/en/article.asp?articleid=2290&c=111> (last visited on September 4, 2015).



all had a positive effect on the development of pro bono in Hong Kong. In fact, according to Edwin Rekosh, president of PILnet, local lawyers in Hong Kong actually are very willing to offer their services.<sup>88</sup>

In 2009, the Hong Kong Law Society established a Pro bono Committee to encourage the development of pro bono within the legal profession. Each year since 2011, the Law Society's Pro bono and Community Work Recognition Committee has also presented the Law Society Pro bono and Community Service Award in an effort to encourage active participation in pro bono and community work.<sup>89</sup> There is a growing list of recipients of the Law Society Pro bono and Community Service Awards every year, reflecting the increased attention on pro bono legal work.<sup>90</sup>

### Current State of Pro bono including Barriers and Other Considerations

The Hong Kong Bar Association and the Hong Kong Law Society impose few barriers on pro bono work for Hong Kong lawyers. Generally, there is "no objection to a barrister giving advice free on legal matters . . . on a charitable basis."<sup>91</sup> However, the Hong Kong pro bono culture has not yet fully matured.<sup>92</sup> Whereas Hong Kong is regarded to have one of the most mature legal systems in the world, its pro bono segment has only started to develop and lags behind its peer cities such as New York, London, and Singapore.<sup>93</sup> Furthermore, there remain a number of obstacles to the growth of Hong Kong's pro bono culture, including lawyers' concerns about professional insurance coverage for pro bono work.<sup>94</sup>

### Laws and Regulations Impacting Pro bono

#### "Loser Pays" Principle

Hong Kong adopts the "loser pays" principle in litigation. The party and party taxation is the process through which the court assists in determining how much the losing party should pay for the costs of the winning party. In doing so, the court refers to a set of scale rates which include some recommended allowable hourly rates for solicitors as guidelines.

#### Rules Directly Governing the Pro bono Practice

One restriction found in the Hong Kong Bar Association's Code of Conduct is that barristers may only give free legal advice in a scheme or program established to the satisfaction of the Hong Kong Bar Council to further the purpose of promoting the objectives of the Hong Kong Bar Association.<sup>95</sup> No similar limit exists in the Hong Kong Law Society's professional guide.

#### Practice Restrictions on Foreign-Qualified Lawyers

Foreign lawyers and foreign law firms, including the Hong Kong offices of many U.S. firms, face an additional obstacle to the provision of pro bono services that do not exist for local firms. Because foreign lawyers and foreign law firms are not allowed to advise on Hong Kong law, they are unable to

---

<sup>88</sup> Stuart Lau, Pro Bono Legal Help Levels Playing Field for Hong Kong NGOs, SOUTH CHINA MORNING POST (May 26, 2014), available at <http://www.scmp.com/news/hong-kong/article/1519480/pro-bono-legal-help-levels-playing-field-hong-kong-ngos> (last visited on September 4, 2015).

<sup>89</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, supra n.90.

<sup>90</sup> Edwin Rekosh & Tze-wei Ng, Pro Bono Legal Work Can Help Advance Social Justice in Hong Kong, supra n.65.

<sup>91</sup> HONG KONG BAR ASSOCIATION'S CODE OF CONDUCT, supra n.21.

<sup>92</sup> Edwin Rekosh & Tze-wei Ng, Pro Bono Legal Work Can Help Advance Social Justice in Hong Kong, supra n.65.

<sup>93</sup> Id.

<sup>94</sup> Hong Kong has strict professional rules on liability insurance coverage, which deter lawyers from taking up pro bono cases unless they have their firm's support. See Edwin Rekosh & Tze-wei Ng, Pro Bono Legal Work Can Help Advance Social Justice in Hong Kong, supra n.65.

<sup>95</sup> THE BAR ASSOCIATION CODE OF CONDUCT, ¶ 22(7), available at [http://www.hkba.org/the-bar/code-of-conduct/code\\_of\\_conduct5.htm](http://www.hkba.org/the-bar/code-of-conduct/code_of_conduct5.htm) (last visited on September 4, 2015).



provide legal representation in Hong Kong courts on a pro bono basis, which is where the need for pro bono assistance is greatest.<sup>96</sup>

### **Availability of Professional Indemnity Legal Insurance Covering Pro bono Activities by Attorneys**

Hong Kong has a restriction that only allows law firms, and not individual lawyers, to obtain indemnity insurance. As a result, lawyers who want indemnification protection must seek their firms' approval before offering free services. Without their firm's approval, pro bono lawyers may find themselves unprotected in the event a client seeks compensation for poor legal advice.<sup>97</sup>

### **Socio-Cultural Barriers to Pro bono**

Despite the relatively few barriers to participation, a large proportion of lawyers in Hong Kong do not participate in pro bono activities. According to the Supply Study Report published in 2008, 48% of barristers and 63% of solicitors did not participate in any pro bono work. The main reasons provided for not participating were that lawyers had no time or no interest in participating.<sup>98</sup> As of 2008, only about 11% of solicitor law firms in Hong Kong had a company-wide policy on pro bono work.<sup>99</sup> For the vast majority of firms that did not have a pro bono policy, the main reason given was that there were insufficient resources to dedicate to pro bono work. Other firms cite that they do not participate because it is difficult for international firms to identify the needs for legal services among the local community and NGO population.<sup>100</sup> One solution to that problem could be partnering with local NGOs.

### **Pro bono Resources**

Listed below is contact information for certain other organizations offering pro bono programs in Hong Kong. The pro bono web page on the Hong Kong Law Society's website contains a list of other pro bono opportunities and resources.<sup>101</sup>

- The Hong Kong Law Society
- Website: [http://www.hklawsoc.org.hk/pub\\_e/probono/public/](http://www.hklawsoc.org.hk/pub_e/probono/public/) (last visited on September 4, 2015)
- The Hong Kong Bar Association
- Website: <http://www.hkba.org/the-bar/free-legal-service/index.html> (last visited on September 4, 2015)
- Hong Kong Refugee Advice Centre
- Website: <http://www.hkrac.org/> (last visited on September 4, 2015)
- Free Legal Advice Clinic at the Hong Kong Federation of Women's Centres

Website: <http://womenscentre.org.hk/en/services/70-counselling-and-legal-support/20-lac> (last visited on September 4, 2015)

## **CONCLUSION**

Along with the legal aid system, pro bono legal services help to ensure and promote more equal access to justice in Hong Kong, and act as a means by which the legal profession can contribute to advancing issues of public interest.<sup>102</sup>

<sup>96</sup> See Naomi Rovnick and Barclay Crawford, HK Law Firms Fall Short on Pro Bono, SOUTH CHINA MORNING POST (Apr. 5, 2010), available at <http://www.legco.gov.hk/yr09-10/chinese/panels/ajls/papers/aj0426cb2-1417-1-ec.pdf> (last visited on September 4, 2015).

<sup>97</sup> Stuart Lau, Pro Bono Legal Help Levels Playing Field for Hong Kong NGOs, *supra* n.101.

<sup>98</sup> Supply Study Report, *supra* n.2, at 25, 50.

<sup>99</sup> *Id.*, 12.

<sup>100</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, *supra* n.90.

<sup>101</sup> *Id.*

<sup>102</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, *supra* n.90.



Developing a more robust pro bono culture in Hong Kong will require increased efforts by the key stakeholders: individual lawyers, law firms, the professional bodies, law students, and the beneficiaries within the public and NGO sector.<sup>103</sup> At the root of pro bono is the stakeholders' sense of social responsibility. Among the stakeholders, lawyers are the gatekeepers of the law and the individuals who possess a much better understanding of legal reasoning, procedures and court systems than the average citizen. Armed with their professional knowledge and expertise, lawyers are in a unique position, through participating in pro bono projects, to help address inequalities in society, particularly unequal access to legal services, and hence unequal access to justice.<sup>104</sup>

September 2015

Pro Bono Practices and Opportunities in Hong Kong

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>103</sup> Id.

<sup>104</sup> Edwin Rekosh & Tze-wei Ng, Pro Bono Legal Work Can Help Advance Social Justice in Hong Kong, *supra* n.65.



## Pro Bono Practices and Opportunities in Hungary<sup>1</sup>

### INTRODUCTION

In the aftermath of the fall of communism in the late 1980s, Hungary went through an important transitional period and in 2004, the country joined the EU. Pro bono in the modern sense has recently been gaining in importance within the legal profession, namely following the entry into the legal market of US and UK based international law firms as well as the creation of PILnet, a public interest law initiative.

### OVERVIEW OF THE LEGAL SYSTEM

The Hungarian legal system belongs to the civil law tradition predominant in continental Europe,<sup>2</sup> as opposed to the common law tradition of the UK, the US and Commonwealth countries.

#### Constitution and Governing Laws

The main sources of law are the Constitution (the Fundamental Law), acts of Parliament, and governmental, ministerial and municipal decrees.<sup>3</sup> The supreme law is the Fundamental Law, which regulates state administration (national government, local governments, and organizations for the protection of rights) and the listing of the basic rights and duties of citizens.

The chapters of the Fundamental Law cover the following areas: general decrees, the Parliament, the President of Hungary, the Government, autonomous regulatory organs, the Constitutional Court, courts, the Prosecution Service, the Commissioner for Fundamental Rights, local governments, public finances, the Hungarian Defence Forces, the police and national security services, decisions on participation in military operations, special legal orders in case of national crisis and state of emergency, basic rights and obligations of citizens, electoral principles, the nation's capital, national symbols of Hungary, and the decrees for implementation.<sup>4</sup>

#### The Courts

The judicial system has several levels, namely, the Supreme Court (*Curia*), the regional courts of appeal, the regional courts, the district courts, and the administrative and labor courts.

In total, 111 district courts have jurisdiction at first instance for all actions not delegated to the competence of the regional courts. There are 20 regional courts, proceeding at first instance in cases defined by law, and reviewing appeals against decisions of district, administrative and labor courts. There are five regional courts of appeal, reviewing appeals at second and third instance.

The Supreme Court, which is located in Budapest, is the highest court in Hungary, having three departments (criminal, civil and administrative-labor law) each composed of various chambers. The Supreme Court guarantees the uniform application of law and its decisions are binding on other courts.<sup>5</sup>

---

<sup>1</sup> This chapter was drafted with the support of Szecskay Attorneys at Law, Budapest, Hungary.

<sup>2</sup> Attila Harmathy, "On Legal Culture of Hungary. Reports to the XVIIIth International Congress of Comparative Law", Washington D.C. 2010.

<sup>3</sup> The Law Society, How to practice in Hungary, available at <http://communities.lawsociety.org.uk/international/regions/europe-and-cis/hungary/how-to-practice-in-hungary/5047713.fullarticle> (last visited on September 4, 2015).

<sup>4</sup> Zsuzsanna Antal, "Introduction to Hungarian Law Research", available at <http://www.nyulawglobal.org/globalex/Hungary1.htm> (last visited on September 4, 2015).

<sup>5</sup> Overview of the Hungarian Judicial System, <http://birosag.hu/en/information/hungarian-judicial-system> (last visited on September 4, 2015).



The typical way of becoming a judge in Hungary is to obtain a university law degree (five years) and then apply for a trainee judge's position (there are 359 positions in Hungary). An entrance exam is organized by the Hungarian Judicial Academy and the President of a tribunal or High Court can only select a judge from applicants, who have passed this exam.

The applicant then works as a trainee judge for a minimum of three years and following that must pass a professional legal examination organized by the Ministry of Justice. The applicant must then apply for a court secretary position (there are 614 positions in Hungary). There is no special procedure for this application and the President of the tribunal or High Court appoints the successful applicant who then works as a court secretary for a minimum of one year. During this period, the court secretaries receive training at the Hungarian Judicial Academy. Finally, they can apply for a judge's position (there are 2914 positions in Hungary) and the successful candidates are appointed by the President of Georgia.<sup>6</sup>

## The Practice of Law

### Education and Licensure

To be admitted to the Hungarian Bar, an applicant must meet the following criteria: citizenship in a member state of the European Economic Area, no criminal record, university degree,<sup>7</sup> passing the Hungarian professional examination in law, engaged in legal practice for at least three years as an attorney, articulated clerk or assistant attorney, having liability insurance and suitable office space.<sup>8</sup>

In order to become familiar with Hungarian legal practice, attorneys from other EU member states may first practise and give legal advice as "European Community Lawyers" under their respective professional designation given by their home countries. After three years' permanent practice in Hungary, European Community Lawyers may demonstrate their experience with the Hungarian rules of law and legal terminology at a hearing organized by the Bar Association. On their successful hearing, they are admitted to the regional Bar Association under the territorial scope of which they intend to run their legal practice in the future. By that act, European Community Lawyers become fully-fledged Hungarian ügyvéd and may provide legal services in Hungary, with the same rights and obligations as fellow Hungarian lawyers.

The operation in Hungary of foreign legal counsel from outside the territory of the EU (typically USA, Canada, and Australia) falls under different rules of law with a more limited scope of activities. Foreign legal counsel may only provide legal advice concerning the law of their home country and international law (but not Hungarian or Community law).<sup>9</sup>

Currently there are no continuing legal education requirements for qualified lawyers

### Demographics

Approximately 30,000 people work in the legal profession in Hungary, generally as attorneys, judges, prosecutors, public notaries, public servants or legal counsel.<sup>10</sup> Although detailed databases are not

---

<sup>6</sup> The typical way of becoming a judge in Hungary, available at [http://birosag.hu/sites/default/files/allomanyok/english/f\\_alod-d11-3.pdf](http://birosag.hu/sites/default/files/allomanyok/english/f_alod-d11-3.pdf) (last visited on September 4, 2015).

<sup>7</sup> The university degree does not have to be from a university in Hungary; however, recognition of the foreign university certificates and degrees is required for legal practice and the professional examination in law. There are no other pro bono specific rules and requirements in order to obtain the degree.

<sup>8</sup> European Judicial Network in Civil and Commercial Matters, Legal professions – Hungary, available at [http://ec.europa.eu/civiljustice/legal\\_prof/legal\\_prof\\_hun\\_en.htm](http://ec.europa.eu/civiljustice/legal_prof/legal_prof_hun_en.htm) (last visited on September 4, 2015); The Law Society, "How to practice in Hungary," available at <http://communities.lawsociety.org.uk/international/regions/europe-and-cis/hungary/how-to-practice-in-hungary/5047713.fullarticle> (last visited on September 4, 2015).

<sup>9</sup> See website of Budapest Bar Association, "Attorneys in Hungary", available at [http://regi.bpugyvedikamara.hu/attorneys\\_in\\_hungary/](http://regi.bpugyvedikamara.hu/attorneys_in_hungary/) (last visited on September 4, 2015).

<sup>10</sup> This estimate was obtained orally from the Hungarian Lawyers Association in 2012.



available, it is estimated that 15,000 legal practitioners work at law firms,<sup>11</sup> approximately 4,000 are employed by the courts<sup>12</sup> and about 900 people work at public notary offices.<sup>13</sup> The Budapest Bar Association is by far the largest regional bar association in Hungary representing about 60% of all attorneys in Hungary.<sup>14</sup> The vast majority of Hungarian lawyers work either individually or in small law firms. However, an increasing number of lawyers work in firms of 20 to 30 lawyers.<sup>15</sup> These law firms are mostly international and active in the corporate sector.<sup>16</sup>

## Legal Regulation of Lawyers

The provision of legal services is regulated by separate acts applicable to the different branches of the legal profession, such as the Act on Attorneys, the Act on Legal Councils and the Act on the Legal Status of Judges.<sup>17</sup> The Act on Attorneys does not fix legal fees, which must be negotiated between the lawyer and client.

Attorneys are independent in the course of their professional work, and can provide legal representation in all cases before all authorities. Certain activities can only be covered by attorneys, including representation and defence in criminal cases, legal consulting, preparing and editing legal documents, and handling money and valuables as deposits in relation to these cases.<sup>18</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The Hungarian Constitution provides an individual with the right to representation at any time during a judicial or criminal proceeding.<sup>19</sup> In fact, legal representation is required for certain types of detentions and if a detained person has not contacted a lawyer within 72 hours of their detention, the Hungarian state has an obligation to provide that person with an attorney.<sup>20</sup>

---

<sup>11</sup> The estimated number of attorneys is: 12,500; trainees: 2,000; employed (salaried) attorneys: 520; European Community lawyers: 70 (oral information from the Hungarian Bar Association, effective as of December 2014).

<sup>12</sup> Judges: 2,910; secretaries: 776; trainees: 348; legal officers employed in the courts: 7,073 (Annual Report of the President of the National Office for the Judiciary, available at [http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolo/obh\\_beszamolo\\_2014.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolo/obh_beszamolo_2014.pdf), effective as of 30 June 2014) (last visited on September 4, 2015).

<sup>13</sup> Public notaries: 316, vice-notaries and trainees: 500-600 (Hungarian Chamber of Civil Law Notaries (June 2015)).

<sup>14</sup> Márta Pardavi, "The Legal Profession in Hungary," Organization for Security and Cooperation in Europe ("OSCE") Paper (October 2008), available at <http://www.osce.org/odihr/36305> (last visited on September 4, 2015).

<sup>15</sup> Budapest Bar Association, <http://www.bpuogyvedikamara.hu/> (last visited on September 4, 2015).

<sup>16</sup> See Pardavi, *supra* n6.

<sup>17</sup> The following acts apply to lawyers: Act 11 of 1998 on attorneys, Act CLXI of 2011 on the judicial system, Act CLXII of 2011 on the legal status of the judges, Act CLXIII of 2011 on public prosecutors, Act XLI of 1991 on public notaries and the Decree No. 3 of 1983 on legal councils.

<sup>18</sup> The Law Society, "How to practise in Hungary", available at <http://communities.lawsociety.org.uk/international/regions/europe-and-cis/hungary/how-to-practice-in-hungary/5047713.fullarticle> (last visited on September 4, 2015).

<sup>19</sup> Committee Takes Up Hungary's Fourth Periodic Report: Experts Praise Reforms, Express Concern Over Minorities, Human Rights, U.N. Press Release Doc. HR/CT/618 (March 22, 2002), [www.un.org/news/Press/docs/2002/hrct618.doc.htm](http://www.un.org/news/Press/docs/2002/hrct618.doc.htm) (last visited on September 4, 2015).

<sup>20</sup> *Id.*



Pursuant to the Act on Legal Aid, legal aid services may be provided by non-governmental organizations (“NGOs”), foundations, minority local governments, universities offering legal education, or lawyers (including European Community lawyers permanently working in Hungary).<sup>21</sup>

In out-of-court proceedings, all registered legal service providers may provide legal aid.<sup>22</sup> However, in court proceedings, only attorneys, law firms and certain other entities (e.g. NGOs, foundations etc) may provide legal aid. These organizations must have concluded fixed-term agency contracts with attorneys under which the attorneys will provide legal services on behalf of the organization.<sup>23</sup>

## State-Subsidized Legal Aid

Hungary offers legal aid in both civil and criminal proceedings. People can also obtain aid when seeking legal advice or drafting legal documents.<sup>24</sup> If a person needs legal services during court-administered judicial proceedings, the court will administer such services.<sup>25</sup> If a person qualifies for legal aid during such proceedings, the aid will cover the entirety of the person’s involvement in the legal process, including any appellate work and enforcement of the court’s decision.<sup>26</sup>

The State must pay a party’s legal services fees if the party’s monthly net income (wage, pension, or other regularly paid cash allowances) does not exceed the current minimum retirement pension (HUF 28,500 or approximately €93 per month) established on the basis of their period of employment, and that the party has no property.<sup>27</sup>

In addition, irrespective of their income and financial situation, further categories of persons are considered in need, including:<sup>28</sup>

- a party who is eligible for benefits provided to persons of active age, or living in the same household with a close relative of a party who is eligible for benefits provided to persons of active age;
- a party who receives public health care or whose entitlement to medical services has been established;
- a party who is a homeless person spending nights at temporary lodgings;
- a party who is a refugee or temporarily protected person, or seeking refugee status or temporary protection or stateless status and, on the basis of their statement regarding their income and financial situation, is entitled to the care and benefits they have been granted;
- any party who is requesting legal aid in connection with obtaining a visa, obtaining authority to reside or permanent resident status, or in a naturalization case, whose ascendant is or has previously been a Hungarian citizen and the party is engaged in a repatriation procedure; or
- a party who cares for a child in their family who has been declared eligible to receive regular child welfare subsidies.

---

<sup>21</sup> Article 66 of the Act LXXX of 2003 on Legal Aid was adopted to encourage the creation of institutions for the socially disadvantaged in which they will be able to receive professional legal advice and representation in court in the course of asserting their rights and resolving legal disputes.

<sup>22</sup> Id. § 68.

<sup>23</sup> Id. § 68.

<sup>24</sup> European Judicial Network in Civil and Commercial Matters, [https://e-justice.europa.eu/content\\_rights\\_of\\_victims\\_of\\_crime\\_in\\_criminal\\_proceedings-171-HU-en.do?clang=en&idSubpage=4](https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-HU-en.do?clang=en&idSubpage=4) (last visited on September 4, 2015).

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Act LXXX of 2003, § 5.

<sup>28</sup> Act LXXX of 2003, § 5.



Furthermore, the State shall pay a party's legal services fees if the party in question is single, and considered poor according to the Act on Providing Legal Aid and their available income does not exceed 150% of the prevailing minimum pension.<sup>29</sup>

### Eligibility

Hungarian courts look at numerous factors when deciding whether a person qualifies for legal aid, including the person's financial status and his or her need for trained legal services in the given legal proceeding.<sup>30</sup>

In addition, a person seeking legal aid from the Hungarian state must be one of the following:

- a Hungarian national;
- a foreign national registered as a resident in Hungary or involved in asylum proceedings in Hungary;
- a non-Hungarian national of a country that has an international treaty with Hungary with an agreement on reciprocity;
- a national of an EU member state; or
- a national of a non-EU country but still a legal resident within an EU member state.<sup>31</sup>

The application form must be submitted to the County Office of Justice. The Office makes its decision within five days where applications are made in person, or ten working days for written applications.<sup>32</sup> If the Office approves the application, the applicants may then choose, under certain conditions, a legal aid provider from the Register of legal aid service providers.<sup>33</sup> Depending on the status of the applicant, the State either pays or advances the fees and costs of the lawyer providing the legal aid, as well as expenses such as phone calls, traveling, parking and copying documents.<sup>34</sup>

### Mandatory Assignment to Legal Aid Matters

According to the Act on Legal Aid, apart from the above mentioned NGO's, foundations, minority local governments and universities offering legal education, the only persons who may be entered into the Register of persons providing legal aid<sup>35</sup> are attorneys, law firms and European Community lawyers permanently working in Hungary. There are no such restrictions in the context of pro bono.

Registration as a legal aid provider is not compulsory for all attorneys, i.e. this is not mandatory for attorneys, just an opportunity. Those lawyers and NGOs, who want to provide legal aid, can voluntarily apply to the Ministry of Justice and may specify their area of practice (i.e. criminal, civil or public administrative law) and the number of cases per month they are willing to take on.<sup>36</sup> The Ministry of Justice will then contract with an entity to provide legal aid when the need arises.

Decree No. 7/2002 of the Ministry of Justice regulates the fees to be paid to lawyers who provide legal aid services in judicial cases. Such lawyers are entitled to legal aid fees and costs. The legal aid fee is

---

<sup>29</sup> Act LXXX of 2003, § 6.

<sup>30</sup> Id.

<sup>31</sup> Act LXXX of 2003 on Legal Aid , § 4.

<sup>32</sup> Id. § 23.

<sup>33</sup> For legal aid for cases heard by a court, the legal representative is chosen by the court. Conversely, for legal aid for cases not heard by a court, the applicants may choose their representative from the registry kept by the Central Justice Office. See European Judicial Network in Civil and Commercial Matters, available at [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_hun\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_hun_en.htm) (last visited on September 4, 2015).

<sup>34</sup> Act LXXX of 2003, supra n23, § 1.

<sup>35</sup> Act LXXX of 2003, § 66.

<sup>36</sup> Id. § 65.



calculated on the basis of the hourly fee of advocates, as set forth by the Central Budget Act, which is currently HUF 5,000 (or approximately €16).<sup>37</sup>

The following statutorily mandated legal fees apply:

#### Legal aid fees in extra-judicial cases

Legal aid fees and costs are regulated by Decree No 11/2007 of the Ministry of Justice, and the hourly fees of legal aid providers are established by the Parliament in the Central Budget Act. Details of the fees are as follows:

- Hourly legal aid fee in extra-judicial cases is currently HUF 5,000 (or approximately €16).
- 15% of the total hourly fee (i.e. currently HUF 450 / hour) is paid as costs.
- If the lawyer is obliged to pay VAT, 27% VAT shall be paid beyond this amount.

#### Legal aid fees in judicial cases

Decree No 7/2002 of the Minister of Justice regulates the fees to be paid for lawyers providing legal aid services in judicial cases. Such lawyers are entitled to:

- the legal aid fee, which is calculated based on the hourly fee of advocates as set forth by the Central Budget Act, which is currently HUF 5,000 (or approximately €16); and
- costs (e.g. phone calls, travelling, copying), which are calculated based on an itemized statement provided by the lawyer. Without this statement, the lawyer is entitled to 25% of the legal aid fee, covering his or her costs.

The Decree does not provide for the reimbursement of VAT. Therefore, the lawyer should inform the court, the prosecutor or the investigating authority determining the legal aid fees and costs in that case, whether he or she is obliged to pay VAT (currently 27%).

This compensation provided by the state is quite low, which sometimes forms an obstacle to legal aid being offered to certain marginalized groups. This results in the current legal aid system not satisfactorily meeting the requirements of certain indigent and marginalized members of society. For instance, in the case of asylum seekers, the Hungarian Helsinki Committee has claimed that the low financial compensation for legal assistance providers is an obstacle for lawyers to engage effectively in the provision of legal assistance. In addition, there is a lack of sustainability of legal aid funding, and the fact that it is project financed means that the funding is not sufficiently flexible.<sup>38</sup> The amount of the budget allocated by the Hungarian Government to legal aid (with the exception of public defenders) was HUF 249m (approximately €800,000) in 2015.

## Alternative Dispute Resolution

Hungary also provides for the following means of alternative dispute resolution:

### Mediation

The objective of the Act on Mediation<sup>39</sup> is to offer an alternative for natural and other persons to settle disputes arising in connection with personal and property rights. Mediators are responsible for mediating negotiations between the parties to the best of their abilities in an unbiased and conscientious manner in order to reach an agreement in conclusion of the dispute. Mediators are entitled to remuneration for their

---

<sup>37</sup> Act LXXX of 2003, supra n26, § 1; Act C of 2014 (Central Budget Act of Hungary in 2015) § 63(4).

<sup>38</sup> For example, due to the big influx of asylum seekers in 2013, the integration center in Bicske started to accommodate asylum seekers as well; however since no legal aid was foreseen in this center in the initial project application, it took the service provider more than 10 months to be able to assure asylum seekers that a lawyer will visit the center, see <http://www.asylumineurope.org/reports/country/hungary/asylum-procedure/procedures/regular-procedure#sthash.fLUkVSwu.iSJPQ0uf.dpuf> (last visited on September 4, 2015).

<sup>39</sup> Act LV of 2002 on Mediation.



services and are compensated for all substantiated expenses. Mediators also have the right to request advance payments for fees and expenses. The fees for any given case are subject to negotiation between the parties and the mediator.

### Arbitration

The Act on Arbitration<sup>40</sup> generally applies to arbitration if the venue (or seat) of the "ad hoc" or standing arbitration tribunal is in Hungary. Instead of the court of law, disputes may be settled by way of arbitration if:

- at least one of the parties is professionally engaged in business activities and the legal dispute arises out of or in connection with this activity;
- the parties may dispose freely of the subject-matter of the proceedings; and
- the arbitration was stipulated as a dispute resolution process in an arbitration agreement.

Any standing arbitration tribunal operating within the structure of a specific organization may be chartered by a national chamber of economy in Hungary, unless otherwise provided by law. Several national chambers of economy may also establish a standing arbitration tribunal collectively. There are also specific arbitration boards, which have competence to resolve a certain areas of dispute, in order to reach an extra-judicial settlement between the parties.

### Ombudsman

In Hungary there are also different types of ombudsmen, such as the Commissioner for Fundamental Rights and their deputies. The Commissioner is responsible for the protection of the rights of future generations, nationalities and ethnic groups living in Hungary.<sup>41</sup> Anyone may turn to the Commissioner for Fundamental Rights, if in their judgment, the activity or omission of, for example, a public administration organ, governmental body, the Hungarian Defence Force, law-enforcement organ, or an investigation organ infringes a fundamental right of that person, provided that they have exhausted all available administrative legal remedies (not including judicial review of an administrative decision) or no legal remedy is otherwise available.<sup>42</sup>

The proceedings of the Commissioner for Fundamental Rights are free of charge, as the costs of inquiries are advanced and borne by the Office of the Ombudsman.<sup>43</sup> The Ombudsman makes a report on the inquiry he or she has conducted, which contains the uncovered facts, and the findings and conclusions based on the facts. This report is public.<sup>44</sup> If, on the basis of an inquiry conducted, the Ombudsman comes to the conclusion that impropriety in relation to a fundamental right does exist, in order to redress it he or she may address a recommendation to the authority or the supervisory organ of the authority subject to the inquiry. The Ombudsman may take several measures, for example initiating proceedings for the supervision of legality by the competent prosecutor or contacting the Constitutional Court or the Parliament.<sup>45</sup>

---

<sup>40</sup> Act LXXI of 1994 on Arbitration.

<sup>41</sup> The Fundamental Law, Article 30.

<sup>42</sup> Act CXI of 2011 on the Commissioner for Fundamental Rights, § 18.

<sup>43</sup> Act CXI of 2011 on the Commissioner for Fundamental Rights, § 19.

<sup>44</sup> Act CXI of 2011 on the Commissioner for Fundamental Rights, § 28.

<sup>45</sup> Act CXI of 2011 on the Commissioner for Fundamental Rights, § 31-38.



## PRO BONO ASSISTANCE

It is important to note that pro bono is not considered a substitute for the state-funded legal aid system. It is a complimentary system that NGOs and civil liberty groups can take advantage of legal assistance that they would not otherwise have access to through state or private services.<sup>46</sup>

### Pro Bono Opportunities

Private law firms and lawyers throughout Hungary are beginning to play an active role in supporting the efforts of NGOs, which serve the legal needs of the less fortunate. Many well-known international law firms, headquartered in the US or UK, have begun to establish Hungarian offices in partnership with Hungarian lawyers, which has given lawyers the opportunity to take on pro bono cases within Hungary.<sup>47</sup> Several of these law firms have also drafted and signed a declaration in which they affirm their commitment to advancing the public good by working for more clients who cannot afford to pay.

Charities and NGOs that provide legal assistance through attorneys, as well as legal clinics, can register as legal aid providers with the Ministry of Justice.<sup>48</sup> Law schools have also begun to look to pro bono and law clinics as a way for students to get hands-on practice.<sup>49</sup>

### Historic Development and Current State of Pro Bono

#### Historic Development of Pro Bono

Hungary has a tradition of pro bono legal assistance dating back to the beginning of the 20th century, when in 1915 the Budapest Bar Association stated that free legal services were part of a “noble heritage that had become part of legal practice.”<sup>50</sup> During the period of communism however, this pro bono concept was lost in practice with the requirement that attorneys get approval from the head of the labor group in order to perform pro bono work.<sup>51</sup>

Following the fall of communism, the Hungarian pro bono culture has slowly been developing again. In practice, mainly international law firms have sufficient capacity to contact NGOs and provide legal assistance free of charge.

#### Current State of Pro Bono including Barriers And Other Considerations

The communication opportunities between lawyers and NGOs needs to be enhanced, which would have a great impact on the development of the Hungarian pro bono culture.

#### Fees

Hungary embraces the “loser-pays” principle and shifts both court costs and attorney fees to the unsuccessful party; however it appears that judicial discretion may also play a significant role.<sup>52</sup>

---

<sup>46</sup> See interview with Atanas Politov, supra n2.

<sup>47</sup> Various international law firms, committed to offering pro bono services in Hungary, signed the Pro bono Declaration, developed with the assistance of PILI’s pro bono project. Firms included, among others, Allen & Overy Iroda, Köver Clifford Chance and Siegler Law Office/Weil, Gotshal & Manges, which affirmed publicly their commitment to advancing the public good.

<sup>48</sup> Id. §§ 66-67.

<sup>49</sup> See interview with Atanas Politov, supra n2.

<sup>50</sup> See interview with Atanas Politov, supra n2.

<sup>51</sup> Id.

<sup>52</sup> Mathias Reimann, Cost and Fee Allocation in Civil Procedure, p. 52.



### Rules Directly Governing Pro Bono Practice

The special conditions for attorneys to provide pro bono services are the following:<sup>53</sup>

- the attorney's activity of providing legal services must not be suspended;
- no disciplinary procedure must have been initiated against the attorney for the suspension of his or her activities for the provision of legal services; and
- the attorney must not be under the effect of a disciplinary sanction.

There are no explicit prohibitions on providing free legal services, advertising pro bono successes or soliciting new pro bono clients. General rules passed by the Hungarian Bar Association apply in the case of advertising pro bono successes, for instance, the advertisement must not contain any comparison with other attorney's successes or any reference to the successful cases.<sup>54</sup>

As specified in Section II above, foreign lawyers from outside the European Union may only provide legal advice concerning the law of their home country and international law. This restriction also applies to pro bono legal services.

The Bar Association must, upon request, admit as an attorney anyone who, among others, is a member of the Hungarian Attorneys Insurance and Assistance Association or has other liability insurance that is accepted by the Bar Association.<sup>55</sup> The minimum amount of liability insurance is HUF 8m per claim, HUF 16m per year.<sup>56</sup>

### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

As judicial procedures often take an unreasonably long time (possibly years),<sup>57</sup> alternative dispute resolution procedures have become more popular. Since the second half of 2012, mediation by judges was introduced into the Hungarian legal system, and the number of such cases is increasing.<sup>58</sup> Arbitration is also used, however the number of cases has decreased in recent years.<sup>59</sup> For further details on these procedures, see above subsection "d. *Alternative Dispute Resolution*" under the section "III. *Legal Resources for Indigent Persons and Entities*".

### Pro Bono Resources

Lawyers that would like to provide pro bono services in Hungary should contact PILnet, which promotes pro bono practice by involving the legal community in pro bono matters. PILnet introduced the concept of pro bono practice in Central Europe through its Hungarian Pro bono Clearinghouse, and later through a network of additional PILnet and partner clearinghouses. PILnet seeks to bridge the gap between NGOs and lawyers, and is currently creating a pro bono clearinghouse to match lawyers with NGO needs. In order to get a monthly listing of pro bono opportunities, interested attorneys can visit the website

---

<sup>53</sup> Act LXXX of 2003, Chapter VIII.

<sup>54</sup> Rules No 8/1999 of the Hungarian Bar Association modified by the Rules No 5/2008, § 11.

<sup>55</sup> Act XI of 1998 on Attorneys, § 13.

<sup>56</sup> Rules No 7/2011 (X. 24.) of the Hungarian Bar Association about the minimum amount of liability insurance.

<sup>57</sup> The general length of a civil procedure was six to 11.5 months in the court of first instance, and four to 31.9 months in the court of second instance in the first half of 2014. Available at [http://birosag.hu/sites/default/files/allomanyok/statisztikai\\_adatok/a\\_birosagi\\_ugyforgalom\\_2014\\_i\\_felev\\_150dpi.pdf](http://birosag.hu/sites/default/files/allomanyok/statisztikai_adatok/a_birosagi_ugyforgalom_2014_i_felev_150dpi.pdf), (last visited on September 4, 2015).

<sup>58</sup> 55 new cases were initiated, 48 cases were finished in January 2014, 129 new cases were initiated, 139 cases were finished in June 2014. Annual Report of the President of the National Office for the Judiciary, available at [http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolok/obh\\_beszamolo\\_2014.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolok/obh_beszamolo_2014.pdf), (last visited on September 4, 2015).

<sup>59</sup> In 2014, 23 cases were initiated by international parties and 117 cases were initiated by Hungarian parties. (Hungarian Chamber of Commerce and Industry; <http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/hasznos-informaciok-8720>). (last visited on September 4, 2015).



<http://probonougyved.hu/> (last visited on September 4, 2015) and sign up. Once registered, they can choose from among the opportunities listed.

PILnet works with each of the NGOs that uses the listing service to help define and articulate their legal needs so that attorneys can get a good idea from the start of the level of expertise and time that will be needed. In practice, lawyers assisting via PILnet usually provide legal assistance in the fields of civil law, family law, criminal law, employment law and environmental law.

PILnet has organized several skill-building workshops since its establishment in Hungary and has also been organizing the Hungarian Pro bono Awards since 2011. To further network private sector lawyers and NGOs, and advance the local culture of pro bono, PILnet also convenes the annual European Pro bono Forum.<sup>60</sup>

## CONCLUSION

The pro bono culture in Hungary has been developing more efficiently since the beginning of the 21st century. Most Hungarian attorneys provide legal aid services under the Act on Legal Aid, in the course of which the Hungarian state finances the costs and fees of the attorney. However, a smaller but growing number of attorneys also provide pro bono legal assistance outside the scope of the Act on Legal Aid, in the course of which they do not request any fee from the represented persons.

September 2015

Pro Bono Practices and Opportunities in Hungary

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>60</sup> For further details, please see <http://pilnet.org/> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in India<sup>1</sup>

### INTRODUCTION

India has an expansive history of legal aid, backed by several decades of legislation, jurisprudential interpretation, and numerous state-funded programs. However, its pro bono culture is still very much a work in progress. While certain pro bono services are organized and provided by a number of individual advocates, law firms, non-governmental organizations (“NGOs”), law schools and bar associations across the country, the demand for such services far exceeds the supply.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

The Indian Constitution (the “**Constitution**”) declares India to be a sovereign, socialist, secular, democratic republic. It prescribes a parliamentary system of government and is federalist in nature. The Constitution has typical characteristics of a federal system, including the supremacy of the Constitution, division of power between the Union and State governments, bicameralism and the existence of an independent judiciary. The three divisions of government (executive, legislature and judiciary) function within separate domains. The Constitution also guarantees certain fundamental rights and prescribes certain directive principles and fundamental duties.

The Constitution is known for its broad delineation of fundamental rights for all citizens, which include but are not limited to the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the right to constitutional remedies. These rights are guaranteed and justiciable. Accordingly, any infringement of such rights may be challenged in court.

The Constitution also prescribes directive principles of state policy, which are guidelines provided to the State to be incorporated or taken into account in the framing of legislations and policies. Finally, the Constitution also prescribes fundamental duties for every Indian citizen. Unlike fundamental rights, however, the directive principles and fundamental duties are non-justiciable.

#### The Courts

The highest court in the Indian judiciary is the Supreme Court of India (the “**Supreme Court**”), which exercises original, writ and appellate jurisdiction. Next in the hierarchy are the high courts, which again exercise original, writ and appellate jurisdiction, and are the highest judicial forums at the state or union territory level.<sup>2</sup> There are a total of 24 high courts in India<sup>3</sup> representing 29 states and seven union territories, since certain high courts have jurisdiction over more than one state and/or union territory.<sup>4</sup> Below high courts in the hierarchy are lower or subordinate courts. There are around 675 administrative

---

<sup>1</sup> This chapter was drafted with the support of Luthra & Luthra Law Offices.

<sup>2</sup> See Arun Prabhudesai, *Doing Business in India – The Legal Environment – Part 1* (Feb. 12, 2008), <http://trak.in/tags/business/2008/02/12/doing-business-in-india-legal-environment-part1/> (last visited on September 4, 2015); see also INDIAN COURTS, <http://indiancourts.nic.in/> (last visited on September 4, 2015); see also Society of Indian Law Firms, *Indian Justice System*, <http://www.silf.org.in/16/indian-judicial-system.htm> (last visited on September 4, 2015).

<sup>3</sup> Indian Dep’t of Justice, *Judges of the High Courts*, [http://doj.gov.in/sites/default/files/userfiles/HCs\(1.7.2015\).pdf](http://doj.gov.in/sites/default/files/userfiles/HCs(1.7.2015).pdf) (last visited on September 4, 2015).

<sup>4</sup> See Prabhudesai, *supra* note 2; see also GOVERNMENT OF INDIA, *National Portal of India*, available at <http://india.gov.in/india-glance/profile> (last updated May 21, 2015) (last visited on September 4, 2015).



districts in India distributed among states and union territories, most of which have a district court.<sup>5</sup> In addition to the district courts, there are several judicial tribunals that are set up to address distinct areas of law.<sup>6</sup> Though they are typically supervised by the High Courts, appeals from some of these tribunals lie directly with the Supreme Court.<sup>7</sup>

A unique feature of the Indian judicial system is that although there are central and state laws with distinct (and sometimes overlapping) jurisdictions, the court system is integrated, implying that courts generally administer both central and state laws.<sup>8</sup> Judges of the Supreme Court and the high courts are presently selected for appointment by a collegium of other judges, including the Chief Justice of India.<sup>9</sup> However, with the passing and notification of the National Judicial Appointments Commission Act, 2014 (the “**NJAC Act**”) by the Parliament, the existing system for the appointment of judges to the Supreme Court and the high courts has been changed. Judges will now be selected by the National Judicial Appointments Commission (the “**NJAC**”), which consist of the Chief Justice of India, the two most senior judges of the Supreme Court, the Union Minister of Law and Justice and two eminent persons nominated by a committee composed of the Prime Minister of India, the Chief Justice of India, and the Leader of the Opposition in the Lok Sabha.<sup>10</sup> The NJAC Act has been challenged before the Supreme Court and the matter is still pending. Accordingly, all higher judicial appointments have been put on hold for the time being.<sup>11</sup>

## The Practice of Law

### Education

Legal education in India is regulated by the Bar Council of India, as set up by the Advocates Act of 1961 (the “**Advocates Act**”).<sup>12</sup> Students may pursue two different paths to obtain a law degree: (i) a three-year specialized course after obtaining an undergraduate degree, or (ii) a five-year integrated course after high school.<sup>13</sup> India currently does not have continuing legal education requirements. There are also no

---

<sup>5</sup> Government of India, GOI Web Directory, <http://goidirectory.nic.in/district.php> (last visited on September 4, 2015); India Law Justice, <http://www.indialawjustice.com/district-courts-in-india.php> (last visited on September 4, 2015).

<sup>6</sup> Some examples of these tribunals include the Company Law Board, the Competition Commission of India, the National Green Tribunal, the Securities Appellate Tribunal, the Consumer Protection Forum and the Tax Tribunal. See Prabhudesai, *supra* note 2.

<sup>7</sup> *Id.*

<sup>8</sup> See Navoneel Dayanand, Overview of Legal Systems in the Asia-Pacific Region: India (Apr. 10, 2004), available at [http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1001&context=lps\\_lsapr](http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1001&context=lps_lsapr) (last visited on September 4, 2015).

<sup>9</sup> R. Balaji, How Judges Are Appointed and How Rakya Sabha Wants Them Appointed (Sept. 6, 2013), available at [http://www.telegraphindia.com/1130906/jsp/nation/story\\_17318049.jsp](http://www.telegraphindia.com/1130906/jsp/nation/story_17318049.jsp) (last visited on September 4, 2015).

<sup>10</sup> See Press Release, Government of India, National Judicial Appointments Commission Act Notified (Apr. 13, 2015), available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=118224> (last visited on September 4, 2015).

<sup>11</sup> Utkarsh Anand, Government Won't Appoint Judges Till Supreme Court Resolves NJAC Issue (Apr. 24, 2015), available at <http://indianexpress.com/article/india/india-others/njac-shall-not-make-fresh-appointment-of-judges-govt-to-sc/> (last visited on September 4, 2015).

<sup>12</sup> Advocates Act, No. 25 of 1961, INDIA CODE, available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Advocates-Act1961.pdf> (last visited on September 4, 2015) (hereinafter, “**Advocates Act**”).

<sup>13</sup> Rakesh Kumar Srivastava, A Guide to India's Legal Research and Legal System (Oct. 2008), available at [http://www.nyulawglobal.org/globalex/India\\_Legal\\_Research.htm#8\\_LEGAL\\_EDUCATION](http://www.nyulawglobal.org/globalex/India_Legal_Research.htm#8_LEGAL_EDUCATION) (last visited on September 4, 2015).



minimum pro bono requirements to obtain a law degree or for continued licensure.<sup>14</sup> However, many law schools in India such as the National Law Schools in Bangalore, Hyderabad, Kolkata and Bhopal, among others, offer clinics and student activities focused on providing legal advice, offering dispute resolution services, and promoting legal awareness among disadvantaged communities.<sup>15</sup>

### Licensure

A graduate from a recognized law school is required to enroll as an advocate with any State Bar Council.<sup>16</sup> Following such enrollment, the law graduate is required to pass the All India Bar Examination, which is conducted by the Bar Council of India (this requirement was instituted in 2010), in order to become a qualified lawyer in India.<sup>17</sup> Persons enrolled as advocates with any State Bar Council are entitled to practice law throughout the country in any state, including the high courts and the Supreme Court.<sup>18</sup> However, to be able file matters in the Supreme Court, lawyers are required to qualify as Advocates-on-record by clearing the AoR examination.

### Demographics

It is estimated that there are more than 1.3 million registered lawyers in India, with about 60,000 to 70,000 new lawyers joining the profession every year.<sup>19</sup> While this is similar to the absolute number of lawyers in the U.S., the per capita number of lawyers in India is around 10.2 for every 10,000 residents compared to around 38.5 lawyers per 10,000 residents in the U.S.<sup>20</sup> Most Indian lawyers work in litigation-related fields, with likely only around 5,000 to 10,000 corporate or transactional lawyers in India, including in-house lawyers.<sup>21</sup> More than 2,000 lawyers work for the seven biggest national law firms, with an estimated additional 1,000-1,500 lawyers working in mid-size firms, each consisting of 20 or more

---

<sup>14</sup> ET Bureau, Law Companies Now Joining in Pro-Bono Activities, Legal Eagles Offering Free Services to Needy, Economic Times, Aug. 24, 2013, [http://articles.economictimes.indiatimes.com/2013-08-24/news/41443991\\_1\\_parliament-attack-case-ram-jethmalani-sar-geelani](http://articles.economictimes.indiatimes.com/2013-08-24/news/41443991_1_parliament-attack-case-ram-jethmalani-sar-geelani); (last visited on September 4, 2015) Interview with Kaustubh Verma, Luthra & Luthra Law Offices (July 13, 2015).

<sup>15</sup> Jane Schukoske & Roopali Adlakha, Enhancing Good Governance in India: Law Schools and Community-University Engagement, J. Indian L. & Soc'y 206 Vol. 3 (2012), <http://www.smsfoundation.org/wp-content/uploads/2015/01/ENHANCING-GOOD-GOVERNANCE-IN-INDIA-LAW-SCHOOLS.pdf> (last visited on September 4, 2015).

<sup>16</sup> Int'l Ass'n of Lawyers, Overview of the Legal Profession in India, <http://www.uanet.org/en/content/overview-legal-profession-india> (last visited on September 4, 2015); Amit Bansal, Int'l Bar Ass'n, How to Qualify as a Lawyer in India, [http://www.ibanet.org/PPID/Constituent/Student\\_Committee/qualify\\_lawyer\\_india.aspx](http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_india.aspx) (last visited on September 4, 2015).

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> See Bar Council of India, Vision Statement 2011-2013, <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/vision-statement-2011-13/> (last visited on September 4, 2015); Kian Ganz, RTI Reveals: 1.3M Advocates; 1 in 300 Delhi-ites a Lawyer; Maharashtra Lawyers 'Richest'; Jharkand, Assam, J&K Fastest, Legally India (Feb. 18, 2013), <http://www.legallyindia.com/201302183448/Bar-Bench-Litigation/rti-reveals-number-of-lawyers-india> (last visited on September 4, 2015).

<sup>20</sup> See Am. Bar Ass'n, Lawyer Demographics (2011), available at [http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer\\_demographics\\_2011\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2011_authcheckdam.pdf) (last visited on September 4, 2015); see Matt Leichter, Lawyers Per Capita by State, <http://lawschooltuitionbubble.wordpress.com/original-research-updated/lawyers-per-capita-by-state/> (last visited on September 4, 2015). Assuming populations of 311,591,917 per the U.S. Census Bureau in July of 2011 and 1,170,938,000 per the World Bank for India in 2010.

<sup>21</sup> See India Watch: The Forbidden Land of "Approximately" 1.2 Million Lawyers, The Lawyer (Oct. 20, 2011), [http://www.thelawyer.com/india-watch-the-forbidden-land-of-%E2%80%98approximately%E2%80%99-12-million-lawyers/1009874\\_article](http://www.thelawyer.com/india-watch-the-forbidden-land-of-%E2%80%98approximately%E2%80%99-12-million-lawyers/1009874_article) (last visited on September 4, 2015).



lawyers.<sup>22</sup> The remaining lawyers work at sole proprietorships and as attorneys employed by smaller law firms.

## Legal Regulation of Lawyers

The legal profession in India is primarily self-regulating and governed by the relevant State Bar Councils and the Bar Council of India set up under the Advocates Act.<sup>23</sup> The stated purpose of the Advocates Act was to “consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Councils and an All-India Bar.”<sup>24</sup> The Advocates Act set up bar councils for each state composed of member-attorneys elected by enrolled attorneys.<sup>25</sup> The functions of bar councils include admitting attorneys to the bar, preparing and maintaining the register of attorneys, hearing cases of misconduct against admitted attorneys and “organiz[ing] legal aid to the poor,” including by constituting legal aid committees.<sup>26</sup> The Bar Council of India has been tasked with establishing the rules and standards of professional conduct for attorneys and disciplinary procedures.<sup>27</sup> These rules and standards, which are set out in detail on the website of the Bar Council of India, prescribe a lawyer’s duties towards the court, clients, opponents and colleagues.<sup>28</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

India’s Constitution, national legislation and Supreme Court jurisprudence together articulate the importance of broadly accessible legal aid.<sup>29</sup> Article 39A of the Constitution provides:

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Further, Article 22(1) of the Constitution requires that any person who is detained be given the right to “consult, and to be defended by, a legal practitioner of [their] choice.”<sup>30</sup> The Supreme Court has interpreted the Constitution broadly with respect to rights of the underprivileged. For example, the Court has held that the right to free legal aid falls within the ambit of the right to life set out in Article 21 of the Constitution.<sup>31</sup>

---

<sup>22</sup> Id.

<sup>23</sup> Advocates Act, supra note 12.

<sup>24</sup> Id.

<sup>25</sup> See id. § 3.

<sup>26</sup> See id. §§ 6, 6(eee), 9A.

<sup>27</sup> See id. § 7.

<sup>28</sup> See Bar Council of India, Rules on Professional Standards (2012), available at <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/> (last visited on September 4, 2015).

<sup>29</sup> See, e.g., INDIA CONST. art. 39A; Legal Services Authorities Act of 1987, S.P. Gupta v. Union of India, INDIA CODE (as amended by the Legal Services Authorities (Amendment) Act, 2002, No. 37, INDIA CODE), (1982) 2 SCR 365.

<sup>30</sup> INDIA CONST. art. 22(1).

<sup>31</sup> Hussainara Khatoon (III) v. Home Sec’y, AIR 1979 SC 1377. This case pertained to the illegal detention of thousands of prisoners in jail in the State of Bihar awaiting trial for periods substantially longer than the period they would have served in jail had they been tried, convicted and given the maximum sentence. Reading a right



The Legal Services Authorities Act, as amended by the Legal Services Authorities (Amendment) Act, 2002 (the “**LSA Act**”) describes a hierarchy of state, district and taluk<sup>32</sup> legal services authorities intended to give effect to the Constitution’s promise of equal access to justice. The LSA Act was originally enacted by India’s Parliament in 1987 and adopted by various Indian states during the mid-1990s. Sections 15, 16 and 17 of the LSA Act establish National, State and District Legal Aid Funds respectively, which collect government funding, grants and donations to finance legal services and legal literacy activities.<sup>33</sup>

### State-Subsidized Legal Aid

Section 12 of the LSA Act lays out the criteria for eligibility for legal services under the LSA Act. According to its provisions, every person who has to file or defend a case is entitled to legal services if they are: (a) from a low caste according to the historical caste system in India; (b) a victim of human trafficking or a beggar; (c) a woman or child; (d) a mentally ill or disabled person; (e) a victim of a natural disaster or man-made disaster or conflict, such as ethnic violence; (f) an industrial workman; (g) in custody, including with the legal authorities and with a mental health institution; or (h) earning an income below the poverty ceiling amended from time to time in accordance with the LSA Act.<sup>34</sup> However, as the bulk of legal services are provided by organizations established outside of the national network of legal aid, these eligibility guidelines are not determinative of whether legal services are actually available to marginalized groups. As a result, the expansive entitlement provided in the LSA Act remains an unfulfilled promise.<sup>35</sup>

### Public Interest Litigation

The Public Interest Litigation (“**PIL**”) mechanism has liberalized access to the courts and perhaps has had the greatest impact on legal services in India. Article 32 of the Constitution gives the Indian Supreme Court jurisdiction over PIL actions. In *S.P. Gupta v. Union of India*, the Court articulated a broad rule of *locus standi*: if a petitioner were “by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public” might petition on their behalf against the government of India to enforce a fundamental constitutional right.<sup>36</sup> In the *S.P. Gupta* case, the apex court further held that it would “respond even to a letter addressed by such individual acting pro bono publico” and treat it as a writ petition for a PIL case.<sup>37</sup>

PIL cases are intended to be cooperative and collaborative, rather than adversarial in nature. They allow judges to involve *amici curiae* and expert advisors to provide information and help structure orders such that they are easily implemented. PILs place the court in the role of an active fashioner of remedies and ongoing monitor, eliciting forward-looking injunctive remedies rather than focusing entirely on monetary damages.<sup>38</sup> As a result, PILs are often more flexible, with courts often taking on an active and

---

to speedy trial as also a right to free legal aid implicit in the fundamental right to life and liberty guaranteed in Article 21 of the Constitution, the Indian Supreme Court directed the release of over 40,000 prisoners on personal or no bond.

<sup>32</sup> A taluk is a subdivision of a district much like a municipality in western countries.

<sup>33</sup> See Legal Services Authorities Act as amended, *supra* note 29.

<sup>34</sup> *Id.* § 12.

<sup>35</sup> See Email from Swagata Raha, Law Faculty, Christ College, Bangalore to author (Dec. 6, 2007, as confirmed on Oct. 1, 2010) (on file with author).

<sup>36</sup> *S.P. Gupta*, 2 S.C.R. 365 ¶¶ 1-11.

<sup>37</sup> *Id.* ¶ 17.

<sup>38</sup> Avani Mehta Sood, *CTR. FOR REPRODUCTIVE RIGHTS, Litigating Reproductive Rights: Using Public Interest Litigation and International Law to Promote Gender Justice in India* 24-30 (2006); Ranjan K. Agarwal, *The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India*, 21 *ARIZ. J. INT’L & COMP. L.* 663, 689-90, 693 (2004). See Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?*, 37 *AM. J. COMP. L.* 495, 498 (1989).



inquisitional role and sometimes granting immediate and interim remedial relief once a prima facie case is made. In PIL proceedings courts are also more likely to relax adherence to procedural rules and laws, such as the principles of *res judicata*, laches, and standing, to permit greater protection of the rights of the disadvantaged sections of society.<sup>39</sup>

Critics argue that this reliance on outside experts grants amici too much influence over judicial outcomes, that the judicial activism of the PIL mechanism violates the separation of powers in the Indian polity, and that the PIL mechanism has invited a flood of frivolous cases that abuse the increased access to the courts provided by PIL.<sup>40</sup> Its critics notwithstanding, PIL has led to court rulings issuing guidelines for compensating and rehabilitating rape victims, ordering the release of bonded laborers, banning smoking in public places, and defining sexual harassment in the workplace.<sup>41</sup> The potential for effective PIL cases is strengthened by the relative independence of India's judiciary. PIL provides a unique opportunity for public legal services providers in India, and is central to the work of legal services organizations such as the Lawyers Collective, Human Rights Law Network, and the Alternative Law Forum.

## Assignment of Lawyers to Legal Aid Matters

### Mandatory assignments

Generally speaking, matters are assigned by a court under the legal aid scheme to those lawyers who are empanelled on the Legal Services Committee constituted by the relevant state's Legal Services Authority. The fee for legal services payable to such empanelled lawyers is typically determined in accordance with a prescribed schedule. Private attorneys who are not empanelled on such committee or any other committee constituted by the legal services authority for legal aid are not required to accept pro bono matters assigned to them. Acceptance of a pro bono matter by such private attorneys is, therefore, voluntary. Typically, such private attorneys accepting pro bono matters voluntarily charge no fee or a minimal fee for such matters. However, if such attorneys were to be empanelled on the above committee, they would be entitled to a legal fee in accordance with the schedule prescribed.<sup>42</sup>

### Unmet Needs and Access.

Despite robust support in the letter of the law, the national network of legal services providers is unable to meet the needs of India's disadvantaged populations, and NGOs providing legal services face significant resource constraints.<sup>43</sup>

---

<sup>39</sup> For a detailed discussion on the evolution, development, nature and norms of PIL, see Clark D. Cunningham, *The World's Most Powerful Court: Finding the Roots of India's Public Interest Litigation Revolution*, in *THE HUSSAINARA KHATOON PRISONERS CASE, LIBERTY, EQUALITY AND JUSTICE: STRUGGLES FOR A NEW SOCIAL ORDER* (S.P. Sathe ed., 2003); Aman Hingorani, *Indian Public Interest Litigation: Locating Justice in State Law*, XVII DLR 159 (1995); Upendra Baxi, *Supreme Court under Trial: Undertrials and the Supreme Court* 35 S.C.C. (1980); C.D. Cunningham, *Public Interest Litigation in the Indian Supreme Court: A Study in Light of the American Experience*, 29 J. OF THE INDIAN L. INST. 494 (1987); and Parmanand Singh, *Protecting the Rights of the Disadvantaged Groups through Public Interest Litigation*, in *HUMAN RIGHTS AND BASIC NEEDS: THEORY AND PRACTICE* (M.P. Singh et al. eds. 2008).

<sup>40</sup> Sood, *supra* note 38, at 28-30; Agarwal, *supra* note 38, at 696, 700; see also V.S. Vadivel, *Public Interest Litigation (PIL) A Boon or Bane?*, available at <http://www.legalserviceindia.com/articles/pil.htm> (last visited on September 4, 2015).

<sup>41</sup> Jasper Vikas George, *Social Change and Public Interest Litigation in India* (Mar. 8, 2005), [http://www.ssvk.org/social\\_change\\_public\\_interest\\_litigation\\_in\\_india.pdf](http://www.ssvk.org/social_change_public_interest_litigation_in_india.pdf) (last visited on September 4, 2015) (the author is an Advocate in the Delhi High Court).

<sup>42</sup> Interview with Kaustubh Verma, *supra* note 14.

<sup>43</sup> Telephone Interview with Linda McGill, Partner, Bernstein Shur (Dec. 6, 2007, as confirmed Oct. 4, 2010); See E-mail from Swagata Raha, *supra* note 35.



## Alternative Dispute Resolution

The LSA Act frames the work of the Lok Adalats.<sup>44</sup> Lok Adalats are local “people’s court” settlement and mediation bodies, intended to promote equal access to justice to those economically or otherwise less privileged in the formal court system. Though criticized for their informality, Lok Adalats provide final settlements to disputes quickly as compared to the traditional court system. Disputes may be presented before a Lok Adalat if the parties agree to its jurisdiction or if a court refers a matter to a Lok Adalat for settlement.<sup>45</sup> Importantly, Section 21(2) of the LSA Act provides that Lok Adalat awards are final and binding on the parties to the dispute. Lok Adalats charge no court fee, do not follow procedural rules, and allow disputants to interact with the judge directly to explain their cases. In practice, for example, in the southern state of Tamil Nadu, by the end of 2001, 4,871 separate Lok Adalats had been organized, and such Lok Adalats had decided 91,178 cases.<sup>46</sup> Lok Adalats usually address money claims, matrimonial and land acquisition matters. They are not intended to be a forum for large scale public interest litigation and do not offer the procedural safeguards characteristic of traditional courts.

## PRO BONO ASSISTANCE

### Pro bono Opportunities

Private attorneys are not mandated to do or report pro bono work.<sup>47</sup> Most law firms in India do not have mandatory pro bono programs or pro bono requirements for their associates.<sup>48</sup> However, some law firms do work on a pro bono basis with poverty alleviation and other NGOs, and some allow their associates to count their pro bono hours as billable hours.<sup>49</sup> While individual advocates may contribute their time to public service activities, the work tends to be ad hoc and consequently difficult to organize or measure.

The major NGOs that provide pro bono services in India are the Lawyers Collective (the “LC”), the Human Rights Law Network (the “HRLN”), the Alternative Law Forum (the “ALF”) and Majlis.<sup>50</sup> The LC comprises lawyers, law students and human rights activist members and consists of a women’s rights initiative as well as a focus on domestic violence, sexual harassment, HIV, access to medicine and vulnerable community issues.<sup>51</sup> HRLN is a not-for-profit NGO with 25 offices across India that advocates for civil, political, economic, social, cultural and environmental rights. HRLN works on a variety of issues including criminal justice, housing rights and human trafficking. It has organized a network of Indian advocates who take on pro bono cases in addition to their individual legal practices.<sup>52</sup> ALF provides legal support to groups and people marginalized on the basis of class, caste, disability, gender or sexuality.<sup>53</sup> Majlis is an all-female organization consisting of lawyers and social activists whose primary agenda is social change

---

<sup>44</sup> Legal Services Authorities Act as amended, supra note 29, at ch. 6.

<sup>45</sup> See *Afcons Infrastructure Ltd. & Anr. v. Cherian Varkey Construction Co. (P) Ltd. & Ors.*, (2010) 8 S.C.R. 1053.

<sup>46</sup> S. Arunajatesan & S. Subramanian, Lok Adalat for Speedy Justice, *THE HINDU*, Dec. 18, 2001, at Open Page, available at <http://www.hindu.com/thehindu/op/2001/12/18/stories/2001121800060100.htm> (last visited on September 4, 2015).

<sup>47</sup> Interview with Kaustubh Verma, supra note 14.

<sup>48</sup> Email from Mohit Abraham to author (Nov. 26, 2007) (on file with author).

<sup>49</sup> ET Bureau, supra note 14.

<sup>50</sup> Email from Swagata Raha, supra note 35; Bella Jaisinghani, ‘Once Victim Overcomes Fear, Half the Battle’s Won’, *Times of India*, June 20, 2011, available at <http://timesofindia.indiatimes.com/city/mumbai/Once-victim-overcomes-fear-half-the-battles-won/articleshow/8920548.cms> (last visited on September 4, 2015).

<sup>51</sup> LAWYERS COLLECTIVE, <http://www.lawyerscollective.org> (last visited on September 4, 2015).

<sup>52</sup> HUMAN RIGHTS LAW NETWORK, <http://www.hrln.org> (last visited on September 4, 2015).

<sup>53</sup> ALTERNATIVE LAW FORUM, <http://www.alllawforum.org> (last visited on September 4, 2015).



through quality legal representation for needy women across the country and bringing about a change in beliefs through advocacy and training.

Other legal services organizations providing pro bono services in India include: in New Delhi, the Public Interest Legal Support and Research Center, which works on environmental, refugee, religious freedom and representative governance issues;<sup>54</sup> in Kolkata, *Swayam* focuses on women's rights,<sup>55</sup> and *Manabadhikar Suraksha Mancha* focuses on civil and political rights;<sup>56</sup> in Bangalore, human rights organization SICHREM<sup>57</sup> and the National Law School's Legal Services Clinic;<sup>58</sup> in Mumbai, the Society for Service to Voluntary Agencies, supporting non-profits;<sup>59</sup> in Uttaranchal, Rural Litigation and Entitlement Kendra, an NGO serving indigenous populations and women and children;<sup>60</sup> with offices across Tamil Nadu, People's Watch Tamil Nadu, which focuses on human rights litigation;<sup>61</sup> and in Orissa, the Committee for Legal Aid to Poor, an NGO which works for the promotion, enforcement and protection of human rights and dignity in association with civil society organisations and governance systems through, inter alia, provision of legal aid.<sup>62</sup>

Further, numerous Indian NGOs engage in law-related advocacy work. For example, the Centre for Civil Society advocates the right to education and the rights of street entrepreneurs.<sup>63</sup> Women's rights organizations include the Centre for Social Research,<sup>64</sup> SAKSHI and WomenPowerConnect. All states have their respective state legal services authority, each of which have been constituted to give effect to the principles enshrined in the Constitution for provision of legal aid to all persons in need of it. For example, the Delhi High Court Legal Services Committee and the Bombay High Court Legal Services Committee are statutory bodies constituted by the state legal services authorities in Delhi and Maharashtra respectively, under the LSA Act, which provide free legal services to eligible persons within their respective states.<sup>65</sup>

## Historic Development and Current State of Pro bono

While pro bono work is supported in Indian law, the provision of pro bono services faces a number of challenges. First, the rising demand for commercial lawyers in India may deter growth in the pro bono sector. In addition, India's tremendous diversity; its liberal laws and jurisprudence in relation to legal

---

<sup>54</sup> PILSARC, <http://www.unhcr.org/48fdeca72.html> (last visited on September 4, 2015).

<sup>55</sup> SWAYAM, <http://www.swayam.info> (last visited on September 4, 2015).

<sup>56</sup> BANGLAR MANABADHIKAR SURAKSHA MANCHA (MASUM), <http://www.masum.org.in/> (last visited on September 4, 2015).

<sup>57</sup> SOUTH INDIA CELL FOR HUMAN RIGHTS EDUCATION AND MONITORING ("SICHREM"), <http://www.sichrem.org> (last visited on September 4, 2015). SICHREM seeks to empower disempowered groups in India to "protect their individual and collective rights for a dignified life, through education, monitoring and mobilising civil society for concerted action." *Id.*

<sup>58</sup> NATIONAL LAW SCHOOL OF INDIA UNIVERSITY—LEGAL SERVICES CLINIC, <http://www.nls-lsc.org/> (last visited on September 4, 2015). The Legal Services Clinic provides free legal services to economically backward members of Indian society, promotes alternate methods of dispute resolution and undertakes research projects at the request of other organizations. See *id.*

<sup>59</sup> SOCIETY FOR SERVICE TO VOLUNTARY AGENCIES, <http://www.sosva.org/> (last visited on September 4, 2015).

<sup>60</sup> RURAL LITIGATION AND ENTITLEMENT KENDRA, <http://www.rlek.org> (last visited on September 4, 2015).

<sup>61</sup> PEOPLE'S WATCH, <http://pwtn.org> (last visited on September 4, 2015).

<sup>62</sup> COMMITTEE FOR LEGAL AID TO POOR, <http://www.clapindia.org/intro.htm> (last visited on September 4, 2015).

<sup>63</sup> CENTRE FOR CIVIL SOCIETY, <http://www.ccsindia.org> (last visited on September 4, 2015).

<sup>64</sup> CENTRE FOR SOCIAL RESEARCH, <http://www.csrindia.org> (last visited on September 4, 2015).

<sup>65</sup> DELHI HIGH COURT LEGAL SERVICES COMMITTEE, <http://www.dhclsc.org/> (last visited on September 4, 2015); <https://legalservices.maharashtra.gov.in/1035/Home> (last visited on September 4, 2015).



services for the underprivileged; its large population living in poverty; its history and present status as a secular, democratic republic; and its recent economic growth along with the expectations that growth has raised, together make it a unique and challenging environment in which to develop pro bono legal services.

### Laws and Regulations Impacting Pro bono

India does not have a “loser pays” statute, but courts are given discretion in awarding legal fees to parties.<sup>66</sup> Contingency fees are not allowed, so disadvantaged litigants must either secure pro bono representation or obtain legal aid. Professional indemnity legal insurance is available for attorneys, and does appear on the surface to cover pro bono activities.<sup>67</sup>

### Restrictions on Foreign-Qualified Lawyers

To qualify as an “advocate” under the Advocates Act, a lawyer must be admitted to the rolls of an Indian Bar.<sup>68</sup> The Advocates Act further specifies that only advocates, as defined under that Act, are entitled to practice law in India,<sup>69</sup> and only advocates may practice in any Indian court or before any Indian authority.<sup>70</sup> The language of the Advocates Act draws no distinction between fee-paying and pro bono work. According to this legislation, foreign-qualified lawyers cannot make any legal filings or appear in court on pro bono matters. Further, the Indian government does not routinely grant work visas to legal interns or lawyers.<sup>71</sup> Recently, the Government of India has begun consultations on a gradual opening up of the legal services sector to foreign lawyers with the safeguard that litigation will remain the exclusive domain of Indian lawyers.<sup>72</sup> The Bar Council of India and the Society of Indian Law Firms have agreed “in principle” with the government’s proposal to gradually open up the legal sector to foreign players but have insisted that that this be done on a reciprocal basis.<sup>73</sup>

As the restriction on foreign-qualified lawyers practicing law extends to both fee-paying and non-fee-paying work, foreign-qualified lawyers are not permitted to take on pro bono cases in India. They also may not participate in a joint venture with local lawyers to undertake pro bono work. Foreign law firms therefore cannot develop their own pro bono practices in India. However, they can partner with local organizations in a variety of supporting, advisory and capacity-building roles. Lawyers are not required to charge value-added tax on legal services, nor are there any regulations that require lawyers to charge minimum tariffs for their services.<sup>74</sup>

Provided that foreign-qualified lawyers do not file any documents under their names or seek to represent their pro bono clients in court, these lawyers can assist in a multitude of ways. For example, they can

---

<sup>66</sup> Law Commission Report, 240th Report On Costs In Civil Litigation (May 2012), available at <http://indiankanoon.org/doc/185277830/> (last visited on September 4, 2015); Interview with Kaustubh Verma, supra note 14.

<sup>67</sup> New India Assurance Co., Professional Indemnity Policy, <http://www.newindia.co.in/Content.aspx?pageid=49#a2> (last visited on September 4, 2015). Interview with Kaustubh Verma, supra note 14.

<sup>68</sup> Legal Services Authorities Act as amended, supra note 29, § 2, cl. 1(a).

<sup>69</sup> Id. § 29.

<sup>70</sup> Id. § 33.

<sup>71</sup> Email from Swagata Raha, supra note 35.

<sup>72</sup> Foreign Lawyers May Get Toehold, but Won’t Be Allowed to Fight Cases, TIMES OF INDIA, June 30, 2011, available at <http://timesofindia.indiatimes.com/india/Foreign-lawyers-may-get-toehold-but-wont-be-allowed-to-fight-cases/articleshow/47873203.cms> (last visited on September 4, 2015).

<sup>73</sup> Amit Anand Choudhary, Bar Council Okay With Foreign Lawyers’ Entry, TIMES OF INDIA, July 5, 2015, <http://timesofindia.indiatimes.com/india/Bar-council-okay-with-foreign-lawyers-entry/articleshow/47942641.cms> (last visited on September 4, 2015).

<sup>74</sup> Email from Arvind Kamath, Partner, ALMT Legal, Advocates & Solicitors to author (June 14, 2012); Shweta Hingorani, Partner, Luthra & Luthra Law offices to author (Jun. 22, 2012) (on file with author).



identify issues, research domestic and foreign precedents, interview parties, assist in drafting documents, and review and rehearse arguments for pro bono cases. They can also provide strategic advice in particular cases or in relation to models and structures for delivering pro bono services in coordination with Indian NGOs and law firms among others. They can aid generally in legal literacy, policy and advocacy efforts.<sup>75</sup>

Foreign-qualified lawyers can also assist with reviews of the implementation of specific laws and research on pendency problems in the judicial system. For example, the Right to Information Act passed in 2005 was aimed at increasing transparency and reducing corruption, in part by establishing commissions to help ensure that Indian citizens are able to access public records. However, the commissions are often in need of further legal resources to read and categorize cases and reduce pendency. In addition to assisting legal services and quasi-judicial organizations in these ways, foreign-qualified lawyers might also volunteer their time to develop legal clinics in coordination with Indian law schools, and to help professionalize pro bono work in India more broadly.

### Socio-Cultural Barriers to Pro bono or Participation in the Formal Legal System

There are also plenty of public concerns about the formal legal system, including corruption, judicial efficiency and lack of public trust in the judiciary which leads to informal dispute resolution. One of the biggest problems plaguing the Indian judicial system has been pendency. It is estimated that, as of April, 2015, there were nearly 30 million cases pending in Indian courts.<sup>76</sup> Further, there are more than 345 vacancies just at the High Court level for judges pending confirmation and appointment, which compounds the problem. For instance, the Allahabad High Court, India's largest high court by the number of judges, has a sanctioned strength of 160 judges but presently has only about 80 sitting judges.<sup>77</sup> Lawyers, activists and even Supreme Court judges have focused on this issue, which is central to an understanding of not just how legal services are provided and regulated in India, but also the real opportunities and obstacles facing lawyers interested in providing pro bono services in India.<sup>78</sup>

### Pro bono Resources

Below is a non-exhaustive list of organizations that provide pro bono services in India through which foreign-qualified lawyers may seek opportunities to participate:

- Lawyers Collective (<http://www.lawyerscollective.org/> (last visited on September 4, 2015))
- Human Rights Law Network (<http://www.hrln.org/hrln/> (last visited on September 4, 2015))
- Alternative Law Forum (<http://www.altlawforum.org/> (last visited on September 4, 2015))
- i-Probono (<http://www.i-probono.com/> (last visited on September 4, 2015))
- Majlis (<http://www.majlislaw.com/> (last visited on September 4, 2015))
- National Campaign for the People's Right to Information (<http://righttoinformation.info/> (last visited on September 4, 2015))
- Public Interest Legal Support and Research Center (<http://www.unhcr.org/48fdeca72.html>)
- Swayam (<http://www.swayam.info/> (last visited on September 4, 2015))
- Manabadhikar Suraksha Mancha (<http://www.masum.org.in/> (last visited on September 4, 2015))

<sup>75</sup> Telephone interview with Linda McGill, supra note 43.

<sup>76</sup> Press Trust of India, Nearly Three Crore Cases Pending, CJI Says Trial to End Within five Years, Indian Express, Apr. 5, 2015, available at <http://indianexpress.com/article/india/india-others/nearly-three-crore-cases-pending-cji-says-trial-to-end-within-5-years/> (last visited on September 4, 2015); See Dhananjay Mahapatra, Supreme Court Chides Itself, Govt for Judicial Backlog, TIMES OF INDIA, Jan. 12, 2012, [http://articles.timesofindia.indiatimes.com/2012-01-12/india/30619133\\_1\\_hc-judges-trial-courts-ad-hoc-judges](http://articles.timesofindia.indiatimes.com/2012-01-12/india/30619133_1_hc-judges-trial-courts-ad-hoc-judges) (last visited on September 4, 2015).

<sup>77</sup> Apoorva Mandhani, High Courts of the Country Enter 2015 With 35% Vacancies; Allahabad HC Functioning with 50% of Approved Strength Judges (Jan. 7, 2015), <http://www.livelaw.in/high-courts-country-enter-2015-35-vacancies-allahabad-hc-functioning-50-approved-strength-judges/> (last visited on September 4, 2015).

<sup>78</sup> See, e.g., id.



- Mahila Sarvangeen Utkarsh Mandal (<http://www.escri-net.org/docs/i/838915> (last visited on September 4, 2015))
- SICHREM (<http://www.sichrem.org/> (last visited on September 4, 2015))
- Committee for Legal Aid to Poor (<http://www.clapindia.org/> (last visited on September 4, 2015))
- National Law School's Legal Services Clinic (<http://www.nls-lsc.org/> (last visited on September 4, 2015))
- National Legal Services Authority (<http://nalsa.gov.in/legalservices.html> (last visited on September 4, 2015))
- Rural Litigation and Entitlement Kendra (<http://www.rlek.org/> (last visited on September 4, 2015))
- People's Watch (<http://www.peopleswatch.org/index.php> (last visited on September 4, 2015))
- Centre for Civil Society (<http://ccsindia.org/> (last visited on September 4, 2015).)
- Centre for Social Research (<http://www.csrindia.org/> (last visited on September 4, 2015))
- SAKSHI (<http://www.sakshingo.org/> (last visited on September 4, 2015))
- WomenPowerConnect (<http://www.womenpowerconnect.org/> (last visited on September 4, 2015))
- Indian Institute of Legal and Professional Development (no website available)

## CONCLUSION

In the last three decades, legislative, institutional and jurisprudential developments in India have laid the foundation for the provision of free legal services to the poor. In practice, however, only a handful of organizations deliver these services effectively, often relying on India's unique PIL mechanism to provide legal aid. At present, domestic law restricts foreign-qualified lawyers from representing pro bono clients. However, foreign-qualified lawyers can contribute to pro bono legal services directly, for example, by providing research and writing skills in individual cases, as well as indirectly through capacity-building efforts alongside Indian organizations. The demand for pro bono legal services in India far exceeds the supply, and a concerted, organized effort by the legal profession would go a long way towards ensuring the provision of quality pro bono legal services to the needy as enshrined in the Constitution.

September 2015

Pro Bono Practices and Opportunities in India

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Indonesia<sup>1</sup>

### INTRODUCTION

The provision of legal services to persons of limited means has historically been delegated to lawyers in Indonesia, with little oversight or financial support from the central or regional governments. Practicing lawyers have a legal obligation to provide pro bono services, but compliance is poorly monitored. Consequently, the provision of pro bono services and legal aid (outside legal aid-focused NGOs) has been limited. The government of Indonesia has, however, recently enacted laws to establish a legal aid scheme with government funding. While the new law is a positive step towards improving access to legal services, it remains to be seen whether it will be effective, as the relevant implementing regulations have not yet been promulgated.

In addition, access to legal services is hampered by Indonesia's geography. Indonesia has a population of 240 million spread over an extremely vast archipelago of more than 17,000 islands. Many of its citizens live in remote areas, without any access to legal services (paid or unpaid). Although there are a large number of NGOs working with Indonesia's underprivileged in urban areas, there are few services available outside of these urban centers.

Overall, outside the legal aid-focused NGOs, Indonesia's pro bono culture is slowly emerging, but requires further active support from lawyers working at law firms and in other legal roles.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Indonesia is a republic comprising 33 provinces. It has two main levels of government: (i) the central government, in which power is concentrated; and (ii) regional governments, which in turn are subdivided into provincial and district governments.

The Constitution of Indonesia (*Undang-Undang Dasar Republik Indonesia* 1945, or UUD '45) has almost exclusively been the fundamental law of Indonesia since its independence in 1945, notwithstanding several amendments made during the last 20 years.

Indonesia has a civil law system which is based, upon gaining independence in 1945, on legal codes inherited from the Dutch. However, in practice, judges and justices in Indonesia have started to adopt and habitually use precedent judicial decisions as their source of law in deciding a case. The Supreme Court also turns to jurisprudence and past cases for guidance in making strategic decisions, issuing annual journals of high profile Supreme Court decisions.

In addition, each ethnic group has developed its own customary law, officially called *adat* law (*hukum adat*), which has been influenced by Hinduism, Buddhism and Islam. Islamic law is also a parallel independent legal system and tends to apply to certain aspects of family and inheritance law.

##### The Courts

##### Court System

Two key institutions comprise the judicial branch of the government: (i) the Supreme Court and (ii) the Constitutional Court.<sup>2</sup>

---

<sup>1</sup> This chapter was drafted with the support of TS & Partners Law Firm, Jakarta – Indonesia.

<sup>2</sup> Alamo D. Laiman, Dewi Savitri Reni, Ronald Lengkong, and Sigit Ardiyanto, *The Indonesian Legal System and Legal Research* (Sep. 2009); (Updated by Tom Kimbrough, Jul. 2011), available at <http://www.nyulawglobal.org/globalex/Indonesia.htm#hierarchy> (last visited on September 4, 2015).



- The Supreme Court (*Mahkamah Agung Republik Indonesia*) is the highest judicial institution and the final court of appeal in Indonesia with regard to criminal, civil, religious, military and state administrative courts and other special courts established by laws enacted by the legislative arm of the central government (*Dewan Perwakilan Rakyat* or “DPR”).<sup>3</sup> The Supreme Court has the power of judicial review over legislative products or legislation, other than constitutional matters (which are outside the remit of the Supreme Court); and
- The Constitutional Court has the jurisdiction to determine whether laws promulgated by the DPR are constitutional.

The Law on Judicial Powers sets out the scope of the Supreme Court and the Constitutional Court.<sup>4</sup>

The Supreme Court has oversight over the Courts of Appeal (also referred to as high courts) of which there are approximately 20 located throughout Indonesia. There are four types of Courts of Appeal (also referred to as High Courts):

- High Court (*Pengadilan Tinggi*) – there is one in each province and special region;
- Religious High Court (*Mahkamah Islam Tinggi*) – there are 30 Religious High Courts;<sup>5</sup>
- Administrative High Court (*Pengadilan Tinggi Tata Usaha Negara*) – as at January 2012, there are four; one each in Jakarta Special Region, Eastern Java, Southern Sulawesi and North Sumatra; and
- Military High Court (*Pengadilan Militer Tinggi*) - there is only one Military High Court. It is located in Jakarta.<sup>6</sup>

The Courts of Appeal hear appeals from the Courts of First Instance.

The District Courts have jurisdiction to hear civil and criminal matters. There are approximately 250 District Courts located throughout Indonesia.<sup>7</sup> Also, within a District Court’s jurisdiction, there are specialist courts that hear cases based on the particularity of the area or issue of law, and a specialist court that hears cases based on the age of the defendant in a criminal case (i.e., a Commercial Court, Labor Court, Human Rights Court, Court for the Crime of Corruption and a Children’s Court).

### Appointment of Judges

In general the selection or appointment of judges in Indonesia under the Supreme Court jurisdiction is divided according to whether a career judge or a non-career judge is being selected. For career Judges, the selection is held through the Civil Servant Candidate (CPNS) system<sup>8</sup>, an admission system similar to that which is used for government officials (e.g. ministry, non-department state bodies, or local government). Non-career judges or ad-hoc judges are commonly selected or appointed from academics, experts or practitioners who have experience of working in specific fields and meet specific requirements. Individuals selected or appointed as judges for the Constitutional Court do not require prior experience as

---

<sup>3</sup> Elaborating on the 1945 Constitution, Law No. 14/1985 as amended by Law No. 5/2004 and Law No. 3/ 2009 state the powers and organization of the Supreme Court (see id., 2011).

<sup>4</sup> Each court is described in Law No. 48/2009 on Judicial Powers (Undang-undang Kekuasaan Kehakiman tahun 2009) (Law on Judicial Powers).

<sup>5</sup> Website of Directorate General of Religious Courts Body (Badilag) at <https://asiafoundation.org/resources/pdfs/V4IDReligiousCourtsWEP4pgWEB.pdf> (last visited on September 4, 2015).

<sup>6</sup> Laiman et al., 2011, supra n.7.

<sup>7</sup> Id.

<sup>8</sup> Website of The Supreme Court of Republic of Indonesia (MARI) at [https://www.mahkamahagung.go.id/images/news/cpnsma2010/3\\_persyaratan\\_cpns\\_ta\\_2010.pdf](https://www.mahkamahagung.go.id/images/news/cpnsma2010/3_persyaratan_cpns_ta_2010.pdf) (last visited on September 4, 2015).



a judge in any court, but only need to comply with the requirements stipulated in the Constitutional Court Law.<sup>9</sup>

There are no laws which integrally unify admission requirements since the requirements differ for each court depending on the court's characteristics or its specialist practice.<sup>10</sup> But in general, other than fulfilling the administrative requirements, all judges in Indonesia, whether under the jurisdiction of the Supreme Court or the Constitutional Court, must (a) be an Indonesian citizen, (b) have faith in God, (c) have obtained an undergraduate degree in law, (d) be physically and spiritually capable of performing their work, (e) never have served a criminal sentence, (f) fall within specified age requirements, and (g) have certain experience with respect to the specialist practice of the court.

## The Practice of Law

### Education

Indonesian lawyers obtain undergraduate degrees in law, following a national curriculum, which is taught at over 200 accredited law faculties across the country. Legal education at university level tends to have an academic rather than practical focus.<sup>11</sup> Practical experience must be obtained during a two year internship before one is eligible to take the oath and practice as a lawyer.

### Licensure

Indonesian lawyers are regulated pursuant to Law No. 18/2003 on Advocates, which came into effect on April 5, 2003 (the "**Advocate Law**"). The Advocate Law provided for Indonesia's eight bar organizations to be replaced by a single, unified professional association of lawyers. As a result of the enactment of such law, an organization called *Perhimpunan Advokat Indonesia*,<sup>12</sup> or the Indonesian Advocate Association ("**PERADI**"), was established.<sup>13</sup> However, in 2008, a number of prominent Indonesian lawyers set up a competing association, the *Kongres Advokat Indonesia* or Indonesia Advocates Congress ("**KAI**"), as they considered PERADI to have been improperly formed. After an extended dispute, on March 23, 2011, the Supreme Court of Indonesia declared that it did not matter which organization an advocate was registered with for the purpose of representing clients in Indonesian courts and stated that PERADI's principal recognition did not necessarily mean that members of other associations would not be eligible to take an oath and be sworn into practice. Accordingly, the division between PERADI and KAI remains, and no unified body has been established in accordance with the aims of the Advocate Law. Both associations are enforcing separate codes of ethics and organizing separate exams for the admission of law graduates to the profession. In 2013, the DPR was working on an amendment to the Advocate Law and considering the issue of whether to re-examine the single bar association policy.

---

<sup>9</sup> Law No. 24 Year 2003 as lastly amended by Law No. 8 Year 2011 regarding The Constitutional Court at art 15 (1) and (2).

<sup>10</sup> Vide Law No. 2 Year 1986 as lastly amended by Law No. 49 Year 2009 regarding Public Judicature; Law No. 7 Year 1989 as lastly amended by Law No. 50 Year 2009 regarding Religious Judicature; Law No. 5 Year 1986 as lastly amended by Law No. 51 Year 2009 regarding Administrative Judicature; Law No. 31 Year 1997 regarding Military Judicature; and Law No. 46 Year 2009 regarding Corruption Criminal Court.

<sup>11</sup> THE LAW SOCIETY OF ENGLAND AND WALES, 2011, Indonesia: Legal Services Market Report, Dec. 2010.

<sup>12</sup> See [www.peradi.or.id](http://www.peradi.or.id) (last visited on September 4, 2015).

<sup>13</sup> PERADI was established in 2005 as a combination of eight existing bar associations. The move fulfilled provisions of the Advocate law that required the establishment of a single non-governmental advocate organization to test and certify Indonesia's lawyers. The Constitutional Court in 2006 upheld PERADI's status as the official organization to issue certifications for the country's lawyers. (Melissa Crouch, Cause Lawyers, the Legal Profession and the Courts in Indonesia: the Bar Association Controversy, LAWASIA JOURNAL (2011).



### Demographics

Indonesia has approximately 34,500 practicing lawyers.<sup>14,15</sup> Lawyers may work in law firms, as in-house counsel in government organizations and private companies and as solo practitioners in Indonesia. Most lawyers, however, choose to work in law firms in major cities.

### Legal Regulation of Lawyers

The Indonesian legal profession is regulated under the Advocate Law. To be registered as an advocate in Indonesia, in accordance with the Advocate Law, Indonesian lawyers must be Indonesian nationals residing in Indonesia, must not be civil servants or public officers, must be at least 25 years of age, and must meet a number of other educational, training and character requirements as well as passing the bar exam (administered by either PERADI or KAI, depending on the association with which the individual seeks registration).<sup>16</sup>

Foreign lawyers wishing to work in Indonesia must submit certain documentation to the Ministry for a licence. This documentation includes: their curriculum vitae, certified copies of degrees, clarification letters on practicing status, proof of membership of the bar in the country of origin, immigration documentation, and the tax numbers of the sponsoring law firm and the foreign lawyer. Once granted, the licence is valid for one year. Foreign lawyers practicing in Indonesia are not permitted to: (i) appear before any court; or (ii) set up law firms or branches of their overseas law firms in Indonesia. They are only allowed to work in Indonesia if they are employed by a local advocate/law firm as an employee or an expert in foreign laws of their home country.<sup>17</sup> Indonesian law firms seeking to employ foreign lawyers are also required to submit regular documentation to the Ministry, setting out the need for the foreign lawyer, the lawyer's particular skills and any pro bono work undertaken by the lawyer.<sup>18</sup> The Ministry of Law and Human Rights regulates foreign lawyers.<sup>19</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Until 2011, state-provided legal aid was not generally available, despite certain laws purporting to require such legal aid.

#### In Civil Proceedings

The Advocate Law provides that an advocate has an obligation to provide legal assistance to those incapable of seeking justice (Article 22(1)), with "legal assistance" defined as a legal service that an advocate provides for free to a client (Article 1(9)). The Advocate Law further provides that in performing his or her duty, an advocate must not discriminate against potential clients based on gender, political interest, ethnicity, race and cultural or social background (Article 18(1)).

#### In Criminal Proceedings

Under the Law of Criminal Procedure, legal aid is generally guaranteed only to those facing more than five years' imprisonment.<sup>20</sup> In other cases, access to legal counsel as guaranteed under the Advocate

---

<sup>14</sup> According to the Indonesian Advocates Association (Perhimpunan Advokat Indonesia), known as PERADI, its membership as at May 2012 was 17,500.

<sup>15</sup> KAI claims to have 17,000 members (see ANTARA NEWS (Jakarta), Konflik KAI dan PERADI Sampai ke Pimpinan MPR (Jan. 24, 2011), see [www.antaranews.com](http://www.antaranews.com)) (last visited on September 4, 2015).

<sup>17</sup> Id.

<sup>18</sup> INDONESIA, *supra* n.3.

<sup>19</sup> Advocates Law at art. 23(4).

<sup>20</sup> Law No. 8/1981 regarding the Law of Criminal Procedure, art. 56(1).



Law would depend on the goodwill of members of the legal profession and was not a strictly enforced requirement.<sup>21</sup> The Advocate Law was described in a United Nations Development Program publication as setting up an ideal, rather than implementing a full legal aid system.<sup>22</sup> Further regulations were put into effect in 2008, but this did not alleviate the problem because the primary responsibility to provide access to legal aid continued to be delegated to private practitioners.<sup>23</sup>

## State-Subsidized Legal Aid

On October 4, 2011, the DPR passed a law concerning legal aid (*Undang-undang tentang Bantuan Hukum or Law No 16/2011*) (the “**Legal Aid Law**”), and the implementing regulation of the Legal Aid Law was subsequently promulgated. The Legal Aid Law provides for the establishment by the Ministry of Justice and Human Rights of standards that must be satisfied by legal aid providers. Organizations that meet the standards are eligible to receive state funding, with payments handled by the Ministry of Justice and Human Rights and derived not only from government monies, *i.e.* State Revenues and Expenditure Budgets (APBN), but also from grants and donations from private sources.<sup>24</sup> Verification of eligibility and accreditation of legal aid providers under the Legal Aid Law are conducted by a committee comprising: (i) members of government departments that govern affairs in the field of law and human rights, (ii) academics, (iii) community leaders, and (iv) members of institutions that provide legal aid.<sup>25</sup> The provision of legal aid pursuant to the Legal Aid Law is not intended to relieve or reduce the obligation of Advocates to provide legal assistance under the Advocate Law and pursuant to the Law of Criminal Procedure.<sup>26</sup>

### Eligibility Criteria

To qualify, a person must, amongst other things, be considered “poor.” The Legal Aid Law defines “poor” as any person or group of people who cannot adequately satisfy their “basic rights” independently (with “basic rights” being defined by the Legal Aid Law to include the right to food, clothing, health services, education services, employment and housing).<sup>27</sup> In addition, such person must (i) have an identity card; and (ii) have approval from low level government officials (such as the village head or equivalent official at the applicant’s place of residence). Consequently, undocumented persons or those without the relevant community support will not be eligible for legal aid, and as a result, some of the most vulnerable members of Indonesian society may be excluded from coverage.<sup>28</sup>

## Mandatory Assignments to Legal Aid Matters

### Legal aid lawyers

Under the Legal Aid Law, legal counsel are to be made available to every qualifying defendant at each step of the legal process in civil, criminal or administrative cases, and also in certain non-litigation

---

<sup>21</sup> Indonesian Legal Aid Foundation (“**YLBHI**”) with support by the United Nations Development Programme (“**UNDP**”) & Commission on Legal Empowerment of the Poor (“**CLEP**”), *Legal Empowerment of the Poor: lessons Learned from Indonesia*, Report from national consultation of Commission on Legal Empowerment of the Poor in Jakarta on 24 – 25 Nov. (2007).

<sup>22</sup> *Id.*

<sup>23</sup> Constance Johnson, *Indonesia: Legal Aid Law Passed*, Oct. 7, 2011. See [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205402844\\_text as at 24 May 2012](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402844_text%20as%20at%2024%20May%202012) (last visited on September 4, 2015).

<sup>24</sup> *Id.* at art 18.

<sup>25</sup> *Id.* at arts. 6 and 7.

<sup>26</sup> Explanation of Legal Aid Law, art. 6, ¶ II.

<sup>27</sup> *Id.* at arts. 4 and 5.

<sup>28</sup> Legal Aid Law, art. 14.



matters.<sup>29</sup> Only lawyers within the accredited and verified legal aid organisation's coverage can provide state-subsidized legal aid. Accredited legal aid lawyers that cooperate with legal aid organizations are assigned to civil, criminal or administrative cases depending on their specialist practice.

### Unmet Needs and Access Analysis

The Legal Aid Law has come under criticism from certain prominent providers of pro bono legal services, including the Director of the Jakarta Legal Aid Foundation (the "LBH"), Nurkholis Hidayat, who expressed his disappointment that the new law did not introduce wider changes in Indonesia's legal system.<sup>30</sup> There is still a critical need for lawyers to be trained as certified legal aid providers, especially outside the main cities. The dissemination of legal aid providers is currently imbalanced when considering where the indigent are located in the country, and legal aid providers still find it difficult to provide their services in certain parts of the country. Furthermore, society and law enforcement officials lack knowledge of the legal aid system and, therefore, are not in a position to provide appropriate advice to people who might be eligible to receive legal aid assistance.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Indonesian Lawyers

Each lawyer admitted pursuant to the Advocate Law is required to comply with a code of ethics (the "Code of Ethics"), which was established in 2002 by a group of bar associations and affirmed by the Advocate Law. The Code of Ethics sets out the minimum standard of conduct that lawyers should observe. According to the Advocate Law, the Honorary Council (or Disciplinary Committee) of the advocates' organization is responsible for enforcement of the Code of Ethics.<sup>31</sup> The Honorary Council is also responsible for elaborating matters under the Code of Ethics.<sup>32</sup>

As Indonesia lacks a single advocates' organization, the implementation and enforcement of the Advocate Law and the Code of Ethics is at times unclear and often ineffective.<sup>33</sup> PERADI has, however, established and implemented an Honorary Council that is responsible for the discipline of its members and also imposes sanctions on its members.<sup>34</sup> In addition to the Advocate Law and the Code of Ethics, Indonesian lawyers are also directly supervised by the Ministry of Law and Human Rights and the Supreme Court of the Republic of Indonesia.<sup>35</sup>

In response to criticism that Indonesian lawyers were not providing sufficient pro bono services, PERADI issued Rule No. 1/2010, stipulating that advocates are recommended to provide at least 50 hours of pro

---

<sup>29</sup> Legal Aid Law, art. 4(3).

<sup>30</sup> Johnson, *supra* n.38. Mr. Hidayat stated that the new law "overlooked the larger purpose of legal aid institutions, which is to work for the interests of justice. It does not only mean the poor – it means women, children, people criminalized by the system, minority groups and transsexuals. They all need legal aid." *Id.*

<sup>31</sup> *Id.* at art. 8(1). Note, however, Article 1(e) of the Code of Ethics defines the "Honorary Council" as a body or body established by professional organizations of advocates who serve and oversee the implementation of the code of ethics properly by the Advocates and [has] the right to receive and examine complaints against an Advocate who violates the Code of Ethics. Note, further, at the time of establishment the transitional rules under the Code of Ethics provided that the professional organizations that established the Code of Ethics would form the Honorary Council (see *Id.* at art. 22).

<sup>32</sup> Code of Ethics, art. 20.

<sup>33</sup> Melissa Crouch, *supra* n.5.

<sup>34</sup> See <http://www.peradi.or.id> (last visited on September 4, 2015).

<sup>35</sup> THE INDONESIAN ADVOCATES ASSOCIATION COUNTRY REPORT 2010 (author unknown), p. 1; see also Joint Statement Letter of Head of the Supreme Court and Minister of Justice No.KMA/005/SKKB/VII/1987.



bono legal assistance every year. PERADI requires that this pro bono requirement be satisfied by lawyers in order to obtain or renew their Advocate Identity Card (“KTPA”).<sup>36</sup>

### Foreign Lawyers

Foreign lawyers are also required to comply with the Code of Ethics applicable to Indonesian lawyers.<sup>37</sup> Foreign lawyers must provide ten hours of pro bono services per month in the areas of legal education, legal research or government legal service.<sup>38</sup>

### Non-Governmental Organizations (NGOs)

Despite poor participation rates by lawyers in law firms, there are numerous legal aid focused NGOs in Indonesia.<sup>39</sup> The LBH has the highest profile of such NGOs, particularly in cases concerning human rights violations and political activism or persecution in Indonesia. The LBH is central to the provision of legal aid services in Indonesia and has become a key facilitator as well as a direct provider of services. It is common for the LBH to work in conjunction with other organizations such as the Indonesian Corruption Watch, the Wahid Institute, the Setara Institute (Institute for Democracy and Peace), KontraS (The Commission for the Disappeared and Victims of Violence), the TIFA Foundation, and other human rights and pro-democracy NGOs that have arisen since the transition to democracy in Indonesia, although in certain high profile cases the LBH is still often the primary organization providing legal representation. The LBH promotes a broad concept of legal aid, which, in addition to traditional legal aid representation, includes non-litigation matters, legal and political criticism, research, publications and community education.

The LBH and its regional legal aid provider, the Indonesian Legal Aid Foundation (*Yayasan Lembaga Bantuan Hukum Indonesia* or YLBHI), are often able to provide referrals and opportunities for lawyers wishing to participate in the provision of community legal aid.<sup>40</sup> Additional referral organizations are also listed towards the end of this chapter.

## Historic Development and Current State of Pro Bono

There is an urgent need for additional pro bono legal services in Indonesia. Human rights violations and corruption remain persistent problems in pockets of Indonesia’s developing economy. A leading Indonesian legal information service has described the “phenomenon of Indonesian lawyers doing pro bono work in the community as almost unheard of, yet the story of suspended rights and forced confessions in police interrogation rooms is commonplace.”<sup>41</sup> Other NGOs working in the area of human rights have indicated that few lawyers in law firms participate in the provision of pro bono legal services.<sup>42</sup>

### Barriers To Pro Bono Work And Other Considerations

There are no direct regulatory limitations on the provision of pro bono legal services in Indonesia. Advocates are not required to charge VAT on services that they provide for free and local regulations do

---

<sup>36</sup> Laiman et al., supra n.7.

<sup>37</sup> Id. at art. 24.

<sup>38</sup> Article 23(3) of the Advocates Law states that foreign advocates are required to provide legal services free of charge for a certain time to education and legal research.

<sup>39</sup> Australian Academic, Melissa Crouch has stated that “since Soeharto’s fall there are now literally thousands of legal NGOs in Indonesia” (Crouch, supra n.5).

<sup>40</sup> Id.

<sup>41</sup> Eli Moselle, Legal Aid’s Dramatic Start with Teenager Forced to Confess Drug Possession (Jul. 20, 2010), at <http://en.hukumonline.com/pages/lt4c4557f768d69/legal-aid-s-dramatic-start-with-teenager-forced-to-confess-drug-possession> (last visited on September 4, 2015).

<sup>42</sup> PEKKA see ([www.pekka.or.id/8/index.php](http://www.pekka.or.id/8/index.php) (last visited on September 4, 2015)), ELSAM see ([www.elsam.or.id](http://www.elsam.or.id) (last visited on September 4, 2015)) and ILRC see ([mitrahukum.org/EN/](http://mitrahukum.org/EN/) (last visited on September 4, 2015)).



not require lawyers to charge minimum tariffs. Restrictions on the provision of pro bono legal services include the following:

- Many of Indonesia's poor are located in remote villages where trained legal advisors are not available and clients must travel long distances to cities to access formal legal advice.<sup>43</sup> One NGO (PEKKA), has noted that, in the 18 provinces in which it works, only two have legal aid centers (which in each case are located in the provincial capital).
- Lack of interest by local lawyers to work in remote locations and to provide pro bono legal services generally due to a weakly-established pro bono legal culture.
- Regulatory restrictions on foreign lawyers' ability to provide Indonesian legal advice.
- Limited access to government officials to promote legal aid matters (especially including those related to human rights abuses).
- Poor knowledge of laws and rights, particularly human rights, amongst potential pro bono clients.

### Pro Bono Resources

The following organizations may provide pro bono referrals and opportunities for lawyers, including foreign lawyers, to participate in education and research activities:

- Jakarta Legal Aid Institute or LBH – [www.bantuanhukum.or.id](http://www.bantuanhukum.or.id) (last visited on September 4, 2015)
- Indonesian Legal Aid Foundation or YLBHI – <http://www.ylbhi.or.id/> (last visited on September 4, 2015)
- Indonesian Women's Association for Justice and Legal Aid Institute (LBH-APIK) – <http://www.lbh-apik.or.id> (last visited on September 4, 2015)
- Indonesian Legal Resource Centre (ILRC) – [www.mitrahukum.org](http://www.mitrahukum.org) (last visited on September 4, 2015)
- Institute for Policy Research and Advocacy (ELSAM) – [www.elsam.or.id](http://www.elsam.or.id) (last visited on September 4, 2015)
- Program for Women-Headed Households in Indonesia (PEKKA) – [www.pekka.or.id](http://www.pekka.or.id) (last visited on September 4, 2015)
- PERADI (through its Legal Aid Centre) – <http://www.peradi.or.id/> (last visited on September 4, 2015)

## CONCLUSION

Overall, the pro bono environment in Indonesia is developing but remains in need of greater central leadership to create a more extensive culture and broad provision of pro bono legal services. Pro bono needs in Indonesia remain largely under-served. This is partially due to the disproportionately small size of the legal profession compared to the general population, and the number of Indonesian citizens that live a long distance from urban centers, and who are therefore far from available legal aid providers. Furthermore, foreign lawyers wishing to participate in pro bono work face a number of obstacles, including regulations significantly limiting the types of law foreign lawyers may practice in Indonesia, and heavy documentation and permit requirements. Efforts are needed to build a more supportive pro bono culture and infrastructure, particularly among practicing lawyers in Indonesia, and to provide a way for legal services providers to reach those who live outside densely populated areas, both to inform them of their rights and the potential availability of legal services, and to provide such services when needed.

September 2015

Pro Bono Practices and Opportunities in Indonesia

---

<sup>43</sup> For example, ELSAM has indicated that there are no providers of pro bono legal services that regularly visit or are permanently located in Kalimantan, apart from ELSAM. In response to the shortage of legal aid providers in remote areas shortage another NGO, PEKKA, trains paralegals in remote communities.



## LATHAM & WATKINS<sup>LLP</sup>

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



# Pro Bono Practices and Opportunities in the Republic of Ireland

## INTRODUCTION

The practice of pro bono is continuing to grow and develop in the Republic of Ireland (“**Ireland**”) and there are high levels of enthusiasm for pro bono opportunities among the legal profession. Nevertheless, there remains room for expansion in the provision of pro bono services, with Ireland arguably lagging behind several other comparable common law countries.

## OVERVIEW OF THE LEGAL SYSTEM

### Constitution and Governing Laws

Ireland has a parliamentary democracy, with the President of Ireland elected directly by the people as its head of state,<sup>1</sup> and is a common law jurisdiction, derived from the English legal system. Irish courts are bound by precedent.<sup>2</sup> As a member of the European Union (the “**EU**”), Ireland’s legal system is also influenced significantly by EU law, with certain provisions having “direct effect” and thus being directly enforceable in Irish courts.<sup>3</sup>

### The Courts

Ireland has a tiered court structure with the Supreme Court at the top, serving as the court of final appeal in civil and criminal matters. Beneath the Supreme Court is the Court of Appeal,<sup>4</sup> and then the High Court, Circuit Court (with appeals going to the High Court) and, at the bottom of the structure, the District Court. The courts have jurisdiction over all civil and criminal matters with the District Court dealing with the most minor civil and criminal cases.<sup>5</sup> Some specialist matters, such as employment and social welfare cases, are dealt with by tribunals, which are similar to courts but aim to be less expensive and formal.<sup>6</sup>

Judges for all courts are appointed by the President of Ireland upon the recommendation of the Judicial Appointments Advisory Board (the “**Board**”).<sup>7</sup> Persons seeking to be appointed as judges must apply to the Board, with the Board then making submissions to the Minister for Justice who, in turn, advises the

---

<sup>1</sup> See <http://www.president.ie/en/the-president/constitutional-role> (last visited on September 4, 2015).

<sup>2</sup> See <http://www.lawlibrary.ie/Legal-Services/The-Courts-System.aspx> (last visited on September 4, 2015).

<sup>3</sup> In addition, Ireland is a signatory to the European Convention on Human Rights, which is distinct from the EU, and which imposes obligations on the State to safeguard certain fundamental rights (see further at section III(a)(ii) below).

<sup>4</sup> The Court of Appeal deals with appeals from the High Court (civil) and the criminal courts (the Criminal division of the Circuit Court, the Central Criminal Court, and the Special Criminal Court).

<sup>5</sup> See <http://www.courts.ie/Courts.ie/library3.nsf/PageCurrentWebLookUpTopNav/The%20Courts> (last visited on September 4, 2015), see also a useful structure chart available at [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/0B793FD2FDA553AA80257D86005C63F9/\\$FILE/Structure%20of%20the%20courts%20October%202014.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/0B793FD2FDA553AA80257D86005C63F9/$FILE/Structure%20of%20the%20courts%20October%202014.pdf) (last visited on September 4, 2015).

<sup>6</sup> E.g. see [http://www.workplacerelations.ie/en/Workplace\\_Relations\\_Bodies/Employment\\_Appeals\\_Tribunal/](http://www.workplacerelations.ie/en/Workplace_Relations_Bodies/Employment_Appeals_Tribunal/) (last visited on September 4, 2015).

<sup>7</sup> The Board exercises its powers pursuant to the Courts and Court Officers Act 1995; see also the Judicial Appointments Advisory Board website at: (<http://www.jaab.ie/JAAB/jaab.nsf/WebPages/3649D5B8EA5A3BF2802573D9003084AE>) (last visited on September 4, 2015).



President in relation to appointments.<sup>8</sup> Although each appointment is ultimately made by the President, the person recommended by the Board must be given first consideration.<sup>9</sup>

## The Practice of Law

The legal profession in Ireland is divided into barristers and solicitors.

### Education

The educational requirements for barristers and solicitors differ, reflecting the different roles that each plays within the legal system. Qualification for barristers is a three-stage process that requires: (i) either (a) a law degree, or (b) a non-law degree combined with the Diploma in Legal Studies;<sup>10</sup> (ii) a year of vocational training focusing on practical skills (which may be taken only upon successful completion of an entrance examination into the Honourable Society of King's Inn);<sup>11</sup> and (iii) a year-long pupillage undertaken with a suitably qualified barrister.<sup>12</sup>

Qualification for solicitors is a five-stage process that requires: (i) a preliminary examination (university graduates are exempted from having to complete this stage); (ii) a "Final Examination" consisting of eight papers across different legal disciplines; (iii) a two-year training contract consisting of in-office training with a law firm; (iv) professional practice courses followed by end-of-course examinations; and (v) admission to the roll of solicitors.<sup>13</sup>

### Licensure

#### The Role of Barristers

Barristers provide specialist advocacy and advisory services, including in court and at arbitration hearings. Typically instructed by a solicitor, a barrister will have less direct contact with clients and will not provide the administrative services typically provided by a solicitor.<sup>14</sup> Barristers begin their careers as junior counsel and may apply to become a senior counsel after a period of time (usually 12 years) to become senior counsel. The position of senior counsel is reserved for barristers of particular ability and experience. Approximately 12% of barristers are senior counsel and they typically work on the most serious and complex cases.<sup>15</sup>

#### The Role of Solicitors

Solicitors are professionally trained to provide clients with legal advice and representation on all legal matters (for example, conveyancing, wills and probate, and litigation)<sup>16</sup> and tend to have more direct exposure to clients than barristers.

#### The Role of Foreign Lawyers

Foreign lawyers may apply to practice law in Ireland. The requirements that a foreign lawyer must fulfil before they can practice law in Ireland vary depending on the jurisdiction in which the foreign lawyer is qualified.<sup>17</sup>

---

<sup>8</sup> *ibid.*

<sup>9</sup> Courts and Court Officers Act 1995 s.16(6).

<sup>10</sup> The requirement to combine the Diploma in Legal Studies with a non-law degree does not apply to students over 25, who may take it without any degree.

<sup>11</sup> This institution controls the entry of barristers-at-law into the justice system of Ireland.

<sup>12</sup> See <http://www.lawlibrary.ie/About-Us/FAQs.aspx> (last visited on September 4, 2015).

<sup>13</sup> See <http://www.lawsociety.ie/Public/Become-a-Solicitor/> (last visited on September 4, 2015).

<sup>14</sup> See <http://www.lawlibrary.ie/About-Us/What-We-Do.aspx> (last visited on September 4, 2015).

<sup>15</sup> See <http://www.lawlibrary.ie/About-Us/FAQs.aspx> (last visited on September 4, 2015).

<sup>16</sup> See <http://www.lawsociety.ie/Public/Become-a-Solicitor/> (last visited on September 4, 2015).



### The Role of In-House Counsel

The majority of lawyers in Ireland work in private practice, but some work in-house, employed by commercial and industrial organisations or the public sector.<sup>18</sup>

### Demographics

There are approximately 11,500 lawyers in Ireland,<sup>19</sup> comprised of 2,300 practicing barristers<sup>20</sup> and 9,200 practicing solicitors (with women narrowly outnumbering men).<sup>21</sup> With a population of approximately 4.56 million, this equates to approximately 397 people per lawyer in Ireland.

### Legal Regulation of Lawyers

The Bar Council of Ireland (the “**Bar Council**”) is the representative body for barristers in Ireland and it is governed by the Constitution of the Bar of Ireland. The role of the Bar Council, among other things, is to control and regulate the conduct of members of the Bar Council and to secure and protect the interests of the profession.<sup>22</sup>

The Law Society of Ireland (the “**Law Society**”) exercises statutory functions under the Solicitors Acts 1954 to 2013 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.<sup>23</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

There is no automatic right to legal assistance in civil proceedings. In criminal proceedings, there is a right to legal assistance. The Supreme Court has held that there is a need to put the defendant on equal terms with the prosecution. Therefore, “if your constitutional right to legal representation applies and you don't have the means to pay for legal representation, then the State...is obliged to provide that legal representation.”<sup>24</sup>

In addition, as Ireland is a party to the European Convention on Human Rights, each person has the right to a fair trial. This requires that everyone charged with a criminal offense has the right “to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”<sup>25</sup>

---

<sup>17</sup> See <https://www.lawsociety.ie/Public/Foreign-Lawyers/> (last visited on September 4, 2015).

<sup>18</sup> See <https://www.lawsociety.ie/Public/Become-a-Solicitor/> (last visited on September 4, 2015).

<sup>19</sup> There are 2,300 barristers and 9,200 solicitors currently practising. However, this may underestimate the total number of lawyers as it excludes, for example, trainees and lawyers who are not currently practicing.

<sup>20</sup> See <http://www.lawlibrary.ie/About-Us.aspx> (last visited on September 4, 2015).

<sup>21</sup> See <https://www.lawsociety.ie/News/Media/Press-Releases/Irish-solicitors-profession-reaches-major-landmark-in-gender-balance/> (last visited on September 4, 2015): figures released by the Law Society showed that at the end of 2014 there were 4,623 female practising solicitors and 4,609 male practising solicitors.

<sup>22</sup> See <http://www.lawlibrary.ie/About-Us/Who-We-Are.aspx> (last visited on September 4, 2015).

<sup>23</sup> See <http://www.lawsociety.ie/About-Us/> (last visited on September 4, 2015).

<sup>24</sup> See [http://www.citizensinformation.ie/en/justice/legal\\_aid\\_and\\_advice/criminal\\_legal\\_aid.html](http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/criminal_legal_aid.html) (last visited on September 4, 2015).

<sup>25</sup> European Convention on Human Rights Article 6(3)(c).



## State-Subsidized Legal Aid

### Civil Proceedings

Civil legal aid is administered by the Irish Legal Aid Board (the “**ILAB**”) pursuant to the Civil Legal Aid Act of 1996 and uses a complicated formula to determine eligibility. Legal aid is available for most types of civil proceedings but there are some exceptions where legal aid will not be provided such as defamation claims and land disputes.<sup>26</sup>

An applicant must satisfy separate financial means and merits tests to meet the eligibility requirements for relief under the statute. In addition, those receiving legal aid must make a modest contribution (the amount of which is determined by the person’s disposable income).<sup>27</sup> In making this assessment, the ILAB will consider, among other things: (i) the prospect of success of the applicant’s case; (ii) the availability of other methods of resolving the applicant’s problem (for example, via mediation); and (iii) the cost to the ILAB of providing assistance weighed against the likely benefit to the applicant. The merits test is modified in cases involving the welfare of a child, such as custody and access issues.<sup>28</sup>

### Criminal Proceedings

Criminal legal aid is provided pursuant to the Criminal Justice (Legal Aid) Act 1962 (the “**Legal aid Act**”). Importantly, unlike civil legal aid, a recipient of criminal legal aid is not required to make a financial contribution.<sup>29</sup> In determining eligibility for criminal legal aid, a court considers (i) whether the applicant’s means are sufficient for him or her to pay his or her own legal representation; and (ii) taking into account the seriousness of the offense, whether it is in the interests of justice that the applicant should have legal aid in the preparation and conduct of his or her defense.<sup>30</sup>

Even if an applicant is not eligible for criminal legal aid under the the Legal Aid Act, he or she may be entitled to free legal representation under another scheme. The ILAB administers a “Custody Issues Scheme” which provides legal representation in relation to certain forms of litigation, such as habeas corpus applications and Supreme Court bail motions.<sup>31</sup> The areas covered by this scheme are outside the coverage of the civil or criminal legal aid programs. Therefore, this scheme meets an important need by providing assistance to those who may otherwise be denied access to justice.<sup>32</sup>

In addition the Department of Justice and Equality has established a “Criminal Assets Bureau Ad-hoc Legal Aid Scheme” which provides legal representation to persons who otherwise cannot afford legal representation in relation to court proceedings commenced pursuant to certain legislative acts relating to criminal assets (for example the Proceeds of Crime Act 1996, as amended by the Proceeds of Crime (Amendment) Act 2005).<sup>33</sup> Financial and merit-based eligibility requirements for this scheme require the court to consider whether (i) the applicant’s means are insufficient to enable him or her to obtain legal representation on his or her own behalf; (ii) by reason of exceptional circumstances it is essential, in the

---

<sup>26</sup> See [http://www.citizensinformation.ie/en/justice/legal\\_aid\\_and\\_advice/legal\\_aid\\_board.html](http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/legal_aid_board.html) (last visited on September 4, 2015).

<sup>27</sup> See <http://www.legalaidboard.ie/lab/publishing.nsf/Content/Home> (last visited on September 4, 2015).

<sup>28</sup> See [http://www.legalaidboard.ie/lab/publishing.nsf/content/LAB\\_FAQ\\_4](http://www.legalaidboard.ie/lab/publishing.nsf/content/LAB_FAQ_4) (last visited on September 4, 2015).

<sup>29</sup> See [http://www.citizensinformation.ie/en/justice/legal\\_aid\\_and\\_advice/criminal\\_legal\\_aid.html](http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/criminal_legal_aid.html) (last visited on September 4, 2015).

<sup>30</sup> See [http://www.citizensinformation.ie/en/justice/legal\\_aid\\_and\\_advice/criminal\\_legal\\_aid.html](http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/criminal_legal_aid.html) (last visited on September 4, 2015).

<sup>31</sup> See [http://www.legalaidboard.ie/lab/publishing.nsf/Content/Legal\\_Aid\\_Custody\\_Issues\\_Scheme](http://www.legalaidboard.ie/lab/publishing.nsf/Content/Legal_Aid_Custody_Issues_Scheme) (last visited on September 4, 2015).

<sup>32</sup> See [http://www.legalaidboard.ie/lab/publishing.nsf/Content/Legal\\_Aid\\_Custody\\_Issues\\_Scheme](http://www.legalaidboard.ie/lab/publishing.nsf/Content/Legal_Aid_Custody_Issues_Scheme) (last visited on September 4, 2015).

<sup>33</sup> See [http://www.legalaidboard.ie/lab/publishing.nsf/Content/criminal\\_assets\\_bureau\\_ad-hoc\\_legal\\_aid\\_scheme](http://www.legalaidboard.ie/lab/publishing.nsf/Content/criminal_assets_bureau_ad-hoc_legal_aid_scheme) (last visited on September 4, 2015).



interests of justice, that the applicant should have legal aid in the preparation and conduct of his or her case; and (iii) the type of proceeding at issue is embraced by the scope of the scheme.<sup>34</sup>

## Mandatory assignments to Legal Aid Matters

Private attorneys are not obligated to participate in the legal aid scheme.<sup>35</sup> Generally, civil legal aid is provided by the ILAB in its law centers or by lawyers employed by the Board.<sup>36</sup> For criminal legal aid, the judge assigns a solicitor from the legal aid panel to a recipient's case. Each county registrar maintains a list of solicitors who are willing to provide criminal legal aid. The Minister for Justice and Equality also compiles and maintains a similar list of barristers willing to provide legal aid (nominated by the Bar Council).<sup>37</sup> Recipients of criminal legal aid are issued a legal aid certificate which entitles their lawyers to be paid for the work that they perform.<sup>38</sup> The certificate covers fees, costs and expenses incurred in the preparation and conduct of defense, the cost of an appeal or a case stated and includes the fees of a solicitor and in certain circumstances, up to two counsel or barristers. It also covers the fees of non-legal professionals required for the preparation and conduct of a recipient's defense.

## Unmet Needs and Access Analysis

### Civil

Civil legal aid is not available for all areas of law or in all types of proceedings. There are nine designated areas of law that are excluded from the civil legal aid scheme as well as almost all proceedings within the tribunals.<sup>39</sup> These exclusions constitute a significant gap in the civil legal aid regime, which is filled largely by pro bono schemes, such as the PILA Pro bono Referral Scheme. Additionally, the requirement for a contribution to be made towards costs also constitutes a gap in the provision of legal aid, potentially excluding those of relatively modest means.

Moreover, the legal aid scheme is oversubscribed and waiting times can be long. The target maximum waiting time for a first consultation with a solicitor is four months. However, as of January 2015, only nine out of 30 law centers had waiting lists within this limit, and at Tallaght, the center with the longest waiting time, applicants had to wait 50 weeks to receive legal aid.<sup>40</sup>

### Criminal

There are gaps in the coverage of criminal legal aid under the Legal Aid Act. Some types of proceedings, such as extradition proceedings and most judicial review proceedings, are excluded from the criminal

---

<sup>34</sup> See [http://www.legalaidboard.ie/lab/publishing.nsf/Content/criminal\\_assets\\_bureau\\_ad-hoc\\_legal\\_aid\\_scheme](http://www.legalaidboard.ie/lab/publishing.nsf/Content/criminal_assets_bureau_ad-hoc_legal_aid_scheme) (last visited on September 4, 2015).

<sup>35</sup> See [http://www.citizensinformation.ie/en/justice/legal\\_aid\\_and\\_advice/criminal\\_legal\\_aid.html](http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/criminal_legal_aid.html) and [http://www.citizensinformation.ie/en/justice/legal\\_aid\\_and\\_advice/civil\\_legal\\_advice\\_and\\_legal\\_aid.html](http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/civil_legal_advice_and_legal_aid.html) (both last visited on September 4, 2015).

<sup>36</sup> See [http://www.citizensinformation.ie/en/justice/legal\\_aid\\_and\\_advice/civil\\_legal\\_advice\\_and\\_legal\\_aid.html](http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/civil_legal_advice_and_legal_aid.html) (last visited on September 4, 2015).

<sup>37</sup> See [http://www.citizensinformation.ie/en/justice/legal\\_aid\\_and\\_advice/criminal\\_legal\\_aid.html](http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/criminal_legal_aid.html) (last visited on September 4, 2015).

<sup>38</sup> See [http://www.citizensinformation.ie/en/justice/legal\\_aid\\_and\\_advice/legal\\_aid\\_certs.html](http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/legal_aid_certs.html) (last visited on September 4, 2015).

<sup>39</sup> FLAC have argued that the exclusion of tribunals from civil legal aid is "not consistent with a vindication of the right to a fair trial as guaranteed by the Irish courts and international human rights law": *ibid* (p.6).

<sup>40</sup> See <http://www.flac.ie/priorityareas/civil-legal-aid/> (last visited on September 4, 2015).



legal aid scheme.<sup>41</sup> Additionally, the subjective enforcement of the eligibility requirements denies aid to many persons in need.

### Alternative Dispute Resolution

Alternative Dispute Resolution is available in Ireland, and persons seeking to resolve disputes outside of the traditional court system may do so by engaging in mediation or arbitration.<sup>42</sup> The Mediators' Institute of Ireland promotes the use and practice of quality mediation as a process of dispute resolution, and approves qualified mediators who are bound by a code of ethics.<sup>43</sup> Arbitration is also promoted in Ireland by the Chartered Institute of Arbitrators.<sup>44</sup> The Arbitration Act 2010 has codified the law in this area and sought to bring it into line with international standards.

### Ombudsmen

In addition, Ireland has various ombudsmen who deal with complaints and disputes in relation to particular matters.<sup>45</sup> For example, the Financial Services Ombudsman deals independently with unresolved complaints from consumers dealing with financial service providers and has the power to investigate and adjudicate such complaints.<sup>46</sup> The Financial Ombudsman encourages the parties to pursue mediation as a first step, and a mediation service is provided free of charge.<sup>47</sup>

## PRO BONO ASSISTANCE

### Pro bono Opportunities

#### Private Attorneys

Private attorneys are not mandated to do pro bono in Ireland and there is no requirement to report the number of hours spent on pro bono. Nevertheless, the 2014 Public Interest Law Alliance ("PILA") pro bono survey found that 72% of barristers had previously engaged in pro bono, with 41% reporting that they did so on a regular basis.<sup>48</sup> The picture was similar for solicitors, with 74% of solicitors / trainee solicitors having undertaken pro bono, and 35% reporting to do so on a regular basis.<sup>49</sup>

#### Law Firm Pro bono Programs

As pro bono continues to develop in Ireland, law firms are increasingly focusing on pro bono.<sup>50</sup> For example, A&L Goodbody, one of Ireland's largest law firms, devoted over 2,800 hours to various pro bono projects in 2014.<sup>51</sup>

---

<sup>41</sup> See [http://www.citizensinformation.ie/en/justice/legal\\_aid\\_and\\_advice/criminal\\_legal\\_aid.html](http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/criminal_legal_aid.html) (last visited on September 4, 2015).

<sup>42</sup> See <http://www.lawlibrary.ie/legal-services/alternative-dispute-resolution.aspx> (last visited on September 4, 2015).

<sup>43</sup> See <http://www.themii.ie/index.jsp> (last visited on September 4, 2015).

<sup>44</sup> See <https://www.ciab.org/branches/ireland> (last visited on September 4, 2015).

<sup>45</sup> See <http://www.ombudsmanassociation.org/association-members-by-country.php?area=2> (last visited on September 4, 2015).

<sup>46</sup> See <https://www.financialombudsman.ie/> (last visited on September 4, 2015).

<sup>47</sup> See <https://www.financialombudsman.ie/> (last visited on September 4, 2015).

<sup>48</sup> PILA, Pro bono Survey 2014, see n 12 above, p.11.

<sup>49</sup> PILA, Pro bono Survey 2014, see n 12 above, p.5.

<sup>50</sup> E.g. <http://www.mccannfitzgerald.ie/firm/corporate-responsibility.aspx>; <http://www.arthurcox.com/who-we-are/community/pro-bono-work/>; [http://www.algoodbody.com/Corporate\\_Responsibility\\_Pro\\_Bono](http://www.algoodbody.com/Corporate_Responsibility_Pro_Bono); <http://www.mhc.ie/about/pro-bono> (all last visited on September 4, 2015).



PILA, a public interest law organization established by FLAC in 2009 to promote access to justice, works with 14 law firms, including several of Ireland's largest firms, on a number of different projects and initiatives.<sup>52</sup> For example, PILA has collaborated with A&L Goodbody to provide assistance to the Irish Refugee Council, representing applicants in the first stage of the asylum process.<sup>53</sup>

### Non-Governmental Organizations (“NGOs”)

As part of their aim to promote equal access to justice, FLAC runs a telephone information and referral line offering basic legal information to the public. For complex queries, individuals may be directed to a legal advice center operated by FLAC, where legal advice from either a volunteer barrister or solicitor will be provided. The volunteer helps to establish whether there is a legal solution, explain the options available and direct the individual so that he or she may obtain further assistance. FLAC, however, does not provide legal representation.<sup>54</sup>

PILA operates a pro bono referral scheme that matches expertise in the legal profession (both barristers and solicitors) with specific legal needs of NGOs, community groups and law centers (the “**PILA Pro bono Referral Scheme**”). PILA has a public interest law focus, and currently works with organizations seeking to effect social change for marginalized and disadvantaged people. The PILA Pro bono Referral Scheme is the primary pro bono matching service in Ireland and has facilitated over 170 referrals since 2009.<sup>55</sup>

### Bar Association Pro bono Programs

In 2004, the Bar Council established a “voluntary assistance” scheme (“**VAS**”) aimed at offering access to justice to financially challenged individuals,<sup>56</sup> whereby barristers provide their services to NGOs working with members of the community who could not otherwise afford representation.<sup>57</sup> Under this program, NGOs serve the referral function that would normally be filled by solicitors.<sup>58</sup> NGOs and charities approach VAS directly, who then seek to match the client with a suitable barrister. There is no direct contact between VAS and the client. The NGOs brief the barristers directly, who in turn provide advocacy and advisory representation to clients.<sup>59</sup>

### University Legal Clinics and Law Students

There are generally high levels of engagement with, and enthusiasm for, pro bono among law students,<sup>60</sup> with most higher-education institutions engaging with the PILA pro bono scheme.<sup>61</sup> For example, there are currently seven student FLAC societies operating in universities in Ireland that administer information

---

<sup>51</sup> See [http://www.algoodbody.com/Corporate\\_Responsibility\\_Pro\\_Bono](http://www.algoodbody.com/Corporate_Responsibility_Pro_Bono) (last visited on September 4, 2015).

<sup>52</sup> See [http://pelorous.totallyplc.com/media\\_manager/public/138/Progress%20Report%202013.pdf](http://pelorous.totallyplc.com/media_manager/public/138/Progress%20Report%202013.pdf) (last visited on September 4, 2015).

<sup>53</sup> See [http://pelorous.totallyplc.com/media\\_manager/public/138/Progress%20Report%202013.pdf](http://pelorous.totallyplc.com/media_manager/public/138/Progress%20Report%202013.pdf) (last visited on September 4, 2015).

<sup>54</sup> See <http://www.flac.ie/help/centres/whattoexpect.html> (last visited on September 4, 2015).

<sup>55</sup> 2013 PILA progress report.

<sup>56</sup> See <http://www.lawlibrary.ie/legal-services/voluntary-assistance-scheme/vas-faq.aspx> (last visited on September 4, 2015).

<sup>57</sup> See The Irish Bar Council's Voluntary Assistance Scheme, Annual Report 2011, available at [http://www.lawlibrary.ie/docs/The\\_Bar\\_Councils\\_Voluntary\\_Assistance\\_Scheme/542.htm](http://www.lawlibrary.ie/docs/The_Bar_Councils_Voluntary_Assistance_Scheme/542.htm) (last visited on September 4, 2015).

<sup>58</sup> *ibid.*

<sup>59</sup> *ibid.*

<sup>60</sup> See PILA, Pro bono Survey 2014, n 12.

<sup>61</sup> See [http://pelorous.totallyplc.com/media\\_manager/public/138/Progress%20Report%202013.pdf](http://pelorous.totallyplc.com/media_manager/public/138/Progress%20Report%202013.pdf) (last visited on September 4, 2015).



clinics. At the clinics, the student population receives legal information from qualified practitioners who supervise law students.<sup>62</sup>

A recent survey conducted by PILA found high levels of pro bono participation among students, with 63% of students reporting that they had done some pro bono over the course of their studies and 98% believing that pro bono helped to develop their legal skills.<sup>63</sup>

## Current State of Pro bono

The Director of the Law Society has claimed that “the undertaking of legal work for people with legal needs but no capacity to pay is part of the culture and tradition, part of the DNA, of the legal profession in Ireland.”<sup>64</sup> Based on a survey of barristers and solicitors, both branches of the profession have a positive attitude towards pro bono work and view it as worthwhile. 60% of barristers and 76% of solicitors felt that pro bono work was personally rewarding, with 78% of barristers and 65% of solicitors responding that they believed it was their professional responsibility to engage in pro bono.<sup>65</sup>

Two substantive areas of law have had a particularly high demand for volunteer legal services in the recent past. The first is human rights law, particularly for refugees and asylum-seekers. Since the passage of the Irish Human Rights Act in 2003, Irish litigants must either pay for their own representation costs or find a solicitor (often through FLAC) willing to represent them on a pro bono basis.<sup>66</sup> Law centers specifically tailored to meet the needs of Ireland’s immigrants in conjunction with the Immigrant Council of Ireland and the Irish Refugee Council Independent Centre help to alleviate the legal problems related to refugees and asylum-seekers. Although the Civil Legal Aid Act makes provision for refugees and asylum-seekers, it is not clear that it has been successful in meeting the demand.

The second area of need relates to Ireland’s “travellers,” a traditionally itinerant ethnic group. The Irish Traveller Movement (the “ITM”) has an established legal unit to provide representation to these marginalized people. Travellers, many of whom are impoverished, have difficulty securing even basic legal services, and the ITM is actively recruiting solicitors willing to undertake these representations, preferably on a pro bono basis.<sup>67</sup>

## Laws and Regulations Impacting Pro bono

### “Loser Pays” Statute

Under Irish law, the loser pays the winner’s litigation costs. This is not a cast-iron rule however, and the presiding judge has discretion as to the final costs order.<sup>68</sup>

### Rules Directly Governing Pro bono Practice

There are very few rules specifically governing pro bono and lawyers are permitted to engage in pro bono and raise awareness of pro bono opportunities. The main obstacles to pro bono being undertaken by

---

<sup>62</sup> See <http://www.flac.ie/getinvolved/student.html> (last visited on September 4, 2015).

<sup>63</sup> PILA, Pro bono Survey 2014, pp.16-17. Available at [http://www.flac.ie/download/pdf/full\\_pila\\_pro\\_bono\\_survey\\_2014.pdf](http://www.flac.ie/download/pdf/full_pila_pro_bono_survey_2014.pdf) (last visited on September 4, 2015).

<sup>64</sup> See <http://www.irishtimes.com/news/crime-and-law/working-pro-bono-good-idea-or-an-excuse-for-state-inaction-1.2138995> (last visited on September 4, 2015).

<sup>65</sup> PILA, Pro bono Survey 2014, see n 12 above, pp. 8 and 14. Conversely only 0.5% of solicitors and 0% of barristers felt that pro bono was of no value, and 0.5% of solicitors and 1% of barristers felt that it had a negative impact on the profession (by taking paid work away from other law firms).

<sup>66</sup> See LAW SOCIETY OF IRELAND, An Unconventional Approach, LAW SOCIETY GAZETTE, 28 (Jan./Feb. 2003).

<sup>67</sup> See LAW SOCIETY OF IRELAND, Remember When You Wanted to Make a Difference?, LAW SOCIETY GAZETTE, 10-11 (Mar. 2004).

<sup>68</sup> See <http://www.chambersandpartners.com/guide/practice-guides/location/241/6601/1481-200> (last visited on September 4, 2015).



lawyers are a lack of time and limited awareness of the available opportunities, rather than any systemic barriers or rules restricting pro bono practice.<sup>69</sup>

### Practice Restrictions on Foreign-Qualified Lawyers

Foreign-qualified lawyers may not practice law in Ireland (including pro bono work) without first receiving the correct accreditation. The registration requirements for foreign lawyers vary depending on the jurisdiction in which the foreign lawyer is qualified.

### Concerns About Pro bono Eroding Public Legal Aid Funding

There have been concerns that the existence of legal aid has hindered the development of pro bono services in Ireland. The overstretched legal aid scheme has created the impression that the legal needs of Ireland's indigent population are being met. Many commentators agree, however, that the Irish legal aid scheme has been inadequate to meet the needs of many clients.<sup>70</sup> Some critics have gone so far as to hold that a formal pro bono scheme would only be a stop-gap solution that would further obscure the failings of a troubled legal aid regime, encouraging the government to continue to underfund the existing programs.<sup>71</sup> Although this viewpoint has hindered progress in the past, this has largely dissipated in recent years as the need for a formal pro bono network to complement legal aid has become more obvious.

### Regulations Imposing Practice Limitations on In-House Counsel

In-house counsel providing legal services only for their employer are exempted from the requirement to maintain insurance.<sup>72</sup> Because of this, in-house lawyers may not have necessary legal insurance for certain pro bono work.

### Availability of Professional Indemnity Legal Insurance Covering Pro bono activities by Attorneys

Both barristers and solicitors must have up-to-date professional indemnity insurance at a level not less than the prescribed minimum.<sup>73</sup> The Bar Council sets the minimum requirements for barristers. For solicitors, the minimum terms of professional indemnity insurance are laid down by statute, and cover pro bono services.<sup>74</sup> More information about obtaining professional indemnity insurance for solicitors is available via the Law Society's website.<sup>75</sup>

### Socio-Cultural Barriers to Pro bono or Participation in the Formal Legal System

The primary obstacle to structured pro bono legal services has been the legal profession's lack of familiarity with the concept, as opposed to any regulatory impediments. Although conceptually it has long been a part of Irish legal culture, efforts to undertake pro bono work were typically piecemeal and ad hoc, most often as a result of personal relationships, or arising from an individual lawyer's strong sense of civic duty.<sup>76</sup> However, the success of pro bono in other jurisdictions and the increasing awareness of corporate

---

<sup>69</sup> PILA, Pro bono Survey 2014, see n 12 above.

<sup>70</sup> See, e.g., Can't Refuse, LAW SOCIETY GAZETTE, 17 (Dec. 2003).

<sup>71</sup> See LAW SOCIETY OF IRELAND, Report of Law Society Council Meeting (held on Jul. 6, 2001), LAW SOCIETY GAZETTE, 39 (Aug./Sep. 2001) (citing a report showing that in countries where an institutionalized pro bono scheme had developed, governments had used such schemes as excuses for refusing to subsidize legal aid).

<sup>72</sup> The Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2014, s.3(f).

<sup>73</sup> See <http://www.lawlibrary.ie/about-us/what-we-do/regulation/pii-responsibilities.aspx> (last visited on September 4, 2015); and <https://www.lawsociety.ie/Solicitors/Practising/PII/> (last visited on September 4, 2015).

<sup>74</sup> The Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2014, Appendix 1.

<sup>75</sup> See <https://www.lawsociety.ie/Solicitors/Practising/PII/> (last visited on September 4, 2015).

<sup>76</sup> See, e.g., What Counts? A Compilation of Queries and Answers, THE LAW FIRM PRO BONO PROJECT, 6 (2003); cf. John Costello, Why we need a solicitor's pro bono scheme, LAW SOCIETY GAZETTE, 5-6 (Aug./Sep. 1998), available at <http://www.lawsociety.ie/Documents/Gazette/Gazette%201998/augustSeptember1998.pdf> (last visited on September 4, 2015) (defining "pro bono" practice as "legal work done without charge or at reduced cost, for members of the public with limited means, or for charitable and other non-profit making organizations").



social responsibility have helped the PILA Pro bono Referral Scheme and the Bar Council's VAS receive an increasingly positive response from both barristers and solicitors for structured pro bono opportunities.

#### Pro bono Resources

- The Bar Council of Ireland, law library; [www.lawlibrary.ie](http://www.lawlibrary.ie) (last visited on September 4, 2015)
- Citizens Information; [www.citizensinformation.ie](http://www.citizensinformation.ie) (last visited on September 4, 2015)
- FLAC; [www.flac.ie](http://www.flac.ie) (last visited on September 4, 2015)
- Irish Statute Book – Legislation Directory; [http://www.irishstatutebook.ie/legislation\\_directory\\_acts.html](http://www.irishstatutebook.ie/legislation_directory_acts.html) (last visited on September 4, 2015)
- Law Society of Ireland; [www.lawsociety.ie](http://www.lawsociety.ie) (last visited on September 4, 2015)
- Legal Aid Board; <http://www.legalaidboard.ie/lab/publishing.nsf/Content/Home> (last visited on September 4, 2015)
- PILA; [www.pila.ie](http://www.pila.ie) (last visited on September 4, 2015)
- TrustLaw's pro bono links; <http://www.trust.org/trustlaw/> (last visited on September 4, 2015)

## CONCLUSION

Although Irish law has a relatively extensive provision of legal aid for both civil and criminal matters, significant gaps in coverage do exist.

Pro bono legal work continues to develop in the Republic of Ireland, with no real foreseeable legal impediments to its continued development. There are signs that the pace of development is increasing. Enthusiasm for pro bono is high among barristers, solicitors and students alike. Indeed, the particularly high levels of pro bono engagement among students, bodes extremely well for the health of pro bono in the medium and long-term future.

August 2015

#### Pro Bono Practices and Opportunities in the Republic of Ireland

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Northern Ireland

### INTRODUCTION

A number of public interest groups offer pro bono legal services in Northern Ireland. The Bar of Northern Ireland operates a dedicated Pro bono Unit offering free advice and representation to clients where public funding (legal aid) is unavailable or where the applicant is unable to afford legal assistance.<sup>1</sup> The Law Centre (NI), a not-for-profit agency, works to advance social welfare rights in Northern Ireland through legal advice, representation, policy, training and publication.<sup>2</sup> And the PILS Project (Public Interest Litigation Support Project), a dedicated strategic litigation project established by the Committee on the Administration of Justice, works to advance human rights and equality in Northern Ireland through the use of and support for public interest litigation.<sup>3</sup>

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Northern Ireland has a long and complex constitutional history dating back to 1921 when the country was created as a separate legal entity under the Government of Ireland Act 1920 (subsequently repealed by the Northern Ireland Act 1998).<sup>4</sup> Until such time as the majority of the people of Northern Ireland vote to change this, Northern Ireland will remain part of the United Kingdom (the “**UK**”).<sup>5</sup>

Northern Ireland has been governed either (a) locally through devolved government by the Northern Ireland Parliament (1921-1972) or by the Northern Ireland Assembly (1999-current day) or (b) directly by the UK Parliament during times of political unrest or stalemate (1972-1998, 2000, 2001 and 2002-2007). The Northern Ireland Act 1998 (enacted by the UK Parliament) devolved general legislative power<sup>6</sup> to the Northern Ireland Assembly subject to excepted<sup>7</sup> and reserved<sup>8</sup> matters which are either wholly retained by Her Majesty’s Government or at least require the consent of the UK Secretary of State before the Northern Ireland Assembly can legislate on such matters.<sup>9</sup>

Northern Ireland is, like England and Wales, a common law jurisdiction. Applicable legislation includes that of the European Community, Acts of UK Parliament (applicable to Northern Ireland) and Acts of the Northern Ireland Assembly.

---

<sup>1</sup> See [www.barofni.com/page/helping-the-community](http://www.barofni.com/page/helping-the-community) (last visited on September 4, 2015).

<sup>2</sup> See [www.lawcentreni.org/about-us/what-we-do.html](http://www.lawcentreni.org/about-us/what-we-do.html) (last visited on September 4, 2015).

<sup>3</sup> See [www.pilsni.org](http://www.pilsni.org) (last visited on September 4, 2015).

<sup>4</sup> Section 2, Northern Ireland Act 1998.

<sup>5</sup> Section 1(1), Northern Ireland Act 1998.

<sup>6</sup> Section 4(1), Northern Ireland Act 1998.

<sup>7</sup> Schedule 2, Northern Ireland Act 1998 lists the various excepted matters which relate to, among other things, the Crown, UK Parliament, the Northern Ireland Constitution Act 1973, international relations, defense and armed forces, nuclear energy, nationality and immigration.

<sup>8</sup> Schedule 3, Northern Ireland Act 1998 lists the various reserved matters which relate to, among other things, firearms and explosives, navigation and civil aviation, import and export controls, financial markets and telecommunications.

<sup>9</sup> Section 8, Northern Ireland Act 1998.



## The Courts<sup>10</sup>

Northern Ireland has its own judicial system which is headed by the Lord Chief Justice of Northern Ireland. The Department of Justice (the “**DOJ**”) is responsible for the administration of the courts through the Northern Ireland Courts and Tribunal Service and also has responsibility for policy and legislation related to criminal law, legal aid, the police, prisons and probation.

The Northern Ireland court structure consists of higher and lower courts. The higher courts include the Court of Appeal and the High Court. The Court of Appeal sits at the Royal Courts of Justice in the City of Belfast and hears appeals on points of law in criminal matters from the Crown Courts and civil matters from the High Court and may, in certain circumstances, also hear appeals on points of law from the County Courts, Magistrates’ Courts and certain appeal tribunals. Some decisions of the Court of Appeal may, subject to certain conditions, be referred to the UK Supreme Court for appeal. The High Court sits at the Royal Courts of Justice in the City of Belfast and comprises the Chancery Division, the Queen’s Bench Division and the Family Division. The High Court hears complex or important civil cases and appeals from the County Courts.

The lower courts include the Crown Courts, the County Courts, the Magistrates Courts, the Coroners Courts and the Enforcement of Judgments Office. The Crown Courts sit in ten major cities and towns across Northern Ireland and hear all serious criminal cases. The County Courts sit in 15 major cities and towns across Northern Ireland and hear a wide range of civil actions including small claims and family cases. The Magistrates’ Courts sit in 16 major cities and towns in Northern Ireland and hear less serious criminal cases, juvenile cases and civil and family cases. The Coroners’ Courts sit in two major cities in Northern Ireland and investigate unexplained deaths. The Enforcement of Judgments Office sits at Lagside House in the City of Belfast.

The Northern Ireland Judicial Appointments Commission (the “**NIJAC**”) was established on June 15, 2005 as an independent public body under the Justice (NI) Acts 2002 and 2004 to select individuals for judicial office based on merit through fair and open competition.<sup>11</sup> The NIJAC selects non-Crown appointments (i.e., temporary High Court Judges, Deputy County Court Judges and Deputy District Judges (Magistrates’ Courts)) and also makes recommendations for crown appointments (i.e., High Court Judge, County Court Judge, District Judge (Magistrates’ Courts)) to the Queen through the Lord Chancellor.<sup>12</sup> Appointments of Justices of Appeal are made by the Queen on recommendation by the UK Prime Minister (who must consult with the Lord Chief Justice of Northern Ireland and the NIJAC).<sup>13</sup>

## The Practice of Law

The legal profession in Northern Ireland comprises both solicitors and barristers.

### Education

The Law Society of Northern Ireland (the “**Law Society**”) regulates the legal education and training necessary to qualify as a solicitor in Northern Ireland. There are several routes into the profession: (i) the law degree route, which requires an acceptable law degree, an offer of a place in the Institute of Professional Legal Studies or the Graduate School of Professional Legal Education and confirmation from a solicitor with whom the applicant proposes to serve his/her apprenticeship; (ii) the non-law degree route, which requires an acceptable degree in a discipline other than law and a satisfactory level of knowledge of fundamental areas of law, an offer of a place in the Institute of Professional Legal Studies and confirmation from a solicitor with whom the applicant proposes to serve his/her apprenticeship; and

---

<sup>10</sup> See [www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/the-justice-system/introduction-to-the-justice-system.html](http://www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/the-justice-system/introduction-to-the-justice-system.html) (last visited on September 4, 2015).

<sup>11</sup> See [www.nijac.gov.uk/index/what-we-do.htm](http://www.nijac.gov.uk/index/what-we-do.htm) (last visited on September 4, 2015).

<sup>12</sup> See [www.nijac.gov.uk/index/crown\\_and\\_non\\_crown\\_appointments\\_table\\_nov11.pdf](http://www.nijac.gov.uk/index/crown_and_non_crown_appointments_table_nov11.pdf) (last visited on September 4, 2015).

<sup>13</sup> Sch. 2, Northern Ireland Act 2009.



(iii) alternative routes typically based on years of practical experience as a bona fide clerk or employee of a solicitor.<sup>14</sup>

The Honorable Society of the Inn of Court of Northern Ireland regulates the legal education and training necessary to qualify as a barrister in Northern Ireland. In general, to be admitted as a barrister, a candidate must (i) complete a qualifying law degree; (ii) complete the Bar Post-Graduate Diploma in Professional Legal Studies at the Institute of Professional Legal Studies at Queen's University, Belfast; (iii) receive a call to the Bar of Northern Ireland; and (iv) complete a 12-month pupillage.<sup>15</sup>

A minimum number of pro bono hours is not mandated for admission as a solicitor or barrister; however, some law degree programs require a minimum number of pro bono hours to be completed as a requirement of the degree program.

## Licensure

### The Role of Solicitors

Solicitors advise clients and represent them before the lower courts and prepare cases for barristers to try in the higher courts.<sup>16</sup> Solicitors also advise clients on a wide range of civil, family and commercial matters.

### The Role of Barristers

Barristers are independent experts, practicing across all areas of law and legal disputes in all courts and tribunals in Northern Ireland, the Republic of Ireland and the United Kingdom. Increasingly, barristers are retained to act in cases outside the conventional courtroom setting such as alternative dispute resolution, arbitrations, tribunals, disciplinary hearings and a broad spectrum of public and private inquiries. A select number of senior barristers become Queen's Counsel which is recognized internationally as a mark of outstanding ability, earning a high reputation for their advocacy and legal skills.

### The Role of Foreign Lawyers

A European registered lawyer may practice under his or her home jurisdiction title in Northern Ireland provided he or she is registered with the Law Society of Northern Ireland or the Bar Council of Northern Ireland (the "**Bar Council**") (as applicable) and complies with the corresponding rules of conduct issued by the applicable regulator.<sup>17</sup> Other foreign registered lawyers may engage in fly-in/fly-out practice provided they do not engage in matters exclusively reserved for solicitors such as real estate. There is no requirement for a foreign registered lawyer to obtain a license to practice as a foreign legal consultant.

### The Role of In-House Counsel

The role of in-house counsel largely depends upon the corporation or organization and whether the in-house counsel is qualified as a barrister or solicitor. The In-House Lawyers Group Northern Ireland was established in 2014 to promote the interests of in-house lawyers in Northern Ireland and to share knowledge through appropriate continuing professional development along with establishing a networking forum for in-house lawyers.<sup>18</sup>

---

<sup>14</sup> See [www.lawsoc-ni.org/joining-the-legal-profession/](http://www.lawsoc-ni.org/joining-the-legal-profession/) (last visited on September 4, 2015).

<sup>15</sup> See [www.barofni.com/page/becoming-a-barrister](http://www.barofni.com/page/becoming-a-barrister) (last visited on September 4, 2015).

<sup>16</sup> See [www.lawsoc-ni.org/about-us/](http://www.lawsoc-ni.org/about-us/) (last visited on September 4, 2015).

<sup>17</sup> See [www.lawsoc-ni.org/joining-the-legal-profession/registered-european-lawyer-/](http://www.lawsoc-ni.org/joining-the-legal-profession/registered-european-lawyer-/) (last visited on September 4, 2015).

<sup>18</sup> See [www.lawsoc-ni.org/news-events-and-media/news/item/952/in-house-lawyers-group-northern-ireland/](http://www.lawsoc-ni.org/news-events-and-media/news/item/952/in-house-lawyers-group-northern-ireland/) (last visited on September 4, 2015).



## Demographics

At present, there are over 700 barristers<sup>19</sup> (43 of which are Queen's Counsel)<sup>20</sup> and over 2,300 solicitors<sup>21</sup> in Northern Ireland. Lawyers are not distinguished according to whether they are privately funded or legal aid funded.

## Legal Regulation of Lawyers

Pursuant to the Solicitors (Northern Ireland) Order 1976, the Law Society acts as the regulatory authority governing the education, accounts, discipline and professional conduct of solicitors in order to maintain the independence, ethical standards, professional competence and quality of services offered to the public. It carries out these functions to ensure that solicitors receive the highest level of support and that their clients receive the required standard of work.

The Bar Council deals with the maintenance of the standards, honor and independence of the Bar and, through its Professional Conduct Committee, receives and investigates complaints against members of the Bar in their professional capacity and also investigates and deals with matters arising from their behavior and conduct generally.<sup>22</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The Legal Services Agency Northern Ireland (the "LSANI") was created on April 1, 2015 as an executive agency within the DOJ and operates under the direction and control of the Minister of Justice.<sup>23</sup> The LSANI supports the justice system by administering publicly funded legal services. The LSANI is responsible for applying the various statutory tests to determine whether an individual is financially eligible to receive civil legal aid (eligibility for criminal legal aid is determined by the judiciary).<sup>24</sup>

### In Civil Proceedings

Civil legal services are available to any individual who is financially eligible to receive advice and assistance or representation under The Civil Legal Services (General) Regulations (Northern Ireland) 2015 and The Civil Legal Services (Financial) Regulations (Northern Ireland) 2015.<sup>25</sup> Individuals may apply for one of four forms of civil legal services: (i) general advice and assistance,<sup>26</sup> (ii) representation in the lower courts in relation to certain proceedings (including separation, maintenance, debt, children and young persons, health and personal services, child support, mental health review and anti-social behavior),<sup>27</sup> (iii) representation in the higher courts in relation to certain proceedings (including all of the

---

<sup>19</sup> See [www.barofni.com/page/the-bar-of-northern-ireland](http://www.barofni.com/page/the-bar-of-northern-ireland) (last visited on September 4, 2015).

<sup>20</sup> See [www.barofni.com/directory/search/search&channel=barristers&barrister\\_queens\\_counsel=Yes/](http://www.barofni.com/directory/search/search&channel=barristers&barrister_queens_counsel=Yes/) (last visited on September 4, 2015).

<sup>21</sup> See [www.lawsoc-ni.org/about-us/](http://www.lawsoc-ni.org/about-us/) (last visited on September 4, 2015).

<sup>22</sup> Section 1.8, The Bar of Northern Ireland Code of Conduct 2015 [http://www.barofni.com/assets/files/PCC\\_Code\\_of\\_Conduct\\_Complete\\_April2015\\_doc.pdf](http://www.barofni.com/assets/files/PCC_Code_of_Conduct_Complete_April2015_doc.pdf) (last visited on September 4, 2015).

<sup>23</sup> Section 2.1, LSANI Framework Document, April 2015.

See <http://www.dojni.gov.uk/index/legalservices/lsani-framework-document-april-2015-final> (last visited on September 4, 2015).

<sup>24</sup> Section 2.4, LSANI Framework Document, April 2015.

<sup>25</sup> Reg. 3, The Civil Legal Services (General) Regulations (Northern Ireland) 2015.

<sup>26</sup> Regs. 31-34, The Civil Legal Services (General) Regulations (Northern Ireland) 2015.

<sup>27</sup> Regs. 35-40, The Civil Legal Services (General) Regulations (Northern Ireland) 2015.



forementioned in respect of the lower courts and proceeds of crime, devolution issues, lands tribunal, asylum and immigration, enforcement of judgments);<sup>28</sup> and (iv) exceptional funding.<sup>29</sup>

Applications for advice and assistance must be made by the individual to the solicitor or barrister from whom the advice and assistance is sought.<sup>30</sup> Applications for representation in both the lower and higher courts and applications for exceptional funding must be made by the individual's solicitor or barrister to the LSANI.<sup>31</sup>

### In Criminal Proceedings

Criminal legal services are available to any individual who is financially eligible to receive advice and assistance or representation under the Access to Justice (Northern Ireland) Order 2003.<sup>32</sup> Individuals may apply for one of two forms of criminal legal services: (i) advice and assistance for individuals who are arrested and held in custody at a police station or other premises or are otherwise involved in investigations which may lead to proceedings,<sup>33</sup> and (ii) representation for individuals who have been granted a right of representation by the Court.<sup>34</sup>

An individual being interviewed by the police in connection with criminal charges is entitled to free legal aid for police station advice. This scheme is not means tested and the individual will not be required to make any contributions. Criminal legal aid is not available to any individual bringing a criminal prosecution against another individual.

## State-Subsidized Legal Aid

### For Civil Proceedings

Eligibility for civil legal aid is determined by the LSANI and dependent on the applicant passing a financial means test. The income and disposable capital thresholds vary depending upon the type of legal services sought, with the lowest thresholds for advice and assistance and the highest thresholds for representation in the higher courts. Financial eligibility limits may be waived in certain cases involving multi-party actions of significant wider public interest, certain inquests, cross-border disputes and domestic violence or forced marriage.<sup>35</sup> Applications may be made by individuals resident outside of Northern Ireland with the prior authority of the Director of the LSANI.<sup>36</sup>

### For Criminal Proceedings

Eligibility for criminal legal aid is determined by the Court and dependent on the defendant applicant passing a financial means test (that the defendant applicant's means are insufficient to pay for the defense) and a merits test (that it is in the interest of justice that the defendant applicant should have free legal aid).

---

<sup>28</sup> Regs. 41-47, The Civil Legal Services (General) Regulations (Northern Ireland) 2015.

<sup>29</sup> Regs. 48-53, The Civil Legal Services (General) Regulations (Northern Ireland) 2015.

<sup>30</sup> Reg. 31(1), The Civil Legal Services (General) Regulations (Northern Ireland) 2015.

<sup>31</sup> Reg. 5(3), The Civil Legal Services (General) Regulations (Northern Ireland) 2015.

<sup>32</sup> Regs. 23-29, Access to Justice (Northern Ireland) Order 2003.

<sup>33</sup> Regs. 23, Access to Justice (Northern Ireland) Order 2003.

<sup>34</sup> Regs. 24-29, Access to Justice (Northern Ireland) Order 2003.

<sup>35</sup> Regs. 7-10, The Civil Legal Services (Financial) Regulations (Northern Ireland) 2015.

<sup>36</sup> Reg. 7, The Civil Legal Services (General) Regulations (Northern Ireland) 2015.



## Mandatory assignments to Legal Aid Matters

Private lawyers are not mandatorily assigned to legal aid matters by the Northern Ireland courts or the LSANI. All legal aid, whether civil or criminal, is provided by lawyers who volunteer for such cases. LSANI pays for all legal services provided in the administration of civil and criminal legal aid.

## Unmet Needs and Access Analysis

Northern Ireland has one of the largest budgets for legal aid in the United Kingdom.<sup>37</sup> In the face of increasing costs, payments to lawyers in legal aid cases have been reduced. Barristers in Northern Ireland have recently withdrawn from all new criminal cases requiring legal aid in protest against new rules reducing the level of payments. The Criminal Bar Association has commented that the highest standard of representation to those members of society who face the most serious and complex criminal cases in the Crown Court cannot be achieved under the new rules.<sup>38</sup>

## Alternative Dispute Resolution

### Mediation and Arbitration

There are various forms of alternative dispute resolution (“**ADR**”) such as: (i) direct negotiation, complaints and grievance procedures; (ii) mediation and conciliation; (iii) arbitration; (iv) evaluation, determination and adjudication; and (v) the ombudsman scheme. The Ombudsman, the Law Centre (NI) and Queen’s University Belfast have produced a very helpful guide entitled “Alternatives to Court in Northern Ireland”<sup>39</sup> which details the types of alternative dispute resolution services available for a wide range of disputes. ADR costs are not, except in family cases, normally met by legal aid.

### Ombudsman

Members of the public may, once they have exhausted the internal complaints procedure of the relevant government department/agency or public body, submit a complaint to the Ombudsman for investigation (at no cost to the applicant) if they are unhappy with the service provided by a government department/agency or public body (which includes all local councils, education and library boards and organizations providing health and social care services in Northern Ireland).<sup>40</sup> When the Ombudsman has concluded his investigation he will issue a report detailing his findings of the investigation to the applicant and the organization concerned.

## PRO BONO ASSISTANCE

### Pro bono Opportunities

#### Private Attorneys

Private attorneys are not mandated to undertake or report pro bono matters but are encouraged to do so by both the Bar Council and the Law Society. Pro bono opportunities exist for private lawyers through bar association programs and programs run by non-governmental organizations.

---

<sup>37</sup> See <http://www.newsletter.co.uk/news/regional/lawyers-legal-aid-fees-described-as-staggering-1-6692409> (last visited on September 4, 2015).

<sup>38</sup> See <http://www.bbc.com/news/uk-northern-ireland-32894268> (last visited on September 4, 2015).

<sup>39</sup> See <http://www.nidirect.gov.uk/dispute-resolution-alternatives-to-court.pdf?rev=5> (last visited on September 4, 2015).

<sup>40</sup> See <http://www.ni-ombudsman.org.uk/home.aspx> (last visited on September 4, 2015).



## Law Firm Pro bono Programs

A large number of law firms in Northern Ireland are committed to pro bono work and developing and maintaining pro bono programs either independently or in partnership with local charities and bar associations.<sup>41</sup> Many law firms provide pro bono services through the Pro Bono Bar Unit (discussed below).

## Non-Governmental Organizations (NGOs)

There are several NGOs in Northern Ireland that provide pro bono legal services to the public. These include the Citizens Advice Bureau, the Children's Law Centre, the Law Centre (NI) and the PILS Project.

The Citizens Advice Bureau is the largest advice charity in Northern Ireland providing free legal advice and representation as well as negotiation and drafting assistance to individuals on 14 different areas of law, including benefits, debt, consumer, employment and housing.<sup>42</sup> The Citizens Advice Bureau operates across Northern Ireland through 28 main offices, 110 outreach service outlets and telephone and website services and relies on trained advisers (both paid and volunteer) to provide its services. The services of the Citizens Advice Bureau are free and provided to anyone seeking assistance.

The Children's Law Centre is a charity that works to protect the rights of all children living in Northern Ireland by providing free and "child-friendly" legal advice and representation to children and young people across a range of areas including education, medical, social security, employment, care, human rights, equality and discrimination. The advice team assists children, young people, their parents and professionals with legal queries relating to difficulties in school, access to services for disabled children, special educational needs, mental health service provision, family law issues or general legal queries. The Children's Law Centre also provides free legal representation, particularly at the Special Educational Needs and Disability Tribunal and Mental Health Review Tribunals and undertakes strategic litigation following the criteria contained within its casework policy.<sup>43</sup> The Children's Law Centre is reliant on both trained advisers (paid) and volunteers to provide its services.

The Law Centre (NI) is a not-for-profit agency that works to advance social welfare rights and social justice in Northern Ireland. The Law Centre (NI) is a referral organization that delivers legal services to members and free legal support to advice giving organizations (through advice, casework, training, information, communications, publications and policy development).<sup>44</sup> The Law Centre (NI) also oversees the Legal Support Project (funded by Atlantic Philanthropies) which provides assistance by way of advice or representation in social security appeals and industrial tribunals to claimants who do not have access to alternative representation.<sup>45</sup> The Law Centre is reliant on both trained advisers (paid) and volunteers to provide its services.

The PILS Project (Public Interest Litigation Support Project), a dedicated strategic litigation project established by the Committee on the Administration of Justice, works to advance human rights and equality in Northern Ireland through the use of and support for public interest litigation.<sup>46</sup> The PILS Project takes on cases that benefit disadvantaged groups or minorities rather than just one person. The PILS

---

<sup>41</sup> Examples are <http://www.pilsni.org/current-solicitors> (last visited on September 4, 2015) and <http://www.lawcentreni.org/news/recent-news/1-news/1050-pro-bono-work-international-perspectives-and-local-solutions.html> (last visited on September 4, 2015).

<sup>42</sup> See <http://www.citizensadvice.co.uk/> (last visited on September 4, 2015).

<sup>43</sup> See <http://www.childrenslawcentre.org.uk/index.php/what-we-do-2/legal-services> (last visited on September 4, 2015).

<sup>44</sup> See <http://www.lawcentreni.org/about-us/what-we-do.html> (last visited on September 4, 2015).

<sup>45</sup> See <http://www.lawcentreni.org/lsp/about-lsp.html> (last visited on September 4, 2015).

<sup>46</sup> See <http://www.pilsni.org/origin-mission-and-aims> (last visited on September 4, 2015).



Project is reliant on its member solicitors to provide pro bono legal services and maintains a register of lawyers interested in undertaking pro bono legal work.<sup>47</sup>

### Bar Association Pro bono Programs

The Northern Ireland Lawyers Pro bono Unit, run jointly by the Bar Council and the Law Society, offers legal advice and representation to individuals who cannot access legal aid or who are unable to afford legal assistance. Lawyers on the Pro bono Unit's register commit to three days or 20 hours of pro bono work per year. Many of the law firms in Northern Ireland perform pro bono through the Pro bono Unit.

### University Legal Clinics and Law Students

Several of the universities in Northern Ireland run legal clinics and advice centers. Queen's University Belfast maintains a Legal Services Unit which provides general advice and guidance to both staff and students on a wide range of legal issues.<sup>48</sup> Additionally The School of Law at the University of Ulster supervises the Ulster Law Clinic which is managed and developed by LLM Clinical Legal Education postgraduate students who provide (as part of their degree program requirements) free legal advice and representation to the public in social security and employment law.<sup>49</sup>

## Historic Development and Current State of Pro bono

### Current State of Pro bono including Barriers and Other Considerations

With Northern Ireland's legal aid system currently undergoing reform, Northern Ireland citizens may need to rely more heavily on pro bono services. Cuts to criminal legal aid have already been implemented in 2015 and further proposed changes would reduce payments to solicitors in civil legal aid cases. It is estimated that the proposed changes will result in approximately £20 million in savings per year.<sup>50</sup> In response to these reforms, solicitors and barristers have begun withdrawing from certain cases, with solicitor firms considering whether they will continue to conduct legal aid work in the future.<sup>51</sup> If fewer lawyers are providing legal aid services with less money budgeted for such services, those in need of legal assistance may increasingly turn to organizations providing pro bono services for needed help.

### Laws and Regulations Impacting Pro bono

#### Availability of Professional Indemnity Legal Insurance Covering Pro bono Activities by Attorneys

All solicitors in private practice are required to maintain professional indemnity insurance at a level and to a specification prescribed by the Law Society of Northern Ireland.<sup>52</sup> Solicitors are required to have professional indemnity insurance to cover work for their employer as well as for pro bono work and work at law centers, charities and other non-commercial advice centers.<sup>53</sup>

### Pro bono Resources

The following is a list of agencies that provide pro bono services and their websites:

---

<sup>47</sup> See <http://www.pilsni.org/pro-bono> (last visited on September 4, 2015).

<sup>48</sup> See <https://www.qub.ac.uk/directorates/HumanResources/LegalServicesUnit/> (last visited on September 4, 2015).

<sup>49</sup> See <http://www.ulster.ac.uk/lawclinic/> (last visited on September 4, 2015).

<sup>50</sup> See <http://www.wilson-nesbitt.com/news-updates/Child-Contact/6726/Plan-to-cut-legal-aid-in-NI-civil-cases> (last visited on September 4, 2015).

<sup>51</sup> See <http://www.belfasttelegraph.co.uk/news/northern-ireland/law-society-warning-over-northern-ireland-legal-aid-cuts-30946415.html> (last visited on September 4, 2015).

<sup>52</sup> See <http://www.lawsoc-ni.org/role-of-the-law-society/regulation/professional-indemnity-insurance/> (last visited on September 4, 2015).

<sup>53</sup> See <https://www.abi.org.uk/Insurance-and-savings/Products/Business-insurance/Liability-insurance/Professional-indemnity-insurance/Solicitors-professional-indemnity-insurance> (last visited on September 4, 2015).



- <http://www.citizensadvice.co.uk/>
- <http://www.childrenslawcentre.org.uk/>
- <http://www.lawcentreni.org/>
- <http://www.pilsni.org/>
- <http://www.barofni.com/page/helping-the-community>
- <https://www.gub.ac.uk/directorates/HumanResources/LegalServicesUnit/>
- <http://www.ulster.ac.uk/lawclinic/>

## CONCLUSION

In Northern Ireland there is a tradition of solicitors and barristers providing pro bono legal services to those who cannot afford to pay. This is typically done, however, on an ad hoc basis and not in any structured, recorded way. The Law Society of Northern Ireland, while a staunch supporter of pro bono, is adamant that it is not a substitute for a properly funded legal aid system which must remain the principal means for assisting those with insufficient means to obtain legal services.<sup>54</sup>

September 2015

Pro Bono Practices and Opportunities in Northern Ireland

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>54</sup> Review of Access to Justice, The Law Society of Northern Ireland, May 2011.



## Pro Bono Practices and Opportunities in Israel<sup>1</sup>

### INTRODUCTION

Traditionally, the public obligation of the legal profession in Israel was seen as corresponding to the project of nation-building and contributing to national institutions. There was no sense that the provision of free legal services was required to fulfill any social obligation that the profession might have, or to uphold the legitimacy or exclusivity of the profession with respect to legal services. Issues such as access to justice, legal representation of the poor and protection of human rights were generally absent from the discourse and practices of the Bar.<sup>2</sup>

Since the 1990s, however, both the traditional concept of lawyering, as well as the Bar Association's hegemony in this area, have eroded. Several factors have contributed to this erosion: the entry of new social groups into the profession due to changes in legal education; the sharp rise in competition between attorneys; new leadership of the Bar Association; the emergence of public interest and community-based lawyering; and a stronger inclination by the Israeli Supreme Court to scrutinize the Bar's practices under Israel's new constitutional framework.<sup>3</sup>

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Israel does not have a formal Constitution.<sup>4</sup> The Knesset, the governing legislative body in Israel, has the power to enact "Basic Laws" – statutes - which serve as the basis of judicial review of legislation and as constitutional norms in lieu of a full Constitution.<sup>5</sup>

There are three main sources of law in Israel: Turkish and British antecedents, and religious law.<sup>6</sup> The legislature has produced an original corpus of law separate from its Turkish and British antecedents, but religious courts representing and servicing Israel's recognized religious communities continue to determine and govern marriage, divorce, and family law in general.<sup>7</sup>

Procedurally, Israel has adopted an adversarial system based on common law and without a jury system. Case law is formed by binding and guiding precedents supplementing legislation to create a full system of

---

<sup>1</sup> This chapter was drafted with the support of the law firm of Yigal Arnon and Co.

<sup>2</sup> N. Ziv, *The Legal Profession: Looking Backward: Combining Professionalism, Nation Building and Public Service: The Professional Project of the Israeli Bar 1928 – 2002*, 71 *FORDHAM L. REV.* 1621, 1623 (2003).

<sup>3</sup> *Id.*

<sup>4</sup> Y. Efron and N. Ebner, *Legal Education in Israel: Developments and Challenges in Legal Education in Asia*, at 91-115 (2014).

<sup>5</sup> See the Supreme Court of Israel's analysis of the judicial review process according to the 'Basic Laws' at *Bank Mizrahi v. Migdal Cooperative Village*, 49(4) P.D. 221 (Sup.Ct. 1995). An English translation can be found at [http://elyon1.court.gov.il/files\\_eng/93/210/068/z01/93068210.z01.pdf](http://elyon1.court.gov.il/files_eng/93/210/068/z01/93068210.z01.pdf) (last visited on September 4, 2015).

<sup>6</sup> SYMPOSIUM: A GLOBAL LEGAL ODYSSEY: A Brief Introduction to the Legal System and Legal Education in Israel and the Curriculum at Haifa Faculty of Law, 43 *S. Tex. L. Rev.* 343, 343.

<sup>7</sup> Y. Efron and N. Ebner, *Legal Education in Israel: Developments and Challenged*, in *Legal Education in Asia*, at 91-115 (2014).



legal norms. Substantively, Israel has adopted a civil law system influenced by European legal approaches, as well as Anglo-American law, Jewish legal tradition, religious law and original legislation.<sup>8</sup>

## The Courts

Israel has an independent judiciary, which constitutes a separate unit within the Ministry of Justice. The judicial system consists of general law courts, known as civil or regular courts, and courts of more limited jurisdiction, such as tribunals and other authorities with judicial powers. The civil courts are divided among three levels: magistrates' courts, district courts and the Supreme Court.<sup>9</sup>

- There are 29 magistrates' courts, and cases before these courts are presided over, at the discretion of the President of the applicable Magistrates' Court, either by a single judge or a panel of three judges, depending on the election of the President of the applicable Magistrates' Court. These courts have jurisdiction in criminal matters (with offenses punishable by up to seven years' imprisonment), civil matters (with judgments up to approximately US\$650,000) and real property, as well as acting as traffic courts, municipal courts, family courts and small claims courts. The jurisdiction of a magistrate's court is the locality in which it sits and the whole district in which it is situated.
- There are six district courts in Israel, and these courts have original jurisdiction for specific matters such as certain administrative petitions and economic affairs, including cases dealing with companies and partnership, arbitration, prisoners' petitions, certain administrative matters, and appeals on tax matters and the Knesset elections register, as well as appeals from judgments of the magistrates' courts. In addition, the Jerusalem district court has jurisdiction over appeals regarding Knesset election results, the Haifa district court also serves as a Maritime Court, and district court judges, duly appointed, may also serve as presiding judges of Standard Contract Tribunals and Anti-Trust Tribunals. Generally, a single judge presides, unless the court hears an appeal of a magistrates' court's decision, when the accused is charged with an offense punishable by imprisonment of ten or more years, or when the President or Deputy President of the District Court so directs.
- The Supreme Court acts predominantly as a court of appeal to hear criminal and civil appeals from judgments of the district courts, but also exercises special jurisdiction to hear appeals in matters of Knesset elections, rulings of the Civil Service Commission, disciplinary rulings of the Israel Bar Association, administrative detentions and prisoners' petitions. The number of justices on the Court is fixed by Knesset resolution. By convention, the most senior justice is the President (Chief Justice) of the Court and the next senior justice is the Deputy President. The President of the Court is the head of the entire judicial system in Israel. Though the Supreme Court generally sits in panels of three justices, the size of the panel may expand to an uneven number of justices at the election of the President or Deputy President. The Supreme Court also serves a unique function as the High Court of Justice, wherein the Supreme Court acts as the court of first and last instance, a role the Supreme Court serves over 1,000 times a year, "in matters in which it considers it necessary to grant relief in the interests of justice and which are not within the jurisdiction of any other court or tribunal." Supreme Court Justices are appointed by the Judicial Selection Committee, which is composed of nine members: three Supreme Court Justices (including the President of the Supreme Court), two cabinet ministers (one of them being

---

<sup>8</sup> S. Goldstein, *The Odd Couple: Common Law Procedure and Civilian Substantive Law*, 78 *TULANE LAW REVIEW* 291, 306; Y. Efron and N. Ebner, *Legal Education in Israel: Developments and Challenges*, in *Legal Education in Asia*, at 91-115 (2014).

<sup>9</sup> THE ISRAEL MINISTRY OF FOREIGN AFFAIRS, *The Judiciary: The Court System*, (May 16, 2012), <http://www.mfa.gov.il/MFA/Government/Branches+of+Government/Judicial/The+Judiciary-+The+Court+System.htm> (last visited on September 4, 2015).



the Minister of Justice), two Knesset members, and two representatives of the Israel Bar Association.<sup>10</sup> The committee is chaired by the Minister of Justice.

## The Practice of Law

Only members of the Israeli Bar Association can practice Israeli law in Israel. Israeli law requires licensure to practice as an attorney, and acquiring such a license requires (i) an academic legal education, (ii) a period of apprenticeship and (iii) passing an examination.<sup>11</sup> The academic requisite is studied through an undergraduate program, i.e. a bachelor's level education, at the end of which an LL.B degree is awarded.<sup>12</sup> For purposes of acceptance to the Israeli Bar, degrees comparable with the Israeli bachelor of law (LL.B), offered by a recognized university outside of Israel, can substitute for an Israeli degree provided the applicant pass a special exam on the laws of Israel.

In order to be accepted to the Israeli Bar, a law student must continue his or her legal education beyond the LL.B degree by undertaking a one-year internship (a "stage") under the training of an experienced attorney (i.e. an attorney who has practiced law for at least five years) or a judge.<sup>13</sup> Public service legal internships are valid.

After completing their internship, candidates are eligible to sit for the Bar exam after which they become members of the Israeli bar and licensed to practice law.

Historically, all attorneys were licensed to practice law by the Israel Bar Association; however, as of the summer of 2012, restrictions against attorneys licensed in foreign jurisdictions attorneys were lifted.<sup>14</sup> According to the amendment, attorneys licensed to practice in non-Israeli jurisdictions are permitted to practice in Israel regarding the laws which apply in the jurisdiction in which they are licensed to practice. The amendment also extended to the establishment of foreign law firms.

Israel has the largest number of attorneys per capita in the world, with the number of attorneys per capita in 2005 more than double the ratio found in either the United States or the United Kingdom.<sup>15</sup> Consistent with the trend that began as early as 1968,<sup>16</sup> more recent statistics document that the increase in the number of attorneys in Israel has continued to outpace population growth.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Israel Bar Association Act provides that "the Bar Association is entitled, *inter alia*, to provide legal relief to those of limited means."<sup>17</sup> Pro Bono practice is, in other words, permissible but not mandatory. Though not required, pro bono is increasingly being viewed as essential for the fulfillment of the right of legal representation. This dramatic change in pro bono culture and practice is perhaps best illustrated by

---

<sup>10</sup> Israel Ministry of Foreign Affairs, The Judiciary: The Court System, <http://www.mfa.gov.il/mfa/aboutisrael/state/democracy/pages/the%20judiciary-%20the%20court%20system.aspx> (last visited on September 4, 2015).

<sup>11</sup> Section 24, Bar Association Law, 1961.

<sup>12</sup> Section 25(1), Bar Association Law, 1961.

<sup>13</sup> Section 29, Bar Association Law, 1961.

<sup>14</sup> Israel Bar Association Law Amendment (5709-2009), which stipulates that the Bar Association may register foreign attorneys and law firms operating in Israel on the basis of their law license at a foreign bar association.

<sup>15</sup> T. Zarchin, Israel First in World for Lawyers per Capita, Study Finds, Haaretz (Aug. 3, 2011) (approximately 585 attorneys per 100,000 residents); G. Barzilai, The Ambivalent Language of Lawyers in Israel: Liberal Politics, Economic Liberalism, Silence and Dissent in FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM, 247-279 (T. C. Halliday, L. Karpik and M.M. Feeley eds. 2007).

<sup>16</sup> Id.; T. Zarchin, Israel First in World for Lawyers per Capita, Study Finds, Haaretz (Aug. 3, 2011) (approximately 585 attorneys per 100,000 residents); D. Combs, The Global Legal Market: By the Numbers, The American Lawyer (Oct. 24, 2014).

<sup>17</sup> Israel Bar Association Act, Section 3(2) (1961).



the 2002 launch of the Bar Association's first pro bono program, Schar Mitzvah, described below. This move was preceded by a two-year struggle within the Bar Association's internal institutions, as critics feared that the initiative would encroach upon the livelihoods of practitioners who currently provided legal services for a fee to many of the same individuals who would become eligible for pro bono services.<sup>18</sup>

### Civil Legal Aid

Civil legal aid is governed by the Legal Aid Act and the Legal Aid Regulations.<sup>19</sup> The law stipulates that any resident of Israel may receive legal assistance in the form of legal services provided by government attorneys, so long as he or she qualifies under the economic criteria. In order to qualify for legal aid, a petitioner must fulfill three conditions:<sup>20</sup>

- The legal issue must pertain to one of the following areas of law: matters of personal status; prosecution or defense of suits related to rights to dwelling-places; fiscal matters (e.g., bankruptcy); civil torts; matters in the competence of the Labor Courts; suits filed in accordance with amendments concerning pension rights, grants, rehabilitation and other rights of the disabled; all suits involving the rights of demobilized soldiers; suits involving Holocaust survivors with respect to their rights as such; suits involving the Law of Return and Citizenship and Population Registry Laws; representation before forced hospitalization committees under the Treatment of Mental Patients Law (Amend. No. 5); representation of victims of human trafficking; and registration of businesses, trades or professions.<sup>21</sup> The Ministry of Justice also provides legal aid for social security benefits under the National Insurance Act, a category that includes general disability benefits, employment disability benefits, unemployment benefits, benefits for children, compensation for reserve service, old-age welfare rights, minimum wage, compensation for victims of terror and hostilities, national medical insurance, and maternity insurance.<sup>22</sup>
- The petitioner must meet two economic criteria: (a) an income threshold – total pre-tax earnings may not exceed 2/3 of the average income for a family of three, with increases of 6% for each additional family member; and (b) a property ownership threshold – available funds from property may not exceed three times the average income mentioned above, with an exclusion for one private residence. In social security or family matters, economic eligibility criteria are modified or waived.
- The claim must have legal merit, i.e. there is a reasonable prospect in law of succeeding in the claim.<sup>23</sup>

---

<sup>18</sup> The struggle to reform the Bar Association and the profession can be traced through a series of Supreme Court cases that challenged the legality and even constitutionality of some of the established rules and regulations, most notably the prohibitions on advertising and on holding certain additional occupations. In 2001, the total ban on advertising by attorneys was replaced with a regulatory scheme that allows attorneys to advertise their services under certain conditions. Israel Bar Association Rules (Advertising) 2001; Israel Bar Association Rules (Additional Practices) 2002, respectively.

<sup>19</sup> Legal Aid Act 1972 and Legal Aid Regulation 1973, respectively.

<sup>20</sup> Legal Aid Act 1972 and Legal Aid Regulation 1973.

<sup>21</sup> MINISTRY OF JUSTICE, ISRAEL, What are the Conditions for Granting Legal Aid?, available at <http://www.justice.gov.il/MOJEng/Siuamishpati/Resources+Center/TnaimLekabaltSiyua.htm> (last visited on September 4, 2015).

<sup>22</sup> National Insurance Act (Consolidated Version) 1995; National Insurance Regulations (Legal Aid) 1973. Further, pursuant to a May 1977 amendment to the National Insurance Act (NIA), any (non-corporate) applicant will receive legal assistance in proceedings before the Labor Court in which the National Insurance Institute (NII), either under the NIA or some other legislation mandating payments by the NII. This assistance is provided at the expense of the NII and through the Legal Aid Bureaus, regardless of the applicant's ability to pay. Thus, while the general right to legal aid in connection to labor law is protected by the Legal Aid Act, the NIA provides further legal guaranties in specific labor law-related issues specified therein.

<sup>23</sup> Legal Aid Law of 1972, Section 4, 5732-1972.



### The Israel Bar Association Pro Bono Project (*Schar Mitzvah*)

In addition to the state-sponsored civil legal aid system, the Bar Association, as part of its reform in recent years, has taken a leadership position with respect to the promotion of a pro bono culture. In 1999, shortly after a change in the Bar Association's elected leadership, a special task force was appointed by the Bar Association's chair to prepare a platform for a comprehensive pro bono initiative. The plan met with opposition from certain members of the Bar Association's Central Committee, which argued that pro bono work might constitute unfair competition. Despite these objections, in April of 2002 the Central Committee approved the *Schar Mitzvah* program. The mission of *Schar Mitzvah* was to "substantially expand accessibility to the justice system and provide legal aid to those who cannot afford to pay for legal services."<sup>24</sup>

Two kinds of legal aid are provided under the program. One consists of initial counseling and guidance offered in 70 help centers located throughout the country. The primary aim of the centers is to guide petitioners and empower them to independently pursue their claims and assert their rights *pro se*. This service is provided at no cost to the petitioner and with no eligibility threshold. The other form of assistance provides legal representation before judicial tribunals. In order to be eligible for this form of assistance, the petitioner must meet a set of eligibility requirements.

While run exclusively by the Bar Association, the eligibility threshold of the *Schar Mitzvah* for representation before judicial tribunals is designed to complement the Ministry of Justice legal aid program. As such, the Bar Association will not provide legal aid to a petitioner who is eligible for state-sponsored legal aid, other than in emergency situations. The *Schar Mitzvah* eligibility test consists of two components: economic eligibility and substantive eligibility. The economic threshold allows a petitioner to earn 18% more than the levels allowed by the Ministry of Justice described above. This means a family of up to three persons whose earnings total 67%-85% of the national average will be eligible for legal aid provided by the Bar Association, whereas families with earnings of less than 67% will be referred to the Ministry of Justice program. There is also a property ownership threshold: in order to qualify for legal aid, the petitioner must not own more than one private residence and one car. In addition, the petitioner must not have available funds exceeding six times the national average income.

### Public Defense Reform

In 1995, comprehensive legislation was passed establishing the Office of the Public Defender (the "OPD") and expanding the right to counsel in criminal cases. The Public Defender Act expanded the right of public defense to indigent defendants when the likely outcome of the legal proceeding will have grave and fateful consequences for that person (for example, prolonged detention until conclusion of the proceedings, a sentence of actual imprisonment, psychiatric hospitalization and extradition). In addition, the Public Defender Act entitles persons suffering from a personal disability that adversely impacts upon their basic ability to defend themselves (for example, a defendant who is mute, blind or deaf, a fear as to mental illness or a defect in his intellectual capacity, and minors with no legal capacity) to public defense. Further, a person is entitled to representation by a public defender when exceptional rules of procedure and evidence are being applied in a trial (for example, a preliminary hearing, evidence given by video, hearsay evidence through a special investigator, and so forth) or when such representation is necessary to ensure due process and prevent a perversion of the law.<sup>25</sup> Like the Bar Association's civil initiative, this reform also met with objections from members who feared that the public defender would dominate the market for criminal defense.<sup>26</sup>

Nonetheless, the legislation passed and the resulting Public Defense Act gave the OPD the responsibility of ensuring effective assistance of counsel for all suspects and defendants who were entitled to legal aid.

<sup>24</sup> "Schar Mitzvah" supra n. 12, [http://www.israelbar.org.il/english\\_inner.asp?pgld=75176&catld=372](http://www.israelbar.org.il/english_inner.asp?pgld=75176&catld=372) (last visited on September 4, 2015).

<sup>25</sup> Section 18 of the Public Defense Act, 1995.

<sup>26</sup> On the right to counsel prior to 1992, the development of the right to state-funded defense counsel, and the establishment of the OPD, see K. Mann and D. Weiner, Creating A Public Defender System In The Shadow Of The Israeli-Palestinian Conflict, 48 N.Y.L. SCH. L. REV. 91 (2003).



Currently, the public defense system includes six district offices covering all criminal courts; state expenditures for criminal legal aid have grown tenfold. There are now approximately 100 attorneys employed by the OPD and approximately 70 other workers, including administrative staff, students and interns. The OPD also retains approximately 900 private bar attorneys to assist with its caseload.<sup>27</sup> In addition to attorneys affiliated with or commissioned by the OPD, some private criminal defense attorneys provide ad hoc pro bono services at their discretion.<sup>28</sup>

### Unmet Needs and Access Analysis

Approximately 152,000 illegal immigrants currently live in Israel, of which approximately 106,000 entered Israel legally and have over-stayed their work or tourist visa with which they have entered, and approximately 46,000 entered Israel illegally, and, in each case, are commonly referred to as "infiltrators"<sup>29</sup> The state policy towards infiltrators is one of temporary non-deportation, officially referred to as "group protection." Infiltrators in Israel are denied basic rights provided to residents, including free non-emergency healthcare, and have limited or no access to basic state-sponsored services, including pro bono services, other than representation by the OPD.<sup>30</sup>

## PRO BONO ASSISTANCE IN ISRAEL

### Pro Bono Opportunities

In Israel, the term "legal aid" is more prevalent in legal discourse than the term "pro bono." Attorneys usually refer to one of three categories of no-fee or reduced-fee services as falling under the concept of legal aid:

- State-sponsored legal aid, which exists in two forms. One is the Legal Aid Bureau of the Ministry of Justice, which is charged with the administration of legal aid in civil matters, such as family and labor law and social benefit litigation.<sup>31</sup> The other is the Office of the Public Defender (the "OPD"), which is charged with providing legal aid in criminal cases.
- Legal aid provided by non-profit organizations and NGOs.<sup>32</sup> Examples of leading NGOs that provide legal aid include ACRI (the Association for Civil Rights in Israel); *Adalah* (the Legal

---

<sup>27</sup> Office of the Public Defender 2013 Annual Report, published August 2014, available at <http://index.justice.gov.il/Units/SanegoriaZiborit/News/Documents/%D7%93%D7%95%D7%97%20%D7%A9%D7%A0%D7%AA%D7%99%202013%20-%20%D7%A1%D7%95%D7%A4%D7%99.pdf> (last visited on September 4, 2015).

<sup>28</sup> No official numbers are available to ascertain the scope of this type of pro bono criminal defense.

<sup>29</sup> Statistical data with respect to foreign persons in Israel, published by the Population and Immigration Authority in Israel, April 2015. Available at <http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/april2015.pdf> (last visited on September 4, 2015).

E. Cooper, Israel's Illegal Immigration Problem, available at [http://www.americanthinker.com/articles/2015/05/israels\\_illegal\\_immigration\\_problem.html](http://www.americanthinker.com/articles/2015/05/israels_illegal_immigration_problem.html) (May 2, 2015) (last visited on September 4, 2015); The OECD Expert Group on Migration (Sopemi), Immigration in Israel 2011-2012; available at <http://www.knesset.gov.il/mmm/data/pdf/me03131.pdf> (last visited on September 4, 2015).

<sup>30</sup> African Refugee Development Center, Refugees in Israel, <http://www.ardc-israel.org/ar/node/53> (last visited on September 4, 2015).

<sup>31</sup> Legal Aid Act 1972 and Legal Aid Regulation 1973. In 2011, the Legal Aid Department at the Ministry of Justice provided legal representation in approximately 200,000 legal proceedings. MINISTRY OF JUSTICE, ISRAEL, Functions of the Legal Aid Department, available at <http://www.justice.gov.il/NR/exeres/0DE80AAC-B813-4C41-80E6-4235922F02BE.frameless.htm?NRMODE=Published> (last visited on September 4, 2015).

<sup>32</sup> This includes cause-lawyering. In this chapter the term "cause-lawyering" refers to legal aid provided by attorneys who are paid, albeit not by a client, such as staff attorneys at NGOs.



Center for Arab Minority Rights in Israel); Kav LaOved (Worker's Hotline); Yedid (the Association for Community Empowerment) and Naamat (Israel's Working Women's Organization).

- Legal services provided by private sector attorneys. The more than 2,000 attorneys who participate in the Israeli Bar Association's pro bono project<sup>33</sup> and over 1,100 outside attorneys who provide services in the courts and other legal forums where fees are paid by the state<sup>34</sup> are an indication of the private sector's capacity and willingness to provide legal aid. These opportunities are available to all private sector attorneys, including in-house counsel, seeking to provide pro bono services.

### Nonprofit Legal Aid Initiatives

Since 1998, there has been a surge in the provision of legal aid. This increase is attributed to the 20% rise in the general population resulting from the vast wave of immigration from the former Soviet Union and Ethiopia in the early 1990s and is also seen as a response to Israel's severe economic downturn in recent years. During the same period, however, public funding has constantly dwindled. These and other factors create a growing need for legal aid services that exceed the capacities of both the private and the public sectors.<sup>35</sup>

Following is a description of legal aid initiatives. The list aims to capture the diversity of legal aid work currently taking place, including universal issues such as refugee rights and issues unique to Israel like access to Rabbinical courts.

- *ISLA – Israeli Society for Legal Aid* provides referrals for professional legal aid, provides legal counseling regarding civil rights, and participates in petitions to the Supreme Court.
- *Naamat* (Israel's Working Women's Organization) operates bureaus providing legal counseling on issues such as divorce and violence against women, assists in representation in divorce proceedings and advocates for legislation promoting women's rights.
- The Association for the Support and Defense of Bedouin Rights in Israel provides initial legal advice and participates in petitions to the High Court of Justice on issues pertaining to "unrecognized villages" and the right to education.
- Legal clinic programs in almost all law faculties in Israel today, both in universities and colleges, offer clinics on the topics of human rights, criminal justice, social welfare law, refugee rights, environmental justice, family law, international criminal law, workers' rights, among others.
- The Israel Union for Environmental Defense provides legal guidance on environmental issues, advice on environmental planning and assistance to community groups to structure legal responses to environmental threats.
- The Israel Religious Action Center is the public and legal advocacy arm of the Reform Movement in Israel and promotes religious tolerance, equality, and social justice through legislative advocacy and petitions to the High Court of Justice on issues such as conversion, medicine, *halacha* (Jewish law), rabbinical courts and the right to marry.

### Private Sector Legal Aid Initiatives

Multinational law firms, to this point, generally have not engaged in pro bono initiatives in Israel ("multinational law firms" in this context excludes Israeli law firms with offices or affiliates overseas), though this may change in the coming years now that foreign attorneys have been cleared to practice in Israel. The firm of Kelley Drye & Warren represented an elderly American now living in Israel after his Retirement Insurance Benefits were reduced by the Social Security Administration on the basis of his

---

<sup>33</sup> THE ISRAEL BAR ASSOCIATION, "Schar Mitzvah," The Israel Bar Association Pro Bono Program, (May 20, 2010), [http://www.israelbar.org.il/english\\_inner.asp?pgId=75176&catId=372](http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372) (last visited on September 4, 2015).

<sup>34</sup> Functions of the Legal Aid Department, *supra* n.5.

<sup>35</sup> See M. Hacoen, Building a Rights-Based Framework for Legal Aid in Israel in JUSTICE INITIATIVES 51 (a publication of the Open Justice Initiative 2004) available at [http://www.soros.org/sites/default/files/justice\\_initiatives\\_20040225\\_2.pdf](http://www.soros.org/sites/default/files/justice_initiatives_20040225_2.pdf) (last visited on September 4, 2015).



receipt of an Old Age Allowance from Israel.<sup>36</sup> However, this might better be seen as an American pro bono case, whose recipient happened to be living in Israel. The firm Mintz Levin Cohn Ferris Glovsky & Popeo provides pro bono legal services to Tmura, a not-for-profit organization focused on education and other youth initiatives and established by Israeli venture capital and high tech leaders. Mintz Levin offers, on behalf of Tmura, pro bono legal support to U.S.-registered companies that are interested in becoming donors to Tmura, helping them through whatever legal difficulties may arise in the donation process.<sup>37</sup> However, this initiative might not be seen as truly Israeli pro bono either, as the direct recipients are American companies. In recent years a number of private law firms have increased their involvement in community projects. The law firm of Yigal Arnon & Co. provides weekly legal services at a local *Schar Mitzva* center. The firm also offers pro bono legal services to a number of NGO's and charities, including, Heznek Le'atid, an organization providing educational assistance to youth from poorer communities across Israel, Ilan – the Israeli Foundation for Handicapped Children, the Human Rights Clinic run by the Law Faculty of the University of Tel Aviv, and Eliya – the Association for Blind and Visually Impaired Children.

### State-Sponsored Legal Aid

#### **The Legal Aid Bureau of the Ministry of Justice**

The Legal Aid Department of the Ministry of Justice operates five Legal Aid Bureaus across Israel, all of which provide legal in civil matters to eligible applicants. The Legal Aid staff consists of around 220 employees, including attorneys, management, and national service members. In addition, the Department collaborates with approximately 1,100 external, non-governmental attorneys, whose fees are paid for by the State Treasury.<sup>38</sup>

#### **The Israel Bar Association Pro Bono Project (*Schar Mitzvah*), *supra***

As part of the *Schar Mitzvah* program, the Bar Association appealed to all members of the Bar to join the program. It launched a media campaign aimed at fostering public awareness of the new initiative. It also created a database of volunteer attorneys, classified by geographical area, type of voluntary work and area of specialization. To date, the pool of volunteers includes approximately 3,910 attorneys, in addition to 180 law students nationwide. During 2014, the program received 23,286 requests for assistance, of which 4,691 people received counseling and representation by the program's volunteers.<sup>39</sup>

### Cause Lawyering

Cause lawyering developed as a distinct specialization some 20 years prior to the 2002 Bar Association initiative. The first issues tackled by practitioners focusing on social causes were focused almost exclusively on human rights: freedom of expression, freedom of movement, and freedom of religion and conscience. Gradually, the scope of these interests extended to include the areas of gender equality and discrimination on the basis of sexual orientation, disability and nationality. Today it includes many additional areas, such as poverty law, social and economic rights and environmental justice.<sup>40</sup>

---

<sup>36</sup> Press Release, KDW Obtains Social Security Benefits for Pro Bono Client in Israel (Aug. 1, 2004), available at [http://www.kelleydrye.com/news/pro\\_bono/0015](http://www.kelleydrye.com/news/pro_bono/0015) (last visited on September 4, 2015).

<sup>37</sup> See generally Mintz Levin, Commitment to the Community, ISRAEL BUSINESS PRACTICES, available at [http://www.mintz.com/practices/17/Israel\\_Business](http://www.mintz.com/practices/17/Israel_Business) (last visited on September 4, 2015).

<sup>38</sup> MINISTRY OF JUSTICE, ISRAEL, Functions of the Legal Aid Department, available at [http://www.justice.gov.il/NR/exeres/0DE80AAC-B813-4C41-80E6-4235922F02BE\\_frameless.htm?NRMODE=Published](http://www.justice.gov.il/NR/exeres/0DE80AAC-B813-4C41-80E6-4235922F02BE_frameless.htm?NRMODE=Published) (last visited on September 4, 2015).

<sup>39</sup> Information provided to Yigal Arnon and Co. upon request from Adv. Ariel Schwarz, Tel Aviv District *Schar Mitzva* program coordinator, on August 4, 2015.

<sup>40</sup> See N. Ziv, Hanging by the Cloak – Advocates for Social Change in Israel: Between the Legal and the Political, ADALAH'S NEWSLETTER (June 2004).



Pro bono work in the Arab community, as well as Palestinian cause lawyering, are also relatively under-documented developments, particularly as they lie outside the realm of state sponsored legal aid.<sup>41</sup> In particular, it is difficult to assess the extent to which private sector attorneys provide free legal services in the Arab community. There are, however, a growing number of nonprofit organizations and NGOs that provide legal aid. Among them is *Adalah*, The Legal Center for Arab Minority Rights in Israel, which was established in 1996. *Adalah* symbolizes the emergence of all-Arab cause lawyering.

The Arab population is disadvantaged with respect to access to the rights and benefits provided by the state-sponsored legal aid system largely because legal aid agencies and organizations are located in major urban centers, while a high percentage of the Arab population is impoverished and rural. In addition, some social benefits and services are contingent upon military service from which Arab and other non-Jewish populations are typically excluded. The Bedouin population, too, faces distinct legal challenges, most commonly related to residential planning and construction laws.<sup>42</sup>

The changes in the legal profession and in legal aid particularly must be viewed as part of larger social processes. Until the 1980s, Israel was, by and large, a socialist welfare state. At that time, Israel began its transformation into a full market economy, a process completed by an accelerated privatization process that took place in the 1990s. The Arab community, in turn, has become more politicized during the first and second *Intifadas*, contributing to a general awakening of activism in the all-Israeli public sphere.

## Pro Bono Resources

The Justice Haim Cohen Center for Legal Defense of Human Rights is a nonprofit organization founded in 2002 for the sole purpose of providing pro bono services. By virtue of its function and relationships with attorneys at Israeli law firms, it can also provide an inroad to the Israeli private sector pro bono network for non-Israeli firms.

The New Israel Fund (NIF), a philanthropic organization with branch offices in Israel, North America, and Europe, is dedicated to providing financial and technical assistance to grassroots organizations while aiding with coalition and capacity building. Its subsidiary, *Shatil*, works directly with NGOs to assist with organizational and training issues, complementing the NIF's financial support. Having worked with more than 800 organizations since its founding in 1979, the NIF could provide a gateway to the Israeli public sector.

## CONCLUSION

Despite recent reforms and developments in Israel's legal aid system, there are entire areas of need that are largely unaddressed by the state, most notably legal protections to non-residents, other than OPD services.<sup>43</sup> Local nonprofit organizations and local governments, however, provide services to some of these underrepresented groups to fill the gaps in the State's legal services.<sup>44</sup> In addition, even in areas in which the state or the public and private sectors do provide legal aid, resources are scarce and legal needs are not fully met. Given the success of the Bar Association's attempts to create a systematic operational scheme for pro bono on the national level, one possible way to establish a pro bono presence

---

<sup>41</sup> See R. Shamir & S. Chinski, Destruction of Houses and Construction of a Cause: Lawyers and Bedouins in the Israeli Court, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 227 (A. Sarat & S. Scheingold eds., 1998) (regarding cause lawyering in the representation of Bedouins); G. Bisharat, Attorneys for the People, Attorneys for the Land: The Emergence of Cause Lawyering in the Israeli-Occupied Territories, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 453 (A. Sarat & S. Scheingold eds., 1998) (regarding Palestinian cause lawyering).

<sup>42</sup> See *id.*

<sup>43</sup> This group includes foreign workers (legal and illegal migrant workers), noncitizen Palestinians and Palestinians who are Israeli citizens but lack proper identification documents.

<sup>44</sup> See, e.g., Hotline for Migrant Workers, Kav LaOved, and the Mesila Aid & Information Center, operated by the Tel Aviv Municipality.



in Israel might be to approach the Bar Association's Pro Bono Committee seeking partnership on pro bono initiatives.

September 2015

Pro Bono Practices and Opportunities in Israel

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Italy

### INTRODUCTION

In Italy, the U.S. notion of pro bono public legal services does not exist. Moreover, pro bono work is not a common practice, notwithstanding that large global law firms have recently started to engage in such activities. It appears that pro bono work simply is not part of the legal culture or framework in Italy. Pro bono activities are instead primarily restricted to legal assistance given to non-profit entities or individuals who cannot pay for legal services based on ethical and social motivations.

Notwithstanding the above, certain professional organizations (e.g. local bar associations or notaries' associations) sometimes provide very basic legal information to guide citizens before they wish to contact a lawyer. Such services, which do not include legal advice, are aimed at providing a general overview of the citizens' rights and obligations in the case of the appointment of a legal professional or participation in a legal act. The Italian legal system also provides for state-funded legal aid for those unable to afford a lawyer in judicial matters.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The primary source of law in Italy is the Italian Constitution, which was enacted in 1947 and subsequently amended. The Constitution contains: (i) certain organizational provisions that regulate the existence, nature and duties of governmental bodies; and (ii) the main principles on which the Italian Republic was established. The Constitution is binding for all private and public persons, as well as governmental authorities (including the Parliament), and may be amended only through a complex two-phase process which involves both the Senate and the Chamber of Deputies.

Below the Constitution (which prevails over any other source of law), the sources of law are national laws, regional laws, rules and customary habits. In case of inconsistency, any such source prevails over the next source of law (i.e. national laws prevail over regional laws, etc). Regional laws and rules are limited in scope, and apply only in cases expressly provided for by the Constitution or national laws. Customary habits have limited application.

The Italian legal system is based on civil law, which originated from Roman Law, and its core principles are codified into a written system of rules which are organized in a hierarchy. In the civil law system the statutory laws prevail over case law, which is secondary and subordinate. Judges in civil law jurisdictions only have the power to apply the law to the specific case, and they are not obliged to respect the precedent established by prior court decisions.

##### The Courts

##### Types and levels of courts

There are three categories of courts with different jurisdiction in Italy: (i) the Constitutional Court; (ii) the ordinary courts; and (iii) the special courts.

- The Constitutional Court is competent to handle: (a) decisions concerning the constitutionality of legal provisions; (b) disputes in relation to the division of powers of the state bodies; and (c) procedures against the President of the Republic.
- The ordinary courts are composed of judges competent to handle general civil and criminal matters (save for some matters reserved to the jurisdiction of special judges, as briefly listed under point (iii) below). The ordinary courts are structured into three levels:
- Courts of First Instance (*Tribunale*). In the Courts of First Instance, certain specialized departments have been created to adjudicate on matters which require a specific expertise (e.g. corporate and intellectual property matters, agrarian matters).



- Courts of Appeal (*Corte di Appello*). This Court has competency over appeals against the decisions of the Courts of First Instance.
- The Court of Cassation (*Corte di Cassazione*). This Court is the highest court in Italy, having competency over appeals solely on issues of law concerning the judgments of the Courts of Appeal and challenges over the jurisdiction raised in any procedure carried out in any Italian court.

The Courts of First Instance and the Courts of Appeal exist on a local basis, while the Court of Cassation is one court for the entire country and is located in Rome.

- The special courts have jurisdiction, for instance, in the following matters:
- Regional Administrative Courts for administrative matters (*Tribunali Amministrativi Regionali*) whose decisions can be appealed before the Council of State (*Consiglio di Stato*);
- State Auditors' Department (*Corte dei Conti*) for matters regarding public accounts;
- Provincial Fiscal Commissions (*Commissioni Tributarie Provinciali*) for tax-related matters;
- Military Courts (*Tribunali militari*) for military matters; and
- the High Court for public waters (*Tribunale superiore delle acque pubbliche*) for matters regarding the regime of public waters.

### Appointed judges

Ordinary jurisdiction is given in Italy to judges appointed following a public selection process. Such judges are public employees. In certain cases, also honorary judges may exist, who are not public employees and provide a temporary service on a gratuitous basis (e.g. *giudice di pace*). Their competence is limited by value or subject matter. The members of the Constitutional Court are elected by the President of Italy, the Parliament and by the higher courts (i.e. the Court of Cassation, the Council of State and the State Auditors' Department).

### The Practice of Law

#### Education

Italian students who wish to enter the legal profession must study law at the Faculty of Law (*Facoltà di Giurisprudenza*) in one of the Italian universities. The academic course lasts five years, during which the future lawyer (*Avvocato*) will study the basis of Italian and international law.

The new Regulation for the Organization of the Legal Profession (Law no. 247 of December 31, 2012) sets out the new rules necessary in order to become an Italian lawyer. After graduation from the Faculty of Law, the trainee-lawyer (*Praticante Avvocato*) must complete a legal traineeship with the aim of learning the skills and knowledge needed for practising law as well as for learning the ethical principles of the legal profession. No pro bono requirements are set by the National Bar Association (*Consiglio Nazionale Forense*) during the legal traineeship. The trainee-lawyer must be registered at the Register of the Trainee-lawyers before starting the traineeship, which lasts for 18 months under the supervision of a qualified lawyer (with at least five years of practice after their qualification). The traineeship could also be completed at the Government Legal Service (*Avvocatura dello Stato*) or, for no longer than six months, under the supervision of a foreign lawyer outside the Italian territory.

Having successfully completed the formative practice, the candidate must obtain a certificate at the end of the traineeship before taking the State Examination for the Qualification to the Profession of Lawyer (*Esame di Stato per l'abilitazione all'esercizio della professione di Avvocato*). The examination consists of three written exams (one in civil law and one in criminal law and one judicial act) and after passing the three written exams, the candidate will then be eligible to take the oral examination. During the oral part, the candidate will be examined by a commission of lawyers and judges on several subjects. Upon passing this examination, the commission will then issue the Certificate for the registration to the Order of Lawyers (*Ordine degli Avvocati*). When the newly qualified lawyer takes the oath and is successfully registered to the Order of the relevant district, they can legitimately start practising in the legal profession.

#### Licensure

Under Italian law, legal services carried out by lawyers are considered to be intellectual activities and, therefore, such legal services are regulated by the provisions of article 2229 and lawyers must follow the



Italian Civil Code (the “**ICC**”). In particular, the ICC states that: (i) the amount of remuneration shall be commensurate with the importance of the services and with the dignity of the profession; and (ii) if the activity involves technical difficulties, the professional is liable for such activity only in case of gross negligence or wilful misconduct.

In addition, lawyers’ activities must be carried out in compliance with the provisions of the Italian Code of Professional Conduct and Ethics (last amended in 2014) (the “**Professional Rules**”), which, amongst other things, provides for the duties of integrity, dignity, honesty and fairness, as well as a prohibition on the poaching of clients and requesting compensation not comparable with the legal assistance effectively rendered. The Professional Rules are issued by the National Bar Association (*Consiglio Nazionale Forense*), which is the national institution representing lawyers in Italy. In addition, the National Bar Association is competent to hear appeals of the disciplinary decisions made against lawyers issued by local Bar Associations.

The local Bar Associations are located in any city where a Court of First Instance is present and competent, *inter alia*, for access to the Bar and for disciplinary actions against attorneys not acting in compliance with the Professional Rules. In addition, local Bar Associations manage and organize seminars and courses aimed at updating attorneys in their profession.

### Demographics

In Italy, the number of lawyers (approximately 247,000) is impressively high in comparison to the total population (approximately 60 million). Lawyers are largely located in the main Italian business centers, such as Rome, Milan and Turin, and also industrial cities in northern Italy.

Traditionally, Italian lawyers worked as sole practitioners or in small-size or family-based firms providing legal services in various areas of law (i.e. both criminal and civil law). Nowadays, large Italian and international law firms have entered into the Italian legal market providing specific legal services – mainly focused on corporate and business law – to banks, funds and corporations, and are mainly located in Milan and Rome. However, generally speaking, the Italian legal market is still primarily comprised of sole practitioners or small-size firms.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Section 24(3) of the Italian Constitution guarantees the fundamental right to proper representation in court.<sup>1</sup> In the past, the protection of the right enshrined in section 24(3) of the Constitution was guaranteed by a system of “free legal representation” (*gratuito patrocinio*).<sup>2</sup>

When called upon by a specific commission or the president of the competent court, attorneys were required to provide free legal services to indigents who had meritorious claims. Under the law in force at the time, free legal representation of indigents was considered an attorney’s “honorary and mandatory task”. However, such a system did not work properly as indigents often received inadequate and inferior legal services from lawyers who lacked the commitment to their cases. In 1973 this system was abrogated and replaced by a new system of state-funded legal aid, called “*patrocinio a spese dello stato*”.

Under this new system, which was intended to effectively implement section 24(3) of the Constitution and ensure access to legal assistance, the Italian state bears the cost of in-court legal representation of indigents in civil, administrative and criminal cases, subject to certain eligibility criteria (described in subsection B. below). It should be noted that such state-funded legal aid is available at all levels of jurisdiction, including all further connected incidental and/or contingent proceedings, but not for out-of-court negotiations.

---

<sup>1</sup> Pursuant to section 24(3) of the Constitution, “[i]ndigents shall be entitled, through special legislation, to proper means for action or defence before any court.”

<sup>2</sup> See Royal Decree No. 3282 of Dec. 23, 1923.



As to the procedure, applications for state-subsidized legal aid in criminal cases are addressed to the chancellor's office of the court before which the case is pending. In all other cases, the request is addressed to the Bar, specifically to the Council or governing body of the Bar of the district where the competent court is located or where the case is already pending. According to the website of the Ministry of Justice, the competent criminal court or the Bar, as applicable, decides on the admission to legal aid within ten days from the filing of the relevant application. Where the applicant is declared eligible, the applicant (a person or non-profit organization) can designate and appoint a defence lawyer of their choice, provided that such designated attorney is registered for legal aid on a dedicated list with the relevant local courts. Registration is conditional upon meeting certain requirements, including membership with the Bar for at least two years,<sup>3</sup> and the list of registered attorneys is updated every year and made available to the public.

### State-Subsidized Legal Aid

State-funded legal aid is available to Italian citizens, non-Italian citizens and stateless individuals that, under the applicable laws, satisfy specific objective requirements<sup>4</sup>, such as needing legal aid in cases that have a clear legal basis. In criminal cases, legal aid is available to non-Italian citizens regardless of their immigration status, whereas in civil and administrative cases, residency in the country is required.<sup>5</sup> Non-profit associations and entities that do not carry out business activities are also entitled to state-funded legal aid, but only in civil and administrative cases.

In particular, in order to qualify for state-funded legal aid, an individual's annual taxable income must not exceed a certain threshold, which is set every two years by a decree of the Ministry of Justice.<sup>6</sup> Such threshold varies in accordance with the consumer price index for employees and workers ascertained by the Italian National Institute of Statistics.<sup>7</sup> In this respect, both the civil and criminal courts calculating the relevant taxable income also take into account the income of any family member living with the applicant (including spouses and cohabitants). This rule however does not apply in civil or criminal proceedings relating to so-called "rights of the personality" (*diritti della personalità*) or where there is conflict between the interests of the individual applying for legal aid and his or her family members.

In addition to the abovementioned eligibility criteria based on potential success, immigration status and financial means, the access to state-funded legal aid in criminal proceedings is subject to limitations depending on the type of the offence. For instance, no state-funded legal aid can be granted in the case of criminal proceedings relating to tax fraud, mafia conspiracy or drug trafficking in connection with mafia organizations.

### Mandatory assignments to Legal Aid Matters

Private attorneys can choose whether to register in the lists specifically held by the local courts for the purposes of providing legal aid services. Individuals eligible for legal aid can then choose a defence lawyer from that list.

The fees and expenses due and payable to the attorney providing legal aid are determined by a ruling of the court that decides the case. When determining the amount of such fees and expenses, the court takes into account the nature of the task relating to the assigned matter, both in terms of quality and

---

<sup>3</sup> See Section 80 of the Decree of the President of the Republic No. 115 of May 30, 2002, as amended by section 2 of Law No. 25 of February 24, 2005.

<sup>4</sup> See Judgment No. 219 of June 1, 1995 of the Constitutional Court.

<sup>5</sup> See Judgments No. 2684 of March 10, 2003 of the Supreme Civil Court and No. 144 of May 14, 2004 of the Constitutional Court.

<sup>6</sup> As of the date of this survey, an individual may have access to state-subsidized legal aid provided that his or her annual taxable income does not exceed Euro 11,369.24.

<sup>7</sup> See Section 77 of the Decree of the President of the Republic No. 115 of May 30, 2002.



quantity. However, the amount of such fees and expenses may not exceed the average amount set by the relevant Ministerial Decree for equivalent professional activities. In civil, administrative and tax law proceedings, if the legal aid beneficiary wins the case, the court may order the losing party to refund the Italian state the fees paid to the attorney representing the indigent party.

The below table summarizes the number of requests and admissions to legal aid for criminal proceedings in Italy,<sup>8</sup> together with the relevant costs:

Year	Requests	Admissions	Total costs (€)	Legal fees (€)	Other costs (€)
2013	150,903	129,354	100,854,891	93,444,275	7,410,617
2012	<b>137,932</b>	<b>117,493</b>	<b>99,766,065</b>	93,110,831	6,655,234
2011	<b>129,944</b>	<b>111,163</b>	<b>95,664,056</b>	90,759,086	4,904,969
2010	<b>121,592</b>	<b>104,170</b>	<b>88,385,214</b>	83,952,626	4,432,588
2009	<b>112,241</b>	<b>95,457</b>	<b>87,595,773</b>	84,076,240	3,519,533
2008	<b>113,632</b>	<b>98,594</b>	<b>86,908,775</b>	82,872,503	4,036,272
2007	<b>111,091</b>	<b>97,951</b>	<b>87,867,315</b>	82,353,157	5,514,158

### Alternative Dispute Resolution

Various alternative dispute resolution schemes are also available in Italy, including mediation, arbitration and the banking ombudsman, which can be more timely and cost-effective at resolving disputes. In particular, pursuing complaints against banks or financial intermediaries through the banking ombudsman (*Arbitro Bancario Finanziario*) is a free service.

Legal aid is only available for mediation and only in respect of certain cases. In fact, in 2013 mediation became mandatory for any civil case relating to, *inter alia*, the following matters: condominium, real estate and related rights, inheritance, insurance policies, banking, rents, damages relating to medical liability and libel. Legal aid is therefore available in relation to civil cases relating to such matters.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

The primary means for attorneys who wish to provide legal assistance to persons who cannot afford such services is through the State’s legal aid system or working for global or local law firms that offer pro bono legal services (such as, *inter alia*, Latham & Watkins, Linklaters, Clifford Chance, Cleary Gottlieb Steen & Hamilton, Bonelli Erede Pappalardo and Gianni Origoni Grippo Capelli). It is not mandatory for attorneys to do or report on pro bono.

Pro bono legal services can also be offered to non-profit associations pursuing social objectives, non-governmental organizations (“NGOs”), charitable organizations and foundations for non-judicial matters, provided that the pro bono work is carried out in accordance with the abovementioned Professional Rules governing the legal profession in Italy.

Moreover, pro bono legal advice is currently offered in Italy by lawyers who are members of certain non-profit associations, NGOs and charitable organizations to individuals belonging to certain “vulnerable categories” such as, *inter alia*, victims of domestic violence, minors and asylum seekers.

<sup>8</sup> The data available on the website of the Ministry of Justice relates to criminal proceedings only.



## Historic Development and Current State of Pro Bono

### Barriers to Pro Bono Work and Other Considerations

There are several barriers to, and other considerations regarding, pro bono work under Italian law and the Professional Rules.

#### Laws and Regulations Impacting Pro Bono

On August 2, 2006, Law decree No. 223 (the “**Bersani Decree**”) became law. The Bersani Decree was designed to address competition concerns within the Italian legal market.

Specifically, the Bersani Decree: (i) abolished statutorily fixed and minimum attorneys’ fees; (ii) lifted the prohibition on contingency fees;<sup>9</sup> and (iii) permitted lawyers to advertise their title, professional specialization, the characteristics of their services, and the cost of their professional services.<sup>10</sup> These reforms created the possibility for competitive pricing of legal services in Italy and removed, albeit unintentionally, the major obstacle to pro bono services in Italy – namely, statutorily imposed minimum attorneys’ fees.<sup>11</sup> While this law did trigger controversy in Italy, the removal of minimum attorneys’ fees had no effect on the level of pro bono services in Italy – that is, pro bono legal services still did not become part of the Italian legal culture.<sup>12</sup>

In January 2012, Italian legislators enacted Law Decree no. 1/2012 (the so-called “**Liberalizzazioni Decree**”), as amended by the Law No. 27/2012, to further remove the barriers preventing free competition in the Italian legal services market and ensure transparency regarding the chargeable fees to clients. In particular, the Liberalizzazioni Decree: (i) entirely abolished statutory attorneys’ fees; and (ii) expressly stated the principle of freedom of the parties in determining the applicable fees for legal services. However, the details of such fees have to be provided in writing to the client in advance, generally in the engagement letter, in order to avoid unexpected costs for the services to be provided. It should be pointed out that if attorneys fail to indicate such costs any different agreement regarding the applicable fees is null and void.

---

<sup>9</sup> The Bersani Decree also abrogated the third paragraph of section 2233 of the ICC and provided that legal fee agreements between lawyers and their clients must be in writing, or will be deemed null and void.

<sup>10</sup> Such advertising is permissible provided that the advertisements satisfy a standard of transparency and truthfulness verified by the Bar Association (Ordine degli Avvocati). Such advertising, however, should not include clients’ names (even with the client’s authorization), price for services, and number of cases won or the turnover generated by the attorney or the firm. Advertising should be limited to information such as the attorneys’ names and publications.

<sup>11</sup> Historically, minimum fees effectively prevented attorneys from engaging in genuine pro bono work. There was an exception - an attorney could provide services for a fee below the statutory levels when the minimum fees were excessive in light of the specific circumstances of the case. However, attorneys could only utilize this exception with authorization from the Bar on a case-by-case basis and the exception could never be applied to criminal cases. According to the Corte di Cassazione (i.e. the Italian Supreme Court), the mandatory nature of the minimum fees was justified by the need to “protect the dignity of the legal profession from the harmful consequences” of “price competition” among attorneys (see Judgment No. 592 of Mar. 22, 1962, of the Corte di Cassazione), as there is a widespread belief that price competition affects the integrity of the Italian legal profession. Similar beliefs led to the explicit prohibition of contingency fees. See ICC Section 2233(3).

<sup>12</sup> It is important to note that the motivation for the Bersani Decree did not stem from pro bono concerns. Instead, the rationale for the reform was to address changes in the legal profession, such as the globalization of legal services and the anti-competitive nature of the older minimum fee system. The EU had also frowned upon the minimum fee system, noting that the anti-competitive nature of the system was at odds with the EU’s longstanding policy of promoting competitive behavior. See European Parliament Resolution, Market Regulations and Competition Rules for the Liberal Professions, Dec. 16, 2003; see also the conclusion of the General Advocate of the European Court of Justice delivered on Feb. 1, 2006 in the case C-94/04 (Federico Cipolla v. Rosaria Fazari née Portolese – reference for a preliminary ruling from the Appeal Court of Turin), and in the case C-202/04 (Stefano Macrino and Claudia Capodarte v. Roberto Meloni - reference for a preliminary ruling from the Court of Rome), stating the non-compliance of the Italian legislation concerning the fixing of lawyers’ minimum fees with the competition rules and the principle of freedom to provide services established by the EU regulation.



The Liberalizzazioni Decree does not expressly mention pro bono work. Until there are concrete applications of the abolition of statutory attorneys' fees towards the legal framework and principles governing the pro bono services, it is unclear what effect the Liberalizzazioni Decree will have on pro bono work.

Furthermore, under the principles governing legal activity in Italy provided by the Professional Rules, lawyers cannot carry out any conduct directed at the acquisition of client relationships by means not conforming to principles of propriety and decorum (including the offer of legal services free of charge in breach of the principles connected to the fair competition among attorneys).

Scholars and case law have interpreted the Professional Rules to allow the provision of free legal services if they are ethically or socially motivated (because the Professional Rules do not allow attorneys to provide free legal services with the purpose of achieving business through the unlawful poaching of clients). Accordingly, pro bono work in Italy is currently mostly limited to non-profit organizations, NGOs, charitable organizations and foundations unable to pay for legal services, in order to realize their ethical and social purposes.

In recent years, Law No. 148/2011 and Presidential Decree No. 137 of August 7, 2012 set forth an obligation for all lawyers registered with the National Bar Association, effective from August 2013, to enter into certain insurance policies aimed at covering professional liability for possible damages suffered by clients in connection with the exercise of professional legal activities. The implementing regulations, which are to be issued by the Ministry of Justice in consultation with the National Bar Association in order to set out the requirements and limits of mandatory insurance coverage have not yet been adopted. Therefore, it is uncertain at this time whether professional liability insurance for legal professionals will be generally available also in relation to pro bono legal services.

#### **Tax implications**

In Italy, services supplied by professionals (such as lawyers) without consideration are not taxable under Italian VAT law.<sup>13</sup> This law has been interpreted to exclude tax services provided by professionals free of charge from the VAT. This conclusion (namely, that free legal services are not subject to VAT) is shared by Italian scholars and is consistent with the European Court of Justice jurisprudence, according to which it is necessary to have a direct link between the service supplied and the consideration received.

It should be noted that, if pro bono legal assistance is provided on the basis of a symbolic fee or it is recognized by the attorney to be a mere reimbursement of expenses, the service supplied by the lawyer should be considered in principle as taxable. However, if the lawyer requests a reimbursement of expenses incurred in the name and on behalf of the customer (i.e. the NGO), this payment is not relevant for VAT purposes.

#### **Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System**

Taken together, national laws and the Professional Rules, while not directly opposing pro bono work, do not set forth clear or detailed rules for pro bono legal services. As a consequence, traditionally, Italian lawyers do not consider pro bono services to be part of practising law and pro bono activities are carried out by lawyers in the absence of an adequate regulatory and tax framework, and face the potential risk of being accused of breaching principles connected with fair competition.

Despite the above, more recently, international and local large law firms offer pro bono services. However, such services have to be offered in compliance with the applicable legislation and the Professional Rules setting forth, *inter alia*, limits for advertising the activity of attorneys, which accordingly restrains the size of pro bono work carried out in Italy. Also foreign-qualified lawyers that intend to offer legal services in Italy and in-house counsel must comply with the aforementioned applicable legislation and Professional Rules which provides, *inter alia*, that certain legal services – in particular, legal assistance in court in litigation cases – can only be provided by Italian lawyers duly registered with the National Bar Association or foreign lawyers who had their qualification recognized in Italy and are therefore fully licensed to practice law in Italy.

---

<sup>13</sup> See Article 3 of the Presidential Decree 26 Oct. 1972, No. 633.



Finally, as far as pro bono litigation cases are concerned, it should be noted that certain inefficiencies of the Italian judicial system – in particular, the excessive length of court proceedings and the number of bureaucratic formalities related thereto – affect the effectiveness of pro bono legal assistance and produces delays and inefficiencies that prejudice the possibility of pro bono clients receiving a prompt satisfaction of their rights.

### Pro Bono Resources

The following organizations may provide pro bono referrals and opportunities for lawyers, including foreign lawyers, to participate in education and research activities:

- Ministry of Justice: <https://www.giustizia.it/giustizia> (last visited on September 4, 2015)
- Italian Bar Association ([www.consiglionazionaleforense.it](http://www.consiglionazionaleforense.it) (last visited on September 4, 2015)); and for cities where legal services are mostly provided:
- Milan Bar Association – [www.ordineavvocatimilano.it](http://www.ordineavvocatimilano.it) (last visited on September 4, 2015)
- Rome Bar Association – [www.ordineavvocati.roma.it](http://www.ordineavvocati.roma.it) (last visited on September 4, 2015)
- Turin Bar Association – [www.ordineavvocatorino.it](http://www.ordineavvocatorino.it) (last visited on September 4, 2015)
- Recognition of foreign qualifications: <http://www.consiglionazionaleforense.it/site/home/area-avvocati/riconoscimento-titoli-stranieri.html> (last visited on September 4, 2015)

## CONCLUSION

Italian attorneys generally do not engage in pro bono legal services, as it is not part of the Italian legal culture. However, some global and large local firms as well as individual attorneys provide free legal services to indigent persons (not always being reimbursed for their services by the Italian government under Italy's legal aid system) in judicial matters, and to non-profit entities for deserving projects in non-judicial matters.

Although statutorily mandated attorneys' fees were repealed, Italian attorneys largely have not embraced this change as an opportunity to engage in pro bono legal services. One contributing factor is that the legal framework and professional rules governing legal activity in Italy do not clearly support or sponsor pro bono work.

Finally, it remains to be seen whether new EU regulations will effectively create a pro bono obligation for lawyers practising in the EU member states. Not only could this create an obligation in Italy, but it could strongly affect the current Italian legal culture in relation to pro bono legal services.

September 2015

Pro Bono Practices and Opportunities in Italy

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Japan

### INTRODUCTION

The Japanese legal tradition places great value on providing legal services to the indigent and ensuring access to justice. The ideals of protecting fundamental human rights and achieving social justice are specifically set forth as the mission of every practicing Japanese attorney,<sup>1</sup> and the Japanese national and local bar associations view the performance of public interest work as an important responsibility of all members of the bar.

Legal aid has been, and remains, the primary means of providing legal services to persons lacking access to legal representation in Japan, and bar associations and the government play a primary role in administering the legal aid system. Traditionally Japanese attorneys performing legal aid work have been compensated by local bar associations or the Japanese government, and the comprehensiveness of the legal aid system has decreased the perceived need for pro bono work among Japanese attorneys. However, domestic and international law firms in Japan have increasingly begun to perform more pro bono work in connection with a larger movement towards increased organizational social responsibility.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

The Japanese legal system is a civil law system governed by the modern Japanese Constitution adopted in 1946, which constitutes Japan's highest law.<sup>2</sup> As a civil law system, laws enacted by the Japanese government are organized into a series of legal codes including the Civil Code, Criminal Code, Code of Civil Procedure and Code of Criminal Procedure. The Attorney Act, enacted in 1949, prescribes the responsibilities of attorneys under Japanese law. The Attorney Act provides that the mission of lawyers must include the protection of fundamental human rights and the realization of social justice.<sup>3</sup> The Attorney Act also establishes the Japan Federation of Bar Associations (the "JFBA") as the controlling body overseeing the nation's attorneys, separate from the Ministry of Justice.<sup>4</sup> All Japanese attorneys are registered with and must comply with the rules and regulations of the JFBA as well as the local bar association in the judicial district where their practices are located.<sup>5</sup>

#### The Courts

##### Court System

The Japanese judicial system consists of the Supreme Court, eight high courts and 50 district courts, as well as family courts and summary courts. The Supreme Court located in Tokyo is the nation's highest

---

<sup>1</sup> 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> (last visited on September 4, 2015) "An attorney is entrusted with the mission of protecting fundamental human rights and achieving social justice."

<sup>2</sup> NIHONKOKU KENPŌ [Kenpō][Constitution].

<sup>3</sup> 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> (last visited on September 4, 2015).

<sup>4</sup> JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/about/us.html> (last visited on September 4, 2015).

<sup>5</sup> The Japanese Attorney System, JAPAN FEDERATION OF BAR ASSOCIATIONS, [http://www.nichibenren.or.jp/en/about/judicial\\_system/attorney\\_system.html](http://www.nichibenren.or.jp/en/about/judicial_system/attorney_system.html) (last visited on September 4, 2015).



court and hears final appeals of decisions made by the high courts, or direct appeals from the district, family or summary courts in limited instances. The eight high courts, located in major cities throughout Japan, hear appeals from the courts of first instance (which include the district courts, family courts and summary courts). The 438 summary courts have original jurisdiction over minor civil claims and minor criminal cases, and family courts have jurisdiction over family and domestic relations disputes. The district courts have original jurisdiction for all other civil and criminal cases not falling under the jurisdiction of the family or summary courts.<sup>6</sup>

### Appointment of Judges

The Emperor of Japan appoints the Chief Justice of the Supreme Court as recommended by the Cabinet, and the Cabinet appoints the other 14 Justices of the Supreme Court with the Emperor attesting to their appointment. At least ten of the Justices must be either attorneys (including judges or public prosecutors) or university professors of legal science; however, the remaining Justices are not required to be jurists. The Cabinet appoints lower court judges from a list of candidates nominated by the Supreme Court, who selects such nominees with the advice of an advisory committee designated for such purpose. No judges are appointed by direct election. The general electorate reviews the appointment of Supreme Court Justices in the first general election of members of the Japanese House of Representatives following each Justice's appointment and every ten years thereafter, but no Justice has ever been dismissed as a result of such review.<sup>7</sup>

## The Practice of Law

### Attorney (*bengoshi*) Education

In order to become an attorney (*bengoshi*), candidates must first either complete a graduate-level law school curriculum or pass a preliminary legal examination. Candidates who successfully complete law school or pass the preliminary legal examination are then eligible to sit for the full Japanese Bar Examination.<sup>8</sup>

With respect to continuing legal education, first year attorneys attend a mandatory lecture on civil cases held by their local bar association, and attorneys who take on criminal cases must attend an additional course on criminal defense, also provided by the local bar association.<sup>9</sup> The JFBA also requires all attorneys to attend an ethics training course during their first year, third year, and fifth year of practice and every five years thereafter.<sup>10</sup> In addition to the JFBA's required ethics training, some local bar associations impose a requirement to attend annual training provided by the local bar association.

### Licensure

#### Attorneys (*bengoshi*)

Upon successful passage of the Japanese Bar Examination, attorney candidates must complete a one-year legal apprenticeship training at the Legal Training and Research Institute of Japan, which consists of general field training in courts, law practices and prosecutors' offices, as well as further specialized training at the apprentice's election. Apprentices elect to become a private practice attorney, judge or prosecutor during their legal apprenticeship training and generally continue in this area of practice

---

<sup>6</sup> Overview of the Judicial System in Japan, SUPREME COURT OF JAPAN, [http://www.courts.go.jp/english/judicial\\_sys/overview\\_of/overview/index.html#06](http://www.courts.go.jp/english/judicial_sys/overview_of/overview/index.html#06) (last visited on September 4, 2015).

<sup>7</sup> Id.

<sup>8</sup> The Japanese Attorney System, JAPAN FEDERATION OF BAR ASSOCIATIONS, [http://www.nichibenren.or.jp/en/about/judicial\\_system/attorney\\_system.html](http://www.nichibenren.or.jp/en/about/judicial_system/attorney_system.html) (last visited on September 4, 2015).

<sup>9</sup> See TOKYO BAR ASSOCIATION, NEWLY-REGISTERED ATTORNEY RULES.

<sup>10</sup> JAPAN FEDERATION OF BAR ASSOCIATIONS, ETHICS TRAINING RULES, art. 2, no. 2.



throughout their professional careers. Once qualified, all attorneys may engage in the general practice of law and may appear in all courts in Japan.<sup>11</sup>

### Legal Para-Professionals

In addition to attorneys, a number of quasi-attorney para-professional positions exist in Japan including patent quasi-attorneys (*benrishi*), who are qualified to prepare intellectual property filings and act as counsel exclusively in intellectual property infringement cases,<sup>12</sup> and certified public tax accountants (*zeirishi*), who may represent clients in connection with preparation of tax documentation and provide certain assistance in tax litigation.<sup>13</sup> Judicial scriveners (*shiho shoshi*) also assist in preparing certain legal documents and have the power to represent clients before summary courts.<sup>14</sup> Attorneys are qualified to perform the services provided by such para-professionals without any additional professional qualification.

### Company In-House Legal Departments

Traditionally, Japanese companies staffed their in-house legal departments (*homu-bu*) with non-professionally qualified personnel rather than qualified attorneys. Companies would either staff their legal department with permanent staff designated to handle legal matters or have their general staff serve in the legal department as part of a rotation. Although many in-house counsel possess law school degrees, they may not have successfully passed the Japanese Bar examinations. However, in recent years companies have increasingly begun to utilize their in-house legal departments for more sophisticated matters, and have therefore started to hire greater numbers of either Japanese or foreign-qualified attorneys.<sup>15</sup> The number of in-house Japanese-qualified lawyers (*bengoshi*) has increased from 123 in 2005 to 1,179 in 2014.<sup>16</sup>

### Registered Foreign Lawyers

Foreign-qualified lawyers (*gaikokuho-jimu-bengoshi*) who have practiced for at least three years, with at least two years' experience outside of Japan, may independently practice in Japan with respect to providing legal services concerning the laws of their state of primary qualification by submitting an application to the Ministry of Justice and registering with the JFBA as a registered foreign lawyer. Registered foreign lawyers may only advise clients regarding the laws of their qualified jurisdiction and may in no event appear in Japanese court or prepare legal documents to be filed with any Japanese court.<sup>17</sup>

---

<sup>11</sup> The Japanese Attorney System, JAPAN FEDERATION OF BAR ASSOCIATIONS, [http://www.nichibenren.or.jp/en/about/judicial\\_system/attorney\\_system.html](http://www.nichibenren.or.jp/en/about/judicial_system/attorney_system.html) (last visited on September 4, 2015).

<sup>12</sup> Review of Patent Attorney (Benrishi) Law, JAPAN PATENT OFFICE, [http://www.jpo.go.jp/torikumi\\_e/hiroba\\_e/hourei\\_e/patent\\_attorney\\_law.htm](http://www.jpo.go.jp/torikumi_e/hiroba_e/hourei_e/patent_attorney_law.htm) (last visited on September 4, 2015).

<sup>13</sup> What is a Certified Tax Accountant?, JAPAN FEDERATION OF CERTIFIED PUBLIC TAX ACCOUNTANTS' ASSOCIATIONS, <http://www.nichizeiren.or.jp/eng/services.html> (last visited on September 4, 2015).

<sup>14</sup> Akibumi Kawara, Judicial Scriveners Given Power of Representation Before Summary Courts, JAPAN FEDERATION OF BAR ASSOCIATIONS (2002), <http://www.nichibenren.or.jp/en/meetings/year/2002/200204192.html> (last visited on September 4, 2015).

<sup>15</sup> See Toshimitsu Kitagawa & Luke Nottage, Globalization of Japanese Corporations and the Development of Corporate Legal Departments: Problems and Prospects 11–21 (2006), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=837906](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=837906) (last visited on September 4, 2015).

<sup>16</sup> 2014 White Paper at 53.

<sup>17</sup> Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers, Law No. 66 of 1986, available at <http://www.nichibenren.or.jp/library/en/about/data/hls.pdf> (last visited on September 4, 2015).



## Demographics

According to the most recent JFBA survey, as of 2014 there were 35,045 attorneys (*bengoshi*) in Japan (one attorney per 3,632 persons), 6,336 (18%) of which were female.<sup>18</sup> As of 2014, 2,183 attorneys (6%) worked in Japan's nine largest law firms (with eight of these firms based in Tokyo), while there were 8,772 solo practitioners (25% of all attorneys).<sup>19</sup> Other than the attorneys (*bengoshi*) described above, there were 386 registered foreign lawyers as of 2014,<sup>20</sup> 2,944 judges (excluding summary court judges) and 1,877 prosecutors employed by national, prefectural or other governmental subdivisions.<sup>21</sup> In addition, a number of legal para-professionals exist in Japan as well as employees in Japanese in-house company legal departments.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

#### Civil Proceedings

Japanese law does not provide for any right to civil legal assistance.

#### Criminal Proceedings

Japanese law provides for access to court-appointed counsel for criminal suspects and defendants. Article 37 of the Japanese Constitution provides that “[a]t all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned for his use by the State.”<sup>22</sup> Under the Japanese Code of Criminal Procedure, prior to indictment, suspects under detention for offenses punishable by death, life imprisonment, or imprisonment for a term longer than three years who are indigent are entitled to request the appointment of court-appointed defense counsel.<sup>23</sup> After indictment, regardless of the gravity of the alleged offense, defendants unable to appoint counsel because of indigence are entitled to court-appointed counsel upon request.<sup>24</sup> Defense counsel appointed prior to indictment will generally be reappointed as trial counsel.<sup>25</sup>

### State-Subsidized Legal Aid

Within the past two decades, the Japanese government and JFBA have come to recognize access to justice as an important social issue in Japan. In particular, the concentration of attorneys in large urban

---

<sup>18</sup> JAPAN FEDERATION OF BAR ASSOCIATIONS, WHITE PAPER ON ATTORNEYS 12, 19 (2014), available at <http://www.nichibenren.or.jp/library/en/about/data/WhitePaper2014.pdf> (last visited on September 4, 2015) [hereinafter 2014 White Paper].

<sup>19</sup> Id. at 27.

<sup>20</sup> Id. at 30.

<sup>21</sup> Id. at 23.

<sup>22</sup> NIHONKOKU KENPŌ [Kenpō][Constitution], art. 37.

<sup>23</sup> CODE OF CRIMINAL PROCEDURE art. 37-2, available at <http://law.e-gov.go.jp/htldata/S23/S23HO131.html> (last visited on September 4, 2015); translation available at JAPANESE LAW TRANSLATION, <http://www.japaneselawtranslation.go.jp/law/detail/?id=2283&vm=04&re=02> (last visited on September 4, 2015).

<sup>24</sup> CODE OF CRIMINAL PROCEDURE art. 36 available at <http://law.e-gov.go.jp/htldata/S23/S23HO131.html> (last visited on September 4, 2015); translation available at JAPANESE LAW TRANSLATION, <http://www.japaneselawtranslation.go.jp/law/detail/?id=2283&vm=04&re=02> (last visited on September 4, 2015).

<sup>25</sup> CODE OF CRIMINAL PROCEDURE art. 32-1, available at <http://law.e-gov.go.jp/htldata/S23/S23HO131.html> (last visited on September 4, 2015); translation available at JAPANESE LAW TRANSLATION, <http://www.japaneselawtranslation.go.jp/law/detail/?id=2283&vm=04&re=02> (last visited on September 4, 2015).



areas such as Tokyo has led to a recognized shortage of attorneys in rural areas, and the small number of attorneys generally relative to the population of Japan has tended to limit access to legal services.<sup>26</sup> In response to this justice gap, the Japanese government and JFBA have initiated a series of legal aid programs over the past several years in order to better facilitate individuals' access to attorneys.

### JLSC Aid Programs

Currently, the primary vehicle for administering state-sponsored legal aid (including the appointment of court-appointed defense counsel as required by law), is the government-sponsored incorporated administrative agency Japan Legal Support Center ("JLSC"), established in 2006 under the Comprehensive Legal Support Act enacted in 2004.<sup>27</sup>

With respect to civil legal aid, the JLSC offers support to low-income households by providing initial 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 cases, including family-related cases and administrative cases. The JLSC awards loan-based aid based on (i) the financial condition of the applicant, (ii) the possibility of success in the pending civil legal matter, and (iii) the consistency of the matter with the purposes of the civil legal aid system.<sup>28</sup> The JLSC may ultimately waive repayment of the loan amount if the recipient is a welfare recipient at the time of application and remains a welfare recipient at the repayment date.<sup>29</sup>

With respect to criminal legal aid, in criminal cases in which a criminal suspect in detention or defendant is entitled to court-appointed counsel as discussed above, the JLSC will select candidates for defense counsel based on a list of attorneys registered with the JLSC. Attorneys willing to take on criminal defense legal aid cases may voluntarily add their name to the defense attorney list managed by the JLSC, and the JLSC will allocate stand-by days to the attorneys on the list. Attorneys allocated to a certain stand-by day will represent suspects or defendants who request court-appointed defense counsel on that day in the attorney's region.<sup>30</sup> The JLSC pays for all legal fees and expenses for such court-appointed defense counsel with public funds. The JLSC also provides attendants for juveniles in juvenile cases through a similar procedure.<sup>31</sup>

### Additional Aid Provided by the JFBA and Local Bar Associations

In addition to the legal aid provided by the JLSC, the JFBA and local bar associations facilitate a number of legal aid programs for providing assistance to the indigent or other individuals in need of legal services.

One of the primary forms of legal aid organized by the JFBA and local bar associations is the Duty Attorney (*Toban Bengoshi*) System. While suspects detained under a detention warrant for serious

---

<sup>26</sup> See Efforts to Improve Access to Justice, JAPAN FEDERATION OF BAR ASSOCIATIONS, available at <http://www.nichibenren.or.jp/en/about/activities/justice.html> (last visited on September 4, 2015).

<sup>27</sup> History of the JLSC, JAPAN LEGAL SUPPORT CENTER, [http://www.houterasu.or.jp/en/about\\_jlsc/history.html](http://www.houterasu.or.jp/en/about_jlsc/history.html) (last visited on September 4, 2015).

<sup>28</sup> JAPAN LEGAL SUPPORT CENTER 31 (2014), available at <http://www.houterasu.or.jp/cont/100578349.pdf> (last visited on September 4, 2015); see also JAPAN LEGAL SUPPORT CENTER, [http://www.houterasu.or.jp/houterasu\\_gaiyou/mokuteki\\_gyoumu/minjihouritsufujo/index.html](http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html) (last visited on September 4, 2015) (Japanese only).

<sup>29</sup> JAPAN LEGAL SUPPORT CENTER, [http://www.houterasu.or.jp/houterasu\\_gaiyou/mokuteki\\_gyoumu/minjihouritsufujo/index.html](http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html) (last visited on September 4, 2015) (Japanese only).

<sup>30</sup> JAPAN LEGAL SUPPORT CENTER, PRACTICAL GUIDE TO PUBLIC DEFENSE WORK (2011), available at <http://www.houterasu.or.jp/cont/100179991.pdf> (last visited on September 4, 2015) (Japanese only).

<sup>31</sup> JAPAN LEGAL SUPPORT CENTER 12 (2014), available at <http://www.houterasu.or.jp/cont/100578349.pdf> (last visited on September 4, 2015); see also JAPAN LEGAL SUPPORT CENTER (Japanese only), [http://www.houterasu.or.jp/houterasu\\_gaiyou/mokuteki\\_gyoumu/kokusenbengo/index.html](http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/kokusenbengo/index.html) (last visited on September 4, 2015).



crimes and indicted criminal defendants have access to court-appointed counsel assigned by the JLSC as discussed above, criminal suspects detained (for a period not exceeding 72 hours) prior to the issuance of a formal detention warrant, or detained for minor offenses, are not entitled to court-appointed counsel. Such suspects may, however, request the JFBA or local bar association to dispatch a duty attorney on their behalf. The JFBA or local bar association will dispatch registered duty attorneys to represent requesting suspects, and such duty attorneys may continue their representation throughout the suspect's criminal proceedings.<sup>32</sup> The first consultation with a duty attorney is free of charge to the suspect, with the duty attorney's fees borne by the JFBA, who collects special dues from its members to support the system.<sup>33</sup> 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 (with the JLSC providing attorney-fee aid for individuals eligible for court-appointed counsel legal aid).<sup>34</sup>

The JFBA and local bar associations also operate special bar-funded law offices and legal counseling centers in order to improve access to justice. There are some areas of Japan where the number of attorneys is particularly low relative to the population. To provide access to legal services for these areas, the JFBA and local bar associations have founded "Himawari Fund Law Offices" staffed by local attorneys but funded by the JFBA and local bar associations, on the condition that the attorneys provide a specified level of public service through participation in the JLSC court-appointed counsel and civil legal aid programs as part of their practice.<sup>35</sup> Local bar associations also establish low-cost legal counseling centers nationwide which provide local inhabitants with access to attorney consultations regarding a wide variety of issues including consumer debt and family matters in addition to traditional civil and criminal legal disputes.<sup>36</sup>

The JFBA has also recently established programs for legal insurance working in cooperation with local insurance companies. Under these programs, an insurance company and the local bar association will match insured persons of moderate income not otherwise qualifying for legal aid programs with an attorney, with the insurance company covering legal fees pursuant to the insured's insurance policy.<sup>37</sup>

### Assignments to Legal Aid Matters

Staffing for JLSC legal aid consists of a combination of full-time staff attorneys and private practice attorney volunteers. With respect to JLSC staff attorneys, the JLSC publicly seeks staff attorney applicants, and any attorney can apply to obtain an available position at the local offices established by the JLSC. Staff attorneys at local JLSC offices hold terms based on the experience of the attorney, and the compensation of JLSC staff lawyers is equivalent to that of judges and public prosecutors of similar experience.

With respect to private practice attorney volunteers, both the JLSC and local bar associations actively seek such volunteers to contribute to legal aid service, and private practice attorneys may coordinate with the JLSC or local bar association to take on legal aid matters on a case-by-case basis. Private practice attorneys who engage in legal aid service are compensated by the JLSC or local bar association based on the difficulty of the case and the time required to complete it. Traditionally, Japanese attorneys do not engage in legal aid work for the JLSC or the local bar association on a pro bono basis.

---

<sup>32</sup> 2014 White Paper at 38–39.

<sup>33</sup> Efforts to Improve Access to Justice, JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/about/activities/justice.html> (last visited on September 4, 2015).

<sup>34</sup> See 2014 White Paper at 38–39; see also JAPAN FEDERATION OF BAR ASSOCIATIONS, [http://www.nichibenren.or.jp/activity/criminal/reforming/kokusen\\_touban.html](http://www.nichibenren.or.jp/activity/criminal/reforming/kokusen_touban.html) (last visited on September 4, 2015) (Japanese only).

<sup>35</sup> Efforts to Improve Access to Justice, JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/about/activities/justice.html> (last visited on September 4, 2015).

<sup>36</sup> Id.

<sup>37</sup> Id.



## PRO BONO ASSISTANCE

The concept of offering pro bono legal services is often unfamiliar to Japanese attorneys, particularly with respect to traditional attorney litigation-related services such as court appearances, for which attorneys are generally culturally recognized as being entitled to compensation. However, opportunities for performing pro bono work are available in Japan. Private practice attorneys may engage in public interest activities through coordination with their local bar association, and while attorneys have conventionally been compensated for many of these services, attorneys could theoretically perform this work pro bono. In addition, law firms and law students have recently begun to engage in certain pro bono matters independently from government and bar association legal aid programs.

### Public Interest Service Requirements for Japanese Attorneys

Japanese attorneys are not subject to a formal requirement to offer free pro bono legal services. They are, however, often subject to a public interest service requirement as determined by their local bar association. “Public interest activities” include activities traditionally regarded as pro bono work; however, public interest activities also typically include other activities such as serving on local bar association committees, performing educational activities for law schools and universities, and performing compensated legal aid work for the JLSC or local bar association through their legal aid programs as described above.<sup>38</sup> In some more progressive districts, such as Tokyo, Yokohama and Osaka, the local bar associations have adopted rules requiring their members to perform mandatory public interest service. In other regions, while practicing attorneys may coordinate with the local bar association to voluntarily participate in public service activities, the bar association imposes no mandatory requirement. Japanese attorneys may elect to satisfy their public interest service requirement through the performance of pro bono work.

As an example of a mandatory public service requirement, the Daini Tokyo Bar Association, one of the three local bar associations in Tokyo with some 4,800 members as of 2015, compels its members to perform at least ten hours of public interest activities each year. Attorneys may opt out of this requirement, however, by choosing to pay a penalty of up to ¥50,000 per year.<sup>39</sup> The Tokyo Bar Association, the largest local bar association in Japan, has a similar rule to the Daini Tokyo Bar Association, and requires attorneys who do not engage in any public interest activities to pay a ¥50,000 charge to the bar association in lieu of performing such public interest activities.<sup>40</sup> The ratio of members of the Tokyo Bar Association who opt to pay a charge to the bar association rather than engage in any public interest activities is relatively low, approximately 11% to 13% of members for the eight years from 2007 to 2014. This ratio had maintained a consistent downward trend for the last four years (2011 to 2014), falling from 13.35% to 11.34% of registered members.<sup>41</sup>

---

<sup>38</sup> See, e.g., TOKYO BAR ASSOCIATION, RULES ON ACTIVITIES OF ASSOCIATION MEMBERS(KAIMUKATSUDŌTŌ NI KANSURU KAIKI).

<sup>39</sup> See DAINI TOKYO BAR ASSOCIATION, RULES REGARDING PUBLIC INTEREST ACTIVITIES OF MEMBERS, available at <http://niben.jp/pdf/public/kisoku2.pdf> (last visited on September 4, 2015) (Japanese only).

<sup>40</sup> See TOKYO BAR ASSOCIATION, RULES ON ACTIVITIES OF ASSOCIATION MEMBERS(KAIMUKATSUDŌTŌ NI KANSURU KAIKI).

<sup>41</sup> The number of attorneys who opted to pay a charge in lieu of engaging in public interest activities was calculated for the years 2007 – 2014 by dividing the total revenue received from public interest charges, as stated in the Tokyo Bar Association annual report for each year, by ¥50,000 (the amount of the charge for each attorney failing to engage in public interest activities). This figure was divided by the total number of member attorneys in the Tokyo Bar Association as of April 1 of each corresponding year (as stated in each year’s April edition of the Tokyo Bar Association monthly periodical *Libra*) to determine the ratio of attorneys opting to pay a charge for that year.



## Pro Bono Opportunities

### JLSC and Local Bar Association-Related Opportunities

The 52 local bar associations in Japan are the primary vehicle through which Japanese attorneys engage in public interest activities. Private practice attorneys may voluntarily participate in the JLSC court-appointed counsel program or local bar association legal aid programs for criminal or civil cases or general legal consultation.

Attorneys from both foreign and domestic law firms are among those actively contributing to JLSC and local bar association-led public interest activities. Attorneys from large local law firms in Japan actively serve on government councils or internship posts at government offices, and offer their services teaching at Japanese law schools, universities or other educational institutions.<sup>42</sup> The extent to which attorneys are currently compensated for these public interest activities varies, but there are no formal restrictions preventing law firm attorneys from engaging in such activities on a pro bono basis.

### Other Law Firm and Legal Department Opportunities

In addition to participation in JLSC and local bar association activities, a number of law firms have also contributed their services to the community and engaged in pro bono opportunities on an independent basis. Since there are still many cases not covered by local bar association activities and JLSC-provided services (particularly in areas such as immigration and refugee proceedings and non-profit organization assistance), pro bono services independently provided 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 engaged in fundraising campaigns for charitable causes and work with humanitarian and entrepreneur organizations, such as the Japan Association for Refugees and Ashoka Japan.<sup>43</sup>

After the Great East Japan Earthquake and tsunami of March 11, 2011, law firms and other companies and professional organizations mobilized to cooperate with nongovernmental organizations and volunteer groups to deliver pro bono services to the Tohoku region of Japan. Such services have contributed to obtaining direct relief for victims as well as economically revitalizing the region in the aftermath of the disaster.<sup>44</sup> Attorneys from private law firms have also participated in various relief programs in connection with the earthquake led by the JFBA and local bar associations, including assistance with legal claims and the provision of pro bono telephone and in-person legal consultations for victims.<sup>45</sup> As the ultimate economic recovery of Tohoku will take many years to complete in light of the extensive damage to the

---

<sup>42</sup> See, e.g., NAGASHIMA OHNO & TSUNEMATSU, <http://www.noandt.com/data/work/index/id/550/> (last visited on September 4, 2015) and MORI HAMADA & MATSUMOTO, <http://www.mhmjapan.com/en/probono/index.html> (last visited on September 4, 2015).

<sup>43</sup> Latham & Watkins is a leader among those western law firms working with such humanitarian and entrepreneurial organizations. See our 2014 Pro Bono Annual Review, available at [http://www.lw.com/admin/Upload/Documents/2014PBAR\\_web\\_final.pdf](http://www.lw.com/admin/Upload/Documents/2014PBAR_web_final.pdf) (last visited on September 4, 2015).

<sup>44</sup> For a few examples of the many ways in which law firms and other companies have contributed to the Tohoku relief effort, see, e.g., MORRISON & FOERSTER, MoPROBONO 11 (2014), available at <http://media.mofo.com/docs/pdf/MoProBono-2014-Fall-Winter/#?page=10> (last visited on September 4, 2015); Nomura Holdings, Inc., Nomura holds corporate citizenship speaker event: Leveraging your skills to contribute to society (Jan. 16, 2014), available at <http://www.nomuraholdings.com/csr/news/news55.html> (last visited on September 4, 2015); Mitsui & Co., Our Response to the Great East Japan Earthquake, MITSUI & CO., LTD. SUSTAINABILITY REPORT 2014, available at [http://www.mitsui.com/jp/en/csr/csrreport/pdf/en\\_csr\\_detail\\_2014-10.pdf](http://www.mitsui.com/jp/en/csr/csrreport/pdf/en_csr_detail_2014-10.pdf) (last visited on September 4, 2015); J.P.Morgan Chase & Co., J.P. Morgan Supports Makoto to Empower Entrepreneurs in Tohoku Area (Mar. 9, 2015), available at [http://www.jpmorgan.co.jp/cm/BlobServer/150309\\_Makoto\\_Grant\\_E.pdf?blobkey=id&blobwhere=1320668894400&blobheader=application/pdf&blobheadername1=Cache-Control&blobheadervalue1=private&blobcol=urldata&blobtable=MungoBlobs](http://www.jpmorgan.co.jp/cm/BlobServer/150309_Makoto_Grant_E.pdf?blobkey=id&blobwhere=1320668894400&blobheader=application/pdf&blobheadername1=Cache-Control&blobheadervalue1=private&blobcol=urldata&blobtable=MungoBlobs) (last visited on September 4, 2015).

<sup>45</sup> See 3.11 Great Earthquake, JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/earthquake.html> (last visited on September 4, 2015).



region, pro bono services for the area offered by law firms and other organizations will continue to be essential over the coming years.

In-house counsel have limited opportunities to participate systematically in pro bono work as they are not members of nor registered with Japanese bar associations, being not registrable “attorneys” under the relevant legislation. Associations for in-house counsel, such as the Japan In-House Lawyers Association (“JILA”), are voluntary membership organisations and primarily focused on networking and educational opportunities. There is however potential scope for an association such as the JILA to mature and grow in the future into a body that could administer pro bono and public interest service offerings by its members in a coordinated and organised fashion, more in keeping with the Japanese culture and approach to handling such matters.

For individuals with no formal legal qualifications such as traditional personnel serving in in-house legal departments in Japan, certain pro bono work clearing houses exist to match employees in Japanese companies with nongovernmental organizations and other public service groups in order to facilitate company employee social contributions. These clearing houses include Service Grant,<sup>46</sup> Probonet,<sup>47</sup> and *Nimaime-no-Meishi*.<sup>48</sup>

### Law Student Opportunities

Many law schools in Japan have legal clinics that allow law school students to provide free legal consultation to local citizens under the supervision of licensed attorneys. These legal clinics handle only civil cases rather than criminal cases. Further, some law schools prepare internship programs where students have opportunities to work at local JLSC offices for a short period and provide legal services to the indigent or people in underpopulated areas. These law student programs offer opportunities for pro bono or public interest work for aspiring Japanese lawyers.

### Historic Development and Current State of Pro bono

As discussed previously, the concept of engaging in pro bono work has not significantly developed in Japan as a responsibility for attorneys. Historically, through coordination with the JFBA and local bar associations, Japanese attorneys have maintained a tradition of serving in public interest activities such as participation in court-appointed counsel programs, bar association committee activities and civil legal aid programs; however, either the client, the JLSC or the local bar association ultimately compensates attorneys for their participation in such legal aid programs.

Legal aid in Japan has made significant progress in the last several decades. For example, the JFBA began its promotion of the Duty Attorney (*Toban Bengoshi*) system for criminal suspects prior to indictment in 1990,<sup>49</sup> and this system has gradually expanded to cover all of Japan. The establishment of the JLSC in 2006 further increased government funding and involvement in the provision of court-appointed counsel and civil legal aid. The JFBA, JLSC and local bar associations have been proactive in soliciting private attorneys to participate in these legal aid programs, and these recent efforts have made engaging in public interest work a common activity for Japanese attorneys.

In contrast to Japanese attorneys’ history of engaging in legal aid and public interest activities, a tradition of law firms regularly engaging in and promoting pro bono work has been relatively slow to develop as compared to other similarly developed countries. Japanese attorneys have traditionally viewed their public service obligation as an individual obligation of each attorney as part of his or her admission to the bar and service for the local bar association, rather than a responsibility at the firm-wide level for law firms to perform pro bono work. Further, law firms have viewed the strength of Japan’s public legal aid

---

<sup>46</sup> See <http://www.servicegrant.or.jp/> (last visited on September 4, 2015).

<sup>47</sup> See <http://www.probonet.jp/> (last visited on September 4, 2015).

<sup>48</sup> See <http://nimaime.com/> (last visited on September 4, 2015).

<sup>49</sup> Prior to 1990, criminal suspects had no access to publicly provided legal counsel prior to formal indictment.



organizations such as the JLSC and local bar associations in providing legal aid services as obviating the need for pro bono work by law firm attorneys, and law firms have not traditionally viewed engaging in pro bono work as part of their primary responsibilities. The government and local bar associations' compensation of volunteer attorneys for their legal aid service further diminishes the perceived need for pro bono work. To the extent that large law firm attorneys engage in public interest activities, such attorneys have often elected to serve in positions on government administrative research groups or advisory panels, serve on local bar association committees, or perform teaching activities for law students or legal apprentices, rather than perform activities more traditionally considered pro bono work.

This attitude, however, is changing as both law firms and traditional companies in Japan have come to place an increasing emphasis on making social contributions in cooperation with Japan's significant network of governmental and nongovernmental public service organizations. Law firms in Japan have generally come to adopt standards of social responsibility reflective of changes in the larger international business community and are placing an increasing emphasis on promoting and engaging in proactive pro bono work.<sup>50</sup> Still, strong cultural resistance remains in Japan regarding the performance of traditional litigation work by Japanese attorneys on a pro bono basis, as the bar and the public generally perceives attorneys as being entitled to compensation for the performance of such services.

For Japanese-qualified attorneys (*bengoshi*), the key barriers to participation in pro bono work are primarily cultural (as described above) rather than systemic regulatory or political factors. For foreign-qualified attorneys, however, the practice restrictions on registered and unregistered foreign lawyers in Japan with respect to matters related to Japanese law serve as a significant regulatory impediment to the performance of pro bono work. Foreign lawyers in Japan also do not have similar access to the local bar associations' matching systems for public interest opportunities available to Japanese-qualified attorneys. Despite these restrictions, however, opportunities remain available to foreign lawyers, particularly in the areas of immigration and refugee assistance, nongovernmental organization support and other general public interest and volunteer efforts not requiring a formal law license.

## Pro Bono Resources

In general, Japan currently offers a wide variety of pro bono opportunities for both Japanese-qualified and foreign-qualified attorneys. Attorneys have increasingly been taking advantage of such opportunities as an emphasis on social responsibility among employees in large organizations has continued to develop in recent years.

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

- 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/> (last visited on September 4, 2015)
- 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/> (last visited on September 4, 2015)
- Dai-ichi Tokyo Bar Association (Japanese only)
- Website: <http://www.ichiben.or.jp/> (last visited on September 4, 2015)

---

<sup>50</sup> For example, a number of domestic Japanese and foreign law firms have recently become official law firm pro bono partners of the Japan Association for Refugees. See, e.g., Japan Association for Refugees, Anderson, Mōri & Tomotsune becomes a Pro Bono Partner (Jun. 22, 2015), available at [https://www.refugee.or.jp/jar/postfile/20150622\\_probono%20partner.pdf](https://www.refugee.or.jp/jar/postfile/20150622_probono%20partner.pdf) (last visited on September 4, 2015) (Japanese only); Japan Association for Refugees, TMI Associates becomes a Pro Bono Partner (Jan. 19, 2015), available at <https://www.refugee.or.jp/jar/release/2015/01/19-0001.shtml> (last visited on September 4, 2015).



- Daini Tokyo Bar Association
- Address: 9F, 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo, Japan 100-0013 Phone: +81.3.3581.2255  
Website: <http://niben.jp/english/index.html> (last visited on September 4, 2015)
- Osaka Bar Association
- Phone: +81.6.6364.0251  
Website: <http://www.osakaben.or.jp/web/english/index.php> (last visited on September 4, 2015)
- Aichi Bar Association (Japanese only): <http://www.aiben.jp/> (last visited on September 4, 2015)
- Japan Association for Refugees
- Phone: +81.3.5379.6001 Fax: +81.3.5379.6002  
Website: <http://www.refugee.or.jp/en/> (last visited on September 4, 2015)  
Email: [info@refugee.or.jp](mailto:info@refugee.or.jp)
- Service Grant (Japanese only): <http://www.servicegrant.or.jp/> (last visited on September 4, 2015)
- Probonet (Japanese only): <http://www.probonet.jp/> (last visited on September 4, 2015)
- *Nimai-me-no-Meishi* (Japanese only): <http://nimaim.com/> (last visited on September 4, 2015)

## CONCLUSION

The legal aid and other public interest activities led by the JLSC, JFBA and local bar associations function as the primary drivers of legal aid activities in Japan, and meet the need for free or reduced-cost legal services for a substantial portion of Japan's population. While a culture of performing pro bono legal services has been slow to develop among Japanese attorneys, law firm and in-house Japanese attorneys can meaningfully contribute public interest service or pro bono efforts by working through the programs offered by the JFBA, JLSC and local bar associations, as well as through other avenues such as relationships with nongovernmental organizations offering public services. While regulations on foreign lawyers restrict the range of pro bono activities that foreign attorneys may conduct in Japan, there are also still many ways that foreign lawyers and non-lawyers can become involved in pro bono work in Japan and serve the public interest.

September 2015

Pro Bono Practices and Opportunities in Japan

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Jordan<sup>1</sup>

### INTRODUCTION

The provision of pro bono legal services by attorneys in the Hashemite Kingdom of Jordan (“Jordan”) is less common than it is in the United States. There are, however, several governmental and nongovernmental organizations (“NGOs”) in Jordan that provide free legal services to disadvantaged individuals and other groups. This chapter discusses these organizations and provides a general overview of pro bono practices and opportunities in Jordan.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Jordan is governed by a limited constitutional monarchy. The King retains the legislative power to promulgate and ratify laws, direct the enactment of regulations, and ratify treaties and agreements.<sup>2</sup> The Senate and Chamber of Deputies constitute the higher and lower houses of the National Assembly, which exercises the legislative functions.

Jordan's legal system is based on its Constitution (last amended in 2011), the Court Establishment Law of 1951, and a civil and criminal code based on codes instituted by the Ottoman Empire, as well as Islamic and ecclesiastical laws.<sup>3</sup> Civil law and family law are largely influenced by Islamic Sharia law, criminal law is mostly drawn from French law, and corporate law mainly derived from English law.<sup>4</sup>

##### The Courts

The Jordanian judicial system consists of three categories of courts: civil courts, religious courts and special courts.<sup>5</sup> The civil courts are courts of general jurisdiction and hear civil and criminal cases that are not reserved by law for other courts.<sup>6</sup> The religious courts, which consist of *Shari'a* (Islamic law) courts and tribunals of other religious communities, have jurisdiction over personal status matters, such as marriage and inheritance.<sup>7</sup> There are several special courts, the jurisdiction of which is specified in the laws creating them, including the State Security Court, which has jurisdiction over cases relating to state security and drug offences.<sup>8</sup>

---

<sup>1</sup> This chapter was drafted with the support of Mizan Law Group for Human Rights.

<sup>2</sup> B. Isaias, F. Jennings, Overview of the Hashemite Kingdom of Jordan Legal System and Research, <http://www.nyulawglobal.org/globalex/Jordan.htm> (last visited on September 4, 2015).

<sup>3</sup> NGO Law Monitor: Jordan, The International Center for Not-for-Profit Law (last updated June 19, 2015).

<sup>4</sup> N. Mahasneh, and K. Thomas, Learning from the Unique and Common Challenges: Clinical Legal Education in Jordan, 5 Berkeley J. Mid. East & Islamic L. 1, 6 (2012).

<sup>5</sup> N. J. Brown, Arab Judicial Structures, UNITED NATIONS DEVELOPMENT PROGRAM, available at <http://web.dubaichamber.ae/LibPublic/Arab%20judicial%20structures.pdf> (last visited on September 4, 2015).

<sup>6</sup> Nathan J. Brown, Arab Judicial Structures, UNITED NATIONS DEVELOPMENT PROGRAM, available at <http://web.dubaichamber.ae/LibPublic/Arab%20judicial%20structures.pdf> (last visited on September 4, 2015).

<sup>7</sup> Id.

<sup>8</sup> Id.; U.S. DEP'T OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2014 HUMAN RIGHTS REPORT: JORDAN, (2014), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dld=236606> (last visited on September 4, 2015).



The new Constitutional Court, which saw its first members appointed in October 2012, is intended to guarantee a respect for the Constitution and to enforce a greater separation of powers.<sup>9</sup> The creation of this Court in accordance with articles 58 and 59 of the Constitution is part of a series of reforms enacted by King Abdullah II to democratize the Kingdom in the wake of the Arab Spring revolts across the region.<sup>10</sup> It remains to be seen whether the Court has managed to accomplish these goals, or whether it is able to exercise judgments independently or to enforce judicial decisions on other branches of the government.<sup>11</sup>

### The Practice of Law

Law is an undergraduate program in Jordan, and graduates must also complete a two-year training program before being admitted to the Jordanian Bar Association. No law school in Jordan has any formal program for pro bono legal services. The legal profession in Jordan is governed by the 1972 Bar Association Law (the “**Bar Association Law**”).<sup>12</sup> Under the Bar Association Law, all practicing attorneys in Jordan are required to join the Jordanian Bar Association (the “**Bar Association**”).<sup>13</sup> In addition, attorneys must undergo a period of training before being allowed to plead cases before the courts.

Foreign-qualified attorneys generally may not practice Jordanian law or represent parties in Jordanian courts, although attorneys from Arab countries are permitted to practice law in Jordan on the basis of reciprocity. Foreign-qualified attorneys are permitted to advise Jordanian clients on matters of foreign or international law. A small number of international law firms operate in Jordan in association with Jordanian law firms.<sup>14</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Both the Constitution of Jordan and the Code of Criminal Procedure mandate the right to a lawyer of the defendant’s own choice during an investigation and a trial period. Jordanian law provides that legal counsel is only provided at the public expense in criminal cases involving the death penalty or life imprisonment. However, the concept of legal assistance beyond the scope of capital cases in Jordan is nascent. As such, there are no established governmental or institutional mechanisms for the provision of legal assistance that are regulated and widespread.

---

<sup>9</sup> B. Isaias, F. Jennings, Overview of the Hashemite Kingdom of Jordan Legal System and Research, <http://www.nyulawglobal.org/globalex/Jordan.htm> (last visited on September 4, 2015).

<sup>10</sup> JT, Constitutional Court a Milestone in Reform Process, Democratic Renewal, Jordan Times, Oct. 6, 2012, available at <http://www.jordantimes.com/news/local/constitutional-court-milestone-reform-process-democratic-renewal-%E2%80%94-king> (last visited on September 4, 2015).

<sup>11</sup> U.S. DEP’T OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2014 HUMAN RIGHTS REPORT: JORDAN, (2014), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dldid=236606> (last visited on September 4, 2015).

<sup>12</sup> Bar Association Law No. 11 (1972), at <http://www.tamimi.com/en/magazine/law-update/section-8/September-4/new-amendments-to-the-jordan-bar-association-law.html> (last visited on September 4, 2015).; Jordan Bar Association, <http://www.jba.org.jo/TrainingContent/HowBecomeLawyer.aspx> (Arabic) (last visited on September 4, 2015).

<sup>13</sup> Bar Association Law No. 11, at art. 7.

<sup>14</sup> The Sanad Law Group merged with Eversheds LLP’s Middle East network in 2011 to become Sanad Law Group in association with Eversheds KSLG. This became only the fourth international law firm to have an official platform in Jordan, joining Safwan Moubaydeen Law Firm in association with SNR Denton, Al Tamimi & Company and Abdul Karim Al Fauri & Associates, which retains a close relationship with UK-headquartered Trowers & Hamblins LLP.



## Criminal Proceedings

The Jordanian government provides free legal representation to defendants in need, in certain criminal cases. Under the Jordanian Criminal Procedure Law, a defendant in any case involving a possible penalty of life imprisonment or death is entitled to a government-provided attorney if he or she cannot afford one.<sup>15</sup> In these cases, the court is required to ask the defendant whether he or she has appointed an attorney. If the defendant replies that he or she lacks the financial means to do so, the court is required to appoint an attorney to represent the defendant.<sup>16</sup> The defendant is not required to make any showing regarding his or her inability to afford an attorney, and the trial cannot proceed until an attorney is appointed to represent the defendant.<sup>17</sup> In such a case, the president of the court appoints a private attorney to represent the defendant.<sup>18</sup> The appointment is not mandatory, and the attorney may refuse the representation, or ask to be excused at any time, in which case the court is required to appoint a replacement attorney. The fees paid to the court-appointed attorney are specified in the Criminal Procedure Law. The fees are paid following the issuance of the judgment, and are based on the number of court sessions, subject to specified minimum and maximum fees.<sup>19</sup> These fees are modest relative to the fees that would ordinarily be charged by an attorney for such a case.<sup>20</sup>

Defendants generally must pay court fees in order to appeal verdicts in criminal cases.<sup>21</sup> It is not possible to have such fees waived or postponed.<sup>22</sup> The National Centre for Human Rights (the “NCHR”), a government-supported human rights body, has criticized the imposition of court fees on criminal appeals, calling it “an impediment facing many in practicing the right to self-defense before courts of different levels.”<sup>23</sup> However, verdicts resulting in a penalty of life imprisonment or death are automatically appealed and no court fees are charged for such appeals.<sup>24</sup> In addition, defendants in need are entitled to a government-provided attorney for such appeals.<sup>25</sup>

## Civil Proceedings

Litigants in civil cases before the civil courts of first instance, courts of conciliation in cases exceeding 1000 Jordanian Dinars (approximately US\$1,411) and in appeal proceedings must be represented by attorneys.<sup>26</sup> Neither the plaintiffs nor the defendants in civil matters have a right to free legal representation. In addition to attorney fees, plaintiffs bringing civil cases, and parties appealing rulings, must pay court fees based on a percentage of the value of the claim.<sup>27</sup> Litigants must also pay verdict and

---

<sup>15</sup> JORDAN CONST., art. 6.1, at [http://www.kinghussein.gov.jo/constitution\\_jo.html](http://www.kinghussein.gov.jo/constitution_jo.html) (last visited on September 4, 2015).

<sup>16</sup> Criminal Procedure Law No. 9, art. 208 (1961).

<sup>17</sup> Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

<sup>18</sup> Criminal Procedure Law No. 9, supra n.15.

<sup>19</sup> Criminal Procedure Law No. 9, supra n.15 available at <http://www.lob.gov.jo/AR/Pages/AdvancedSearch.aspx> (last visited on September 4, 2015).

<sup>20</sup> Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

<sup>21</sup> See THE NATIONAL CENTRE FOR HUMAN RIGHTS, State of Human Rights in the Hashemite Kingdom of Jordan (2008), ¶ 24 (2009). <http://www.nchr.org.jo/english/Publications/AnnualReports.aspx> (last visited on September 4, 2015). (last visited on September 4, 2015).

<sup>22</sup> Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 22, 2008) (on file with author).

<sup>23</sup> State of Human Rights (2008), supra n.28.

<sup>24</sup> Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 24, 2008) (on file with author).

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> THE NATIONAL CENTRE FOR HUMAN RIGHTS, State of Human Rights in the Hashemite Kingdom of Jordan During the Period (June 1, 2003 –December 31, 2004), 28 (May 31, 2005).



implementation fees, which may be equal to the initial trial fees.<sup>28</sup> These court fees are intended to reduce the burden on the court system by ensuring that only serious cases are brought before it.<sup>29</sup> Yet, the NCHR has observed that this has often resulted in people being prevented from resorting to the judiciary due to an inability to afford the costs of litigation.<sup>30</sup>

Under the court fee regulations, the president of the court or the presiding judge can postpone the payment of court fees by a litigant, if a financial inability to pay is demonstrated.<sup>31</sup> In order to obtain a postponement of fees, the litigant must submit a petition to the president of the court stating that the litigant is unable to pay the court fees.<sup>32</sup> The petition must include a statement from the land and survey department, stating that the litigant does not own any property and must be accompanied by the testimony of two witnesses regarding the litigant's financial status.<sup>33</sup> Petitions for postponement of fees are generally granted.<sup>34</sup>

Court fees (including lawsuit fees, execution fees and expert fees) are also charged for cases before the *Shari'a* courts. The NCHR has observed that these fees are high, and prevent many individuals, particularly women, from resorting to the *Shari'a* courts.<sup>35</sup>

It is permissible for a Jordanian attorney to represent a client on a contingency fee basis, such that the attorney's fees are paid out of the proceeds of the litigation received by the client, and, in such instances, the attorney is not paid unless the client prevails in the litigation.<sup>36</sup> Attorneys working on a contingency fee basis are not providing pro bono services, but the possibility of retaining an attorney on a contingency fee basis may allow some individuals who could not otherwise afford to hire attorneys access to the legal system.

## PRO BONO ASSISTANCE IN JORDAN: OPPORTUNITIES

### Pro Bono Opportunities

The provision of pro bono legal services by attorneys is not common in Jordan.<sup>37</sup> According to the Bar Association Law, one of the goals of the Bar Association is to assist in providing legal services to those who cannot afford them.<sup>38</sup> However, the Bar Association has no established mechanism to organize and encourage pro bono efforts by its members and there is no specific governmental body regulating pro bono work in Jordan.<sup>39</sup> Under the Bar Association Law, the President of the Bar Association may assign any Jordanian attorney, once per year, to represent an individual lacking the means to hire an attorney on

---

<sup>28</sup> Id.

<sup>29</sup> Id. at 29.

<sup>30</sup> Id. at 28; State of Human Rights (2008), supra n.28 at ¶ 24.

<sup>31</sup> Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> State of Human Rights (2008), supra n.28, at ¶ 25.

<sup>36</sup> Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 22, 2008) (on file with author).

<sup>37</sup> N. Mahasneh, and K. Thomas, Learning from the Unique and Common Challenges: Clinical Legal Education in Jordan, 5 Berkeley J. Mid. East & Islamic L. 1, 6 (2012).

<sup>38</sup> Bar Association Law No. 11 of 1972, art. (5).5.

<sup>39</sup> P. Prettitore, Improving Legal Aid for the Poor in Jordan (June 17, 2015), available at <http://wbi.worldbank.org/sske/result-story/1081> (last visited on September 4, 2015).



a pro bono basis.<sup>40</sup> In practice, accepting a pro bono assignment is not mandatory, and the attorney may refuse to provide the representation.<sup>41</sup> Moreover, there are no guidelines regarding who is eligible for such legal aid, and the decision to request an attorney to provide free representation rests in the sole discretion of the President of the Bar Association.<sup>42</sup> Recently, the Jordanian Bar Association launched a campaign against legal aid organizations, claiming that such services are detrimental towards other lawyers, especially recent graduates, as it hinders their entering the work force as organizations that provide legal aid have a monopoly over the service.<sup>43</sup> The campaign results are pending.

Although the provision of pro bono legal services by Jordanian attorneys is not common, several governmental and NGOs provide free legal services to individuals in Jordan. Several of these organizations are discussed below.

### Government Supported Initiatives

The governmental Ombudsman Bureau was established in 2009, operating under the Ministry of Public Sector Development, to receive and investigate complaints by citizens regarding actions by public agencies or their employees. In 2012, the Ombudsman Bureau signed a memorandum of understanding with the Justice Centre for Legal Aid (the “JCLA”) to enhance the legal services both entities extend to the public. The memorandum stipulates that the bureau will refer all grievances lodged by citizens that lie outside its jurisdiction to the JCLA which will provide legal advice to the complainants and direct them to the proper legal channels.<sup>44</sup> In February 2013, The Ombudsman Bureau had resolved 78% of complaints it had received since its inception.<sup>45</sup> In 2013, the Ombudsman Bureau received a total of 1,027 complaints. Of these, 208 applications were dismissed as outside of the mandate of the Ombudsman Bureau.<sup>46</sup>

The National Center for Human Rights (the “NCHR”) is a government-supported human rights body that, among other activities, provides free legal services to victims of human rights violations.<sup>47</sup> The NCHR was established by law in 2002 to promote an awareness of human rights, improve the human rights situation in Jordan and assist victims of human rights violations.<sup>48</sup> The Complaints & Legal Services unit of the NCHR, which employs several attorneys, receives and addresses complaints of human rights

---

<sup>40</sup> Bar Association Law No. 11 of 1972, art. 100.

<sup>41</sup> Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 20, 2008) (on file with author); contra Bar Association Law No. 11 of 1972 art. (100).

<sup>42</sup> Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

<sup>43</sup> Mohamed Saleh, القانونية المساعدة من الضعيفة الفئات تحرم المحامين.. ازمقنا: صهيونية منظمة من التمويل تتلقى، Ammonnews, February 24, 2015, available at <http://www.ammonnews.net/article.aspx?articleno=221902> (last visited on September 4, 2015).

<sup>44</sup> The Jordan Times article by Hani Hazaimh published on Feb. 28, 2012, available at <http://jordantimes.com/ombudsman-bureau-legal-aid-centre-to-cooperate-in-addressing-public-complaints> (last visited on September 4, 2015).

<sup>45</sup> D. Al Emam, Ombudsman Bureau Resolved 78% of Complaints Received Since 2009, The Jordan Times (Feb. 27, 2013), available at <http://www.jordantimes.com/news/local/ombudsman-bureau-resolved-78-complaints-received-2009> (last visited on September 4, 2015).

<sup>46</sup> E. CUVILLIER, S. ALMAROOF, A Jordan Ombudsman Bureau With Enhanced Capacity (January 2015), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/01/15/000470435\\_20150115130131/Rendered/PDF/937040BRI0Box30UBLIC000Knote00QN137.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/01/15/000470435_20150115130131/Rendered/PDF/937040BRI0Box30UBLIC000Knote00QN137.pdf) (last visited on September 4, 2015).

<sup>47</sup> THE NATIONAL CENTER FOR HUMAN RIGHTS, Introduction, available at <http://www.nchr.org.jo/english/Aboutus> (last visited on September 4, 2015).

<sup>48</sup> Id.



violations, often pursuing judicial remedies where appropriate.<sup>49</sup> The NCHR operates a hotline for complaints of human rights violations, and complaints may also be submitted via its website.<sup>50</sup> In 2011, the NCHR received 596 complaints and 156 requests for assistance.<sup>51</sup>

### Non-Governmental Organizations

Mizan for Law (MIZAN) was established as a non-profit company on August 5, 1998, by a team of advocates for the purpose of enhancing human rights in Jordan and protecting victims of human rights violations. MIZAN also seeks to reinforce and spread democracy, develop legislations, increase awareness of laws and human rights, and participate in the international and Arab efforts to set principles and values of ensuring the universality of human rights. MIZAN engages in human rights education, awareness campaigns, and undertakes strategic litigation functions including referring cases to the Noor Network, a network of lawyers established by MIZAN, to represent vulnerable individuals and victims of human rights violations. MIZAN focuses on providing assistance to lawyers that represent victims of human rights violations including: children in conflict with the law, vulnerable children, women at risk or victims of discrimination and violations, laborers, refugees, asylum seekers and victims of torture. MIZAN assists lawyers that provide a range of free legal services, including providing legal advice, interfacing with government agencies on behalf of its clients, and represent clients in court. MIZAN also strives to build the capacity of lawyers, law practitioners, government officials and others for issues related to human rights. MIZAN is primarily funded by donations from international sources, which have included the European Union and the Embassy of France in Jordan. In addition to its network of attorneys, MIZAN utilizes a group of “volunteer” attorneys who provide legal services to individuals on MIZAN’s behalf in exchange for reimbursement of costs and payment of nominal fees by MIZAN. Engaging the services of these attorneys to represent individuals in need of legal services has enabled MIZAN to meet the increasing demand for its services.<sup>52</sup>

The Justice Center for Legal Aid (the “JCLA”) is an NGO that provides free legal counseling and representation to individuals who are unable to afford legal services.<sup>53</sup> The JCLA has a team of in-house attorneys and operates 25 legal aid clinics in Jordan.<sup>54</sup> The JCLA has also organized a “Pro Bono Legal Network,” consisting of law firms and individuals who provide free legal advice and representation to individuals referred to them by the JCLA.<sup>55</sup> Since its establishment in 2008, the JCLA had provided legal counseling to 2,300 individuals and legal representation to 1,450 individuals.<sup>56</sup> The JCLA is funded by donors that include the Foundation for the Future and the World Bank.<sup>57</sup>

---

<sup>49</sup> THE NATIONAL CENTER FOR HUMAN RIGHTS, Monitoring & Complaints, available at [http://www.nchr.org.jo/english/Aboutus/OrganizationalStructure/Monitoring\\_Complaints\\_unit.aspx](http://www.nchr.org.jo/english/Aboutus/OrganizationalStructure/Monitoring_Complaints_unit.aspx) (last visited on September 4, 2015).

<sup>50</sup> THE NATIONAL CENTER FOR HUMAN RIGHTS, Contact Us, available at <http://www.nchr.org.jo/english/ContactUs> (last visited on September 4, 2015); The National Center for Human Rights, Human Rights Violation Complaints.

<sup>51</sup> Telephone Interview with Atef Al Majali, NCHR Jordan; State of Human Rights (2008), supra n.20 at ¶¶ 214-15, available at <http://www.nchr.org.jo/english/Publications/AnnualReports.aspx> (last visited on September 4, 2015).

<sup>52</sup> Id.

<sup>53</sup> JUSTICE CENTER FOR LEGAL AID, About Us, available at <http://www.jcla-org.com/#/en-about-us> (last visited on September 4, 2015).

<sup>54</sup> JUSTICE CENTER FOR LEGAL AID, Legal Aid Clinics, available at <http://www.jcla-org.com/#/en-legal-and-clinics> (last visited on September 4, 2015).

<sup>55</sup> JUSTICE CENTER FOR LEGAL AID, Pro Bono Legal Network, available at <http://www.jcla-org.com/#/en-pro-bono-legal-network> (last visited on September 4, 2015).

<sup>56</sup> Id.

<sup>57</sup> JUSTICE CENTER FOR LEGAL AID, Our Partners, available at <http://www.jcla-org.com/ar/partner-category/strategic-partners> (last visited on September 4, 2015).



The Media Legal Aid Unit of the Center for Defending Freedom of Journalists (the “**MELAD**”) is an NGO, providing free legal services and counseling to journalists.<sup>58</sup> The MELAD employs four full time attorneys who are involved primarily in defending journalists entangled in publication and free expression proceedings, such as character defamation. In addition to representing journalists in litigation, the MELAD operates a hotline offering free legal advice to journalists.<sup>59</sup> It also conducts legal awareness workshops for journalists and press law training workshops for attorneys. The MELAD is funded by donations from the European Commission and other donors.<sup>60</sup>

The Tamkeen Centre for Legal Aid and Human Rights (the “**Tamkeen**”) was founded in 2007 and works in partnership with other service providers, attorneys, consultants and advocates and a network of volunteer attorneys and activists who advocate and defend the rights of underprivileged people, through the provision of legal services and consultations, human rights education, advocacy and training programs, research and analytical studies, media campaigns and raising awareness activities and development of specialized programs that support human rights efforts and improve legal services. Tamkeen’s Legal Unit provides the following legal services: legal aid, court representation, one on one counseling, escort services to official institutions, referrals for victims in need for health or psychological help and assisting with labor disputes outside the judiciary system through arbitration, mediation and re-conciliation efforts.

Other organizations providing legal counseling services include:

- *United Nations High Commissioner for Refugees (“UNHCR”)* works closely with ministries, international and national NGOs and UN agencies to provide services and assistance to refugees, including holding workshops for lawmakers, providing financial assistance and providing social and legal counseling for refugees.
- *Women in Danger* supports detained women by providing shelter and free legal aid services in civil and criminal matters, working in partnership with the Public Security Department and the Ministry of Social Development.
- *Legal Van* collaborates with other NGOs, allowing attorneys to travel across the country and providing legal advice and assistance to those in need, as well as lecturing and raising awareness in rural communities.
- *The Hotline*, arranges for attorneys to give free legal advice over the phone.
- *The Jordanian Women’s Union* focuses on defending and protecting women’s rights. It provides legal and social counseling, and operates a 24-hour counseling hotline.
- *The Jordanian Society for Human Rights* covers a wide range of human rights issues and works on monitoring human rights violations and assisting victims.
- *The Arab Organization for Human Rights*, founded in 1990, provides free legal aid services, upon request, to people who are either suffering from human rights violations or are at risk of suffering human rights violations.

## Barriers To Pro Bono Work And Other Considerations

Although the Jordanian constitution guarantees the equality of citizens before the law and access to justice for all, it does not contain an explicit right to defense or guaranteed access to courts and counsel.<sup>61</sup> According to the NCHR, many of the inmates in Jordanian prisons do not receive adequate

---

<sup>58</sup> HUMAN RIGHTS WATCH, WORLD REPORT 2013: JORDAN, available at <http://www.hrw.org/world-report/2013/country-chapters/jordan> (last visited on September 4, 2015).

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> JORDAN CONST. art. 6(1), available at [http://www.kinghussein.gov.jo/constitution\\_jo.html](http://www.kinghussein.gov.jo/constitution_jo.html) (last visited on September 4, 2015).



legal assistance due to their poverty or their ignorance regarding the importance of legal representation.<sup>62</sup> As a result, the lack of access to Jordan's legal system affects the most impoverished sections of Jordanian society: the unemployed (the unemployment rate is as high as 12%), a refugee population of 450,915,<sup>63</sup> juveniles and women.

In 2010 the NCHR noted that despite repeated recommendations to reduce litigation costs, the cost of litigation remained one of the main the impediments to access to justice for Jordanian citizens. The NCHR observed that in 2010 there had been an increase in the fees associated with granting powers of attorney and this had been a continuing trend since 2008, when higher fees were imposed on citizens under the amended court fees system. It was added that this constituted an additional burden on litigants and limited their ability to resort to the judiciary.<sup>64</sup>

Individual Jordanian attorneys, including those working as in-house counsel, have the ability to become involved in pro bono legal work either through volunteering or by working with NGOs in Jordan. In particular, Jordanian attorneys can provide legal services to NGOs on a pro bono basis, or partner with NGOs, to provide free legal services to needy individuals. For instance, Jordanian attorneys can join MIZAN's or JCLA's network of attorneys and assist in providing free legal representation to individuals on MIZAN's or JCLA's behalf.

Although foreign-qualified attorneys are limited in their ability to engage in pro bono legal work in Jordan because they cannot appear before Jordanian courts or practice Jordanian law, one possibility for international law firms to engage in pro bono work in Jordan is to provide advice regarding foreign or international laws to non-profit organizations in Jordan. International law firms may also be able to partner with Jordanian NGOs to provide needy individuals with legal assistance on matters involving foreign laws. For instance, MIZAN has received requests for assistance from Jordanian women who are involved in marital or custody disputes in the United States.<sup>65</sup> US law firms may work with MIZAN to assist such individuals. Additional examples include law firms with offices in the United Arab Emirates working with the Center for Justice and Legal Aid in coordinating a pro bono project in Jordan to help break down barriers to access to justice under Jordanian law<sup>66</sup> and working with USAID in conducting a comprehensive assessment of Jordan's media laws.<sup>67</sup>

## CONCLUSION

The provision of pro bono legal services is not common in Jordan, however, there exists a number of organizations that provide free legal services to disadvantaged groups and there are a number of opportunities for Jordanian attorneys to become involved in pro bono legal work. In particular, at least two NGOs have organized networks of attorneys who provide free legal services on a pro bono basis, or for a

---

<sup>62</sup> HUMAN RIGHTS WATCH, WORLD REPORT 2013: JORDAN, available at <http://www.hrw.org/world-report/2013/country-chapters/jordan> (last visited July 1, 2015); THE NATIONAL CENTRE FOR HUMAN RIGHTS, Status Report of Human Rights; The Hashemite Kingdom of Jordan; 2010, 21 (2010), available at <http://www.nchr.org.jo/english/Publications/AnnualReports.aspx> (last visited on September 4, 2015).

<sup>63</sup> Tradinc Economics: Jordan unemployment Rate, available at <http://www.tradingeconomics.com/jordan/unemployment-rate> (last visited on September 4, 2015).

<sup>64</sup> HUMAN RIGHTS WATCH, WORLD REPORT 2013: JORDAN, available at <http://www.hrw.org/world-report/2013/country-chapters/jordan> (last visited on September 4, 2015); THE NATIONAL CENTRE FOR HUMAN RIGHTS, Status Report of Human Rights; The Hashemite Kingdom of Jordan (2010), available at <http://www.nchr.org.jo/english/Publications/AnnualReports.aspx> (last visited on September 4, 2015).

<sup>65</sup> Interview with Eva Abu Halaweh, Executive Director, MIZAN – Law Group for Human Rights (Jan. 16, 2008).

<sup>66</sup> REED SMITH, Pro Bono, at <http://m.reedsmith.com/pro-bono-eme-practices/> (last visited on September 4, 2015).

<sup>67</sup> COVINGTON & BURLING, Public Service Activities 2008 Report, available at <https://www.cov.com/~media/files/corporate/publications/2009/03/public-service-activities-2008.pdf> (last visited on September 4, 2015); see also <https://www.cov.com/en/probono?show=morehighlights> (last visited on September 4, 2015).



nominal fee. Despite this, there is a lack of provision of legal representation for non-human-rights related cases.

While restrictions exist on the practice of law in Jordan by foreign-qualified attorneys, there is some scope for international law firms to assist non-profit organizations and needy individuals on matters involving foreign and international law.

September 2015

Pro Bono Practices and Opportunities in Jordan

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Kenya<sup>1</sup>

### INTRODUCTION

Equal access to justice remains a challenge for most people in Kenya. Aside from the limited provision of state-funded legal aid, a large number of Kenyans have few options to access the judicial system with proper representation. The majority of pro bono legal services are provided by non-governmental organizations (“NGOs”), which are located mainly in large cities, and which lack the resources and capacity to represent the large number of Kenyans in need of legal advice. Without representation, most Kenyans are unable to manoeuvre the legal system because of the complex legal procedures, lack of education regarding legal rights and the court system, financial impediments or other time and resource constraints. Kenya faces significant challenges in implementing a legal system that serves its population adequately, but it is making strides in the right direction.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

Kenya’s Constitution proclaims that “the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.”<sup>2</sup> The Constitution also provides that every person “has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”<sup>3</sup> Despite this constitutionally mandated right to equal access to justice, many Kenyans cannot access the country’s justice system because they are unaware of their basic rights, the courts are structured in a way that does not facilitate equal access to all, and legal services are unaffordable to most of the country’s population.<sup>4</sup>

#### The Courts

##### Types and levels of courts

Kenya’s legal system contains elements of English common law, Kenyan statutory law, customary law and religious law (mainly Islamic law).<sup>5</sup> Pursuant to section 3(2) of the Judicature Act, the courts are to be “guided by African customary law in civil cases in which one or more of the parties is subject to it or affected by it, so far as it is applicable and is not repugnant to justice and morality or inconsistent with any written law.” The court structure in Kenya operates at two levels: namely, the superior and subordinate courts. The superior courts consist of the Supreme Court, the Court of Appeal, the High Court, the Employment and Labor Relations Court, and the Environmental and Land Court.<sup>6</sup>

The Supreme Court is the highest court in the judicial system of Kenya, having appellate jurisdiction over appeals from cases concluded by the Court of Appeal, whilst the Court of Appeal has jurisdiction over appeals from the High Court, and other courts and tribunals. In addition, the Supreme Court has exclusive original jurisdiction over matters relating to presidential elections, and issues advisory opinions on matters

---

<sup>1</sup> This chapter was drafted with the support of Kaplan & Stratton.

<sup>2</sup> The Constitution of Kenya, 2010, § 48.

<sup>3</sup> The Constitution of Kenya, 2010, § 50(1).

<sup>4</sup> P. Mbote and M. Akech, Kenya: Justice Sector and the Rule of Law, Open Society Foundations, March 2011 at 156, available at <http://www.opensocietyfoundations.org/reports/kenya-justice-sector-and-rule-law> (last visited on September 4, 2015).

<sup>5</sup> Id at 42.

<sup>6</sup> The Constitution of Kenya, 2010, § 162(1).



concerning County Governments, in any cases involving the interpretation or application of the Constitution and in matters of general importance. The remaining superior courts consist of special courts that have the same status as the High Court, and have jurisdiction over matters relating to employment and labor relations, environmental laws and land rights.<sup>7</sup>

In addition to the superior courts, the Constitution provides for subordinate courts.<sup>8</sup> Subordinate courts consist of Magistrates' courts, Kadhis' courts, court martial, and any other court or local tribunal established by an Act of Parliament. The traditional, or Kadhis', courts are presided over by a local chief and a council of elders who profess the Islamic religion and have knowledge of Islamic law. These courts have jurisdiction over limited types of proceedings relating to personal status, marriage, divorce or inheritance.<sup>9</sup>

### Appointed judges

Pursuant to section 166 of the Constitution, the Chief Justice and Deputy Chief Justice of the Supreme Court are to be appointed by the President, in accordance with the recommendation of the Judicial Service Commission and subject to the approval of the National Assembly. All other judges are appointed in accordance with the recommendation of the Judicial Service Commission. Judges have a fixed term tenure, which expires at the age of 70, but judges may elect to retire at any time upon turning 65.<sup>10</sup> In addition, the Chief Justice shall only hold office for a maximum of ten years, following which the Chief Justice may continue in office as a judge of the Supreme Court (unless the mandatory age of retirement is reached beforehand).<sup>11</sup>

### The Practice of Law

#### Education and Licensure

A qualified lawyer in Kenya is referred to as an advocate of the High Court. A person is qualified for admission as an advocate of the High Court upon passing the relevant examinations from a recognized university, obtaining a law degree from a university or institution that the Council of Legal Education may from time to time approve,<sup>12</sup> and then being admitted to the Kenyan bar.

Pursuant to sections 22 and 23 of the Legal Education Act, a legal education provider must provide instruction and examination in certain "core courses" at the degree and post-graduate (professional) diploma level (e.g., contract law, the law of evidence, constitutional law, professional ethics etc.). As a requirement under the Legal Education Act, at the professional level, a pupillage (of at least six months' attachment) with a qualified advocate is mandatory.

The Council for Legal Education, established under the Legal Education Act,<sup>13</sup> is responsible for regulating and supervising legal education and training in Kenya. Under the Advocates Act (Continuing Legal Education) Regulation, the Law Society of Kenya introduced continuing legal education ("CLE") for

---

<sup>7</sup> The Constitution of Kenya, 2010, § 162(2).

<sup>8</sup> The Constitution of Kenya, 2010, § 169(1).

<sup>9</sup> The Constitution of Kenya, 2010, § 170.

<sup>10</sup> The Constitution of Kenya, 2010, § 167(1).

<sup>11</sup> The Constitution of Kenya, 2010, § 167(2) and (3).

<sup>12</sup> Initially, only the University of Nairobi and Moi University, offered law degree courses. However, an increasing number of public and private Kenyan universities now offer law degree courses and several private universities plan to introduce law courses in the future: P. Mbote and M. Akech, Kenya: Justice Sector and the Rule of Law, Open Society Foundations, March 2011 at 116. See also: <http://www.cle.or.ke/status-of-universities/> (last visited on September 4, 2015).

<sup>13</sup> Legal Education Act, 2012, section 8, available at <http://www.cle.or.ke/acts-of-parliament/> (last visited on September 4, 2015).



advocates in 2004.<sup>14</sup> CLE programs emphasize ethical as well as practical and professional aspects of legal practice and every member of the Law Society must obtain no less than five CLE units annually.<sup>15</sup>

### Demographics

According to the Law Society of Kenya, there are more than 8,000 practising lawyers in the country.<sup>16</sup> It has been estimated that the ratio of lawyers to the general population is approximately one lawyer for every 5,500 people.<sup>17</sup> These lawyers work for law firms, companies, the government, non-profit organizations, academic institutions and as sole practitioners.

### Legal Regulation of Lawyers

Lawyers in Kenya are primarily monitored and regulated by the Law Society of Kenya under the Advocates Act. The Law Society was established by an Act of Parliament in 1948,<sup>18</sup> to maintain and improve the standards of conduct and learning among the members of the Kenyan legal profession. The Law Society provides CLE to practising attorneys and assists the government and the courts in matters affecting the legislation, administration and practice of law in the country.

The Advocates Act is the key statute for the admission and regulation of advocates.<sup>19</sup> It also governs Kenyan legal practice through the establishment of the Complaints Commission,<sup>20</sup> which has the power to investigate complaints against lawyers, and the Disciplinary Tribunal. Most complaints are dealt with by the Complaints Commission, but serious matters (e.g., professional misconduct, including disgraceful or dishonorable conduct incompatible with the status of an advocate) may be considered by the Disciplinary Tribunal.<sup>21</sup> The Disciplinary Tribunal has wide-ranging powers to investigate and discipline such misconduct.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The physical distance between the Kenyan population, particularly indigent citizens living in remote districts, and legal service providers is one of the most significant barriers to justice in Kenya. Most lawyers reside in cities and major towns, leaving the rural population without access to legal services.<sup>22</sup> In addition, the cost of legal services for much of the Kenyan population is prohibitive. As noted by the Kenyan Solicitor General in January 2014:<sup>23</sup>

---

<sup>14</sup> Advocates Act (Continuing Legal Education) Regulation, 2004, regulation 11.

<sup>15</sup> Advocates (Continuing Professional Development) Rules, 2014, regulation 4(a). See also: <http://www.lsk.or.ke/index.php/practicing-certificates> (last visited on September 4, 2015).

<sup>16</sup> The Law Society of Kenya, Strategic Plan 2012-2016, April 2012, available at <http://www.lsk.or.ke/images/downloads/lsk%20strategic%20plan%202012-2016.pdf> (last visited on September 4, 2015).

<sup>17</sup> P. Mbote and M. Akech, Kenya: Justice Sector and the Rule of Law, Open Society Foundations, March 2011 at 114.

<sup>18</sup> The Law Society was initially formed in 1948 under section three of the Law Society of Kenya Ordinance, 1949. That Act was later repealed by the current Law Society of Kenya Act, which came into force on October 30, 1992.

<sup>19</sup> Qualifications for admission as an advocate are prescribed in section 12 of the Advocates Act, 2012.

<sup>20</sup> Advocates Act, 2012, section 53.

<sup>21</sup> Advocates Act, 2012, section 60. See also: <http://www.lsk.or.ke/index.php/for-the-public> (last visited on September 4, 2015).

<sup>22</sup> P. Mbote and M. Akech, Kenya: Justice Sector and the Rule of Law, Open Society Foundations, March 2011 at 114.

<sup>23</sup> D. Odunga, "Kenyans set for free legal services," Daily Nation, January 20, 2014, available at <http://www.nation.co.ke/news/Legal-Aid-Bill-2013-Constitution-/-/1056/2152852/-/126ut9d/-/index.html> (last visited on September 4, 2015).



“Very few Kenyans who need legal services can afford to pay for them, and most are ignorant of their legal rights. ... Millions are in need of legal services but are unable to afford the specialised knowledge and skills of the legal professionals.”

## The Right to Legal Assistance

The Constitution declares that every person has the right to a fair trial which includes, among other things, the right “to choose, and be represented by, an advocate, and to be informed of this right promptly.”<sup>24</sup> However, in a human rights report from 2014, it was noted that there were many instances in which indigent defendants did not have legal representation.<sup>25</sup>

“The vast majority of defendants could not afford representation and were tried without legal counsel. ... The lack of a formal legal aid system seriously hampered the ability of many poor defendants to mount an adequate defense. Legal aid was available only in major cities where some human rights organizations, notably the Federation of Women Lawyers (FIDA), provided it.”

## State-Subsidized Legal Aid

The Legal Aid Bill, 2013 (“**Bill**”) was previously before the Parliament of Kenya, but was recently withdrawn, because it was not tabled before Parliament for a second reading. According to parliamentary standing orders, once a bill is withdrawn it cannot be enacted, and would have to be re-introduced into Parliament.<sup>26</sup>

If enacted, this Bill could have provided for a national legal aid service and legal aid fund.<sup>27</sup> Many of the significant gaps in pro bono services and legal aid in Kenya might have been addressed by the functions assigned to such a legal aid service, including:<sup>28</sup>

- administering a national legal aid scheme that is accessible, efficient, sustainable, reliable and accountable;
- facilitating the settlement of disputes through alternative dispute resolution methods;
- undertaking and promoting research in legal aid, legal awareness and access to justice for the poor and marginalized;
- promoting and providing legal aid support for public interest litigation;
- promoting the establishment and working of legal aid clinics in institutions of higher learning, universities, colleges and other institutions; and
- raising legal awareness and facilitating legal representation, particularly among vulnerable and marginalized groups.

Although legal aid would not have been available for certain types of matters,<sup>29</sup> for many other legal proceedings, including criminal trials, constitutional references, public interest litigation and matters

---

<sup>24</sup> The Constitution of Kenya, 2010, § 50(2)(g).

<sup>25</sup> U.S. Department of State, Country Reports on Human Rights Practices for 2014 – Kenya, 2014, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236370#sthash.qcxWD1k8.dpuf> (last visited on September 4, 2015).

<sup>26</sup> It is not clear why the Bill was not tabled before Parliament for a second reading. Some media reports claimed that the Bill was poorly drafted, having significant errors of form and grammar: P. Bowry, “Return faulty Bill on legal aid to draughtsmen,” Standard Digital Media, February 12, 2014, available at [http://www.standardmedia.co.ke/article/2000104473/return-faulty-bill-on-legal-aid-to-draughtsmen?articleID=2000104473&story\\_title=return-faulty-bill-on-legal-aid-to-draughtsmen&pageNo=1](http://www.standardmedia.co.ke/article/2000104473/return-faulty-bill-on-legal-aid-to-draughtsmen?articleID=2000104473&story_title=return-faulty-bill-on-legal-aid-to-draughtsmen&pageNo=1) (last visited on September 4, 2015).

<sup>27</sup> Legal Aid Bill, 2014, section 4(1), available at <http://kituochasheria.or.ke/wp-content/uploads/2014/05/Draft-Legal-Aid-Bill-2014.pdf> (last visited on September 4, 2015).

<sup>28</sup> Legal Aid Bill, 2014, section 6.



involving breaches of fundamental rights and freedoms, legal aid would have been available.<sup>30</sup> It also appears from the text of the draft Bill that, subject to certain exceptions, legal aid could have been available for other types of civil proceedings.<sup>31</sup>

The enactment of a legal aid bill would be the culmination of an increasing focus on human rights' issues relating to the rule of law and access to justice in Kenya. Since 2003, Kenya has made significant strides in improving equal access to justice by establishing:

- the Kenya National Human Rights and Equality Commission, which is charged with enhancing the promotion and protection of human rights;<sup>32</sup>
- the National Commission on Gender and Development, which promotes gender equality throughout society;<sup>33</sup> and
- the National Cohesion and Integration Commission, of which one of its objectives is to facilitate and promote equal opportunity and acceptance of diversity.<sup>34</sup>

In 2007, the government created the National Legal Aid (and Awareness) Program (“NALEAP”) to oversee, coordinate, monitor and provide policy direction regarding a legal aid program under the auspices of the Ministry of Justice. However, in a recent report, the UN Human Rights Committee, while welcoming the introduction of NALEAP, also regretted that “access to legal aid and courts is unduly constrained by lack of funding for a legal aid scheme and physical accessibility factors,” and noted concerns that a comprehensive legal aid bill has not yet passed into law.<sup>35</sup>

## Alternative Dispute Resolution

Besides the formal court system, other dispute resolution mechanisms are used by Kenyan citizens to pursue grievances and conflicts, including mediation and arbitration. Mediation by community elders has also been said to be preferable because of the relatively lower cost and ease of access, compared to formal court structures; however, such forums may not permit a party to be represented by an advocate of his or her choosing. Accordingly, it has been recommended that the government institutionalize such forms of dispute resolution (which would ease the backlog in the formal court system) and ensure that traditional justice systems adhere to constitutional norms of equality and non-discrimination.<sup>36</sup>

---

<sup>29</sup> Including taxation, the recovery of debts, insolvency proceedings and defamation: Legal Aid Bill, 2014, section 30.

<sup>30</sup> Legal Aid Bill, 2014, section 29(3).

<sup>31</sup> Section 39(1) of the Legal Aid Bill, 2014, provides: “Where a party to civil proceedings is granted legal aid, the legal aid service provider under the grant shall immediately give notice of that fact to every other party to the proceedings, and to the Registrar of the relevant court.”

<sup>32</sup> See <http://www.knchr.org/> (last visited on September 4, 2015).

<sup>33</sup> See <http://www.ngeckkenya.org/> (last visited on September 4, 2015).

<sup>34</sup> See <http://www.cohesion.or.ke/> (last visited on September 4, 2015).

<sup>35</sup> United Nations Human Rights Committee, Concluding observations adopted by the Human Rights Committee at its 105th session, July 9-27, 2012 – Kenya at ¶19, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=5) (last visited on September 4, 2015).

<sup>36</sup> P. Mbote and M. Akech, Kenya: Justice Sector and the Rule of Law, Open Society Foundations, March 2011 at 174-176.



## PRO BONO ASSISTANCE

### Pro bono Opportunities

#### Non-Governmental Organizations

The majority of pro bono legal assistance in Kenya is provided by NGOs that offer assistance to marginalized groups. As discussed in further detail below, these organizations include the Federation of Women Lawyers, The CRADLE, the International Commission of Jurists in Kenya, Kituo Cha Sheria, the Public Law Institute and KELIN Kenya.

NGOs in Kenya are presently registered and regulated under the Non-Governmental Organizations Co-ordination Act, 1990 (the “**NGO Act**”). The NGO Act defines an NGO as:<sup>37</sup>

“a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which is organised nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development, charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry and the supply of amenities and services to be registered as an NGO under the Act.”

An NGO’s branch office will house regional expatriate staff who will be seconded to the NGO and house any assets the NGO may need. Under the NGO Act, the entity’s assets would be protected from mandatory asset divestiture requirements on the winding-up of operations.

It is likely that the NGO Act will be repealed in the near future (but currently remains in force). On January 14, 2013, the President of Kenya assented to the Public Benefit Organizations Bill, 2013. This bill (signed into law as the Public Benefit Organizations Act, 2013 (the “**PBO Act**”) and published in the Kenya Gazette on January 25, 2013) seeks to regulate non-profit organizations, including NGOs registered under the NGO Act. Upon the publication of its commencement date in the Kenya Gazette, the PBO Act will come into force and the NGO Act will stand repealed.

In 2013, the Statute Law (Miscellaneous Amendments) Bill, 2013 sought to amend part of the PBO Act by providing that a public benefit organization shall not receive more than 15% of its total funding from external donors. Such amendment to the PBO Act, which was ultimately dispensed with and is no longer being considered by Parliament, is likely to negatively affect several NGOs who receive the majority, if not all of their funding, from external donors.

Based on Schedule 3 of the V.A.T. Act of 2009, social welfare services provided by registered charitable organizations or NGOs whose income is exempt from taxation, are also exempt from the application of value added taxes for the provision of legal assistance.<sup>38</sup>

#### Federation of Women Lawyers (“**FIDA Kenya**”)

FIDA Kenya is a non-profit, non-partisan membership-based NGO committed to the creation of a society that is free from all forms of discrimination against women. They address their mission by providing pro bono advice to indigent women, engaging in legal, policy and legislative reform, monitoring the implementation of treaties, researching issues related to women’s rights, and educating women about their rights. FIDA Kenya has assisted women through various programs and initiatives, including training women to represent themselves in court. The primary areas of law that they cover are succession and inheritance, family law, employment cases and land disputes involving discrimination on the basis of sex, cases involving gender-based violence and other public interest cases. FIDA Kenya has established a

---

<sup>37</sup> Non-Governmental Organizations Co-ordination Act, 1990, section 2.

<sup>38</sup> See <http://www.revenue.go.ke/vat/pdf/VATAct2009.pdf> at 66 (last visited on September 4, 2015).



country-wide pro bono lawyer's scheme and engages in legal awareness activities and alternative dispute resolution.<sup>39</sup>

#### **The CRADLE**

The CRADLE is a non-profit NGO committed to the protection, promotion and enhancement of the rights of children, especially girls. The organization was started by a group of Christian lawyers to respond to the need for the provision of legal assistance to children and it works to enhance children's access to justice. The CRADLE's activities include running a legal aid program, advocating for policy and legislative enactments protecting children's rights, researching, monitoring and documenting issues related to children's rights, and building awareness of children's rights.

#### **International Commission of Jurists in Kenya ("ICJ-Kenya")**

ICJ-Kenya is a non-profit, non-partisan membership-based NGO with over 300 members who are dedicated to the legal protection of human rights in Kenya. The organization has a permanent secretariat with a team of full-time lawyers charged with running its programs. ICJ-Kenya's objectives include improving access to justice and protection of human rights, increasing citizen empowerment, investing in the development and involvement of key stakeholders, and increasing awareness of human rights.

#### **Kituo Cha Sheria**

Kituo Cha Sheria is a national membership-based NGO founded by lawyers committed to helping disadvantaged and poor people who cannot afford the cost of legal services. Established in 1973, it was the first legal aid center in Kenya and focuses on empowering marginalized and poor people to access justice through legal aid education, advocating for equitable access to justice, establishing community partnerships, and undertaking public interest litigation. The organization provides legal advice regarding family law, land disputes, employment and labor disputes, landlord and tenant issues, criminal offences, accident claims, rape cases, women's rights issues, and refugee issues. Kituo Cha Sheria is largely dependent on donors and lawyers who volunteer their services, which can make its ability to provide consistent levels of service unpredictable. The organization is headquartered in Nairobi, has a branch office in Jogoo Road and a regional office in Mombasa, in addition to an established network of volunteer lawyers in major towns throughout the country.

#### **Public Law Institute ("PLI")<sup>40</sup>**

PLI is an NGO that was created by the National Council of Churches of Kenya and the Law Society of Kenya to promote human rights and the rule of law in Kenya. PLI's activities include providing legal representation and services to the poor and disadvantaged, and protecting consumer and environmental rights. PLI also provides legal education through publications, workshops, seminars and paralegal training programs. The organization has 12 lawyers on staff and relies heavily on volunteers.

#### **KELIN Kenya ("KELIN")**

KELIN was registered as an NGO in 2001. It is a human rights organization working to protect and promote HIV-related human rights in Kenya. The NGO's objective is to undertake advocacy and provide leadership in enhancing human rights approaches in health, as well as HIV strategies and programs. KELIN does this by providing legal services and support, training professionals on human rights, engaging in advocacy campaigns that promote awareness of human rights issues, conducting research, and influencing policy that promotes evidence-based change. KELIN works with vulnerable and often marginalized groups such as people living with HIV and at-risk populations. It also engages with key stakeholders, policy makers and involves itself in the process of policy development and reform in order to improve protection against health and HIV-related human rights violations for such groups.

---

<sup>39</sup> P. Mbote and M. Akech, Kenya: Justice Sector and the Rule of Law, Open Society Foundations, March 2011 at 162.

<sup>40</sup> O. Ooko-Ombaka, "Education for Alternative Development: The Role of the Public Law Institute, Kenya," Third World Legal Studies, vol. 4 article 11, 1985, available at <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1130&context=twls> (last visited on September 4, 2015).



## Law Society of Kenya

One of the key components of the Law Society's strategic plan is to increase the availability and quality of legal services, and generally improve access to justice in the country.<sup>41</sup> As noted in its strategic plan, the key outcome of a pro bono legal scheme would be to enhance access to justice for the indigent and marginalized in society.<sup>42</sup> The Law Society of Kenya, in conjunction with the judiciary of Kenya, offers annual legal aid and pro bono services over a number of days at its branches throughout Kenya. In Nairobi, lawyers advise pro bono clients at the grounds in the High Court of Kenya and Milimani Law Courts.

The Law Society has set a performance objective of engaging 600 Kenyan lawyers in pro bono services by 2016,<sup>43</sup> although it is not readily apparent whether this goal will be achieved in the desired timeframe.

## University Legal Clinics and Law Students

Some Kenyan universities have established legal aid clinics that allow students to provide pro bono assistance during their legal studies. This is a relatively recent development, arising from the growing acceptance of incorporating practical skills into legal education. This recognition can be traced back to 1994, following the establishment of the Moi University Faculty of Law. Through the Moi University Legal Aid Clinic, students can render legal advice and routine legal assistance to indigent clients.<sup>44</sup>

By using legal education as a tool for engaging and assisting the public, students can also learn to be competent lawyers committed to the provision of quality legal services and the ideal of social justice. Moi University aims to revive and revamp its legal aid clinic so as to provide legal aid services to at least five indigent persons a month.<sup>45</sup>

## HISTORIC DEVELOPMENT

It has been noted that several legal aid systems in Kenya have previously been piloted. However, the adequacy of such legal assistance has been criticized.<sup>46</sup> Pro bono assistance has also historically been available under the Civil Procedure Act, which allows indigent people access to the courts by filing a "pauper brief." However, it has been noted that such applications are dependent on the availability of lawyers to take up the brief.<sup>47</sup>

## Barriers to Pro bono and Participation in the Formal Legal System

According to research by the Kenya AIDS NGO Consortium in 2004, many Kenyans do not seek justice through the Kenyan legal system for reasons including:<sup>48</sup>

---

<sup>41</sup> The Law Society of Kenya, Strategic Plan 2012-2016, April 2012, at ¶4.1.3.

<sup>42</sup> The Law Society of Kenya, Strategic Plan 2012-2016, April 2012, at 41.

<sup>43</sup> The Law Society of Kenya, Strategic Plan 2012-2016, April 2012, at ¶7.3.

<sup>44</sup> T.O. Ojienda and M. Oduor, "Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya," International Journal of Clinical Legal Education, vol. 2 p.49-63, June 2002, available at <http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/123> (last visited on September 4, 2015).

<sup>45</sup> See <http://www.mu.ac.ke/law/index.php/departments/legal-aid-clinic-externship#mission.vision-objectives> (last visited on September 4, 2015).

<sup>46</sup> Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, Access to Justice in Africa and Beyond: Making the Rule of Law a Reality, 2007 at 13.

<sup>47</sup> P. Mbote and M. Akech, Kenya: Justice Sector and the Rule of Law, Open Society Foundations, March 2011 at 159.

<sup>48</sup> K. Kalla and J. Cohen, Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS-related Legal Services, Open Society Initiative for East Africa, April 2007 at 8, available at <http://www.soros.org/reports/ensuring-justice-vulnerable-communities-kenya> (last visited on September 4, 2015).



- the high costs associated with legal proceedings, including court filing fees and physically attending court proceedings;
- lack of physical access to court buildings – many of Kenya’s counties have only one magistrate to serve the entire county;
- an intimidating formal court atmosphere, replete with technicalities and complex procedures; and
- significant delays in resolving matters before the courts, with civil matters taking between two and six years on average to conclude, and frequent adjournments.

There are also procedural challenges to the provision of public interest litigation. Courts have frequently used the doctrine of *locus standi* to defeat a number of initiatives aimed at securing the public interest through litigation. In addition, it has been reported that discovery laws are not clearly defined, handicapping defense lawyers, and the absence of established rules for presenting evidence can result in case dismissals for lack of evidence.<sup>49</sup> Often defense lawyers may not have access to government-held evidence before a trial, and there are reports that the government may invoke the Official Secrets Act as a basis for withholding evidence.

On the other hand, the Constitutional and Human Rights Division of the High Court has affirmed that costs should not be awarded against a party who has litigated an unsuccessful public interest proceeding against the state. In *John Harun Mwau & Others v Attorney General & Others* (Nairobi Petition No. 65 of 2011) [2012] eKLR, the court stated at [180]:

“In matters concerning public interest litigation, a litigant who has brought proceedings to advance a legitimate public interest and contributed to a proper understanding of the law in question without private gain should not be deterred from adopting a course that is beneficial to the public for fear of costs being imposed. Costs should therefore not be imposed on a party who has brought a case against the state but lost. Equally, there is no reason why the state should not be ordered to pay costs to a successful litigant.”<sup>50</sup>

One of the barriers to pro bono assistance is the statutory prohibition on advocates charging amounts below those stipulated under the Advocates Act, through the Advocates Remuneration Order. Under the Advocates Act, it is prohibited for a lawyer to agree or accept remuneration less than the Order. Although this provision is designed to prevent lawyers undercutting each other, it is also prejudicial to clients. Unless clients can afford to pay the set rates of remuneration, they may have to forego legal representation.<sup>51</sup>

Immigration regulations affect the ability of foreign-qualified lawyers to provide pro bono services. Foreign lawyers must obtain the requisite work permit in order to offer pro bono services in Kenya, and must also obtain a clearance letter from the Law Society.

Professional indemnity in Kenya is governed by the Advocates (Professional Indemnity) Regulations, 2004 made under the Advocates Act. Every advocate (enrolled in the Kenyan Bar) practising on his own behalf or in partnership is required to purchase a policy of “professional indemnity cover”, the value of which shall be not less than 1,000,000 Kenya shillings (approximately \$ 9,881). This cover is to be used to compensate clients for loss or damage in respect of any civil liability or breach of trust by the advocate or the advocate’s employees. The Regulations are silent on whether the requirement for professional indemnity includes pro bono clients; however, as the Regulations do not distinguish between paying clients or pro bono clients and the advocate’s duty of care to all clients is the same, it seems that pro bono clients would be covered by such professional indemnity.

---

<sup>49</sup> U.S. Department of State, Country Reports on Human Rights Practices for 2014 – Kenya, 2014, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370#sthash.qcxWD1k8.dpuf> (last visited on September 4, 2015).

<sup>50</sup> This was adopted in *Amoni Thomas Amfry & Another v The Minister for Lands & Another* (Nairobi Petition No. 6 of 2013) [2013] eKLR at [25].

<sup>51</sup> P. Mbote and M. Akech, Kenya: Justice Sector and the Rule of Law, Open Society Foundations, March 2011 at 159.



## Pro bono Resources

The following organizations may provide pro bono opportunities for lawyers:

- FIDA Kenya: <http://www.fidakenya.org> (last visited on September 4, 2015)
- The CRADLE: <http://www.thecradle.or.ke> (last visited on September 4, 2015)
- ICJ-Kenya: <http://www.icj-kenya.org> (last visited on September 4, 2015)
- Kituo Cha Sheria: <http://www.kituochasheria.or.ke> (last visited on September 4, 2015)
- KELIN Kenya: <http://kelinkenya.org/> (last visited on September 4, 2015)
- Law Society of Kenya: <http://www.lsk.or.ke/> (last visited on September 4, 2015)

## CONCLUSION

While Kenya currently lacks a substantial legal aid system, there have been noticeable improvements in the past few years. Individuals without adequate legal representation often lack knowledge of the legal system and fundamental rights, face insurmountable costs and await the outcome of legal proceedings caused by extensive procedural delays. Currently, the Kenyan government only provides limited legal aid, although the passage of a comprehensive Legal Aid Bill would do much to bridge the significant gaps in the existing legal aid system.

NGOs attempt to fill the need for legal representation, but often face resource and capacity constraints. In order for Kenyans to truly have equal access to justice, the government needs to increase its commitment to providing and financially supporting legal aid, and make systematic and procedural changes to reduce the barriers to accessing justice.

September 2015

Pro Bono Practices and Opportunities in Kenya

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Latvia<sup>1</sup>

### INTRODUCTION

In Latvia, the practice of pro bono legal work is permitted, but unregulated. As a result, pro bono services have not developed in a systematic or structural manner. At the same time, there are a number of opportunities for pro bono legal assistance in Latvia, involving aid to both individuals and non-governmental organizations (“NGOs”). As such, international and domestic law firms are encouraged to provide pro bono services to those in need in Latvia.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### The Constitution and Governing Laws

The Latvian legislature, executive and justice system, including the courts, their competence, activity and administration, are all grounded in the Constitution of Latvia (*Satversme*). The Constitution provides that legislative power is exercised by the Latvian Parliament (*Saeima*)<sup>2</sup> and also sets out the foundation of the independent Latvian judiciary.<sup>3</sup>

##### The Courts

##### Levels, Relevant Types, and Locations

Latvia employs a three tier judicial structure which comprises district (city) courts, regional courts and the Supreme Court at the apex of the judicial structure.<sup>4</sup> There are currently 33 district (city) courts, representing courts of first instance for criminal, civil and administrative matters.<sup>5</sup> Six regional courts hear appeals from district (city) courts.<sup>6</sup> The Supreme Court serves as the court of cassation for all cases heard in regional courts (or cases heard in the district (city) courts as provided for by law).<sup>7</sup> Decisions of the Supreme Court are used in developing uniform court practice in the interpretation and application of laws and other legal acts.<sup>8</sup> A separate and independent Constitutional Court is empowered to review cases concerning the compliance of laws with the Constitution and other related matters.<sup>9</sup>

##### Appointed vs. Elected Judges

The Act on Judicial Power provides for the process of appointment of judges, there being no provision for the election of judges by popular vote of the people. Judges of a district (city) court are appointed to office by the Parliament on the recommendation of the Minister of Justice for an initial period of three years,

---

<sup>1</sup> This chapter was drafted with the support of the law firm, SORAINEN.

<sup>2</sup> Article 5, Chapter II (The Saeima) of the Constitution.

<sup>3</sup> Article 5, Chapter VI (Courts) of the Constitution.

<sup>4</sup> Act on Judicial Power, adopted December 15, 1992 (as amended) (hereinafter “**Act on Judicial Power**”).

<sup>5</sup> Chapter 4 (District (City) Courts) of the Act on Judicial Power.

<sup>6</sup> Chapter 5 (Regional Courts) of the Act on Judicial Power.

<sup>7</sup> Chapter 6 (Regional Courts) of the Act on Judicial Power. See also general discussion on the Supreme Court found at: [http://ec.europa.eu/civiljustice/org\\_justice/org\\_justice\\_lat\\_en.htm](http://ec.europa.eu/civiljustice/org_justice/org_justice_lat_en.htm) (last visited on September 4, 2015).

<sup>8</sup> Note: Administrative cases are separately dealt with from civil and criminal cases through administrative courts. Administrative courts monitor the activities of the executive branch, which involves review of administrative acts or specific acts of institutions, as well as determination of public law duties and rights of individuals.

<sup>9</sup> Article 85, Chapter VI (Courts) of the Constitution and Section 1, Chapter I (General Provisions) of the Constitutional Court Law.



with an option for reappointment subject to the satisfaction of certain requirements.<sup>10</sup> At the regional court tier, judges are confirmed by the Parliament, upon a recommendation of the Minister for Justice, for an unlimited term of office.<sup>11</sup> Judges of the Supreme Court are recommended by the Chief Justice of the Supreme Court for confirmation and, once confirmed in office by the Parliament, are so confirmed for an unlimited term of office.<sup>12</sup>

## The Practice of Law

### Education

The Latvian legal profession comprises judges, prosecutors, sworn advocates, assistants to sworn advocates, jurists, sworn notaries and sworn bailiffs. In general, a university degree is a prerequisite to admission to the legal profession. State-funded legal aid may only be provided by persons that possess a professional legal education and comply with certain specific requirements, whereas the provision of pro bono legal assistance is unregulated, and therefore, practitioners in the pro bono space are not required to possess a legal education.

### Licensure

The Advocacy Law regulates the professional and corporate activities of advocates.<sup>13</sup> Advocates are independent and professional lawyers who take the form of sworn advocates, assistants to sworn advocates and other advocates permitted to practice in Latvia.<sup>14</sup> Admission to the position of a sworn advocate or assistant to a sworn advocate includes both professional qualification requirements and requisite work experience. Sworn advocates are entitled to provide legal assistance to any person in civil proceedings, administrative proceedings or in other matters specified by law.<sup>15</sup> In criminal cases, sworn advocates are entitled to defend persons, represent victims and provide legal assistance.<sup>16</sup> Assistants to sworn advocates work under the guidance and supervision of sworn advocates and may only conduct cases in court following the passing of mandated time periods and relevant examinations.<sup>17</sup> While sworn advocates are required to satisfy a specified number of hours of continuing legal education each year, there is no such requirement for pro bono hours.

### Demographics: number of lawyers per capita; number of legal aid lawyers per capita

Lawyers, including sworn advocates are not limited by number, however the profession is naturally limited by the requirements of admission as a sworn advocate or assistant to sworn advocate. As of 2015, there are over 1,300 sworn advocates in Latvia, while the number of assistants to sworn advocates is approximately 76.<sup>18</sup> Statistical information regarding lawyers that are not sworn advocates or assistants to sworn advocates is not maintained.

---

<sup>10</sup> Section 60 (Procedures for the Appointment and Confirmation of Judges of a District (City) Court), Chapter 9 (Procedures for the Appointment and Confirmation of Judges and their Term of Office) of the Act on Judicial Power.

<sup>11</sup> Section 61 (Procedures for the Confirmation of a Judge of a Regional Court), Chapter 9 (Procedures for the Appointment and Confirmation of Judges and their Term of Office) of the Act on Judicial Power.

<sup>12</sup> Section 62 (Procedures for the Confirmation of a Judge of the Supreme Court), Chapter 9 (Procedures for the Appointment and Confirmation of Judges and their Term of Office) of the Act on Judicial Power.

<sup>13</sup> Section 1, Part 1 (General Provisions) of the Advocacy Law of the Republic of Latvia, adopted April 27, 1993 (hereinafter "**Advocacy Law**").

<sup>14</sup> Section 4, Part 1 (General Provisions) of the Advocacy Law.

<sup>15</sup> Section 48, Part 4 (Duties, Rights and Liabilities of Sworn Advocates) of the Advocacy Law.

<sup>16</sup> Section 49, Part 4 (Duties, Rights and Liabilities of Sworn Advocates) of the Advocacy Law.

<sup>17</sup> Sections 92-96, Part 5 (Assistants to Sworn Advocates) of the Advocacy Law.

<sup>18</sup> List of sworn advocates and assistants to sworn advocates, available at <http://www.advokatura.lv/?open=advokati> (last visited on September 4, 2015).



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The State Ensured Legal Aid Law seeks to institutionalize State funded legal aid and has the stated purpose of promoting the right of natural persons to fair court protection by ensuring State guaranteed financial support in the form of legal aid.<sup>19</sup> A person eligible for legal aid may request legal aid in certain civil and criminal matters and administrative proceedings. Administration of the State Ensured Legal Aid Law is performed by the Legal Aid Administration (the “**LAA**”), which is a state institution subordinate to the Ministry of Justice.

### State-Subsidized Legal Aid

#### Eligibility Criteria

Eligibility for State legal aid is prescribed by the State Ensured Legal Aid Law according to the personal circumstances of the individual and a means test. State legal aid is available only to natural persons, including citizens and non-citizens of Latvia, refugees and stateless persons.<sup>20</sup>

Those persons who are eligible for State legal aid have the right to request legal aid provided that such person: (i) is classified by relevant regulation as having the status of a “low-income or needy person”; or (ii) finds themselves suddenly in a situation which prevents them from ensuring the protection of their rights (due to a natural disaster or *force majeure* or other circumstances beyond their control), or are on full support of the State or local government (“**special situation**”).<sup>21</sup>

Legal aid is approved or refused by the LAA in civil and administrative cases<sup>22</sup> and following an application made to the relevant authority conducting the proceedings in criminal cases.<sup>23</sup> In civil and administrative cases, the State provides for and pays expenses for legal aid on a case-by-case basis to cover: (i) up to three hours of consultation, (ii) preparation of up to three procedural documents, and (iii) representation in court not exceeding 40 hours.<sup>24</sup> In criminal cases, the State provides an advocate to defend a defendant.<sup>25</sup> The State provides legal aid for pre-trial proceedings and in court where requested by the authority conducting the criminal case.<sup>26</sup> A person who is refused legal aid may lodge an appeal within certain specified timeframes.

---

<sup>19</sup> Section 1 (Purpose of this Law), Chapter 1 (General Provisions) of the State Ensured Legal Aid Law.

<sup>20</sup> Section 3(2) and (3) (Right to Legal Aid), Chapter I (General Provisions) of the State Ensured Legal Aid Law. (Note: “natural persons” is a reference to people, ie, not “legal persons” in the legal sense, and does not include corporations or NGOs).

<sup>21</sup> Section 3(2) (Right to Legal Aid), Chapter I (General Provisions) of the State Ensured Legal Aid Law. This criteria does not apply to asylum seekers or foreign nationals subject to forcible removal, where different eligibility criteria applies.

<sup>22</sup> Section 5 (General Provisions for Legal Aid), Chapter I (General Provisions) of the State Ensured Legal Aid Law.

<sup>23</sup> See discussion in Part 3 (Can legal aid be obtained for all disputes), found at: [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_lat\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_lat_en.htm) (last visited on September 4, 2015).

<sup>24</sup> See discussion in Part 11 (If I qualify for legal aid, will this cover all the costs of my trial), found at: [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_lat\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_lat_en.htm) (last visited on September 4, 2015).

<sup>25</sup> Sections 17 (Provision of Legal Aid in Criminal Matters) and 18 (Types of Legal Aid in Criminal Matters), Chapter V (Legal Aid in Criminal Matters) of the State Ensured Legal Aid Law.

<sup>26</sup> Section 18 (Types of Legal Aid in Criminal Matters), Chapter V (Legal Aid in Criminal Matters) of the State Ensured Legal Aid Law.

Subject to certain other criteria and dispensation, a person is recognised as “needy” if their average monthly income during the last three months does not exceed € 128.06 per month.<sup>27</sup> A person is recognised as a “low-income person” if a person’s income and material conditions do not exceed the level specified by the relevant municipality (e.g., in the municipality of Riga, the “low-income person” threshold is € 320 per month).<sup>28</sup>

In Latvia there are a substantial number of people who are in need of legal aid, but do not qualify for State-funded legal aid because of the relatively high eligibility criteria. According to the LAA, of the 2,318 State legal aid applications in 2014, 227 were refused and of the 2,443 State legal aid applications in 2013, 262 were refused.<sup>29</sup> Such statistics do not include those persons who do not apply for State-funded legal aid. For many people receiving the minimum wage (currently € 360 per month),<sup>30</sup> payment of legal fees is simply not an option, yet such people would also not qualify for State-funded legal aid. Moreover, even if a person does qualify for State-funded legal aid under the income test, additional eligibility criteria may apply to exclude their legal aid claim.

### Mandatory assignments to Legal Aid Matters

In civil cases, legal aid providers are contracted to the LAA for the provision of legal aid.<sup>31</sup> Following the grant of legal aid by the LAA, the LAA may select a legal aid provider to take on the relevant matter, subject to certain selection criteria.<sup>32</sup> The legal aid provider is responsible for the quality of the legal aid provided and may be liable for losses incurred as a result of his or her professional activity.<sup>33</sup> Once the LAA assigns the relevant matter to the legal aid provider, the legal aid provider may not, subject to certain exceptions, refuse to provide legal aid.<sup>34</sup>

In criminal cases, defence counsel is nominated by the Latvian Council of Sworn Advocates at the request of the person directing the criminal proceedings (for example, the prosecutor or the investigator).<sup>35</sup> The sworn advocates are obliged to accept the criminal matters assigned to them and are compensated according to the criteria set out in subordinate legislation.<sup>36</sup> Anecdotal studies have

---

<sup>27</sup> Rules of Cabinet of Ministers of March 30, 2015 No 299 “Regulations Regarding the Recognition of a Family or Person Living Separately as Needy.”

<sup>28</sup> Section 14 (Persons to be Provided with Residential Space First), Chapter III (Renting of Residential space) of the Law On Assistance In Solving Apartment Matters.

<sup>29</sup> LAA Publications and Statistics, available at <http://jpa.gov.lv/publikacijas-un-statistika-eng> (last visited on September 4, 2015).

<sup>30</sup> Section 2 of the Rules of Cabinet of Ministers of August 27, 2013 No 665 “Regulations on the minimum monthly wage and the minimum hourly wage rate.”

<sup>31</sup> Section 30 (Legal Aid Providers), Chapter VIII (Legal Aid Providers) of the State Ensured Legal Aid Law.

<sup>32</sup> Section 33 (Assignment of Legal Aid Provider), Chapter VIII (Legal Aid Providers) of the State Ensured Legal Aid Law.

<sup>33</sup> Section 32(1) and (2) (Duties and Liability of a Legal Aid Provider), Chapter VIII (Legal Aid Providers) of the State Ensured Legal Aid Law.

<sup>34</sup> Section 32(5) (Duties and Liability of a Legal Aid Provider), Chapter VIII (Legal Aid Providers) of the State Ensured Legal Aid Law.

<sup>35</sup> Section 52, Part 4 (Duties, Rights and Liabilities of Sworn Advocates) of the Advocacy Law of the Republic of Latvia; Section 80 (Retaining a Defence Counsel), Section 81 (Invitation of a Defence Counsel in a Separate Procedural Action), Chapter 5 (Persons who Perform Defence) of the Criminal Procedure Law.

<sup>36</sup> Section 52, Part 4 (Duties, Rights and Liabilities of Sworn Advocates) of the Advocacy Law of the Republic of Latvia; Rules of Cabinet of Ministers of January 1, 2010 No 1493 “Regulations Regarding the Amount of State-ensured Legal Aid, the Amount of Payment, Reimbursable Expenses and the Procedures for Payment.”



suggested that remuneration for taking on State funded legal aid matters in criminal cases is substantially lower than in the case of private practice briefs.

### Unmet Needs and Access Analysis

Currently State-funded legal aid is available only to natural persons and not to NGOs or other persons. In addition, as explained previously, natural persons who cannot afford legal representation themselves still face problems in accessing State-funded legal aid due to the relatively high eligibility criteria. Accordingly, despite the provision of State-funded legal aid and supporting legislation, there still appears to be a gap between those people who require legal assistance and those who fail to meet the eligibility criteria for State-funded legal assistance. Pro bono legal assistance is especially important for such people as well as NGOs and similar organisations.

### Alternative Dispute Resolution

#### Mediation, Arbitration, Etc.

Legal aid is not available where alternative dispute resolution mechanisms such as arbitration are employed.

#### The Ombudsman

The Ombudsman is an official elected by Parliament for a term of five years tasked with encouraging the protection of human rights and the promotion of a legal and expedient State authority, which observes the principle of good administration. Private individuals may apply to the Ombudsman with a complaint or request in regards to a violation of human rights (defined broadly in legislation), discrimination or breach of the principle of equal treatment by State authorities, private individuals or legal entities, or good governance.<sup>37</sup> If a breach is detected, and if it is necessary for the benefit of society,<sup>38</sup> the Ombudsman may represent the rights and interests of a private individual in an administrative court.

## PRO BONO ASSISTANCE

### Pro bono Opportunities

#### Private Attorneys

Private attorneys are not mandated to undertake or report pro bono matters but are encouraged to do so by the Latvian Council of Sworn Advocates. The Latvian Lawyers Association also provides an online forum<sup>39</sup> where members can discuss various legal issues free of charge and the Christian Lawyers Association<sup>40</sup> brings together various legal professionals and law students to provide legal assistance to Christian organisations and Christians in the defense of religious discrimination.

#### Law Firm Pro bono Programs

A number of law firms in Latvia are committed to pro bono work<sup>41</sup> and developing and maintaining pro bono programs either independently or in partnership with local charities<sup>42</sup> and the Latvian Council of Sworn Advocates.

---

<sup>37</sup> See Ombudsman of the Republic of Latvia, available at <http://www.tiesibsargs.lv/eng/ombudsman/> (last visited on September 4, 2015).

<sup>38</sup> Ibid.

<sup>39</sup> See <http://www.ljb.lv/?c=diskusijas> (last visited on September 4, 2015).

<sup>40</sup> See <http://www.kja.lv/merki.html> (last visited on September 4, 2015).

<sup>41</sup> See <http://www.sorainen.com/en/News/3941/attorney-at-law-pro-bono-consultation-days-during-march-in-latvia-again-this-year> (last visited on September 4, 2015) and [http://www.eversheds.com/global/en/what/publications/shownews.page?News=en/latvia/en/pro\\_bono\\_legal\\_consultations\\_eversheds\\_2014-02-14](http://www.eversheds.com/global/en/what/publications/shownews.page?News=en/latvia/en/pro_bono_legal_consultations_eversheds_2014-02-14) (last visited on September 4, 2015).



## Non-Governmental Organizations

Delna, the Latvian branch of Transparency International, has established the 'TI Latvia Pro Bono Lawyers Network' with the goal of strengthening public confidence in democracy and the rule of law through increasing legal support and advocacy in "whistle-blower" cases.<sup>43</sup>

The Latvian Centre for Human Rights provides free legal advice and representation on a wide range of human rights matters.<sup>44</sup>

The Latvian Pro Bono Legal Centre, which is currently managed by the Riga Graduate School of Law,<sup>45</sup> allows NGOs to receive free legal advice from participating Latvian attorneys.

## Bar Association Pro bono Programs

The Latvian Council of Sworn Advocates has an annual day on which a number of law firms and sworn advocates host (at their offices) free legal consultations on a wide range of legal matters such as civil, commercial, competition, construction, employment, financial, intellectual property, real estate and tax law.<sup>46</sup>

## University Legal Clinics

The Faculty of Law at the University of Latvia runs a legal clinic<sup>47</sup> where senior law students under the supervision of sworn advocates provide free legal advice to the public on a case-by-case basis on a wide range of matters including employment, property, patients, consumers, NGOs and freedom of information.<sup>48</sup> The Faculty of Business Administration at the University of Turība also runs a legal clinic where students provide free legal advice under the supervision of faculty staff.<sup>49</sup>

## Historic Development and Current State of Pro bono

### Historic Development and Current State of Pro bono

Pro bono practice in Latvia has developed slowly. Due to a lack of resources there is a tendency for some well-planned pro bono programs or support centres to be established but not developed further. However, increasingly, the Latvian Council of Sworn Advocates is encouraging more sworn advocates and law firms to provide pro bono services.

### Laws and Regulations Impacting Pro bono

There are no rules directly governing pro bono practice, however, some general litigation rules such as "Loser Pays" (state duties and sworn attorney fees)<sup>50</sup> may foster a reluctance to utilize available pro bono services.

---

<sup>42</sup> See <http://www.petrovs.lv/index.php?page=99> (last visited on September 4, 2015) and <https://www.bnt.eu/en/social-responsibility/1880-latvia-social-responsibility> (last visited on September 4, 2015).

<sup>43</sup> See <http://delna.lv/2014/11/06/ti-latvia-pro-bono-juristu-tikla-izveide/> (last visited on September 4, 2015).

<sup>44</sup> See <http://cilvektiesibas.org.lv/en/legal-assistance/> (last visited on September 4, 2015).

<sup>45</sup> See <https://www.facebook.com/pages/Pro-bono-Juridisk%C4%81-atbalsta-centrs/1536166106615696> (last visited on September 4, 2015).

<sup>46</sup> Supra n. 73.

<sup>47</sup> See <http://www.lu.lv/eng/faculties/fl/structural-units/the-legal-clinic-of-the-faculty/> (last visited on September 4, 2015).

<sup>48</sup> See <http://www.lm.gov.lv/text/1259> (last visited on September 4, 2015).

<sup>49</sup> See <http://www.lm.gov.lv/text/1259> (last visited on September 4, 2015).

<sup>50</sup> Section 41 (Reimbursement of Court Costs), Section 44 (Costs Related to Conducting a Matter and Reimbursement Thereof), Chapter 4 (Costs of Adjudication) of the Civil Procedure Law.

There are also general practice restrictions that affect the availability of pro bono counsel. For example, only sworn advocates (in certain cases also foreign sworn advocates) or assistants to sworn advocates (defence counsel) are permitted to defend persons in criminal matters, only sworn advocates are permitted to represent persons before the Supreme Court,<sup>51</sup> and only certain persons are considered sworn advocates under Latvian law (i.e., sworn advocates and assistants to sworn advocates who have obtained such status under the law, and citizens of European Union Member States who have obtained the qualification of a sworn advocate in one of the European Union Member States, in certain cases foreign advocates).<sup>52</sup>

### Socio-Cultural Barriers to Pro bono or Participation in the Formal Legal System

According to Delna, the Latvian branch of Transparency International, there are several barriers to providing pro bono legal assistance in Latvia.<sup>53</sup>

- a lack of deep-rooted pro bono traditions;
- a lack of information about the legal needs of individuals and a lack of information about pro bono providers;
- accessibility to legal services, including pro bono aid, is limited in areas with low economic activity, since lawyers are mostly concentrated in large cities;
- smaller law firms and individually practicing lawyers can devote less financial resources to pro bono work as compared to large law firms. As such, smaller law firms and individually practicing lawyers mostly engage in pro bono work if they are personally interested in a specific case rather than as routine work;
- sometimes NGOs view law firms as competitors and are not keen to involve outside counsel in problem solving;
- due to the small size of Latvia and its legal market, large law firms are exposed to the potential risk of a conflict of interest; and
- since pro bono work is often regarded as a means for publicity, law firms may not be interested in carrying out pro bono work which does not show potential to attract public attention.

Finally, the restoration of public confidence in the judicial system in general remains a continuing issue affecting the public's use of pro bono resources. Thankfully, this issue is one that is currently being addressed in Latvia.<sup>54</sup>

### Pro bono Resources

- SORAINEN: [www.sorainen.com](http://www.sorainen.com) (last visited on September 4, 2015); Linda Reneslāce [linda.reneslace@sorainen.com](mailto:linda.reneslace@sorainen.com) Andris Tauriņš [andris.taurins@sorainen.com](mailto:andris.taurins@sorainen.com) Agris Repšs [agris.repss@sorainen.com](mailto:agris.repss@sorainen.com) +371.67.365.000
- Latvian Council of Sworn Advocates: [www.advokatura.lv](http://www.advokatura.lv) (last visited on September 4, 2015); Jānis Grīnbergs [padome@advokatura.lv](mailto:padome@advokatura.lv) +371.67.358.487
- Latvian Lawyers Association: [www.ljb.lv](http://www.ljb.lv) (last visited on September 4, 2015); Aivars Borovkovs +371.67.315.564
- Christian Lawyers Association: [www.kja.lv](http://www.kja.lv) (last visited on September 4, 2015); Christian Lawyers Association [kristigiejuristi@gmail.com](mailto:kristigiejuristi@gmail.com) +371.26.540.628

<sup>51</sup> Section 79(2) (Defence Counsel), Chapter 5 (Persons who Perform Defence) of the Criminal Procedure Law; Section 82(6),(7) (Right to Representation in the Civil Procedure), Chapter 12 (Representatives) of the Civil Procedure Law.

<sup>52</sup> Section 4, Part I (General Provisions) of the Advocacy Law of the Republic of Latvia.

<sup>53</sup> Telephone interview with Delna (Jun. 30, 2015).

<sup>54</sup> See <http://delna.lv/2014/12/02/tieslietu-ministrijas-prioritate-ir-sabiedribas-uzticibas-atjaunosana-tiesu-varai/> (last visited on September 4, 2015).



- Delna: <http://delna.lv> (last visited on September 4, 2015); Gundars Jankovs [ti@delna.lv](mailto:ti@delna.lv) +371.67.285.585
- Latvian Centre for Human Rights: <http://cilvektiesibas.org.lv> (last visited on September 4, 2015); Anhelita Kamenska [angel@humanrights.org.lv](mailto:angel@humanrights.org.lv) [office@humanrights.org.lv](mailto:office@humanrights.org.lv) +371.67.039.290
- Latvian Pro bono Legal Centre: <https://www.facebook.com/pages/Pro-bono-Juridisk%C4%81-atbalsta-centrs/1536166106615696> (last visited on September 4, 2015); [info@probono.lv](mailto:info@probono.lv) +371.26.040.721
- Faculty of Law at the University of Latvia: <http://www.lu.lv/eng/faculties/fl/structural-units/the-legal-clinic-of-the-faculty/> (last visited on September 4, 2015); Sandra Zīle Gereiša [zile@lu.lv](mailto:zile@lu.lv) +371.67.034.591
- Faculty of Business Administration at the University of Turība: <http://www.turiba.lv/en/studijas/faculty-of-business-administration/about-faculty/34/> (last visited on September 4, 2015); Faculty of Business Administration at the University of Turība [turiba@turiba.lv](mailto:turiba@turiba.lv) +371.67.607.726

## CONCLUSION

Latvia has a functioning State-funded legal aid system, but legal aid is still needed by NGOs and those individuals that do not qualify for State-funded legal aid. Therefore, pro bono services provided by international and domestic law firms can be very helpful in ensuring the proper administration of justice.

September 2015

Pro Bono Practices and Opportunities in Latvia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



# Pro Bono Practices and Opportunities in Liechtenstein<sup>1</sup>

## INTRODUCTION

With a population of around 37,000, Liechtenstein is the fourth smallest country in Europe and the sixth smallest country in the world.<sup>2</sup> Liechtenstein currently does not have a formally regulated culture of providing pro bono legal services and apparently lacks any specific platforms to do so. This may be due to the remarkable wealth that Liechtenstein and most of its inhabitants enjoy. Liechtenstein currently boasts the third highest gross domestic product per capita adjusted on a purchasing power parity basis.<sup>3</sup> Furthermore, its sophisticated system of state-funded legal aid arguably minimizes the need for individual lawyers to provide pro bono services.

## OVERVIEW OF THE LEGAL SYSTEM

### Constitution and Governing Laws

#### Constitution and Governing Laws

Liechtenstein is a constitutional, hereditary monarchy with an elected Parliament that enacts law. The Constitution sets out two forms of direct democracy: initiatives and referendums. The Government is the country's executive body. Comprising the Prime Minister and four Ministers, the Government is a collegial body reporting both to Parliament and to the Reigning Prince. The Constitution of the Principality of Liechtenstein forms the supreme law of Liechtenstein, and was last amended in 2003.<sup>4</sup> Liechtenstein has a civil law system and many of its laws are highly similar to those of its neighboring countries, Austria and Switzerland.<sup>5</sup>

In addition to its own country-specific laws, as a member of the European Economic Area ("EEA"),<sup>6</sup> Liechtenstein is obliged to implement most European Union ("EU") regulations.

#### The Courts

##### Court System

The Liechtenstein court system is made up of ordinary courts, the Administrative Court (*Verwaltungsgerichtshof*) and the Constitutional Court (*Staatsgerichtshof*). The ordinary courts hear general civil and criminal matters, while the Constitutional Court reviews cases where any court orders or judgments are allegedly in breach of a party's constitutionally guaranteed rights.<sup>7</sup>

##### Appointment of Judges

There are three levels of ordinary courts: the High Court (*Landgericht*), the Court of Appeal (*Obergericht*), and the Supreme Court (*Oberster Gerichtshof*).<sup>8</sup> All courts are located in the capital, Vaduz.<sup>9</sup>

---

<sup>1</sup> This chapter was prepared with the support of Lampert & Partner Attorneys at Law Ltd, Vaduz, Liechtenstein.

<sup>2</sup> See <http://www.liechtenstein.li/en/country-and-people/society/> (last visited on September 4, 2015).

<sup>3</sup> See <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html> (last visited on September 4, 2015).

<sup>4</sup> See Constitution of the Principality of Liechtenstein available at <http://www.llv.li/files/rdr/Verfassung-E-01-02-2014.pdf> (last visited on September 4, 2015).

<sup>5</sup> See <http://www.chambersandpartners.com/guide/europe/7/133/1> (last visited on September 4, 2015).

<sup>6</sup> See <https://www.gov.uk/eu-eea> (last visited on September 4, 2015).

<sup>7</sup> See Dispute Resolution: Liechtenstein, Practical Law, <http://uk.practicallaw.com/0-502-2520> (last visited on September 4, 2015).

<sup>8</sup> See <http://www.liechtenstein.li/en/country-and-people/state/courts/> (last visited on September 4, 2015).



Proceedings before the High Court are conducted by a single judge, while proceedings before the Court of Appeal are heard by a panel of three judges and proceedings before the Supreme Court are heard by a panel of five judges.<sup>10</sup> When acting as a Criminal Court, proceedings before the High Court may be conducted by a panel of five judges or a single judge, depending on the severity of the punishment for the criminal act.

For non-contentious matters, including specific family matters, the Law on Extra-Judicial Procedures (*Ausserstreitgesetz*) applies. Such proceedings are less formal than the proceedings of contentious cases, and the judge has more *ex officio* powers.

Up until July 1, 2015, Liechtenstein law provided for compulsory pre-trial settlement proceedings (*Vermittlung*), which were conducted through judges of the peace. These proceedings were very similar to the Swiss conciliation proceedings conducted by justices of the peace.<sup>11</sup> Today, before filing any lawsuit, an optional conciliation procedure before the High Court is provided by the Liechtenstein Code of Civil Procedure.

Judges are proposed by the Judicial Selection Commission and elected by Parliament. The Judicial Selection Commission comprises the Reigning Prince, one member of each Parliamentary group represented in Parliament and the Minister of Justice, as well as additional members. The Commission is chaired by the Reigning Prince who also has the casting vote (Law on Appointment of Judges, *Richterbestellungsgesetz*). The Judicial Selection Commission is governed principally by the qualifications and personal suitability of the candidates. Special knowledge in the relevant areas of law and relevant professional experience are taken into account.

## The Practice of Law

### Education

For admission to the Liechtenstein bar, Liechtenstein lawyers are required to complete their legal studies at a university or college recognised by the Liechtenstein government. The government recognises universities or colleges providing studies of law that teach the general principles of the Liechtenstein legal system and last for at least four years.<sup>12</sup> As there are currently no universities or colleges that teach Liechtenstein law, almost all Liechtenstein lawyers are educated in Austria or Switzerland, both of which have very similar legal regimes to that of Liechtenstein.<sup>13</sup>

### Licensure

Once admitted to the Liechtenstein bar, Liechtenstein lawyers are free to practice all forms of Liechtenstein law and may appear before all types of Liechtenstein courts.<sup>14</sup>

### Demographics

Due to the size of Liechtenstein, there are very few lawyers. The Liechtenstein bar association only names 161 lawyers and 16 established European lawyers.<sup>15</sup> This equates to approximately 0.005 lawyers per capita.

---

<sup>9</sup> *ibid.*

<sup>10</sup> See <https://www.gov.uk/eu-eea> (last visited on September 4, 2015).

<sup>11</sup> See *id.*

<sup>12</sup> See <http://www.lirak.li/en/index.php?submenu=Zulassung&src=gendocs&link=Zulassung&category=Main> (last visited on September 4, 2015).

<sup>13</sup> See <http://www.chambersandpartners.com/guide/europe/7/133/1> (last visited on September 4, 2015).

<sup>14</sup> See Dispute Resolution: Liechtenstein, Practical Law, <http://uk.practicallaw.com/0-502-2520> (last visited on September 4, 2015).

### Legal Regulation of Lawyers

Lawyers in Liechtenstein have to abide by the Code on Lawyers (*Rechtsanwaltsgesetz*), the Professional Guidelines of the Liechtenstein Chamber of Lawyers (*Standesrichtlinien der Liechtensteinischen Rechtsanwaltskammer*),<sup>16</sup> and the Code of Conduct for Lawyers in the EU (*Berufsregeln der Rechtsanwälte der Europäischen Union*).<sup>17</sup>

In Liechtenstein, lawyers' fees are freely negotiable.<sup>18</sup> However, contingency fees are prohibited. Only a surcharge to the fees in the case of successful litigation may be agreed (i.e. mixed fee agreements). Generally, compensation is based on a statutory tariff for legal services and a set of professional rules governing the fees that lawyers may charge. Within this system, a lawyer's fee is based on the "value of the dispute" (*Streitwert*), e.g., the amount of the damages claim or the consideration in a transaction, the degree of difficulty, as well as the nature and the amount of the necessary legal services.

If a lawyer and client have agreed upon the tariff system, only specific services provided in court may be charged, (e.g. court briefs such as complaints or appeals and attendance at court hearings (the "basic charges")). Other "out-of-court" services (including meetings, telephone conversations, correspondence, review of files, legal research, etc.) are usually remunerated by means of a "flat charge" (*Einheitssatz*) that is a percentage of the basic charge. The flat charge is then added to the basic charge. Alternatively, a lawyer may ask the client to pay for each out-of-court service separately. In such a case, the client agrees to pay the basic charge plus fees related to any additional services performed. When enforcing a judgement, however, the successful party's lawyer may claim from the opposite party only the basic charge plus the flat charge.

Like most continental European states, Liechtenstein follows the "loser pays" system, according to which the losing party in a litigation matter has to bear all costs and legal fees. If a plaintiff's case is only partially successful, he or she is entitled to receive from the other party a percentage of costs and court fees in proportion to the extent to which the plaintiff or defendant has succeeded with the complaint or defense, respectively.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Access to legal services by those unable to afford them is ensured by a system of state-subsidized legal aid (*Verfahrenshilfe*).<sup>19</sup> Although legal aid was traditionally reserved for natural persons, as of December 2015, it will now be extended to legal persons as well.<sup>20</sup> Legal aid is available for both criminal and civil cases, in the form of legal advice and representation in court<sup>21</sup>. In respect of litigation matters, legal aid is

<sup>15</sup> See [http://www.lirak.li/en/index.php?submenu=Anwaltsverzeichnis&src=directory&view=Membership&view=Memberships\\_list](http://www.lirak.li/en/index.php?submenu=Anwaltsverzeichnis&src=directory&view=Membership&view=Memberships_list) (last visited on September 4, 2015).

<sup>16</sup> See <http://www.lirak.li/en/clientuploads/docs/gesetze/ProfessionalGuidelines.pdf> (last visited on September 4, 2015).

<sup>17</sup> See [http://www.lirak.li/en/clientuploads/docs/gesetze/code2002\\_en.pdf](http://www.lirak.li/en/clientuploads/docs/gesetze/code2002_en.pdf) (last visited on September 4, 2015).

<sup>18</sup> See Code on Lawyers (*Rechtsanwaltsgesetz*) §§ 22 et seq. Available at <http://www.lirak.li/clientuploads/docs/gesetze/RAG01.09.2008.pdf> (last visited on September 4, 2015).

<sup>19</sup> See Code of Civil Procedure (*Zivilprozessordnung*) §§ 63 et seq. available at <https://www.gesetze.li/Seite1.jsp?LGBIm=1912009a> (last visited on September 4, 2015).

<sup>20</sup> See <http://www.batlinergasser.com/en/about-us/news/2014/legal-aid-now-also-available-legal-entities-0> (last visited on September 4, 2015).

<sup>21</sup> See <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2006/Liechtenstein.PDF> (last visited on September 4, 2015).



always granted by the court of first instance, even if it does not become necessary until the case reaches a higher court.

## State-subsidized Legal Aid

### Eligibility Criteria

#### Financial Means

A claimant must prove their indigence, i.e., the applicant must disclose his income and assets to determine whether full or partial aid or a deferral of fees or payment in installments may be granted (*Teilverfahrenshilfe*).

#### Merits

In civil cases, it is possible for a court to refuse legal aid for lack of merit.<sup>22</sup> Therefore the claim or defense upheld must not be obviously willful or hopeless; the standard applied being the reasonableness test (i.e. whether a reasonable person would actually enforce the claim or defense at hand).

## Mandatory Assignments to Legal Aid Matters

When legal aid is granted by the court, the Board of the Liechtenstein Bar Association appoints a lawyer to represent the applicant, taking care to ensure an equal allocation of mandates. Lawyers are obliged to take on legal aid cases which are delegated to them by the Liechtenstein Bar Association. However, the delegation may be refused on certain grounds, such as a conflict of interest. If legal aid is granted for all legal costs, the state will waive the court fees and pay the scheduled statutory fees to the attorney.

For disputes with banks, investment funds and asset managers there is a Conciliation Board and an appointed conciliator whose responsibility is to mediate conflicts and settle such claims out of court.<sup>23</sup>

## PRO BONO ASSISTANCE

### Pro bono Opportunities

#### Law Firm Pro bono Programs

There is no documented pro bono work being undertaken in Liechtenstein at the moment, and it seems that Liechtenstein generally lacks a culture of providing formally regulated pro bono legal services, though lawyers provide pro bono work on a voluntary basis. As noted above, this is likely due to the country's significant wealth, coupled with readily available and fairly significant legal aid services.

#### Bar Association Pro bono Programs

However, there are no legal barriers to conducting pro bono work in Liechtenstein. As noted previously, lawyer's fees are freely negotiable within the limits set by the fee regulations of the Bar Association. A lawyer may provide his services for free, if he or she chooses to do so. However, this does not appear to be a common practice in Liechtenstein, and in most cases, lawyers will only agree to provide services without charge if the client is personally known to them.

### Pro bono Resources

It appears that besides the Liechtenstein Bar Association there are no referral organizations, nongovernmental organizations ("NGOs") or clearing houses that are sources for pro bono opportunities

---

<sup>22</sup> *ibid.*

<sup>23</sup> See at [www.bankenombudsmann.li](http://www.bankenombudsmann.li) (last visited on September 4, 2015).



in Liechtenstein. Further information on legal practice in Liechtenstein may be provided by the Liechtenstein Bar Association.<sup>24</sup>

## CONCLUSION

While the legal framework and freely negotiable aspects of lawyers' fees allow for pro bono representation, there is no statistical data available with respect to pro bono work being undertaken in Liechtenstein at present. The well-established system of state-subsidized legal aid arguably minimizes the need for such efforts.

September 2015

Pro bono Practices and Opportunities in Liechtenstein

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>24</sup> See [www.lirak.li](http://www.lirak.li) (last visited on September 4, 2015).

## Pro Bono Practices and Opportunities in Lithuania<sup>1</sup>

### INTRODUCTION

The system of free legal aid in the Republic of Lithuania (“**Lithuania**”) has evolved extensively since Lithuania’s accession to the EU in 2004 and the transposition of the EU’s requirements for the provision of state-subsidized legal aid<sup>2</sup> into Lithuanian legislation. A strong culture of pro bono assistance has also developed in the legal community as certain law firms, university students and NGOs provide free legal services to applicants who may not qualify for state legal aid, all of which continues to strengthen access to justice in Lithuania.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

With a view to ensuring fair and impartial court decisions, the Constitution of the Republic of Lithuania (the “**Constitution**”)<sup>3</sup> and the Law Amending the Law on Courts, May 31, 1994, No. I-480 (the “**Law on Courts**”) establish that in the administration of justice, courts are independent from other government institutions, officials, political parties, organizations and other persons. Interference with the administration of justice is a civil offence. Court decisions may only be reviewed by courts of a higher instance and in accordance with the procedure prescribed by law. The system of courts, their competence and the system of court organization, activity and administration, as well as the system of self-governance by the courts, the status of judges, their nomination, career, liability and other issues related to judicial activities are regulated by the Constitution, the Law on Courts and other legal acts.

##### The Courts<sup>4</sup>

##### Types and levels of courts

The court system of Lithuania is made up of courts of general jurisdiction and courts of special jurisdiction. The Supreme Court of Lithuania, the Court of Appeal of Lithuania, five regional courts and 54 district courts are courts of general jurisdiction dealing with civil and criminal cases. District courts also hear cases of administrative offences falling within their jurisdiction by law. The Supreme Administrative Court of Lithuania and five regional administrative courts are courts of special jurisdiction, which hear disputes arising out of administrative legal relations.

District courts are the courts of first instance for criminal cases, civil cases, administrative offences assigned to the jurisdiction of the district court by law, property cases involving mortgage disputes, and cases relating to the enforcement of judicial decisions and sentences. District court judges also function as pre-trial and enforcement judges.

Regional courts are the courts of first instance for criminal and civil cases assigned to their jurisdiction by law. They also hear appeals from judgments, decisions, rulings and orders of the district courts. The president of a regional court organizes and controls the administrative activities of the district courts and their judges in accordance with the procedure prescribed by law.

The Court of Appeal is the appeal court for cases heard in the regional court where the regional court is acting as a court of first instance. It also hears requests for the recognition of decisions of foreign or

<sup>1</sup> This chapter was drafted with the support of Sorainen.

<sup>2</sup> European Council Directive 2003/8/EC of January 27, 2003.

<sup>3</sup> The Constitution was adopted by the citizens of Lithuania in the referendum of October 25, 1992.

<sup>4</sup> See Lithuanian Courts <<http://www.teismai.lt/en/courts/judicial-system/>> (last visited on September 4, 2015).



international courts and arbitration awards. The president of the Court of Appeal organizes and controls the administrative activities of regional courts and their judges in accordance with the procedure prescribed by law.

The Supreme Court of Lithuania is the highest appellate court (or “court of cassation”) for judgments, decisions, rulings and orders of courts of general jurisdiction. As such, it ensures the uniform development of case law regarding the interpretation and application of laws and other legal acts. Specifically, it has the authority to determine whether the laws and other legal acts adopted by the Parliament (*Seimas*) are in conformity with the Constitution and whether the legal acts adopted by the President of Lithuania (the “**President**”) and executive conform to the Constitution and laws of Lithuania.<sup>5</sup>

Regional administrative courts are courts of special jurisdiction established for hearing complaints (“**petitions**”) with respect to administrative acts and omissions by public entities. Regional administrative courts hear disputes in the field of public administration and deal with issues relating to the lawfulness of regulatory administrative acts, tax disputes and other legal issues relating to public administration. Before applying to an administrative court, individual complaints may be resolved using the pre-trial procedure. In this case, disputes are investigated by municipal public administrative dispute commissions, district administrative dispute commissions and the Supreme Administrative Dispute Commission.

The Supreme Administrative Court is the first and final instance court for administrative cases assigned to its jurisdiction by law. It also functions as the appeals court for decisions, rulings and orders of regional administrative courts and for district court decisions regarding administrative offences. The Supreme Administrative Court also hears petitions on the reopening of completed administrative proceedings, including those of administrative offences, as specified by law. Like the Supreme Court of Lithuania, it ensures the uniform development of cases under its jurisdiction.

### Appointed judges

The Law on Courts provides for the selection, nomination and appointment of judges by the President, on the recommendation of a special committee of judges (which also advises on the dismissal of judges), following a rigorous selection process.<sup>6</sup> Justices of the Supreme Court as well as its president are nominated and dismissed by the Parliament on the recommendation of the President. Judges of the Court of Appeal and its president are nominated by the President with the consent of the Parliament. Judges and presidents of local, regional and specialized courts are nominated, and their places of work are changed, by the President.

Persons nominated to the judiciary must take an oath promising to be faithful to the Republic of Lithuania and to administer justice only according to the law.

### The Practice of Law

The legal profession encompasses judges, prosecutors, attorneys, assistant attorneys, jurists, notaries and bailiffs. A legal education in Lithuania can be obtained in universities or colleges, but only a university degree grants a person the right to become an attorney, notary, bailiff, judge, civil servant or in-house company lawyer. Persons who obtain a law degree from a college may not become attorneys or judges.

The difference between “attorneys” and “jurists” lies in their admission to the Lithuanian Bar Association (the “**Bar**”), which is contingent upon five or more years of practice (or at least two years of practice as an assistant attorney) and passing the Bar examination. Every attorney must be a member of the Bar, which is headed by elected members, and attorneys must follow the professional rules of conduct. These are legal obligations under the Law on the Bar of the Republic of Lithuania (the “**Law on the Bar**”).<sup>7</sup> An attorney is treated as an independent servant of justice rather than as a commercial actor. An attorney therefore is responsible not only to his or her client, but to the judicial system as a whole.

---

<sup>5</sup> See Ministry of the Interior of the Republic of Lithuania <<http://www.vrm.lt/index.php?id=808&lang=2>> (last visited on September 4, 2015).

<sup>6</sup> Law on Courts, Arts. 51-55.

<sup>7</sup> Adopted on March 18, 2004, Nr. IX-2066.



Attorneys have the right to provide legal advice and represent any person or entity in court. The number of attorneys is not limited and there are over 2,800 practising attorneys and over 800 assistant attorneys in Lithuania at present.

By contrast, jurists are not admitted to the Bar but they can still practise law as in-house counsel to public institutions or companies, and as such jurists can only give legal advice to and represent their employer in court.

## LEGAL RESOURCES TO INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The system of free legal aid in Lithuania has evolved extensively over the past decade. One of the main reasons for this has been Lithuania's accession to the EU in 2004 and the transposition of the EU's requirements for the provision of legal aid into Lithuanian legislation. The cornerstone of this process was the adoption of the Law on State-Guaranteed Legal Aid (the "LSGLA") by the Parliament in 2000, which was last amended in 2014.

Until the LSGLA came into force on January 1, 2001, persons had a constitutional right to legal assistance in criminal matters only,<sup>8</sup> while the Civil Procedure Code guaranteed legal aid only in certain civil cases.<sup>9</sup> Currently, in accordance with the LSGLA, state-subsidized legal aid covers all criminal, civil and administrative matters and can be provided to citizens of Lithuania, citizens of EU member states, other natural persons lawfully residing in Lithuania or in other EU member states, and other persons referred to in international treaties to which Lithuania is a party.<sup>10</sup>

### State-Subsidized Legal Aid

The LSGLA provides for two types of state legal aid: primary and secondary. Primary and secondary legal aid can only be provided to natural persons, i.e. legal entities are not entitled to such aid.

Primary legal aid is out-of-court aid, which includes the provision of legal information, legal consulting and drafting of legal documentation (for example, as required by municipal or police authorities) and applications for secondary legal aid.<sup>11</sup> Such legal aid also includes advice on out-of-court settlements, actions for amicable settlements of disputes and drafting of agreements for amicable settlements.<sup>12</sup> This type of legal aid must be provided immediately upon the application being made (or by scheduling an appointment within five days), either orally or in writing, to a municipal executive authority irrespective of the applicant's financial status. However, an individual is only allowed up to one hour of free legal advice or information on that matter. An extension of time may be granted by a decision of the municipal executive authority or its officer. Primary legal aid can be provided by municipal officers or public institutions as well as attorneys on the basis of an agreement with the municipal authority, but in practice, primary legal aid is provided mainly by municipal officers.

Primary legal aid is unavailable where the applicant's claim is clearly ungrounded, the applicant has already received detailed advice on the issue from an attorney, or it is clear that the applicant can obtain such advice without recourse to primary legal aid.<sup>13</sup>

---

<sup>8</sup> Constitution, Art. 31, para. 6; Criminal Procedure Code, Official Gazette, no. 37, March 14, 2002, Art. 51.

<sup>9</sup> Civil Procedure Code, Official Gazette, no. 36, February 28, 2002, Art. 20.

<sup>10</sup> This would capture, for example, refugees: LSGLA Art. 11, paras. 1-2.

<sup>11</sup> See <<http://www.teisinepagalba.lt/lt/pirmine/tm/kastaip/>> (last visited on September 4, 2015).

<sup>12</sup> LGSLA, Art. 2, para. 2.

<sup>13</sup> LGSLA, Art. 11, para. 4.

Secondary legal aid covers the drafting of legal documents, defense and representation in court, as well as representation in out-of-court dispute settlements if mandated by law or the court.<sup>14</sup> It also includes coverage of civil and administrative litigation costs.<sup>15</sup> The provision of this type of legal aid is subject to the following conditions:

- **Financial Criteria:** All persons requesting secondary legal aid must submit a declaration of property and income to local tax authorities. Depending on which of the two statutory levels of property and income the applicant falls within, they will either be granted aid covering 100% or 50% of the expenses of secondary legal aid (including court costs and disbursements).
- **Merit Criteria:** The LGSLA stipulates that secondary legal aid cannot be provided where: (a) the applicant's claim is clearly unfounded; (b) representation in a lawsuit has no reasonable prospect of success; (c) the applicant brings an action for non-pecuniary damage related to the defense of the applicant's honour and dignity, and the damage suffered is not material; (d) the application for legal aid relates to a requirement arising directly from the commercial or professional activities of the applicant; (e) the applicant could receive necessary legal services without relying on state-subsidized legal aid; (f) the applicant is applying on behalf of a third party for a violation of that third party's rights, except where representation for the third party is required as a matter of law; and (g) the claim for which secondary legal aid is being sought lapsed while legal aid was being sought.<sup>16</sup>
- In addition, secondary legal aid may be refused if: (a) the possible costs of pursuing the applicant's claim would significantly outstrip the financial value of the claim itself; (b) a non-pecuniary claim is not material; (c) the applicant is clearly able to defend their interests without the help of an attorney; or (d) the applicant has insurance which may cover the legal costs.<sup>17</sup>
- These requirements do not apply to administrative cases, to applicants who are the subject of a criminal investigation where, by law, the participation of an attorney is mandatory ("*ex officio*" criminal cases)<sup>18</sup> or where an applicant is determined to be "socially vulnerable".<sup>19</sup>
- Applicants who are refused secondary legal aid can appeal that refusal in accordance with the procedure stipulated in the Law on the Amendment of the Law on Administrative Proceedings, January 14, 1999, No. VIII-1029.

## Mandatory Assignments to Legal Aid Matters

Secondary legal aid is mainly provided by full-time legal aid attorneys who receive monthly remuneration from the state legal aid budget. If necessary, individually practising attorneys can also provide secondary legal aid. Their fees will depend on the complexity of the case, the stage at which they become involved and various other factors. These attorneys are selected following a regulated selection process approved by the order of the Minister of Justice.

Full-time legal aid attorneys are generally required to accept matters assigned to them by the state-subsidized legal aid service. In exceptional circumstances, an attorney may submit a written application stating why they cannot represent the appointed client, which if sufficient (for example, because there is a conflict of interest) may result in an amendment to the appointment, at the discretion of the legal aid service.

---

<sup>14</sup> LGSLA, Art. 2, para. 1.

<sup>15</sup> LGSLA, Art. 2, para. 3.

<sup>16</sup> LGSLA, Art. 11, para. 6.

<sup>17</sup> LGSLA, Art. 11, para. 6 and para. 8.

<sup>18</sup> Code of Criminal Procedure of the Republic of Lithuania (2002), Art. 51.

<sup>19</sup> This category includes, inter alios, persons eligible for welfare payments from the government, persons residing in residential care establishments, persons with a recognized disability or incapacity for work, and their guardians and persons suffering from serious mental disorders: LGSLA, Art 11, para. 7 and Art. 12.



## Unmet Needs and Access Analysis

Although state-subsidized legal aid is broadly available to a fairly wide range of applicants, access to legal aid is impaired due to a general lack of public awareness. Further, as state-subsidized legal aid is only available to natural persons, NGOs are unable to make use of this service.

## Alternative Dispute Resolution

The LGSLA provides that both primary and secondary legal aid must include steps to help clients seek an amicable solution to their legal issues, which as per the Council of Europe Committee of Minister's Recommendation No. R(93)1<sup>20</sup> includes alternative dispute resolution methods such as mediation and conciliation.

## PRO BONO ASSISTANCE

### Pro bono Opportunities

Certain NGOs, for example the Lithuanian Association for Human Rights, provide pro bono legal assistance. The legal departments of certain universities also give students the opportunity of participating in pro bono legal clinics. Among such departments are the Mykolo Romeris University legal aid centre, which provides primary legal aid,<sup>21</sup> and the Vilnius University legal clinic, which in partnership with the law firm, Lideika, Petrauskas, Valiūnas and partners LAWIN, provides primary legal aid, including legal advice on civil, employment, social welfare, administrative and other legal issues (with the exception of criminal legal issues) to all natural persons regardless of their financial status.<sup>22</sup> As mentioned below, some private law firms also offer and promote pro bono services on a case-by-case basis.

### Historic Development and Current State of Pro bono

#### Barriers to Pro bono Work and Other Considerations

##### Laws and Regulations Impacting Pro bono

In Lithuania, pro bono practice is allowed and is voluntary but it is not regulated. Therefore, pro bono services are not developed in a systematic or structured manner. Article 4(5) of the Law on the Bar stipulates that “[a]n attorney shall be entitled to provide legal services free of charge, i.e. to provide legal aid” but there is no official explanation of what constitutes the provision of legal services free of charge and/or how and when an attorney is allowed to provide such services. There is no official statistical data on the number of attorneys that provide pro bono services in Lithuania but most attorney and firm webpages refer to such services. An attorney of another EU Member State can represent pro bono clients in Lithuania under the Law on the Bar, provided that the relevant procedures for representation of a client in court are followed.

The Law on the Bar stipulates that an attorney must be insured for loss that exceeds €290, and that the mandatory minimum insurance coverage must be €29,000 per insured event. To the extent that actual loss exceeds an attorney's insurance coverage, the attorney is personally liable for the difference. An attorney must provide their insurance certificate and policy if a client so requests.

Persons who do not qualify for state-subsidized legal aid can obtain legal expenses' insurance to cover any costs relating to dispute resolution procedures, including for example, expenses relating to the

---

<sup>20</sup> Adopted on January 8, 1993.

<sup>21</sup> See Mykolas Romeris University <[https://www.mruni.eu/lt/universitetas/fakultetai/teises\\_fakultetas/teisesines\\_pagalbos\\_centras/apie\\_centra/](https://www.mruni.eu/lt/universitetas/fakultetai/teises_fakultetas/teisesines_pagalbos_centras/apie_centra/)> (last visited on September 4, 2015).

<sup>22</sup> See Teises Klinika Vilnius University <<http://teisesklinika.lt/?>> (last visited on September 4, 2015).



provision of expert witnesses and inspections and other investigations, subject to the individual insurance company's specific terms and conditions (for example, a company may choose not to insure legal costs for claims that are less than €200 in value). Such insurance usually covers court costs relating to civil, administrative or criminal cases, and sometimes includes the costs of alternative dispute resolution procedures. Insurance policies covering non-contentious matters are not prohibited but there are no practical examples of such policies in Lithuania.

### Socio-Cultural Barriers to Pro bono or Participation in the Formal Legal System

Albeit that pro bono services are not regulated or monitored by any public or private body, 12 attorneys were honoured by the Office of the Lithuanian President in 2011 for the provision of pro bono services during a conference on pro bono legal services and legal aid, which demonstrates the state's commitment to fostering pro bono work. The webpages of some of the Lithuanian law firms suggest that Lithuanian lawyers understand pro bono as an opportunity to provide legal services "for the public good," for example, where a court's decision may have a significant impact on the case law relating to a particular social group or where the potential client would not otherwise be able to afford legal services (but, perhaps, does not fall into the requisite category for state-subsidized legal aid).

Former Lithuanian Minister of Justice Remigijus Šimašius<sup>23</sup> has stated that pro bono legal aid offers distinct advantages in comparison with state-subsidized legal aid because it is tailored to the client, and because attorneys are free to choose (or decline) to act in individual cases. This makes it more likely that pro bono work is done in an area in which the attorney has a special interest or expertise. Further, the client is free to choose an attorney, all of which may result in greater client and attorney satisfaction. Lawyers providing state-subsidized legal aid will likewise assess the probability of their client's success in resolving a legal issue, but because clients who meet the relevant criteria are entitled to receive legal aid, and are not entitled to choose their attorney, the result of the case and the overall satisfaction of the attorney and the client is more varied.

The freedom to choose whether or not to engage in pro bono activities comes with an expectation that attorneys will treat pro bono requests ethically. For example, as a general rule of good practice, attorneys are expected to carefully consider individual requests for pro bono services rather than reject all such requests outright.

### Pro bono Resources

The following organizations may provide pro bono referrals and opportunities for lawyers to participate in education and research activities:

- Lithuanian Association for Human Rights: [www.lzta.lt](http://www.lzta.lt)
- Lithuanian Bar Association: [www.advoco.lt](http://www.advoco.lt)

## CONCLUSION

Lithuania has long been in need of a legal aid system that can serve its indigent citizens and recent legislative amendments have undoubtedly had a positive effect. However, much remains to be done as Lithuania seeks to further develop its pro bono culture, private pro bono initiative, common awareness of the existing pro bono opportunities and administrative mechanisms for the provision of legal services. While individual clients are served better under the pro bono model because the attorney will have a greater interest in the case, an interest which is not solely motivated by monetary reward, the Lithuanian approach seeks to ensure that everyone has access to legal advice.

September 2015

Pro bono Practices and Opportunities in Lithuania

---

<sup>23</sup> See <<http://simasius.pop.lt/2012/06/01/protinga-teisine-pagalba-neturtingam-zmogui/>> (last visited on September 4, 2015).



## LATHAM & WATKINS<sup>LLP</sup>

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Luxembourg<sup>1</sup>

### INTRODUCTION

Luxembourg has an expansive and well-implemented legal aid system that uses public funds to help those in need of legal services. This system is managed nationally by the Luxembourg Bar Association. In addition, Luxembourg is known in Europe for its low number of indigent people among its approximate 563,000 inhabitants.<sup>2</sup> This raises the question as to whether there is a large role to be played by pro bono work on a private basis in Luxembourg. Furthermore, because of strict restrictions on advertising, law firms in Luxembourg are largely unable to advertise their involvement in, or offering of, any type of pro bono work.

For these reasons, pro bono culture is not very developed in Luxembourg. However there are pro bono opportunities and specialized attorneys working in international law firms have adopted creative and innovative approaches to pro bono work. For instance, by using their technical skills and expertise to propose cost-savings solutions and/or problem-solving approaches to help indigent people, in Luxembourg or elsewhere, through NGOs, charities, and other institutions.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### The Constitution and Governing Laws

The Luxembourgish Constitution, adopted on October 17, 1868, as amended, is the supreme law of the Grand Duchy of Luxembourg. The *Cour Constitutionnelle* ensures the constitutionality of the law on referral to either the administrative or the judicial jurisdictions.<sup>3</sup> Luxembourg is a civil law country that has been substantially influenced by the French Civil Code and, to a lesser extent, by the Belgium Code.

##### The Courts

The Luxembourgish court system is divided into three distinct branches: the judicial jurisdictions, the social jurisdictions and the administrative jurisdictions.<sup>4</sup>

The first-level judicial courts are called Peace Justices (*Justices de Paix*), and include three tribunals: the Peace Tribunal (*Tribunal de Paix*), which handles small civil and commercial matters, the Police Tribunal (*Tribunal de Police*), which handles minor penal offenses, and the Labor Jurisdictions (*Juridictions du Travail*), which handle labor issues. Both the Police Tribunal's and the Peace Tribunal's decisions are subject to appeal to the District Tribunals (*Tribunaux d'Arrondissement*),<sup>5</sup> while the Labor Jurisdiction's decisions are directly subject to appeal to the Superior Court of Justice (*Cour Supérieure de Justice*); including the Judicial Appellate Court (*Cour d'Appel*) and the Court of Cassation (*Cour de Cassation*). The District Tribunals handle civil and commercial matters above a specific amount and have exclusive jurisdiction on specific matters, such as on exequatur of foreign judgments. The District Tribunals also

---

<sup>1</sup> This chapter was written with the contribution of Tom Storck, associate at Stibbe (Luxembourg).

<sup>2</sup> Population statistics as of December 31, 2014. See [www.statistiques.public.lu](http://www.statistiques.public.lu) (last visited on September 4, 2015).

<sup>3</sup> See the Ministry of Justice website available at <http://www.justice.public.lu/fr/organisation-justice/cour-constitutionnelle/index.html> (last visited on September 4, 2015).

<sup>4</sup> See the Ministry of Justice website available at <http://www.justice.public.lu/fr/organisation-justice/index.html> (last visited on September 4, 2015).

<sup>5</sup> There are two District Tribunals in Luxembourg, the country being divided into two districts, Diekirch and Luxembourg-City.



handle matters of serious offenses and crimes. The District Tribunals' decisions are also subject to appeal to the Superior Court of Justice.

The social jurisdictions consist of the Social Security Board (*Conseil Arbitral de la Sécurité Sociale*), the first-level social court whose decisions are subject to appeal to the Social Security Superior Council (*Conseil Supérieur de la Sécurité Sociale*). The Social Security Superior Council's decisions are also subject to appeal to the Court of Cassation.

The administrative jurisdictions consist of the Administrative Tribunal (*Tribunal Administratif*), the first-level administrative court whose decisions are subject to appeal to the Administrative Court (*Cour Administrative*), which has jurisdiction over final decisions.

All judges in Luxembourg, regardless of their jurisdictions, are appointed by decree of the Grand Duke, the Luxembourgish head of State. To become a judge, one must be a Luxembourgish national and have an appropriate knowledge of the three administrative languages of Luxembourg, namely French, German and Luxembourgish. Moreover, it is necessary to complete a master's degree in law, and, in addition, the specific complementary courses of Luxembourgish law. Further, one must complete at least one year of the two-year judicial traineeship or of the notarial traineeship. Thereafter, candidates may attempt to pass the entry-exam (*examen-concours*) into the judicial traineeship. A candidate having passed this exam is appointed as *attaché de justice* for a provisional duration of 12 months during which training programs and tests have to be taken by the candidate.<sup>6</sup>

Alternatively, if all available *attaché de justice* positions have not been filled, following the entry-exam, candidates fulfilling certain conditions (e.g. having passed the two-year judicial traineeship and having practiced as an attorney for at least five years) can be provisionally appointed as *attaché de justice* without having to pass the entry-exam. The training requirements after the provisional appointment remain the same.

The training of an *attaché de justice* generally includes theoretical training at the French National School of the Magistrature followed by practical training in Luxembourgish tribunals, police offices and prison facilities before being officially appointed.

## The Practice of Law

### Education

The access to the profession of attorney (*avocat*) is governed by the grand-ducal regulation of June 10, 2009.<sup>7</sup> A University of Luxembourg law master's degree or an equivalent foreign diploma homologated by the authorities<sup>8</sup> is necessary to enter the educational process required to become an attorney.

The Luxembourg bar requires trainee attorneys in Luxembourg to represent anyone who cannot afford an attorney.<sup>9</sup> In addition, the legal system in Luxembourg ensures that legal assistance is provided to indigents in need of representation. In this respect, attorneys as well as trainee-attorneys can be designated to represent them. Most cases concern political asylum, divorce, or drug-related crime. Furthermore, trainee attorneys are required to provide free legal advice on behalf of the Luxembourg Bar at the Legal Advice Service (*Service d'accueil et d'information juridique*), where people can receive general legal advice regarding their rights and how to enforce them). Trainee attorneys are also required to provide legal advice and consultation in police stations and the Judicial Investigations Department (*cabinet*

---

<sup>6</sup> See the Luxembourg law of June 7, 2012 regarding attachés de justice, as amended.

<sup>7</sup> Grand-Ducal Regulation of June 10, 2009 organizing the judicial trainee and regulating access to the notary profession, Grand Duchy of Luxembourg Official Journal of June 17, 2009 available at <http://www.legilux.public.lu/leg/a/archives/2009/0140/a140.pdf> (last visited on September 4, 2015).

<sup>8</sup> Grand-Ducal Regulation of September 10, 2004 fixing criteria for homologating foreign titles, Grand Duchy of Luxembourg Official Journal of September 29, 2004 available at <http://www.legilux.public.lu/leg/a/archives/2004/0162/a162.pdf> (last visited on September 4, 2015).

<sup>9</sup> See Art. 2.9.1 of the Internal Regulation of the Bar Association of Luxembourg.



*d'instruction*),<sup>10</sup> which investigates crimes, interrogates witnesses and suspects, and may decide upon the provisional detention of suspects, in the Luxembourgish courts.

### Licensure

- Luxembourgish law students: Upon completion of the Complementary Courses on Luxembourgish Law during a six month period and following receipt of the Certificate of Complementary Training on Luxembourgish Law, students are admitted to one of the two National Bars, namely the Diekirch Bar and the Luxembourgish Bar, and become List II attorneys. Such status enables the attorney to practice as a List I attorney except for the signing of certain acts. Students must then complete a judicial traineeship of a minimum of two years, during which mandatory courses need to be completed, attested by a knowledge assessment exam. To finally become a List I attorney, students must pass the Final Traineeship exam.<sup>11</sup>
- 
- Procedure for EU attorneys: Pursuant to the law of August 10, 1991, as modified by the law of December 18, 2008,<sup>12</sup> EU nationals enjoy a simplified procedure for admittance to the Luxembourgish National Bars so long as they possess the required qualifications to be an attorney in their home country. A Luxembourgish Law exam can be required if the Minister of Justice considers that the training followed by the applicant in his/her home country does not sufficiently cover some legal subjects. Fluency in German and French is required, but Luxembourgish is no longer required.<sup>13</sup>
- 
- Procedure for foreign attorneys: The procedure for EU attorneys also applies to foreign attorneys so long as their country of origin enjoys an extension of Directive 2005/36/CE<sup>14</sup> in Luxembourg, pursuant to an agreement between both countries.
- 
- In-House Counsel: No specific license is required to become an in-house counsel in Luxembourg. Corporate firms however seek out students who have (i) a University of Luxembourg law masters and (ii) completed the Complementary Courses on Luxembourgish Law, even if such requirements are not legally mandatory.

### Demographics

The number of attorneys per capita in Luxembourg is very high. Overall, there is approximately one attorney per 255 inhabitants in Luxembourg.<sup>15</sup> There were approximately 2,200 attorneys in Luxembourg in 2014, among which French are the greatest number (41%), followed by the Luxembourgers (30%), Belgians (11%) and Germans (9%).<sup>16</sup>

---

<sup>10</sup> Id.

<sup>11</sup> Grand-Ducal Regulation of June 10, 2009, op. cit.

<sup>12</sup> Law of December 18, 2008 transposing, for the attorney profession, the Directive 2005/36/CE, Grand Duchy of Luxembourg Official Journal of December 22, 2008 available at <http://www.legilux.public.lu/leg/a/archives/2008/0195/a195.pdf> (last visited on September 4, 2015).

<sup>13</sup> Case C-193/05 Commission v Grand-Duché de Luxembourg ECR [2006] I-8673.

<sup>14</sup> Directive 2005/36/EC of the European Parliament and of the Council of September 7, 2005 on the recognition of professional qualifications, OJ L 255 of 30.9.2005.

<sup>15</sup> This figure has been calculated considering the population and the number of attorneys identified in 2014.

<sup>16</sup> See <http://www.lessentiel.lu/fr/news/luxembourg/story/24198867> (last visited on September 4, 2015).



## Legal Regulation of Lawyers<sup>17</sup>

Access to the legal profession is regulated by the law of August 10, 1991, as modified by the law of December 18, 2008.<sup>18</sup> This law determines how the profession is organized and how it can be accessed, the attorneys' rights and duties and the disciplinary proceedings to which they can be subjected. Attorneys in Luxembourg must also abide by the Internal Regulation of the Bar Association of Luxembourg as adopted on January 9, 2013<sup>19</sup> and the Internal Regulation of the Bar Association of Diekirch of April 22, 2005.<sup>20</sup> These regulations establish the general principles regarding attorneys' activities, including attorneys' fees, legal aid and judicial traineeship.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Pursuant to Article 189 of the law of March 7, 1980, Luxembourg has created a legal advice service.<sup>21</sup> This service, established in the courts, is subject to the authority of the attorney general (*Procureur général d'Etat*). Its mission is to welcome individuals and to provide general information on the extent of their rights. An officer from the Public Prosecutor's Office is available on a continual basis for technical information and orientation services, and a commission, including an attorney or a third year trainee-attorney, is available on certain days for legal advice.<sup>22</sup> The legal advice service generally deals with civil matters, divorce, criminal matters, labor issues and tenancy law. This service is not available for business persons seeking commercial law-related advice.

### State-Subsidized Legal Aid

The law of August 18, 1995 on legal aid, modifying the law of August 10, 1991, considerably extended the number of persons who are eligible for legal aid. Pursuant to this law, the state bears the costs of providing legal aid (*assistance judiciaire*) to persons selected by the Bar Association. It is the Bar Association's mission to provide legal aid to persons who are unable to find an attorney for their defense or to those who cannot afford to pay the costs of their defense.<sup>23</sup> The decision of whether or not to grant legal aid rests with the Chairman of the Bar in the applicant's district of residence. In the case of nonresidents, it is the Chairman of the Luxembourg Bar Council who decides.<sup>24</sup>

### Immigration Status

In addition to Luxembourg nationals, persons with insufficient means can obtain legal aid, provided they are either (i) foreigners authorized to take up residence in Luxembourg; (ii) nationals of an EU Member

---

<sup>17</sup> See the Luxembourg Bar website available at <http://www.barreau.lu/le-metier-d-avocat/la-deontologie> (last visited on September 4, 2015).

<sup>18</sup> Law of December 18, 2008, op.cit.

<sup>19</sup> Internal Regulation of the Bar Association of Luxembourg as adopted on January 9, 2013, Grand Duchy of Luxembourg Official Journal of March 6, 2013 available at <http://www.legilux.public.lu/leg/a/archives/2013/0039/a039.pdf> (last visited on September 4, 2015).

<sup>20</sup> Internal Regulation of the Bar Association of Diekirch of April 22, 2005, the Grand Duchy of Luxembourg Official Journal of July 28, 2005 available at <http://www.legilux.public.lu/leg/a/archives/2005/0111/a111.pdf> (last visited on September 4, 2015).

<sup>21</sup> See the Luxembourg Bar website available at <http://www.barreau.lu/le-barreau/la-maison-de-l-avocat/service-d-accueil-et-d-information-juridique> (last visited on September 4, 2015).

<sup>22</sup> Grand-Ducal Regulation of November 16, 1976, art. 2.

<sup>23</sup> Law of August 10, 1991, art. 37 (1).

<sup>24</sup> Id. at art. 37-1 (5).



State; (iii) foreigners placed on the same footing as Luxembourg nationals for legal aid purposes by virtue of an international agreement; or (iv) any other foreigner in a proceeding relating to his or her rights of asylum, entry, residence, establishment, and/or expatriation from Luxembourg.<sup>25</sup>

Furthermore, pursuant to directive 2003/8/CE of January 27, 2003, in civil and commercial matters, any person having his domicile or continually residing in Luxembourg may be entitled to legal aid, including for the preparation of a legal aid request to be filed in another EU Member State. According to the same directive, in civil and commercial matters, any persons having his domicile or regular residence in another EU Member State, excluding Denmark, may receive Luxembourg legal aid for cross-border litigation.<sup>26</sup>

### Financial Means

The essential criterion for receiving legal aid is financial need. A person's ability to pay for legal services is determined by assessing his or her gross income and capital, and the gross income and capital of any other member of their household.<sup>27</sup> Unlike several other European countries offering legal aid, the Luxembourg rules do not impose a strict monetary threshold above which a person cannot apply for legal aid. The decision to grant legal aid is based on complex calculation methods and made on a case-by-case basis, taking into account, in particular, monthly earnings, personal wealth, and the number of persons in the household.<sup>28</sup>

Legal aid will generally cover the entire cost of court proceedings, procedures or actions for which it was granted (including attorney's fees and emoluments, stamp and registration duty, costs incurred by the clerk's office, cost and fees of experts, bailiffs, translators, interpreters, notaries, allowances to witnesses, travel expenses, and publication costs).<sup>29</sup> Contribution or partial payment is not a common practice in Luxembourg. With regard to criminal proceedings, legal aid does not cover the costs and penalties pronounced in the event of conviction. Furthermore, legal aid does not cover procedural indemnities or indemnities for abuse of process and vexatious proceedings in civil cases.<sup>30</sup>

### Merits

Legal aid is not available to persons who bring an action that seems *a priori* unreasonable or unlikely to succeed, or whose subject matter seems disproportionate to the costs involved.<sup>31</sup>

### Legal Issues/Case Types

The scope of work covered by legal aid is very diverse. Legal aid can be granted in contested or non-contested cases, whether handled in or out of court. Moreover, legal aid is available for all cases brought before ordinary or administrative courts. Legal aid can also be granted to those who are seeking declaratory and precautionary court orders and to those involved in enforcement actions.<sup>32</sup>

There are three situations in which legal aid is not available (except in cases of cross-border litigations under specific circumstances): (i) owners or drivers of motor vehicles relating to disputes resulting from the use of such motor vehicles; (ii) subject to certain exceptions, traders, manufacturers, artisans, or

---

<sup>25</sup> Law of August 10, 1991, art. 37-1 (1).

<sup>26</sup> Id. at art. 37-1 (1).

<sup>27</sup> Id. at art. 37-1 (1). However, the means of other people living in the household are not taken into consideration if the proceeding opposes spouses or persons usually living together in the same home, or where there is a conflict of interest between them regarding the subject matter of the dispute, making a separate evaluation of financial means necessary.

<sup>28</sup> Grand-Ducal Regulation of September 18, 1995 (on legal aid), art. 1.

<sup>29</sup> Grand-Ducal Regulation of September 18, 1995 (on legal aid), art. 8.

<sup>30</sup> Law of August 10, 1991, art. 37-1 (2).

<sup>31</sup> Id. at art. 37-1 (3).

<sup>32</sup> Id. at art. 37-1 (2).



professional persons involved in disputes relating to their commercial or professional activity and; (iii) persons involved in disputes arising from speculative activity, such as disputes pertaining to losses in connection with the trading of securities.<sup>33</sup>

### Applicant Type

Legal aid can be granted to both plaintiffs and defendants, but only to natural persons. In June 2009, the availability of legal aid was extended to minors involved in legal proceedings, irrespective of the financial resources of their parents or other persons in the household. In those cases, the state retains the right to require a refund from parents who have sufficient means.<sup>34</sup>

### Mandatory Assignments to Legal Aid Matters

As far as legal aid is concerned, attorneys and trainees are designated by the Secretary of the Bar. Once appointed, attorneys cannot refuse their appointment, except for reasons of impediment or conflicts of interest.<sup>35</sup> Attorneys assigned to legal aid matters get remuneration from the state, calculated according to the number of hours dedicated to the case on an hourly rate basis determined in the grand ducal regulation of December 23, 1972.<sup>36</sup> If the legal aid beneficiary's attorney wins the case, the condemned party will have to bear the cost of the proceeding in place of the state, including the winning party's attorney's fees.<sup>37</sup>

### Unmet Need and Access Analysis

Luxembourg's legal aid system is among the most efficient in Europe. As legal aid is dispatched by the Bar Association, and as it forms part of the training requirements of the trainee-attorneys, there are enough attorneys who are at all times available to handle the workload. As the state funds the system, attorneys are required to charge fixed rates, which are substantially lower than the standard rates usually charged to regular clients.

### Alternative Dispute Resolution

#### Mediation and Arbitration

The law of February 24, 2012 created a legislative framework for mediation in civil and commercial matters in Luxembourg. Three types of mediation can be distinguished under Luxembourg law: conventional mediation, judicial mediation and family mediation. As far as conventional mediation is concerned, the parties agree to proceed to mediation independently from any judicial proceeding. In this case, the chosen mediator does not have to be chartered by the Minister of Justice. In judicial mediation, the parties agree to proceed to such mediation either upon the judge hearing their dispute's invitation or upon their own initiative. Finally, family mediation only concerns specific matters, namely divorce and all separation-related issues, as well as children-related issues.<sup>38</sup> In these two last cases, the chosen mediator needs to be chartered by the Minister of Justice unless he is exempted from such approval according to article 1251-3 al. 3 of the New Civil Procedure Code. In all cases, the duration of the mediation is set for a maximum of three months that can be extended at the parties' request, except for family mediation.

---

<sup>33</sup> Id. at art. 37-1 (2).

<sup>34</sup> Id. at art. 37-1 (2).

<sup>35</sup> Id. at art. 37-1 (5); Internal Regulation of the Bar Association of Luxembourg, art. 2.6 (Commissions et désignations d'office).

<sup>36</sup> See Grand-Ducal Regulation of December 23, 1972, art. 4 a) and Grand-Ducal Regulation of September 18, 1995 (on legal aid), art. 9.

<sup>37</sup> Law of October 3, 1995, art. 15.

<sup>38</sup> New Civil Procedure Code, art. 1251-1.



With respect to mediator remediation for conventional mediation, the mediator freely sets his level of remuneration. For judicial and family mediation, the mediator's fees are legally set at €57 per hour.<sup>39</sup> Legal aid can be obtained to cover the family and judicial mediations' costs. In criminal mediation, the State attorney can decide to proceed to mediation if he considers such measure able to ensure that reparation is made to the victim, that any difficulties arising from the offence will be resolved or that it will help with the rehabilitation of the offender. In this case, the mediator must be chartered by the Minister of Justice. The mediator's fees are set on an hourly basis by the government, and legal aid can be obtained to cover his costs.

Arbitration offers an alternate dispute resolution process that is limited to the cases upon which the parties have agreed to resort to arbitration. The arbitrator is appointed by the parties or, in the case they have not reached an agreement within 30 days, by the Arbitration Council.<sup>40</sup> The arbitrator is required to render his award within six months.<sup>41</sup>

### Ombudsman

An Ombudsman role was established by the law of August 22, 2003. His/Her scope of intervention concerns disputes between individuals and the administration in case of disapproval of an administration's decision. Before asking the Ombudsman's help, the applicant must have first contacted the administration from whom they did not get a satisfying response. Anyone can benefit from the Ombudsman's help regardless of his nationality or his legal status (natural or moral person).<sup>42</sup> In 2014, 689 claims were submitted to the Ombudsman who has an impressive "rate of correction" of 82.53%<sup>43</sup> meaning that 189 total or partial corrections to the initial decision of the administration have been obtained (determined on the basis of closed cases, not taking into account the claims rejected by the Ombudsman, transmitted to other Ombudsman, inadmissible declaration, unfounded statement or claims which the applicant decided to renounce).

## PRO BONO ASSISTANCE

### Pro bono Opportunities

#### Private Attorneys

In Luxembourg, participation in pro bono initiatives is done on a voluntary basis and is not a mandatory requirement for attorneys, contrary to legal aid matters that cannot be refused by designated attorneys or trainees.

#### Law firm Pro bono Programs

A handful of large law firms located in Luxembourg mention pro bono initiatives on their external websites. For example some firms, both international and domestic, are involved with, and provide pro bono legal counsel for Luxembourgish non-profit organizations, charity groups, or other public interest organizations. Some law firms regularly provide their services either on a purely pro bono basis or at substantially lower rates (there are no mandatory minimum tariffs) in the emerging sector of microfinance, where Luxembourg has developed into a premier actor.

---

<sup>39</sup> New Civil Procedure Code, art. 1251-17; Regulation Act of June 25, 2012, art 4.

<sup>40</sup> Arbitration Regulation of the Grand Duchy of Luxembourg Chamber of Commerce, art. 2.

<sup>41</sup> Id. Art. 19.

<sup>42</sup> See the Ombudsman website available at <http://www.ombudsman.lu/accueil.html> (last visited on September 4, 2015).

<sup>43</sup> See the Ombudsman 2014 Report available at [http://www.ombudsman.lu/doc/doc\\_downloads\\_210.pdf](http://www.ombudsman.lu/doc/doc_downloads_210.pdf) (last visited on September 4, 2015).

## Corporate Pro bono Programs

Patronage activity has experienced increasing success in Luxembourg in several forms: sponsorship, donations and all sorts of financial support that benefit from tax reduction. Many companies get involved in all sort of fields and especially human rights though skill-sponsorship and donations. In particular, an institute, the Inspiring More Sustainability Luxembourg, has been established to foster corporate social responsibility among companies. In this respect, the initiative Part & Act has been launched to provide a professional interface between associations and companies willing to get involved in skills-sponsorship and volunteering partnerships.<sup>44</sup>

## Bar Association Pro bono Programs

The Bar Association of Luxembourg manages the legal aid system as it is the entity that assigns legal aid matters to attorneys and trainees and decides whether or not to grant legal aid. Considering this substantial involvement in the State-run legal aid system, the Bar Association has not developed any specific pro bono program, for which there is little incentive.

## Non-Governmental Organizations (NGO)

Many NGOs are established in Luxembourg and are involved in various fields including asylum, health, poverty, children, etc. For instance, the Association in Support of Migrant Workers (*Association de Soutien aux Travailleurs Immigrés*) provides free consultation to migrant workers in partnership with several other NGOs.<sup>45</sup> In addition, the Red Cross Luxembourg works in partnership with the Social Offices of Luxembourg to provide assistance to people in need, generally unemployed people, indebted people, or people going through a divorce or the death of their spouse. The assistance provided can take various forms, helping people through administrative procedures, providing financial management, or even psychological support.<sup>46</sup> In addition, many NGOs get involved in international actions, such as Solidarity Action for the Third World (*Action Solidarité Tiers Monde*), Indian Children's Aid (*Aide à l'Enfance de l'Inde*), Friendship Luxembourg or Men's Earth Luxembourg (*Terre des Hommes Luxembourg*) to name a few.

## University Legal clinics and Law students

A clinical programs culture is not a well-established practice in Europe and Luxembourg. There is only one legal clinic at the University of Luxembourg, the Consumer Law Clinic within the European Private Law LL.M. After having been taught how to deal with practical cases, students meet real clients and help them to deal with their legal issues.<sup>47</sup>

## Historic Development and Current State of Pro bono

### Historic Development of Pro bono

The development of pro bono practice in Luxembourg has been slow and limited thus far when compared to the efficient and well-implemented legal aid system. International law firms are the main participants in pro bono initiatives in the framework of their global pro bono strategy, but domestic Luxembourgish law firms still contribute to an important part of pro bono activities considering the few international law firms established in Luxembourg.

---

<sup>44</sup> See the Part & Act website available at <http://www.partnact.lu/part-act/l-initiative> (last visited on September 4, 2015).

<sup>45</sup> See the ASTI website available at <http://www.asti.lu/asile/projets-de-lasti/> (last visited on September 4, 2015).

<sup>46</sup> See the Red Cross Luxembourg website available at <http://www.croix-rouge.lu/missions-des-offices-sociaux/> (last visited on September 4, 2015).

<sup>47</sup> See the University of Luxembourg website available at [http://www.fr.uni.lu/formations/fdef/programmes\\_ll\\_m/droit\\_priv\\_europeen](http://www.fr.uni.lu/formations/fdef/programmes_ll_m/droit_priv_europeen) (last visited on September 4, 2015).



## Current State of Pro bono

### Laws and Regulations Impacting Pro bono

One of the main problems facing pro bono in Luxembourg is the lack of communication regarding pro bono initiatives. Among law firms involved in pro bono initiatives, little to no information can be found on their external website. This can be explained by the strict rules regulating advertising for attorneys in Luxembourg. Pursuant to Clause six of the Luxembourg Bar's Internal Regulations, canvassing is forbidden, and legal advertisements are regulated. Specifically, advertisements may not identify the clients represented, or the matters being handled, by the attorney or law firm. All advertisements are susceptible to review by the Bar Association or the Chairman of the Bar, the regulatory authorities of the Luxembourg Bar. As such, it appears difficult for Luxembourg law firms to enhance their professional reputations or create goodwill by conducting pro bono work. Still, the Luxembourg Bar seems to have partially understood this inherent need for recognition. The Bar allows attorneys to disclose information about exceptional matters or clients, in order to answer an information request emanating from a professional magazine or publication, or on their external website. However, the attorney or firm must have obtained prior informed consent from the clients in order to do so.<sup>48</sup>

In addition, there is no specific tax regime for pro bono hours and initiatives. The law only provides for tax reduction under certain conditions in the context of cash donations to recognized public-interest organizations. Therefore, the law provides even fewer incentives to get involved in pro bono programs.

### Socio-Cultural Barriers to Pro bono

There are no specific socio-cultural barriers to pro bono in Luxembourg (i.e. corruption or lack of public trust in the judiciary).

### Pro bono Resources

There are no specific resources dedicated to pro bono in Luxembourg. However, information on legal aid and humanitarian action can be found on the following websites:

- Luxembourg Bar Association (only in French)
  - Address: 1-7, rue St. Ulric, B.P. 361, L-2013 Luxembourg
  - Phone: +352.72.72.1
  - Website: <http://www.barreau.lu/le-barreau/assistance-judiciaire/presentation> (last visited on September 4, 2015)
  - Email: info@barreau.lu
- **Legal Information Services** (Service d'accueil et d'information juridique)
  - Luxembourg: Cité Judiciaire, Bâtiment BC, L-2080, Luxembourg
  - Phone: +352.22.18.46
  - Diekirch: Address: Place Joseph Bech, L-9211 Diekirch
  - Phone: +352.80.23.15
  - Esch-sur-Alzette: Place de la Résistance, L-4041 Esch/Alzette
  - Phone: +352.54.15.52
- Ministry of Justice of Luxembourg (only in French)
  - Address: 13, rue Erasme, L-2934, Luxembourg
  - Phone: +352.247.84537
  - Fax: +352.26.68.48.61
  - Website: [http://www.mj.public.lu/services\\_citoyens/assistance\\_judiciaire/index.html](http://www.mj.public.lu/services_citoyens/assistance_judiciaire/index.html) (last visited on September 4, 2015)
- The European Commission

<sup>48</sup> See Art. 6.2 of the Internal Regulation of the Bar Association of Luxembourg.



- Address: Maison de l'Europe, L-2920, Luxembourg  
Phone: +352.4301.34925  
Fax: +352.4301.34433  
Website: [http://ec.europa.eu/luxembourg/index\\_fr.htm](http://ec.europa.eu/luxembourg/index_fr.htm) (last visited on September 4, 2015)  
Email: [comm-rep-lux@ec.europa.eu](mailto:comm-rep-lux@ec.europa.eu)
- European Justice
- Website: [https://e-justice.europa.eu/content\\_costs\\_of\\_proceedings-37-en.do](https://e-justice.europa.eu/content_costs_of_proceedings-37-en.do) (last visited on September 4, 2015)
- List of Luxembourgish NGOs certified by the Foreign Affairs Ministry
- Website: <http://www.gouvernement.lu/4737059/ong-partenaires> (last visited on September 4, 2015)

## CONCLUSION

Given Luxembourg's exceptional and extensive State legal aid system, Luxembourg does not appear to be a country in urgent need of pro bono legal services. However, there is a niche for sophisticated pro bono work, done by highly specialized and technically skilled commercial, banking and litigation attorneys based in Luxembourg, who can provide innovative and cost-efficient solutions, locally or internationally.

September 2015

Pro bono Practices and Opportunities in Luxembourg

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Malaysia<sup>1</sup>

### INTRODUCTION

While robust government-sponsored legal aid and pro bono initiatives operate throughout Malaysia for litigation matters, there is no central clearinghouse for the coordination of pro bono efforts by private practitioners. Moreover, the representation of pro bono clients before Malaysian courts is limited to Malaysian-barred attorneys. However, in light of the generally unregulated nature of legal practice in Malaysia, pro bono opportunities are available either through NGOs or private initiatives and alliances, be it in the direct provision of, engagement in or creation of pro bono services and programs.

### OVERVIEW OF THE LEGAL SYSTEM

Malaysia is a constitutional monarchy, operating through dual federal and state governmental systems, while adhering to a common law legal system. Federal laws apply throughout its 13 states and three federal territories, while matters that are local by nature are governed by applicable state laws.<sup>2</sup>

#### The Justice System

The Malaysian Constitution, dated August 31, 1957, is considered the highest law of the land. The Constitution sets forth the government structure and guarantees fundamental rights to its citizens, including the right to life, liberty, equality, and freedom of religion. The Constitution is unique in providing a dual justice system of secular (criminal and civil) and sharia laws.

The jurisdiction of Malaysian courts is set forth under the Subordinate Courts Act 1948 and the Courts of Judicature Act 1964.<sup>3</sup> Courts are divided into two levels; the Superior Courts and the Subordinate Courts.

The Superior Courts consist of the Federal Court, the Court of Appeal and two High Courts. The Federal Court of Malaysia is the court of highest judicial authority, hearing cases on appeal from the Court of Appeal. The Court of Appeal hears cases on appeal from the High Court relating to both civil and criminal matters. Third in hierarchy of the Superior Courts are the two High Courts; the High Court in Malaya and the High Court in Sabah and Sarawak, which pursuant to Article 121 of the Constitution, are of co-ordinate status and jurisdiction, hearing criminal and civil cases, along with cases on appeal from the Magistrate and Session Courts.<sup>4</sup>

The Subordinate Courts in each of Peninsular Malaysia and Sabah and Sarawak, in order of hierarchy, consist of the Sessions Court and the Magistrates' Courts, having jurisdiction over certain civil and criminal cases.<sup>5</sup> Jurisdiction and related matters concerning these courts are governed by the Subordinate Courts Act 1948 (revised 1972).

According to Section 74 of the Court of Judicature Act 1964, every proceeding in the Federal Court shall be heard and disposed of by three judges or such greater uneven number of Judges as the Chief Justice may in any particular case determine. Currently, the Federal Court typically sits with a quorum of five judges, which includes the Chief Justice of Malaysia (head of the judiciary), the President of the Court of

---

<sup>1</sup> This chapter was drafted with the support of Zaid Ibrahim & Co.

<sup>2</sup> See INTRODUCTION TO MALAYSIA LEGAL SYSTEM, available at [http://www.nyulawglobal.org/globalex/Sources\\_Law\\_Malaysia1.htm](http://www.nyulawglobal.org/globalex/Sources_Law_Malaysia1.htm) (last visited on September 4, 2015).

<sup>3</sup> INSTITUTE OF DEVELOPING ECONOMIES, THE MALAYSIAN LEGAL SYSTEM, LEGAL PRACTICE & LEGAL EDUCATION (March 2001), available at <http://www.ide-jetro.jp/English/Publish/Download/Als/pdf/04.pdf> (last visited on September 4, 2015).

<sup>4</sup> Id.

<sup>5</sup> Id; see also HIERARCHY STRUCTURE, MALAYSIAN LEGAL SYSTEM HIERARCHY, available at <http://www.hierarchystructure.com/malaysian-legal-system-hierarchy/> (last visited on September 4, 2015).



Appeal, the Chief Judge of Malaya, and the Chief Judge of Sabah and Sarawak. According to Section 38 of Court of Judicature Act 1964, every proceeding in the Court of Appeal shall be heard and disposed of by three Judges or such greater uneven number of Judges as the President may in any particular case determine. A typical sitting in the Court of Appeal will comprise of three judges.<sup>6</sup> Yang di-Pertuan Agong, the king of Malaysia, appoints judges to all levels of the Superior Courts' judiciary, on the advice of the Prime Minister and after consulting with the Council of Rulers (a council comprising of rulers of the Malay states and the governors of the four other states). Judicial and legal services are operated by the Judicial and Legal Commission (consisting of the Chairman of the Public Services Commission, the Attorney General, along with members of the judiciary of the Federal Court, the Court of Appeal and the High Court). The Attorney General is head of the Attorney General's Chambers, a department within the Judicial and Legal Services of the Malaysian Federation.<sup>7</sup> Court rulings are reported through three major reports: the *Malayan Law Journal*; the *Current Law Journal*; and all *Malaysia Reports*.<sup>8</sup>

## The Practice of Law

Attorneys practicing in the federal government sector are regulated through the Judicial and Legal Service Commission. However, in the private sector, the legal profession does not have an overarching governmental regulatory body. Instead, private practice is governed through three main bar associations: (i) the Bar Council of Malaysia of Peninsular Malaysia (the "**Bar Council**"); (ii) the Sabah Law Association of Sabah; and (iii) the Advocates' Association of Sarawak for attorneys in the Sarawak state. Members of one particular bar may practice only in their respective jurisdiction, and may not practice in other locations.<sup>9</sup>

As of 2014, there were a total of 7,058 law firms operating throughout West Malaysia, and a total of 16,450 practicing attorneys registered with the Bar Council.<sup>10</sup> There are currently 1,250 attorneys on the Bar roll of Sarawak<sup>11</sup> and approximately 260 law firms<sup>12</sup> in the Sarawak state. The Sabah Law Association records the presence of 209 firms in the State but does not presently list the total number of practitioners. The Bar Council, created under the purview of the Legal Profession Act of 1976 is an independent bar. To be admitted as an advocate and solicitor, one must either be a citizen or resident of Malaysia and obtain a law degree from a recognized law school, along with meeting other requirements set forth under the Legal Profession Act of 1976 ("**LPA**"),<sup>13</sup> which includes showing that s/he is a "qualified person"<sup>14</sup> and passing the bar exam. From an educational standpoint, the Bar Council

---

<sup>6</sup> The Constitution further requires 47 judges in the Malaya High Court and 10 judges in the Sabah and Sarawak High Court, among others. See THE JUDICIARY, available at [http://d-arch.ide.go.jp/idedp/IAL/IAL000400\\_003.pdf](http://d-arch.ide.go.jp/idedp/IAL/IAL000400_003.pdf) (last visited on September 4, 2015).

<sup>7</sup> Supra n.3, at 14-16.

<sup>8</sup> See BAR COUNCIL LIBRARY, available at [http://www.malaysianbar.org.my/bar\\_council\\_library.html](http://www.malaysianbar.org.my/bar_council_library.html) (last visited on September 4, 2015).

<sup>9</sup> See INFORMATION SHEET – MALAYSIA, available at [http://www.nichibenren.or.jp/library/ja/bar\\_association/word/data/Malaysia.pdf](http://www.nichibenren.or.jp/library/ja/bar_association/word/data/Malaysia.pdf) (last visited on September 4, 2015).

<sup>10</sup> THE MALAYSIAN BAR, STATISTICS – NO. OF LAWYERS AND LAW FIRMS, available at [http://www.malaysianbar.org.my/statistics\\_no\\_of\\_lawyers\\_and\\_law\\_firms.html](http://www.malaysianbar.org.my/statistics_no_of_lawyers_and_law_firms.html) (last visited on September 4, 2015).

<sup>11</sup> ADVOCATES' ASSOCIATION OF SARAWAK, Rolls, available at <http://sarawak-advocates.org.my/index.php/rolls-a-directories/rolls> (last visited on September 4, 2015).

<sup>12</sup> ADVOCATES' ASSOCIATION OF SARAWAK, Legal Firms, available at <http://sarawak-advocates.org.my/index.php/rolls-a-directories/legal-firms> (last visited on September 4, 2015).

<sup>13</sup> Supra n.9, at 6-10.

<sup>14</sup> To become a "qualified person," one must either (1) complete a final examination leading to the degree of Bachelor of Laws from one of the listed universities; (2) become a barrister-at-law of England; or (3) be a person



recognizes graduates from Singapore, England, Australia and New Zealand, as equally as graduates from Malaysian law schools.<sup>15</sup> An advocate and solicitor, however, must be a citizen or permanent resident of Malaysia.<sup>16</sup>

The Malaysian system does not distinguish between barristers and solicitors; advocates and solicitors practicing in Peninsular Malaysia are automatically considered members of the Malaysian Bar if they hold a valid practicing certificate. Moreover, the Malaysian legal system, generally, does not have stringent regulations for the practice of foreign attorneys, and leaves the practice of in-house counsel unregulated.<sup>17</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### Criminal Defense

With respect to criminal defense work, four initiatives are available to practitioners:

#### Legal Aid Bureaus.

The Malaysian government offers legal aid pursuant to the Legal Aid Act of 1971 through its Legal Aid Bureaus. In criminal defense matters, individuals may seek legal assistance (free or subsidized representation and advice) through the Legal Aid Bureaus if they have annual income below a certain specified level (the “**Means Test**”).<sup>18</sup> Government legal aid does not extend to criminal cases where the accused makes a request for trial, as set forth under the 2nd Schedule of the Legal Aid Act of 1978.<sup>19</sup> Attorneys providing services through the Legal Aid Bureaus are on the payroll of the Prime Minister Department.

#### Criminal Defense Support.

Complimentary to the Legal Aid Bureaus’ services, the Criminal Defense Support, under the purview of the office of the Chief Justice, extends free legal representation to defendants in criminal cases, including capital punishment in the High Court.

#### Legal Aid Centres.

The Bar Council provides legal aid (free or subsidized representation and advice) under the LPA through its Legal Aid Centres, providing legal representation through 16 centres in Peninsular Malaysia. Legal aid is self-funded (membership dues are RM 100 per year), and requires members to do one case per year

---

in possession of such other qualification as may be declared by the Board to be sufficient to make such person a qualified person for the purposes of the Legal Profession Act. See supra n. 9, at 6-7.

<sup>15</sup> Sections 10 - 19 of the LPA.

<sup>16</sup> See GLOBALEX, AN OVERVIEW OF MALAYSIAN LEGAL SYSTEM AND RESEARCH, available at <http://www.nyulawglobal.org/globalex/Malaysia.htm> (last visited on September 4, 2015).

<sup>17</sup> Id; foreign attorneys practicing in Peninsular Malaysia must comply with certain rules and regulations set forth under the LPA and the Legal Profession Rules 2014, see THE MALAYSIAN BAR, FOREIGN LAW FIRMS AND FOREIGN LAWYERS NOW PERMITTED TO PRACTICE IN PENINSULAR MALAYSIA, available at [http://www.malaysianbar.org.my/press\\_statements/press\\_release\\_%7C\\_foreign\\_law\\_firms\\_and\\_foreign\\_lawyers\\_now\\_permitted\\_to\\_practise\\_in\\_peninsular\\_malaysia.html](http://www.malaysianbar.org.my/press_statements/press_release_%7C_foreign_law_firms_and_foreign_lawyers_now_permitted_to_practise_in_peninsular_malaysia.html) (last visited on September 4, 2015).

<sup>18</sup> The Means Test limits free representation and legal advice to persons whose income does not exceed RM 25,000 per annum (USD\$8,000). Also, applicants whose yearly income is more than RM 25,000 but less than RM 30,000 (i.e. RM2, 500 per month) may be eligible for subsidized legal aid. Applicants who do not qualify for the first or second category can apply to the Director of BBG for a special exemption to obtain legal aid, subject to certain approvals and processes. See JUSTICE AUDIT MALAYSIA, available at [http://malaysia.justicemapping.org/?page\\_id=22](http://malaysia.justicemapping.org/?page_id=22) (last visited on September 4, 2015).

<sup>19</sup> LEGAL AID IN MALAYSIA: THE NEED FOR GREATER GOVERNMENT COMMITMENT, available at [http://www.malaysianbar.org.my/members\\_opinions\\_and\\_comments/legal\\_aid\\_in\\_malaysia\\_the\\_need\\_for\\_great\\_er\\_government\\_commitment.html](http://www.malaysianbar.org.my/members_opinions_and_comments/legal_aid_in_malaysia_the_need_for_great_er_government_commitment.html) (last visited on September 4, 2015).



on a pro bono basis.<sup>20</sup> The Legal Aid Centres have assisted over 24,000 clients with the help of 1,400 volunteer attorneys.<sup>21</sup> The Legal Aid Centres provide criminal defense services for all defendants, including cases involving capital punishment. To obtain representation, an applicant must provide proof of income and meet the Means Test.

National Legal Aid Foundation Yayasan Bantuan Guaman Kebangsaan (“NLAFF”).

NLAFF provides criminal defense legal assistance, from the point of arrest through mitigation, hearing and appeal, only to Malaysian citizens of income not exceeding RM 36,000 per annum.<sup>22</sup>

## Civil Proceedings

Legal aid organizations also extend legal aid in civil matters. For instance, the Legal Aid Department provides legal services and representation in cases pertaining to family law, workers’ compensation matters, accident cases and money-lending matters, among others. Moreover, the Bar Council operates a number of clinics to service immigrants and women, including the Legal Aid Centres Clinic and Syariah Clinic, which offer free legal advice and representation.<sup>23</sup> Such clinics and programs are administered by “pupils” (recently graduated attorneys who serve under the supervision of senior attorneys). All recently graduated attorneys must serve in such capacity for a period of nine months after graduation. Attorneys may volunteer to supervise and train the pupils in the provision of services. The Legal Aid Centres’ clinics provide a multitude of programs, including Women’s Aid Organisation Legal Information of Advocacy (joint program with the Women’s Aid Organisation, which provides legal advice and assistance on family matters and domestic violence issues), Tenaganita Migrant Workers Clinic (joint program with Tenaganita Migrant Worker’s Desk, which provides legal assistance and representation to migrant workers), United Nation High Commissioner for Refugees Clinic (joint program with the United Nation High Commissioner for Refugees, which provides legal advice and assistance to refugees), among others.<sup>24</sup> Additionally, Legal Aid Bureaus provide legal representation and advice for civil matters, including divorce, child custody, estate and monetary claims, as well as assistance in drafting various legal documents, for persons qualifying under the Means Test.<sup>25</sup>

## Mediation

The Legal Aid Bureaus<sup>26</sup> and the Jabatan Bantuan Guaman (“JBG”) offer free mediation services for qualifying persons who satisfy the Means Test with respect to family law matters, Syariah (Islamic) family

---

<sup>20</sup> Supra n.9 at 15-18.

<sup>21</sup> SPEECH BY LIM CHEE WEE, CHAIRMAN OF THE BAR COUNCIL, AT THE OPENING OF THE LEGAL YEAR 2012 (Jan. 2012), available at [http://www.malaysianbar.org.my/index2.php?option=com\\_content&do\\_pdf=1&id=3467](http://www.malaysianbar.org.my/index2.php?option=com_content&do_pdf=1&id=3467).

<sup>22</sup> Supra n.9, at 21-22; see also YBGK, SERVICE PROVIDED, available at [http://www.ybgk.org.my/index.php?option=com\\_content&view=article&id=52&Itemid=57&lang=en](http://www.ybgk.org.my/index.php?option=com_content&view=article&id=52&Itemid=57&lang=en) (last visited on September 4, 2015).

<sup>23</sup> See BAR COUNCIL LEGAL AID CENTRE, available at [www.klbar.org.my/newsletter/file/LACReport062010.pdf](http://www.klbar.org.my/newsletter/file/LACReport062010.pdf) (last visited on September 4, 2015).

<sup>24</sup> See generally KUALA LUMPUR LEGAL AID CENTRE - PROGRAMS, available at <http://www.kllac.com/Programs.html> (last visited on September 4, 2015).

<sup>25</sup> See LEGAL AID BUREAU, WHAT TYPES OF CASES ARE HANDLED BY LAB?, available at [www.klbar.org.my/newsletter/file/LACReport062010.pdf](http://www.klbar.org.my/newsletter/file/LACReport062010.pdf) (last visited on September 4, 2015); see, e.g., LEGAL AID BUREAU (BIRO BANTUAN GUAMAN) IN MALAYSIA, available at <http://www.elawyer.com.my/blog/legal-aid-bureau-bira-bantuan-guaman-in-malaysia/> (last visited on September 4, 2015).

<sup>26</sup> MEDIATION IN MALAYSIA: IS IT FACILITATIVE, EVALUATIVE OR TRANSFORMATIVE?, available at <http://westeastinstitute.com/journals/wp-content/uploads/2014/09/2Norjihan-Ab-Aziz.pdf> (last visited on September 4, 2015).



law cases, probate matters, accident cases, hire-purchase matters, workers' compensation matters, consumers' claims, inheritance matters, money-lending matters, and tenancy matters, among others.<sup>27</sup>

## Unmet Needs Analysis

According to the Universal Periodic Review of 2013, as conducted by the United Nations under the auspices of the Human Rights Council, human rights violations remain a concern in Malaysia.<sup>28</sup> Legal aid initiatives have not been responsive to human rights violations primarily due to the ad hoc approach to criminal and civil legal needs.<sup>29</sup> Moreover, within the existing legal aid space, government funding is limited and utilizes stringent qualification tests (e.g., the Means Test), which inhibit persons from receiving adequate representation and equal access to the justice system.<sup>30</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities and Other Considerations

Pro bono opportunities in Malaysia are pursued mainly through the Legal Aid Centres and Legal Aid Bureaus, as described above, which focus primarily on criminal defense representation. Clearinghouses and referral organizations for pro bono opportunities outside these channels have not yet been established in Malaysia. Moreover, only advocates and solicitors admitted to the Malaysian Bar are permitted to appear in Malaysian courts. As such, foreign attorneys are unable to take on any pro bono representation.

The unavailability of any established clearinghouse may make it difficult for non-local practicing attorneys to find or connect to readily-available pro bono opportunities in Malaysia. This is especially true with respect to transactional-based pro bono opportunities due to the system's focus on criminal and civil proceedings. Generally, law firms operating in Malaysia do not have widely publicized structured pro bono programs. However, where there are cases that raise issues of public interest or have an element of human rights issues in play, there will inevitably be attorneys or law firms that will volunteer to take on such cases on a pro bono basis.

### Historic Development and Current State of Pro Bono

Historical development of the four main legal aid initiatives is as follows:

---

<sup>27</sup> See LEGAL AID DEPARTMENT, FAQ GENERAL, available at [http://www.jbg.gov.my/index.php?option=com\\_content&view=article&id=192&Itemid=239&lang=en](http://www.jbg.gov.my/index.php?option=com_content&view=article&id=192&Itemid=239&lang=en) (last visited on September 4, 2015).

<sup>28</sup> Reported violations include restrictions on the freedoms of assembly, expression and association; arbitrary arrest and detention; excessive force and unlawful killings by security forces; torture, ill-treatment and deaths of persons in custody; abuse and non-recognition of refugees and asylum seekers. See MALAYSIA 2013 UNIVERSAL PERIODIC REVIEW SUBMISSION, available at <https://www.hrw.org/news/2013/09/03/malaysia-2013-universal-periodic-review-submission> (last visited on September 4, 2015).

<sup>29</sup> See, e.g., the UN Refugee Agency reports that "[A]sylum-seekers and refugees are treated as irregular migrants, and in the absence of any substantive engagement by the authorities, UNHCR remains the principal actor in providing international protection." 2015 UNHCR SUBREGIONAL OPERATIONS PROFILE - SOUTH-EAST ASIA, available at <http://www.unhcr.org/pages/49e4884c6.html> (last visited on September 4, 2015).

<sup>30</sup> According to the head of the Bar Commission approximately 80% of those on remand and 95% of those tried lack representation. See MALAYSIA: COURT BACKLOG AND DELAY REDUCTION PROGRAM, A PROGRESS REPORT (Aug. 2011), available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16791/632630Malaysia0Court0Backlog.pdf?sequence=1> (last visited on September 4, 2015).



- The government Legal Aid Department (JBG) was founded in 1970 as the “Legal Aid Bureau.” Shortly thereafter, the Legal Aid Act of 1971 was passed as legislation, which provides legal aid grants and administers the JBG by the Prime Minister’s Legal Affairs Division. In 2010, the Legal Aid Bureau became part of the government, operating as its “Legal Aid Department.”<sup>31</sup>
- In 1980, the Bar Council founded a “Legal Advisory Centre” in the state of Penang, pursuant to the Legal Profession Act. The purpose of the Bar Council is to make provision for or assist in the promotion of a scheme whereby underprivileged persons may be represented by attorneys.<sup>32</sup> The first official Legal Aid Centre opened its doors in Kuala Lumpur in 1982.<sup>33</sup> Shortly thereafter, the Bar Council passed a resolution in 1983, requiring all practicing attorneys to pay dues of RM 100 per year to the Bar Council, thereby enabling the Bar Council to operate as an independent and self-funded entity.
- Court-Assigned Counsel, a remnant of the World War II era, today operates under the Chief Registrar of Malaysia and only offers free representation to accused individuals who cannot defend themselves in capital offense cases. Its head office is in the Palace of Justice, Putrajaya, Malaysia.<sup>34</sup>
- The NLAFF was incorporated as a charity by the Malaysian government in February 2011. The NLAFF’s objectives are to fund the provision of legal aid, enhance services to attorneys who represent those needing legal representation, determine administration guidelines for the national legal aid scheme, and operate educational programs designed to promote public understanding of rights and duties under the laws of Malaysia. Attorneys representing persons through NLAFF are paid at rates determined by the organization, and are not carried out on a purely pro bono basis.<sup>35</sup>

## Pro Bono Resources

For additional information or insight on the availability of established pro bono opportunities, interested attorneys may reach out to:

- The Malaysian Bar - [http://www.malaysianbar.org.my/legal\\_aid\\_centres.html/](http://www.malaysianbar.org.my/legal_aid_centres.html/) (last visited on September 4, 2015)
- Legal Aid Bureaus - <https://www.mlaw.gov.sg/content/lab/en.html> (last visited on September 4, 2015)
- Lawyers for Liberty<sup>36</sup> - <http://www.lawyersforliberty.org/a> (last visited on September 4, 2015)
- Advocates Association of Sarawak - <http://sarawak-advocates.org.my> (last visited on September 4, 2015)
- SUARAM - <http://www.suaram.net/> (last visited on September 4, 2015)
- Kuala Lumpur Legal Aid Centre - <http://www.kllac.com/> (last visited on September 4, 2015)
- UNDP Malaysia - <http://www.my.undp.org/> (last visited on September 4, 2015)
- Legal Aid Centre Programs - <http://www.kllac.com/Programs.html> (last visited on September 4, 2015)
- Legal Aid Centre Clinic and Syariah Clinic (joint clinics)
- All Women Action Society Legal Information Service
- Women’s Aid Organisation Legal Information of Advocacy

---

<sup>31</sup> Supra n. 9, at 11 – 12.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Lawyers for Liberty is a Non-Governmental Organization that provides legal and human rights advice and representation for private individuals and organizations suffering human rights and civil liberties violations.



- Tenaganita Migrant Workers Clinic
- United Nation High Commissioner for Refugees Clinic
- Dock Brief Program

## CONCLUSION

Malaysia enjoys well established government and bar sponsored litigation legal aid and pro bono systems that assist individuals in both criminal and civil matters. As such, with respect to litigation pro bono opportunities, interested attorneys are advised to reach out to the Legal Aid Centres (vis-à-vis the Malaysian Bar), which can connect practitioners with qualified individuals seeking assistance. Moreover, while there is no central clearinghouse to link private practitioners to pro bono clients, pro bono opportunities are available through NGOs and other organizations. Due to the unregulated nature of the private practice of law, attorneys have wide latitude in pioneering efforts in the private realm, and are able to initiate programs, collaborate with local attorneys and directly provide pro bono services.

September 2015

Pro Bono Practices and Opportunities in Malaysia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Malta<sup>1</sup>

### INTRODUCTION

The provision of pro bono legal services is less common in Malta than it is in the United States. There is, however, a publicly funded legal aid scheme for those unable to afford a lawyer which allows for free representation in civil, administrative or criminal proceedings. Before engaging in a detailed analysis of such state funded legal services and pro bono opportunities in Malta, a brief overview of the Maltese legal system is necessary.

### OVERVIEW OF THE LEGAL SYSTEM

The Maltese legal system, like Malta itself, has seen a good deal of change throughout its history. Maltese law has historically been influenced by Roman, French and British colonial law.<sup>2</sup> In 1964 Malta enacted its first Constitution based on British constitutional principles. Ten years later, in 1974, Malta adopted a new Constitution and declared itself a Republic with a President as its head of state. The Maltese legal system has since developed into a legal order utilizing elements from both common law and continental law. With Malta's accession to the European Union in 2004, the legal system has further developed to incorporate European Union law in domestic legislation.<sup>3</sup>

#### The Justice System

##### Constitution and Governing Laws

Malta has a written constitution from which it derives its constitutional principles.<sup>4</sup> This is the supreme law of the State defining, among other things, the organs of the State and their functions together with a set of fundamental human rights recognized by the State.<sup>5</sup> These rights are influenced by the European Convention for Human Rights to which Malta is a signatory.<sup>6</sup> Article 39 of the Constitution entitled "Provisions to Secure Protection of Law" provides for a right to legal assistance.

All laws are passed by Parliament which is comprised of the President of the Republic and the House of Representatives.<sup>7</sup> As a hierarchy, the 542 chapters (to date) of the Laws of Malta emanate from and are

---

<sup>1</sup> This chapter was drafted with the support of CSB Advocates (previously known as Zammit & Associates Advocates, The Penthouse, Tower Business Centre, Tower Street, Swatar, BKR 4013, Malta, EU available at (<http://www.csb-advocates.com/contact-us>) (last visited on September 4, 2015).

<sup>2</sup> See generally J. J. Cremona, THE MALTESE CONSTITUTION AND CONSTITUTIONAL HISTORY SINCE 1813 (Malta Publishers Enterprises Group) (1994).

<sup>3</sup> Treaty of Accession, Apr. 16, 2003, available at [http://www.europarl.europa.eu/enlargement\\_new/treaty/default\\_en.htm](http://www.europarl.europa.eu/enlargement_new/treaty/default_en.htm) (last visited on September 4, 2015) (entered into force on May 1, 2004).

<sup>4</sup> MALTA CONST., Sept. 21, 1964, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1> (last visited on September 4, 2015).

<sup>5</sup> See id. at ch. IV-VIII.

<sup>6</sup> See Convention for the Protection of Human Rights and Fundamental Freedoms, COUNCIL OF EUROPE, for a list of signatory countries, available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG> (last visited on September 4, 2015).

<sup>7</sup> Composition of Parliament, OFFICIAL WEBSITE OF THE MALTESE PARLIAMENT, available at <http://www.parlament.mt/compositionofparliament?l=1> (last visited on September 4, 2015).

subject to the Constitution.<sup>8</sup> Each chapter tackles a specific area of law and is often supplemented by “subsidiary legislation” containing more specific rules and/or regulations.<sup>9</sup> Parliament may delegate the power to adopt such regulations to Ministers, allowing them to pass subsidiary legislation which is subject to Parliamentary review for the sake of adhering to or creating policies issued by the Executive as a whole.<sup>10</sup> This system has proven invaluable for the purpose of harmonization of domestic legislation with certain European Union directives and regulations.

## The Courts

### Levels, Relevant Types, and Locations

The judiciary system in Malta is a two-tier system that is divided into Superior and Inferior courts.<sup>11</sup> The Maltese judiciary does not apply the doctrine of precedent which exists under the Common Law system. In practice however, previous judgments have persuasive power but are not binding.

The courts are mainly divided between the civil jurisdiction and the criminal jurisdiction with the former holding jurisdiction over commercial matters.<sup>12</sup> These two jurisdictions, in turn, are divided into different tiers of courts. In all cases, persons may either represent themselves<sup>13</sup> or have a lawyer appear and litigate on their behalf.

The civil jurisdiction is comprised of both superior and inferior jurisdictions.<sup>14</sup> The superior jurisdiction is the Constitutional Court,<sup>15</sup> which, amongst other things, hears cases relating to the interpretation of the Constitution or the validity of laws, as well as appeals on alleged breaches of fundamental human rights. The inferior civil jurisdiction comprises the Court of Magistrates (in Malta or in Gozo) and the Small Claims Tribunal.<sup>16</sup> The Small Claims Tribunal hears cases pertaining to property disputes valued less than €3,494.06;<sup>17</sup> the Magistrates’ Court hears cases pertaining to property valued less than €11,646.87; while the First Hall Civil Court hears cases pertaining to property valued in excess of €11,646.87.<sup>18</sup>

The Criminal Courts handle criminal matters that exceed the competence of the Court of Magistrates, either in terms of potential punishment or sanction. The Court of Magistrates is responsible for addressing the inquiry stage of criminal cases as well as trying cases below a certain threshold of punishment as

---

<sup>8</sup> CONST., supra n.4 at art. 6 (“... , if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.”).

<sup>9</sup> See Laws of Malta, OFFICIAL WEBSITE OF THE MALTESE MINISTRY OF JUSTICE, CULTURE AND LOCAL GOVERNMENT, [www.justiceservices.gov.mt/LOM.aspx?pageid=24](http://www.justiceservices.gov.mt/LOM.aspx?pageid=24) (last visited on September 4, 2015).

<sup>10</sup> Id.

<sup>11</sup> EUROPEAN JUDICIAL NETWORK, Legal Professions: Malta, [http://ec.europa.eu/civiljustice/legal\\_prof/legal\\_prof\\_mlt\\_en.htm](http://ec.europa.eu/civiljustice/legal_prof/legal_prof_mlt_en.htm) (last visited on September 4, 2015).

<sup>12</sup> See PORTAL OF THE JUDICIARY OF MALTA, The Courts, for an overview of the Maltese judiciary, <http://www.judiciarymalta.gov.mt/the-courts> (last visited on September 4, 2015).

<sup>13</sup> This practice is heavily discouraged but still allowed by procedures both in civil and criminal courts.

<sup>14</sup> CODE OF ORGANIZATION AND CIVIL PROCEDURE [CCOP], ch. 12.

<sup>15</sup> See Malta Judiciary, [www.judiciarymalta.gov.mt/constitutional-court](http://www.judiciarymalta.gov.mt/constitutional-court) (last visited on September 4, 2015).

<sup>16</sup> Id.

<sup>17</sup> Small Claims Tribunal Act, ch. 380 (Malta).

<sup>18</sup> CCOP, ch. 12.



provided by law.<sup>19</sup> The prosecution in such cases is conducted by the police and the office of the Attorney General.<sup>20</sup>

### Appointed vs. Elected Judges

Superior Courts are presided over by Judges and the Inferior Courts are presided over by Magistrates. Judges and Magistrates are appointed by the President of Malta acting in accordance with the advice of the Prime Minister. In practice, the Prime Minister often confers with the Minister responsible for Justice, Culture and Local Government and the Cabinet. By tradition, the Minister responsible for Justice also confers with the Chief Justice on proposed appointments to the Bench of Judges and the Bench of Magistrates. The Prime Minister may also request the advice of the Commission for the Administration of Justice on any appointment to be made to either Bench. Judges enjoy security of tenure and can only be removed from office for proved misbehavior or proved inability to perform their functions. The eligibility criterion for Judges is 12 years of legal practice (as a Magistrate or an attorney), and for Magistrates seven years of legal practice.

## The Practice of Law

### Education

A person can only practice in the Law Courts after successfully attaining the academic title of LL.D (Doctor of Laws) following a six-year course qualification and then sitting for the public warrant examination successfully.<sup>21</sup> Although one is technically a lawyer in Malta after attaining the LL.D, the law requires that a person possess a government-issued Warrant in order to attain the Right of Audience in the Law Courts and to represent clients.<sup>22</sup> Such a Warrant can only be obtained following a one-year traineeship at the office of a practitioner and/or of a superior court.<sup>23</sup> Such training can be pursued after having obtained the LL.D (or equivalent degree of another EU Member State) or alternatively at any time after the start of the last academic year of the LL.D course of the University of Malta. In Malta, warranted lawyers are permitted to plead before the courts, including the Superior Courts.

### Demographics

The legal profession in Malta is regulated by a single bar association known as the Chamber of Advocates. Currently, there are 875 lawyers registered with the Maltese Chamber of Advocates.<sup>24</sup> While this number provides a general idea of the number of lawyers in Malta, it fails to account for all of them, as membership with the Chamber of Advocates is optional.<sup>25</sup>

---

<sup>19</sup> See CRIMINAL CODE, ch. 9, article 370.

<sup>20</sup> Id.

<sup>21</sup> CCOP, ch. 12.

<sup>22</sup> Id.

<sup>23</sup> The complete list of conditions are set out in Article 81 of the Code of Organization and Civil Procedure (hereinafter "COCP").

<sup>24</sup> See Lawyer Search, MALTA CHAMBER OF ADVOCATES, [http://www.avukati.org/chamberofadvocates/lawyer\\_search.aspx](http://www.avukati.org/chamberofadvocates/lawyer_search.aspx) (last visited on September 4, 2015) for a complete list of lawyers.

<sup>25</sup> Malta Chamber of Advocates represents a fraction of the advocates admitted to the Bar of Malta. It is a voluntary non-political non-governmental organization funded by the fees payable by members and by funds raised from the activities it organizes, and it is recognized as the consultative and participatory representative of advocates in matters related to the organization and administration of justice. See MALTA CHAMBER OF ADVOCATES, About Us, <http://www.avukati.org/chamberofadvocates/content.aspx?id=29020> (last visited on September 4, 2015), for a description of services.



## Legal Regulation of Lawyers

Lawyers in Malta and the services they provide are regulated by various sources. The Maltese 'Chamber of Advocates' has issued an extensive *Code of Ethics*<sup>26</sup> to guide lawyers in their practice. Further, lawyers are subject to the Commission for the Administration of Justice – Committee for Advocates and Legal Procurators for disciplinary matters.<sup>27</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Legal aid is funded by the State and provided through the Legal Aid Office situated at the Law Courts in Valletta. The right to legal assistance is provided for in the Constitution of Malta under Article 39, stipulating the right to “Provisions to Secure Protection of Law.” The right to legal assistance applies to both civil and criminal proceedings.

#### In Civil Proceedings

Article 911 of the COCP provides that a person wishing to benefit from Legal Aid is required to apply to the First Hall of the Civil Court. The COCP, in this respect, refers to this office as the “Advocate for Legal Aid.”<sup>28</sup> The COCP also provides that a request for a legal aid lawyer may be done verbally to the Advocate for Legal Aid at the legal aid office in the courts.<sup>29</sup>

#### In Criminal Proceedings

Every person charged with a criminal offence shall be permitted to defend himself in person or by a legal representative. A person who cannot afford to pay for such legal representation, as is reasonably required by the circumstances of his case, shall be entitled to have such representation at the public's expense.

Article 570 of the Criminal Code provides for the same protection to be afforded in criminal cases as in civil cases and cross-references to Article 911 of the COCP in this regard (as the COCP is more comprehensive regarding conditions and appointment of legal aid lawyers). It remains the prerogative of the First Hall of the Civil Court to approve the application for legal aid. The same prerogative is vested in the Court of Magistrates when the case falls under the criminal jurisdiction.<sup>30</sup>

### State-Subsidized Legal Aid

#### Eligibility Criteria

According to Article 912 of the COCP, a person may gain access to legal aid by means of a:

- Declaration on oath that the person applying for legal aid genuinely believes that he or she has an interest in the case whether as plaintiff or defendant.

---

<sup>26</sup> CODE OF ETHICS AND CONDUCT FOR ADVOCATES, available at <http://www.snapadministration.com/snapdatafiles/files/chamberofadvocates/633057714342187500.pdf> (last visited on September 4, 2015).

<sup>27</sup> See PORTAL OF THE JUDICIARY OF MALTA, Commission for the Administration of Justice, for further information on the Commission for the Administration of Justice, <http://www.judiciarymalta.gov.mt/commission-for-the> (last visited on September 4, 2015).

<sup>28</sup> COCP, art. 911(6) (“In this Code or in any other law includes any other lawyer, officer or public officer designated by the Minister responsible for justice to perform, under the guidance of the Advocate for Legal Aid, any function pertaining to the Advocate of Legal Aid or to the administration of the benefit of legal aid.”).

<sup>29</sup> COCP, art. 911(2).

<sup>30</sup> CRIMINAL CODE, art. 570(4).

- Confirmation on oath that the applicant for legal aid does not possess any property with a value equal to or in excess of €6,988.12. Furthermore, the applicant must not be earning more than the minimum wage, which in 2015, was set to be (in whole-time weekly rates): for 18 years and over €166.26; 17 years €159.48; and under 17 years €156.64. The Minister of Justice reserves the right to change the property value from time to time as he may deem necessary. Furthermore, the calculation process does not consider the principal residence of the applicant or any property, immovable or movable, which forms part of the subject matter of the court proceedings.

The Criminal Code does not make reference to how one may be granted access to a legal aid lawyer. However, reference is made to the application to the Advocate for Legal Aid, which is regulated by the COCP.<sup>31</sup> This effectively means that the same tests applied in the COCP are also applied in criminal cases.

Maltese law specifically states that a company registered under the Companies Act is not entitled to legal aid under any circumstance.<sup>32</sup> Under the system of legal aid, there is no distinction between a Maltese citizen or a foreign national. As long as the case is in the Maltese court system, any financially eligible individual may be entitled to legal aid, regardless of citizenship. It is to be noted that a person applying will not be able to select which lawyer from the Register for Legal Aid may represent them. This decision remains in the hands of the civil courts as the legal aid lawyers work on a rotation system on a fixed roster.

## Mandatory assignments to Legal Aid Matters

In order to provide legal aid, a warranted lawyer must first be added to the Register of Legal Aid. The salary for legal aid lawyers is set out in Chapter 497 of the Public Administration Act as salary scale 10.<sup>33</sup> Assignments are voluntary, which means that there can be no mandatory assignments on legal aid matters, even during the legal training.

### Unmet Needs and Access Analysis

Analyses regarding unmet needs under the legal aid system in Malta are ongoing. In 2014 a Legal Aid Agency was set up to provide administrative support in relation to, *inter alia*, procedures or measures on legal aid concerning; the nomination of advocates for legal aid in the court of criminal jurisdiction, in adoption or guardianship proceedings or in any other court relating to proceedings concerning minors; the benefit of legal aid in cross-border disputes; and the admission to sue and defend with the benefit of legal aid. In addition, the Agency has been entrusted to carry out studies and appoint competent individuals in order to improve and reform the system of legal aid; to monitor the functioning system of legal aid; and to function as an agency for the provision and reform of legal aid or other forms of legal assistance.<sup>34</sup>

### Alternative Dispute Resolution

#### Mediation and Arbitration

Maltese law also provides for Alternative Dispute Resolution. With respect to arbitration, the Malta Arbitration Centre (MAC) was set up to encourage individuals to make use of domestic arbitration and international commercial arbitration. The MAC is governed by a board of Governors duly appointed by the

---

<sup>31</sup> Id.

<sup>32</sup> COCP, art. 926.

<sup>33</sup> Government salary scales are updated every five years and issued by the Government of Malta. Currently, an Advocate for Legal Aid qualifies for a scale 10 salary under the Third Schedule of Chapter 487 (Public Administration Act). This schedule expands on Article 27 of the Act. See Public Administration Act, ch. 487.

<sup>34</sup> Legal Aid Agency (Establishment) Order; 2014, Legal Notice 414 of 2014, available at <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26497&l=1> (last visited on September 4, 2015).



President of Malta. However, the Arbitration Act (Cap. 387) does not provide for the provision of Legal Aid in relation to arbitration.

With respect to mediation, the Malta Mediation Centre was set up under the Mediation Act, 2004 (Cap. 474). The Mediation Centre was introduced within the Maltese legal system to provide mediation services in civil, social, family, commercial, and industrial matters, however no provision is made for Legal Aid lawyers. In family mediation, the parties have two options. They may either choose a mediator from an accredited list, with costs, or ask the Court Registrar to appoint a mediator of its choice from an accredited list, however the cost is not borne by the parties but by the court itself.

### Ombudsman

The Ombudsman in Malta is an independent Officer of Parliament appointed by the President of the Republic.<sup>35</sup> The Ombudsman's mandate is to investigate any action taken by or on behalf of the public administration. The Ombudsman may conduct any such investigation *ex officio* or on the written complaint of any person having an interest who claims to have been aggrieved by any action, provided the complaint is not the subject-matter of proceedings pending in a court or other tribunal. Complaints can be lodged in the form of a letter, online, or by email.<sup>36</sup> The Ombudsman charges no fees for his services. When the investigation shows that the complaint is justified, he may issue a recommendation addressed to the public service at issue, recommending that a complainant be given adequate redress.

## PRO BONO ASSISTANCE

While not entirely absent from the Maltese legal practice, pro bono work is not that common in Malta. This is mainly due to the generally well-developed of legal aid system. This explains why pro bono work in Malta has not yet been regulated. However, as such it is not a new concept within the Maltese legal community. Often questions have arisen in the past with respect to the type of lawyers that are able to offer pro bono services, specifically whether or not non-warranted lawyers should be allowed to provide pro bono services and legal advice.

### Pro bono Opportunities

#### Private Attorneys

Private firms are not obliged to do or report any of their pro bono work.

#### Law Firm Pro bono Programs

Some law firms have been known to perform pro bono work, including, but not limited to, authoring numerous publications addressing a variety of social issues including human rights, unemployment, and social security. This practice is more common for law firms rather than individual lawyers who are sole practitioners.<sup>37</sup> There are currently no main clearinghouses dealing in pro bono work in Malta, and no information has been published regarding the pro bono work of law firms or the degree or frequency of such activities.

---

<sup>35</sup> See the Ombudsman Act No XXI of 1995 as amended by Act XVI of 1997; Legal Notices 425 of 2007 and 105 of 2008; and Act XVII of 2010, available at <http://www.ombudsman.org.mt/wp-content/uploads/2013/11/Ombudsman-Act.pdf> (last visited on September 4, 2015).

<sup>36</sup> Complaint form available here <http://www.ombudsman.org.mt/making-a-complaint/> (last visited on September 4, 2015).

<sup>37</sup> See indicative list of law firms offering pro bono legal advice, e.g., Fenech & Fenech (<http://www.fenechlaw.com/pro-bono-csr>) (last visited on September 4, 2015); Dorda Brugger Jordis (<http://www.dbj.at/en/about-us/pro-bono>).



## Non-Governmental Organizations (NGOs)

The most common example of pro bono legal services offered in Malta involves NGOs and asylum seekers. Refugee and immigration matters are pervasive in Malta given the country's geographic location.<sup>38</sup> NGOs that offer pro bono services in these matters include, the Jesuit Refugee Service (JRS),<sup>39</sup> Aditus Foundation<sup>40</sup> and the UN Refugee Agency's refugee services.<sup>41</sup> The Agency for the Welfare of Asylum Seekers - a department of the Ministry of Home Affairs – also assists in the provision of pro bono services by acting as facilitator with all NGOs and public entities to ensure that national obligations to refugees and asylum seekers are accessible.<sup>42</sup>

## University Legal Clinics and Law Students

The Faculty of Laws of the University of Malta offers law students two study units - "*Advocacy Skills 1 - Lectures and Role Plays*" and "*Advocacy Skills 2 – Practicum*" - that aim to introduce legal clinics within the syllabus. These study units provide law students with the opportunity to assist consumers or asylum seekers by providing pro bono legal support.<sup>43</sup>

## Historic Development and Current State of Pro bono

### Historic Development and the Current State of Pro bono

Historically, large scale pro bono activity in Malta has never really developed. This is mainly due to the fact that most law firms are relatively small, that Malta has a well-developed system of legal aid for both civil and criminal proceedings and significant legal aid is being provided by non-profit organizations, especially in the area of asylum and immigration law. Therefore, pro bono work, when performed, is mainly carried out on an individual lawyer basis, despite the establishment of some pro bono programs by larger law firms in recent years.

## Laws and Regulations Impacting Pro bono

There are no specific rules that provide a framework for pro bono representation in Malta. However, the general rules regulating attorney conduct naturally also apply to pro bono services. For instance, the Chamber of Advocates regulations on advertising are relatively strict, as lawyers are prohibited from identifying clients they have worked with and generally may not advertise their services commercially.<sup>44</sup> This may discourage commercial law firms from providing pro bono services by limiting the law firms' ability to approach potential indigent clients.

---

<sup>38</sup> As of Dec. 2014, according to the UNHCR representation in Malta, there were 6,095 refugees, and 178 asylum-seekers residing in Malta. See 2015 UNHCR Subregional Operations Profile, THE UN REFUGEE AGENCY IN MALTA, available at <http://www.unhcr.org/pages/49e48eba6.html> #MTAVA (last visited on September 4, 2015).

<sup>39</sup> See generally JESUIT REFUGEE SERVICE, <http://jrsusa.org/> (last visited on September 4, 2015).

<sup>40</sup> See generally MALTA PRO BONO DIRECTORY <http://www.refugeelegalaidinformation.org/malta-pro-bono-directory> (last visited on September 4, 2015).

<sup>41</sup> See generally THE UN REFUGEE AGENCY IN MALTA, <http://www.unhcr.org/mt/> (last visited on September 4, 2015).

<sup>42</sup> See generally AGENCY FOR THE WELFARE OF ASYLUM SEEKERS, <http://homeaffairs.gov.mt/en/MHAS-Departments/awas/Pages/AWAS.aspx> (last visited on September 4, 2015).

<sup>43</sup> See <http://www.ghsl.org/~leyigzur/upload/pages/Microsoft%20Word%20-%20Law%20Clinics.doc.pdf> (last visited on September 4, 2015).

<sup>44</sup> See CHAMBER OF ADVOCATES, Guidelines for advertising, available at <http://www.avukati.org/downloads.aspx> (last visited on September 4, 2015).



## “Loser Pays” Statute

One problem facing the pro bono practice is a “Loser Pays” statute which may be a deterrent for law firms wanting to represent indigent clients in court.<sup>45</sup>

## Statutorily Mandated Minimum Legal Fee Schedule

The fees payable to legal practitioners for the purpose of activities carried out in the Law Courts are provided for in the Code of Organization and Civil Procedure (hereinafter “COCP” - Chapter 12 of the Laws of Malta) in its Schedule A, Tariff E.<sup>46</sup> It should be noted that these fees are limited to court expenses and do not include compensation for, among others things, the preparation of a case or the research involved. Furthermore, the Chamber of Advocates has issued guidelines for legal fees as a general indication of tariffs charged for out-of-court services.<sup>47</sup> These tariffs make no exceptions for legal aid cases.

While these tariffs are exclusive of the 18% Value Added Tax (“VAT”) that applies to legal services work, VAT in Malta is charged on the applicable fee.<sup>48</sup> Therefore, a lawyer who performs pro bono work is by definition working for free and no VAT is charged as no applicable fee exists. As a result, the current VAT scheme does help facilitate pro bono work.

Finally, there can be no agreements giving a lawyer a percentage of the amount won when a case has been pleaded successfully under Maltese law. Any such agreement would fall within the ambit of an agreement *quotae litis*, which is explicitly prohibited by the COCP.<sup>49</sup> In some cases, this ban could be considered a barrier to the provision of pro bono services.

## Socio-Cultural Barriers to Pro bono or Participation in the Formal Legal System

Unlike law firms in the US and the rest of the EU, Maltese firms do not focus on pro bono as part of their services due, in large part, to the existence of an advanced legal aid system. Pro bono is not ingrained within the traditional Maltese legal system, and is not regulated. Instead, pro bono work in Malta is more often done on a purely voluntary basis through NGOs. The Chamber of Advocates could arguably adopt a more pro-active stance in the promotion of pro bono activities among firms.

## Pro bono Resources

### Entities Engaged in Pro bono

Currently, there are no such resources other than those mentioned above. Moreover, there is no public statistic available with respect to the successful pleas by legal aid lawyers, nor in respect to what kind of disputes are handled by legal aid lawyers.

---

<sup>45</sup> See Legal Aid – Malta, available at [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_mlt\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_mlt_en.htm) (last visited on September 4, 2015).

<sup>46</sup> EUROPEAN E-JUSTICE, Regulatory Framework Governing Fees of Legal Professions: Malta, available at [https://e-justice.europa.eu/content\\_costs\\_of\\_proceedings-37-mt-en.do?member=1](https://e-justice.europa.eu/content_costs_of_proceedings-37-mt-en.do?member=1) (last visited on September 4, 2015).

<sup>47</sup> Guidelines on Fees to be Charged by Advocates for Services Rendered, MALTA CHAMBER OF ADVOCATES, available at [http://www.avukati.org/chamberofadvocates/common/file\\_provider.aspx?id=633509679584440000](http://www.avukati.org/chamberofadvocates/common/file_provider.aspx?id=633509679584440000) (last visited on September 4, 2015).

<sup>48</sup> Value Added Tax Act, available at <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8872&l=1> (last visited on September 4, 2015).

<sup>49</sup> COCP, art. 83 (“Advocates shall not, either directly or indirectly, enter into or make any agreement or stipulation *quotae litis*”).



## CONCLUSION

In Malta, because of the characteristics of the legal market and the absence of a well-established pro bono culture, there is limited pro bono activity. Nevertheless, in view of Malta's particular geographic position, there is an ongoing need for both publicly funded legal aid schemes and pro bono work to assist the numerous immigrants and/or asylum-seekers Malta receives.

While non-profit organizations are active in these fields and do offer considerable legal assistance, larger law firms are given no particular incentives to engage in pro bono services. On an individual level, pro bono work is provided only on a voluntary basis by lawyers. As a result, there is still significant room for developing corporate initiatives and enhancing the provision of free legal services to those in need.

September 2015

Pro Bono Practices and Opportunities in Malta

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Montenegro<sup>1</sup>

### INTRODUCTION

Montenegro's legal system is currently undergoing a period of extensive reform and restructuring, and practitioners should be aware that the legal profession and pro bono culture in Montenegro are still developing. Because Montenegro's pro bono culture is still in a relatively early stage of development, pro bono opportunities come from individual organizations rather than from national clearinghouses, which do not appear to exist at this time. Nonetheless, Montenegro's laws against domestic violence and the general development of its legal sector bode well for the future prospects of pro bono work in the country.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The government of Montenegro is based on the principle of separation of powers, whereby the judicial, legislative, and executive branches, at least in theory, are independent of each other.<sup>2</sup> Montenegro, like other continental European countries, adheres generally to a civil law model of jurisprudence.<sup>3</sup> Due to the relative youth of the country, Montenegro's Constitution and governing laws were developed with reference to the principles of its European neighbors. Montenegro's Constitution generally complies with European Union standards and was developed with input from the Council of Europe through its Venice Commission.<sup>4</sup> Additionally, many of the laws governing Montenegro's judiciary are aimed at ensuring that Montenegro conforms to European Union standards.<sup>5</sup>

##### The Courts

The judiciary of Montenegro is in flux. Montenegro only recently became fully independent, in 2006, prior to which it was in a union with neighboring Serbia.<sup>6</sup> Since 2006, the judiciary has undergone a number of structural and institutional reforms in preparation for Montenegro's application to join the European Union.<sup>7</sup> Montenegro has established 15 Basic Courts, two High Courts, two Commercial Courts, the Court of Appeals, the Administrative Court, the Supreme Court, and the Constitutional Court.<sup>8</sup>

The court system in Montenegro provides for judicial review in both criminal and civil matters and divides such jurisdiction among several different types of courts.

---

<sup>1</sup> This chapter was drafted with the support of Milica Popović, Sonja Gitarić and Ksenija Ivetić, CMS Reich-Rohrwig Hainz.

<sup>2</sup> Country Reports on Human Rights Practices: Montenegro, U.S. DEP'T OF STATE BUREAU OF DEMOCRACY 1 (2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236558> (last visited on September 4, 2015).

<sup>3</sup> Branka Lakočević, Judicial Reform in Montenegro in the Scope of the European Union Integration Process, UNITED NATIONS DEVELOPMENT PROGRAMME 3 (Jun. 17, 2009), available at [http://europeandcis.undp.org/uploads/public1/files/Montenegrin\\_judiciary\\_and\\_the\\_EU\\_Bratislava\\_conference%5B1%5D.pdf](http://europeandcis.undp.org/uploads/public1/files/Montenegrin_judiciary_and_the_EU_Bratislava_conference%5B1%5D.pdf) (last visited on September 4, 2015) [hereinafter JUDICIAL REFORM IN MONTENEGRO].

<sup>4</sup> Id. at 2.

<sup>5</sup> Id. at 3.

<sup>6</sup> Id. at 2.

<sup>7</sup> Id. at 4–6.

<sup>8</sup> Id. at 3.



- The Basic Court is the court of first instance for certain criminal charges and civil matters.<sup>9</sup>
- The High Courts act as courts of first instance for more serious criminal charges, as well as appellate courts to review decisions made by the Basic Courts.<sup>10</sup>
- The Commercial Courts hear disputes involving local and foreign business entities, registration of business entities, bankruptcy and liquidation, copyright and intellectual property.<sup>11</sup>
- The Court of Appeals acts as an appellate court for decisions made by the High Courts and Commercial Courts.<sup>12</sup>
- The Administrative Court has jurisdiction to hear disputes regarding the legality of final administrative acts.<sup>13</sup>
- The Supreme Court can provide relief from the decisions of any lower court and the Judicial Council and can decide on fundamental issues of jurisdiction in certain circumstances.<sup>14</sup>
- The Constitutional Court decides on matters regarding compliance with the Montenegro Constitution, international treaties, other constitutional complaints such as electoral disputes and government actions during a state of war and emergency.<sup>15</sup>

In addition, the Judicial Council oversees the administration of the court system. The Judicial Council is a ten-member body comprised of the President of the Supreme Court (who is selected by Parliament), four judges selected by the Conference of Judges, the Minister of Justice, two Members of Parliament (also selected by Parliament), and two “distinguished lawyers” appointed by the President of Montenegro. In 2013, the Montenegrin Constitution was amended to address the procedure for the appointment of judges by increasing merit-based selection reforms.<sup>16</sup>

### The Practice of Law

The legal community in Montenegro is relatively small. Although the Bar Association of Montenegro was established over 100 years ago, its membership includes only about 800 attorneys-at-law (i.e., lawyers registered with the Bar Association and authorized to practice before the courts and otherwise provide legal services).<sup>17</sup> Because the law student population consists of several thousand students,<sup>18</sup> the lawyer community in Montenegro is likely much larger than the approximately 800 attorneys-at-law registered with the Bar Association. Most lawyers appear to be employed either in private practice or in government, but there is no detailed breakdown of lawyers by industry, business sector or practice type.<sup>19</sup>

---

<sup>9</sup> Government of Montenegro Directorate for Anti-Corruption Initiative, Integrity and Capacity Assessments of the Judiciary in Montenegro, INSTITUTE FOR ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT 8–9 (Oct. 2008), available at <http://iper.org.me/en/content/integrity-and-capacity-assessments-of-the-judiciary-in-montenegro> (last visited on September 4, 2015).

<sup>10</sup> Id. at 9.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> LAW ON THE CONSTITUTIONAL COURT OF MONTENEGRO, art. 20, available at <http://www.ustavnisudcg.co.me/engleska/PDF/Law%20on%20the%20Constitutional%20Court%20of%20Montenegro%20.pdf> (last visited on September 4, 2015).

<sup>16</sup> Corruption and Anti-Corruption in Montenegro 2013-2014, CENTER FOR DEMOCRATIC TRANSITION 28 (2015), available at [http://seldi.net/fileadmin/public/PDF/Publications/CAR\\_Montenegro/CAR\\_Montenegro\\_2014\\_ENG.pdf](http://seldi.net/fileadmin/public/PDF/Publications/CAR_Montenegro/CAR_Montenegro_2014_ENG.pdf) (last visited on September 4, 2015).

<sup>17</sup> ADVOCACY ACT, art. 2, OFFICIAL GAZETTE OF THE REPUBLIC OF MONTENEGRO NO. 79/2006.

<sup>18</sup> Id.

<sup>19</sup> See id.; List of Attorneys, EMBASSY OF THE UNITED STATES PODGORICA, MONTENEGRO, <http://podgorica.usembassy.gov/attorneylist.html> (last visited on September 4, 2015).



Other parts of the legal community are similarly small in number. There are only a few hundred judges and fewer than 100 prosecutors in Montenegro.<sup>20</sup>

### Legal Regulation of Lawyers

Attorneys-at-law and the provision of state-funded legal aid and pro bono services are regulated generally by the Advocacy Act.<sup>21</sup> The Advocacy Act outlines the responsibilities of lawyers practicing in Montenegro, as well as requirements for qualification to practice.<sup>22</sup> The same issues are in further detail regulated by the Statute of the Bar Association of Montenegro.<sup>23</sup> Lawyers must also abide by a code of ethics.<sup>24</sup> The Advocacy Fees Act details restrictions and requirements for lawyer compensation.<sup>25</sup> The Act appears to apply exclusively to work performed for a Montenegrin citizen in Montenegro.<sup>26</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Many Montenegrins face a combination of low wages and relatively high court costs and are consequently unable to afford legal action in the Montenegrin courts.<sup>27</sup> To address this issue, the Parliament of Montenegro adopted the Law on Legal Aid (the “Law”) in 2011 and began implementing the Law in 2012.<sup>28</sup> The law was further amended in 2015.<sup>29</sup> The Law created a formal process through which certain types of individuals are provided free legal counseling, free aid in the preparation of briefs and free representation in court proceedings and out-of-court settlement proceedings in the majority of the country’s courts.<sup>30</sup> Free legal aid is explicitly not provided in commercial registration matters, commercial court proceedings, libel and defamation proceedings and reduction of child support proceedings.<sup>31</sup>

---

<sup>20</sup> JUDICIAL REFORM IN MONTENEGRO, *supra* n.3, at 3.

<sup>21</sup> Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Montenegro COUNCIL OF EUROPE 27 (Mar. 17, 2009), [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2009\)10Rep-MNE\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2009)10Rep-MNE_en.pdf) (last visited on September 4, 2015).

<sup>22</sup> ADVOCACY ACT (Official Gazette of the Republic of Montenegro, No. 79/06 Dec. 26, 2006), available at [http://www.advokatskakomora.me/zakon\\_o\\_ad.html](http://www.advokatskakomora.me/zakon_o_ad.html) (last visited on September 4, 2015).

<sup>23</sup> OFFICIAL GAZETTE OF THE REPUBLIC OF MONTENEGRO, NO. 34 (JUN. 2005), 50/07.

<sup>24</sup> ADVOCACY PROFESSIONAL CODE OF ETHICS (Jan. 1999), <http://www.advokatskakomora.me/kodeks1.html> (last visited on September 4, 2015).

<sup>25</sup> ADVOCACY FEES ACT (Official Gazette of the Republic of Montenegro, No. 79/05 25 Feb. 2005), available at [http://www.advokatskakomora.me/advokatska\\_tarifa.html](http://www.advokatskakomora.me/advokatska_tarifa.html) (last visited on September 4, 2015).

<sup>26</sup> *Id.* art. 2.

<sup>27</sup> Rule of Law, Access to Justice and Legal Empowerment News Update: Democratic Governance, UNITED NATIONS DEVELOPMENT PROGRAMME (Nov. 2012), [http://www.pravnapomoc.me/images/stories/Global\\_Newsletter\\_2012.pdf](http://www.pravnapomoc.me/images/stories/Global_Newsletter_2012.pdf) (last visited on September 4, 2015).

<sup>28</sup> See About Us, LEGAL AID MONTENEGRO, [http://www.pravnapomoc.me/index.php?option=com\\_content&view=category&layout=blog&id=3&Itemid=8&lang=en](http://www.pravnapomoc.me/index.php?option=com_content&view=category&layout=blog&id=3&Itemid=8&lang=en) (last visited on September 4, 2015).

<sup>29</sup> OFFICIAL GAZETTE OF THE REPUBLIC OF MONTENEGRO NO. 20/2015

<sup>30</sup> LAW ON LEGAL AID, art. 2, available at [http://www.pravnapomoc.me/images/stories/zakoni/Law\\_on\\_Legal\\_Aid.pdf](http://www.pravnapomoc.me/images/stories/zakoni/Law_on_Legal_Aid.pdf) (last visited on September 4, 2015).

<sup>31</sup> *Id.* art. 7.



## State-Subsidized Legal Aid

Under the Law, reduced fee and/or free legal aid is available to persons of poor financial standing, children without parental care, individuals with disabilities, victims of domestic violence and victims of human trafficking.<sup>32</sup> The Law on Legal Aid defines a person of poor financial standing as a person who owns no property and whose family's monthly income does not exceed 30% of the average wage in Montenegro for the leading income earner and 15% of the average wage for any subsequent income earners.<sup>33</sup> There are specific exceptions to these definitional requirements that allow individuals to own small amounts of property for basic subsistence (e.g., a single individual may own a dwelling that has a floor area up to 25 m<sup>2</sup> and still receive state-subsidized legal aid)<sup>34</sup> and that exempt certain items from the income calculation (e.g., disability benefits, newborn benefits, commuting costs).<sup>35</sup> Additionally, one must either be a Montenegrin citizen, a legal resident of Montenegro or a person seeking asylum in Montenegro to exercise the right to free legal aid, though ratified international treaties may create an exception to this rule.<sup>36</sup>

Under the Law, only members of the Bar Association of Montenegro may provide legal aid.<sup>37</sup> These lawyers will be referred to potential clients by the court legal aid service, which utilizes a list of lawyers that voluntarily agree to offer state-subsidized legal aid.<sup>38</sup> Although legal aid recipients may not be charged for the time spent on work, lawyers are still entitled to 50% of legal tariffs and reimbursements of necessary expenditures.<sup>39</sup> Thus, should a lawyer choose to charge for the tariff, the state-funded legal aid recipient will still be required to pay up to 50% of the legal tariff out of pocket. Additionally, lawyers that provide assistance following a referral by the court legal aid service are compensated for their work out of funds set aside in the Budget of Montenegro.<sup>40</sup>

## Unmet Needs and Access Analysis

The Law on Legal Aid has been criticized on several different grounds. Because the Law does not cover proceedings before the Administrative Court, indigent individuals are not able to petition the court to establish their rights to social assistance, disability insurance benefits, and pension benefits.<sup>41</sup> The Law does not specifically provide coverage for victims of torture, state abuse or discrimination.<sup>42</sup> Further, the eligibility restrictions contained within the Law are extremely strict.<sup>43</sup> This may create a coverage gap within which many are unable to afford legal help on their own but are not poor enough to qualify for state-subsidized legal aid.

---

<sup>32</sup> Id. art. 13.

<sup>33</sup> Id. art. 14.

<sup>34</sup> Id. art. 15.

<sup>35</sup> Id. art. 16.

<sup>36</sup> Id. art. 12.

<sup>37</sup> Id. art. 30.

<sup>38</sup> Id. arts. 28-34.

<sup>39</sup> Id. art. 31; ADVOCACY FEES ACT arts. 5-6.

<sup>40</sup> LAW ON LEGAL AID, art. 10.

<sup>41</sup> Criticism of the Law on Free Legal Aid, HUMAN RIGHTS ACTION MONTENEGRO, [http://www.hracion.org/wp-content/uploads/Kritika\\_Zakona\\_o\\_besplatnoj\\_pravnoj\\_pomoci.pdf](http://www.hracion.org/wp-content/uploads/Kritika_Zakona_o_besplatnoj_pravnoj_pomoci.pdf) (last visited on September 4, 2015).

<sup>42</sup> Id.

<sup>43</sup> Id.



## Alternative Dispute Resolution

There appears to be a burgeoning alternative dispute resolution culture in Montenegro that may be able to fill in some of the gaps within the Law on Legal Aid. The Montenegrin Ombudsman, for example, will provide free legal aid to individuals that have been harmed by improper and illegal acts of the government (e.g., the wrongful application of laws or the government's failure to enforce rendered legal decisions).<sup>44</sup> In addition, the Center for Mediation of Montenegro provides mediation proceedings and collaborates with government agencies, NGOs and financial companies to develop and implement mediation regulations throughout Montenegro.<sup>45</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Montenegro's pro bono culture appears to be less-developed than its state-funded legal aid counterpart, and many international development programs are aimed at promoting the Law on Legal Aid rather than on providing private pro bono legal aid.<sup>46</sup> However, the Montenegrin government has undertaken judicial reforms that have made pro bono services easier for individual citizens to access and simpler for organizations and individual attorneys to provide.<sup>47</sup>

Though private attorneys are not required to provide pro bono legal work, Montenegrin law firms and private attorneys regularly provide such services.<sup>48</sup> In addition, prominent international organizations and agencies such as the Red Cross or the United Nations High Commissioner for Refugees provide pro bono legal work regarding refugee and other human rights issues,<sup>49</sup> either themselves or by engaging an implementing local partner.<sup>50</sup> Other potential opportunities for pro bono work include matters regarding fighting corruption, promoting government transparency and other governance issues.<sup>51</sup> Because the pro bono culture in Montenegro is still in a relatively early stage of development, it is likely easier to find pro bono opportunities from individual organizations rather than from a national clearinghouse or referral

---

<sup>44</sup> About the Protector, MONTENEGRO OMBUDSMAN, [http://www.ombudsman.co.me/eng/o\\_zastitniku.htm](http://www.ombudsman.co.me/eng/o_zastitniku.htm) (last visited on September 4, 2015).

<sup>45</sup> See Mediation in Montenegro, CENTRE FOR MEDIATION (Feb. 13, 2012), <https://www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/debt-resolution-and-business-exit/upload/Mediation-in-Montenegro.pdf> (last visited on September 4, 2015).

<sup>46</sup> See Promotion of Legal Aid and Mediation, UNITED NATIONS DEVELOPMENT PROGRAMME IN MONTENEGRO, <http://www.me.undp.org/content/montenegro/en/home/ourwork/democraticgovernance/successstories/legalaid/> (last visited on September 4, 2015).

<sup>47</sup> See UNDP Continues to Support Judicial Reform in Montenegro, UNITED NATIONS DEVELOPMENT PROGRAMME IN MONTENEGRO (Dec. 23, 2013), <http://www.me.undp.org/content/montenegro/en/home/presscenter/articles/2013/12/23/undp-helps-in-further-judicial-system-reform-in-montenegro.html> (last visited on September 4, 2015).

<sup>48</sup> See, e.g., Human Rights, PRELEVIC LAW FIRM, [http://www.prelevic.com/human\\_rights.htm](http://www.prelevic.com/human_rights.htm) (last visited Jun. 25, 2015); Pro Bono Work, VUJACIC LAW OFFICES, <http://www.lawoffice-vujacic.com/newsletter/pro-bono-work> (last visited on September 4, 2015).

<sup>49</sup> See, e.g., Montenegro Pro Bono Directory, INTERNATIONAL REFUGEE RIGHTS INITIATIVE, <http://www.refugeegalaidinformation.org/montenegro-pro-bono-directory> (last visited on September 4, 2015).

<sup>50</sup> See Implementing Partner with the UNHCR Providing Legal Aid, Counselling for Refugees, LEGAL CENTER PODGORICA, <http://www.refugeegalaidinformation.org/montenegro-pro-bono-directory#sthash.ufVJkPII.dpuf> (last visited on September 4, 2015).

<sup>51</sup> Id.



organization. For example, Red Cross Montenegro has its own programs relating to international human rights, but does not appear to act as a referral organization for other NGOs.<sup>52</sup>

Lawyers in partnerships in Montenegro also provide pro bono work for local NGOs.<sup>53</sup> In addition, NGOs cooperate with lawyers to provide citizens with pro bono services regarding corruption and organized crime matters, domestic violence matters, human rights violations<sup>54</sup> and LGBT rights.<sup>55</sup>

## Historic Development and Current State of Pro Bono

Given the relative youth of the country, the development of Montenegro's pro bono culture is still in an early, formative stage. There are many regulatory and practical barriers to engaging in pro bono work in Montenegro. Regulatory barriers relate primarily to licensing restrictions and uncertainty regarding the structure of the legal system. The Montenegrin Constitution established the right to legal aid only as far as it is provided by members of the Bar Association,<sup>56</sup> but other services or institutions may also provide pro bono services.<sup>57</sup> Further, the Advocacy Fees Act restricts members of the Bar Association from charging clients less than 50% of the normal tariff for legal work.<sup>58</sup> Thus, even when an individual receives state-subsidized legal aid or private pro bono services, he or she may still be required to pay a portion of his or her legal fees, should the attorney providing the services decide to charge available legal tariffs.<sup>59</sup>

Practical barriers relate mostly to the relative nascence of much of Montenegro's judicial system. As noted above, there are relatively few licensed lawyers admitted to practice in front of Montenegro courts. As of June 2015, there are approximately 775 licensed lawyers for Montenegro's population of approximately 620,000 people, or one lawyer per 800 people.<sup>60</sup> In addition, many Montenegrin citizens do not trust the judicial system or the government in general, and they feel that corruption within the judiciary and the government is the issue "that most gravely affects the quality of life" in Montenegro.<sup>61</sup>

## Pro Bono Resources

NGO activity and NGOs that may present opportunity for pro bono work in Montenegro include:

- Pravni Centar-Legal Center
- Address: Legal Center Podgorica, 4/1 Balsica Street, 81000 Podgorica, Montenegro  
Phone: + 382.20.23.09.13  
Website: <http://www.pravnicentar.com> (last visited on September 4, 2015)  
Email: pravnicentar@t-com.me

<sup>52</sup> See Organizational Development, MONTENEGRO RED CROSS, available at <http://www.ckcg.co.me/en/djelatnosti/organizacioni-razvoj> (last visited on September 4, 2015).

<sup>53</sup> See, e.g., Human Rights, PRELEVIC LAW FIRM, [http://www.prelevic.com/human\\_rights.htm](http://www.prelevic.com/human_rights.htm) (last visited on September 4, 2015); Pro Bono Work, VUJACIC LAW OFFICES, <http://www.lawoffice-vujacic.com/newsletter/pro-bono-work> (last visited on September 4, 2015).

<sup>54</sup> See, e.g., Violence Against Women: Montenegro supra n. 26.

<sup>55</sup> See, e.g., About Us, LGBT FORUM PROGRES, <http://lgbtprogres.me/en/o-nama-2/> (last visited on September 4, 2015).

<sup>56</sup> LAW ON LEGAL AID art. 30.

<sup>57</sup> See, e.g., Montenegro Pro Bono Directory, supra n. 51.

<sup>58</sup> ADVOCACY FEES ACT, art. 4.

<sup>59</sup> Id.

<sup>60</sup> List of Lawyers by Municipality, supra n. 19.

<sup>61</sup> Olivera Komar & Pavle Gegaj, The Montenegro I Want: Report on Post-2015 National Consultations in Montenegro, UNITED NATIONS DEVELOPMENT PROGRAMME IN MONTENEGRO (April 2013), <http://www.me.undp.org/content/dam/montenegro/docs/publications/Post2015/Post%202015%20Montenegro%20ENG.pdf> (last visited on September 4, 2015).



- MANS: <http://www.mans.co.me/>
- Youth Initiative for Human Rights: <http://www.yihr.me> (last visited on September 4, 2015)
- Human Rights Action: <http://www.hraction.org> (last visited on September 4, 2015)
- Shelter for Women and Children
- Address: Ulica Ivana Crnojevica br.89, 81000 Podgorica, Montenegro  
Phone: +382.20.232.352  
Website: <http://www.szk.me> (last visited on September 4, 2015)  
Email: shelter@t-com.me
- SOS Hotline for Women and Children Victims of Violence: <http://www.sosnk.org>
- Civic Alliance
- Address: Vukice Mitrovic 16, 81000 Podgorica, Montenegro  
Phone: +382.20.655/175  
Website: <http://www.gamn.org> (last visited on September 4, 2015)  
Email: office@gamn.org
- Center for the Development of Non-Governmental Organisation (free legal aid to other NGOs)
- Address: CRNVO, Dalmatinska 78, 20 000 Podgorica, Crna Gora, Montenegro  
Phone: +382.20.219.120 Fax: +382.20.219.121  
Website: <http://www.crnvo.me/> (last visited on September 4, 2015)  
Email: crnvo@crnvo.me

The following NGOs do not provide pro bono services, but support various projects that may provide them:

- United Nations Development Program in Montenegro
- Address: UNDP, UN Eco House, Stanka Dragojevic bb, 81000 Podgorica, Montenegro  
Phone: +382.20.447.400  
Website: <http://www.me.undp.org/> (last visited on September 4, 2015)  
Email: registry.me@undp.org
- United Nations High Commissioner for Refugees
- Website: <http://www.unhcr.org/pages/49e48d986.html> (last visited on September 4, 2015)  
Email: mnepo@unhcr.org

## CONCLUSION

Practitioners who seek to engage in pro bono work in Montenegro might first try to locate pro bono opportunities, likely relating to anti-corruption, anti-domestic violence, refugee or rule of law matters, through established international or local NGOs (e.g., MANS, noted above). Alternatively, teaming up with local counsel may be an easier option, as it appears that there are more opportunities to render state-funded legal aid than opportunities to provide pro bono services. Otherwise, practitioners should monitor the development of the legal sector in Montenegro; as the legal sector further develops, increased opportunity for pro bono work should follow.

September 2015

Pro bono Practices and Opportunities in Montenegro

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Morocco<sup>1</sup>

### INTRODUCTION

The Moroccan legal system has long provided for legal assistance to the indigent population of Morocco. However, this system suffers from structural loopholes and support for voluntary pro bono work among private lawyers has not yet earnestly been developed. This chapter discusses the law and regulations governing the provision of free legal services in Morocco and the specific pro bono opportunities available to lawyers in Morocco.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

Morocco is a constitutional, democratic, parliamentary and social monarchy, and after 44 years as a French protectorate, obtained independence in 1956. Since 1956, Moroccan law has been shaped by French Civil Law, and a combination of Muslim and Jewish traditions.

The Constitution of Morocco has also played a pivotal role in shaping the law and legal systems in Morocco. The most recent constitutional developments took place following the “Arab Spring.”<sup>2</sup> Following this event, Morocco drafted and adopted a new Constitution in July 2011. Morocco’s Constitution proclaims that “*the judicial authority is independent from the legislative power and the executive power.*” The King of Morocco is the guarantor of the independence of the judicial power.

#### The Courts

The organization of the judiciary in Morocco is based on the Law No. 1 74 338, dated July 15, 1974, which was amended in 1991 to create the administrative courts and in 1997 to establish the commercial courts. The judiciary is divided into two principal categories of courts:

- General jurisdiction courts: comprising neighbourhood courts (formerly the communal and district courts), 67 courts of first instance and 21 courts of appeal.
- Specialized jurisdiction courts: comprising seven administrative courts, two administrative courts of appeal, eight commercial courts and three commercial courts of appeal.

Each court of first instance is composed of a president, judges, prosecutors and a clerk of the court. These courts are competent for: (i) all cases concerning all litigants except those that are assigned by law to another judicial body; (ii) civil, real estate, criminal, social and personal status cases; (iii) criminal matters; (iv) marriage, divorce and inheritance cases; (v) employment disputes, industrial accidents and occupational diseases in social cases; and (vi) civil transactions of sale, purchase, rent and mortgage, except those relating to commercial transactions, which are within the jurisdiction of the commercial courts.

In 2011, the neighbourhood courts replaced the communal and district courts under Act No. 42.10. They are competent for: (i) civil cases up to 5,000 dirhams, with the exception of disputes under the Family Code, Real Estate Code, social and rent cases; and (ii) criminal cases, but the penalty they may impose must not exceed a fine of 1,200 dirhams.

The Courts of Appeal are composed of a first President, judges, prosecutors and clerk of the court. These courts consider appeals in cases where the courts of first instance have jurisdiction and appeals

---

<sup>1</sup> This chapter was drafted with the support of Benzakour Law Firm.

<sup>2</sup> The “Arab Spring” was a series of demonstrations, protests, riots and civil wars that began on December 18, 2010 in Tunisia with the Tunisian Revolution and spread throughout countries of the Arab League and its surroundings.



concerning orders issued by the Presidents of those courts. Through their first instance chambers, they also consider felonies, and hear appeals concerning the decisions of investigating judges and others.

In 2011, the Court of Cassation replaced the Supreme Council.<sup>3</sup> The Court of Cassation does not review the merits of a case, but determines whether lower Court decisions are compliant with the law and, in particular, whether there is a violation of law, a violation of procedural rules, an incompetency, an excess of power or an absence of legal ground. It is composed of a first President, chambers, the Prosecutor-general, assistant prosecutors and clerk of the court.

The Supreme Court has the highest jurisdiction of any Moroccan court and ultimate power of review of any court decision.<sup>4</sup> The Supreme Court consists of six chambers: (i) the civil chamber; (ii) the family matters chamber; (iii) the commercial chamber; (iv) the administrative chamber; (v) the social chamber; and (vi) the criminal chamber.

The administrative courts (first instance and appellate) hear cases concerning decisions, acts or activities by administrative authorities and disputes regarding administrative contracts. The commercial courts hear actions or disputes relating to commercial contracts, debt securities, shareholders' claims, sale or transfer of company assets, winding-up and bankruptcy procedures.

Judges in Morocco are appointed and not elected. Since 1965, only Moroccans may be appointed as Judges. In addition to Moroccan citizenship, Judges shall hold the equivalent of an LLB (*License en Droit*), pass a professional examination, complete a two-year internship, pass another professional examination and be nominated by Dahir (Royal Decision). There is also the possibility for professors teaching law for ten years and lawyers practising for 15 years to become a judge.

## The Practice of Law

### Education

Lawyers are required to obtain the equivalent of an LLB (*Licence en Droit*) (namely, an undergraduate degree in law), pass a professional examination and then intern with an experienced lawyer.<sup>5</sup> The LLB can be obtained from any Moroccan University or from overseas universities (especially French universities) whose diplomas are recognized in Morocco. After some years of experience, a qualified lawyer becomes experienced. Qualified lawyers are not required to undergo continuing legal education.

### Licensure

Lawyers are individually registered with one of the 17 Bar Associations.<sup>6</sup> Each Bar is managed by an elected council, which is headed by the Bar President. Individual Bar Associations are federated under a National Association, *Association des barreaux du Maroc*.

Foreign lawyers may be admitted to practise in Morocco on equal terms with their Moroccan colleagues, provided that they are nationals of a country with which Morocco has an agreement containing a reciprocity clause on the right to practise.<sup>7</sup> Such recognition agreements have been signed by Morocco with France<sup>8</sup> and Spain.

---

<sup>3</sup> It was established by Act No. 58/11, promulgated under Royal Decree 1.11.170 of October 25, 2011, amending Royal Decree No. 1.57.223 of September 27, 1967 on the Supreme Council.

<sup>4</sup> Dr. Mustapha El Baaj (Deputy public prosecutor of Morocco), presentation titled "L'organisation judiciaire au Maroc."

<sup>5</sup> Law No. 1-93-162 of September 10, 1993.

<sup>6</sup> Id.

<sup>7</sup> Article 5 of Law No. 1-93-162.

<sup>8</sup> Agreement dated May 20, 1965 modifying the provisions of the judicial convention dated October 5, 1957 entered into between France and Morocco.



To practise law in Morocco, a foreign lawyer must hold a certificate of aptitude to practise law, or provide evidence that he or she has practised law for a minimum of five years in their home country.<sup>9</sup> Failing that, they have to take an examination in Morocco to assess their knowledge of the Arabic language and Moroccan law. They must also be registered with one of the Moroccan Bar Associations.<sup>10</sup>

Foreign lawyers satisfying the aforesaid requirements may also provide legal services before the Moroccan courts, without seeking admission to one of the Moroccan Bars. In such case, they are required to establish domicile at the office of a Moroccan lawyer registered with one of the Moroccan Bars, and (unless this is waived by an aforementioned recognition agreement) be specially authorized to practise there by the Secretary of Justice.<sup>11</sup> Since all pleas in Moroccan courts are made in Arabic, a high degree of fluency in the Arabic language is an additional prerequisite to practise law in Morocco.

### Demographics

Over the past 20 years, the number of lawyers has risen considerably in response to the increasing caseload of the courts.<sup>12</sup> Despite such considerable increases, the number of lawyers in Morocco remains lower than any other country in the Mediterranean area or the member states of the Council of Europe. There are approximately 10,500 lawyers in Morocco and 10,000 trainee lawyers, which is 60 lawyers per 100,000 inhabitants, as compared to (a) an average of 145 lawyers per 100,000 in the Mediterranean area and (b) an average of 120 lawyers in the member states of the Council of Europe.<sup>13</sup> The majority of work undertaken by lawyers in Morocco is in the area of litigation.<sup>14</sup>

### Legal Regulation of Lawyers

The legal profession in Morocco is regulated by Law No. 28-08 dated October 20, 2008.<sup>15</sup> The Dahir No. 1-08-102 of October 20, 2008, which enacted Law No. 29-08, specifically regulates the *société civile professionnelle* (being, professional non-commercial law firms) and Decree No. 2-81-276 of February 1, 1982, determines the requirements to obtain the certificate of aptitude to practise as a lawyer.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

In light of international recommendations, Morocco has launched an ambitious process of legal reform in order to place “justice at the service of the citizen.”<sup>16</sup> In a speech on August 20, 2009, the King of Morocco outlined six major pillars of such reform, including among others, the enhancement of judicial efficiency.<sup>17</sup> Subsequent initiatives also included a draft law on legal assistance and legal aid, a decree organizing the provision of legal assistance, the creation of information desks in the courts of appeal and

---

<sup>9</sup> Article 18 of Law No. 1-93-162.

<sup>10</sup> Report of the Secretariat of the World Trade Organization, “Trade Policy Review”, Kingdom of Morocco, WT/TPR/S/217, (May 20, 2009).

<sup>11</sup> Article 31 of Law No. 1-93-162.

<sup>12</sup> Euromed Justice II Project, “Study on Access to Justice and Legal Aid in the Mediterranean Partner Countries” (2008 - 2011).

<sup>13</sup> Id.

<sup>14</sup> Morocco: Legal and Judicial Assessment, “Legal Vice Presidency of the World Bank” (June 2003).

<sup>15</sup> Dahir No. 1-08-102 of October 20, 2008 enacted the Law No. 28-08, which modified the Dahir establishing the Law No. 1-93-162 of September 10, 1993.

<sup>16</sup> Speech on October 8, 2010 by the King of Morocco, Mohammed VI.

<sup>17</sup> Ministry of Justice of Morocco, “Réalizations au titre du processus de la réforme globale et profonde du système de la Justice” (August 2011).



first instance, and the appointment of an ombudsman in charge of helping citizens during their proceedings.<sup>18</sup>

## The Right to Legal Assistance

Article 118 of the Constitution codifies the principle that each person has guaranteed access to justice for the defence of their rights and interests protected by the law. Moreover, pursuant to Article 121 of the Moroccan Constitution, when provided by the law, justice is free for those who do not have the resources sufficient to bring a claim before a court.

In Morocco, legal representation is compulsory before any court, with the exception of cases involving alimony, social matters or small cases.<sup>19</sup> However, as aforementioned, the number of lawyers in Morocco remains disproportionate to the population's needs.

In addition, lawyers' fees are neither regulated by law nor regulated by the Bar, but are freely negotiable.<sup>20</sup> The average lawyer's fee ranges from 1,000 to 2,000 dirham (approximately USD114 to USD228), which is equal to two to four weeks of the minimum wage in Morocco. Therefore, the majority of the population cannot afford legal services. Legal aid is thus an important mechanism to ensure equal access to justice, as provided for under the Constitution of Morocco.

## State-Subsidized Legal Aid

Pursuant to the Dahir dated November 16, 1966, which established the Law No. 514-65 on judicial assistance, legal aid in Morocco covers "judicial assistance."<sup>21</sup> This is defined as the assistance provided by a State to individuals who do not have sufficient financial means to defend themselves before a court. This excludes legal counselling, i.e. consultation with legal professionals.<sup>22</sup>

Legal aid is granted for the whole litigation process from the legal representation of an individual before the court up to the stage of execution of a decision by the court.<sup>23</sup> Such legal aid encompasses all the legal costs an individual may incur (e.g. appointment of a lawyer, experts, translators and execution costs) and excuses the individual from paying any taxes due in connection with the commencement of the proceedings. Legal aid applies to all cases, whether criminal or otherwise.<sup>24</sup>

### Eligibility

The criteria under which legal aid is granted includes the following:<sup>25</sup>

- Applicant's nationality: Under Article 1 of the Law No. 514-65 on judicial assistance (save specific provisions in international treaties allowing foreigners to benefit from such aid) judicial assistance is granted to Moroccan citizens, public-benefit institutions, and private associations with a mission of assistance and legal personality. Such aid also benefits Moroccans living outside Morocco.<sup>26</sup>

---

<sup>18</sup> Id.

<sup>19</sup> Morocco: Legal and Judicial Assessment, supra n. 13; Article 310 of the Criminal Code of Morocco.

<sup>20</sup> Law No. 1-93-162 of September 10, 1993 organizing the practice of the profession of attorney.

<sup>21</sup> A Dahir is a rule issued by the King. Though it has the value of law, it is often translated as royal edict.

<sup>22</sup> Law No. 514-65 on judicial assistance.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Ministère Chargé des Marocains Résidant à L'Étranger, <http://www.marocainsdumonde.gov.ma> (last visited on September 4, 2015).



- Applicant's resources: In the assessment of resources, there are no standard ceilings, nor tables or models with an order of priority. Decisions are taken on a case-by-case basis. The financial situation of the applicant is assessed by a local institution, which issues a "certificate of poverty" to be submitted to the judge.<sup>27</sup>
- 
- Grounds upon which legal aid is requested: In non-criminal cases, legal aid may also be refused if there are no good grounds for the case (e.g. abuse of the process).<sup>28</sup>

The Legal Aid Bureau is responsible for determining the allocation of legal aid to an individual. The composition of the Bureau depends on the court responsible for the case. However as a general rule, it is composed of one prosecutor (also the President of the Bureau), one representative from the tax department and a lawyer.<sup>29</sup> The Bureau collects all information necessary to assess the applicant's resources and may invite the applicant to present his or her situation in person. The Bureau may also hear both litigants of the dispute for which legal aid is sought and in such cases, the Bureau will attempt to reach an amicable settlement.<sup>30</sup> Applicants may appeal a decision of the Legal Aid Bureau within 15 days.<sup>31</sup>

Legal aid may be withdrawn in the event the aided party recovers sufficient resources from the proceedings (i.e. from a successful judgment), the parties settle, the case is withdrawn or the applicant's inaction indicates a disinterest in pursuing the case.<sup>32</sup>

#### Assignments to Legal Aid Matters and Legal Aid in Practice

Legal aid is in practice restricted to criminal matters.<sup>33</sup> The reason for this is that the appointment of lawyers by criminal courts can take a lot of time and rather than adjourn the proceedings, the judge frequently ends up asking lawyers who are present in the court to volunteer to defend the accused. In civil matters, there are no provisions for legal aid besides the general principles expressed in the law on judicial assistance dated 1966.

Lawyers are required to accept matters assigned to them by the applicable legal aid scheme and are also subject to disciplinary measures if they refuse the assignment without a valid justification.

In 2008, a new law expressly asserted the right of lawyers to receive financial compensation for legal aid assistance and referred to a future decree to set out the procedures for the determination of this compensation.<sup>34</sup> The decree did not however, bring the expected clarifications.<sup>35</sup> It only provided that legal fees with respect to legal aid should be borne by the budget of the Secretary of Justice and that the Bar Associations should agree on the allocation of such budget amongst themselves.

Recently, a new law has stated the principle that lawyers' assistance to an aided party shall be remunerated on a flat rate basis by decree and reviewed when necessary. By a decree dated February 26, 2013, the current applicable flat rates (approximately in €) are as follows:

- €110 for proceedings before the Courts of first instance;

---

<sup>27</sup> Euromed Justice II Project, supra n. 11.

<sup>28</sup> Id.

<sup>29</sup> Law No. 514-65 on judicial assistance.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Article 312 of the Criminal Code of Morocco.

<sup>34</sup> Dahir No. 1.08.101 of October 10, 2008, enacted the Law No. 28.08, which modified the Law regulating the legal profession.

<sup>35</sup> Decree No. 2-10-587 of April 20, 2011, implemented the Law No. 28-08.



- €140 for proceedings before the Court of Appeals; and
- €190 for proceedings before the Supreme Court.

Since 2011, an Ombudsman has also been established in Morocco. The Ombudsman is a constitutional authority, in charge of matters, complaints, conflicts arising between individuals, private entities or companies and the Government or administration. The Ombudsman does not intervene in disputes among private individuals. Although legal aid is not available for disputes before the Ombudsman, there are no costs for the filing of a claim with the Ombudsman.

### Unmet needs and access analysis

Despite early and generous legislation, the current legal aid system in Morocco is deficient.<sup>36</sup> Since there is no specific application form for requesting legal aid, legal aid procedures are fragmented, and ultimately become complex and ambiguous. The criteria for assessing a person's eligibility for legal aid is not centralized, which means that the process can be opaque and discretionary. These deficiencies, in addition to the relatively low number of lawyers compared with the Moroccan population, mean that the current legal aid scheme does not sufficiently meet the needs of the Moroccan people and enable adequate access to justice for all.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

The Pro bono associations currently operating in Morocco are involved mainly in reception and attendance centers for refugees, and for women and minors who are victims of violence.<sup>37</sup> They also provide some support with legal proceedings and assist in distributing legal information.

The development of these associations is recent and there is no national federation of associations. However certain associations, which are more structured with more members, have more weight, which allows them to be heard when there is government consultation with civic society (e.g. in areas such as consumption and health). However, these associations are not a sufficient alternative to legal aid or the assistance of lawyers. They may assist in initial legal guidance for victims and provide them with financial aid, but such associations cannot provide individuals with legal representation in court.

### Barriers to Pro Bono or Participation in the Formal Legal System

Barriers to pro bono work result from the social environment of the judiciary and, more specifically, from the current practice of law in Morocco. The population generally has a low regard for the legal and judicial sector, and expects corruption in the judiciary.

In Morocco, legal information is also not adequately disseminated to the public.<sup>38</sup> In addition, the low literacy rate – 52.3% for the total population (39.6% for women, 65.7% for men)<sup>39</sup> – renders access to justice all the more difficult. A substantial proportion of the population is therefore vulnerable and may fall prey to unethical behaviour.<sup>40</sup> The Bar Association has great difficulty in supervising “homeless” lawyers, who are lawyers with no fixed business address and operate with a cellular telephone from undisclosed

---

<sup>36</sup> Reda Oulamine, “L’assistance juridique ne fonctionne pas car l’avocat désigné n’est pas payé”, *Aujourd’Hui Le Maroc* (May 21, 2012); “Elaboration d’un nouveau projet de loi sur l’assistance juridique et judiciaire”, *Aujourd’Hui Le Maroc* (May 21, 2012).

<sup>37</sup> Euromed Justice II Project, *supra* n. 11.

<sup>38</sup> Morocco: Legal and Judicial Assessment, *supra* n. 13.

<sup>39</sup> US Department of State, 2004 census <<http://www.state.gov/r/pa/ei/bgn/5431.htm>> (last visited on September 4, 2015). The definition of a literate woman or man is a person aged 15 years or over who can read and write.

<sup>40</sup> Morocco: Legal and Judicial Assessment, *supra* n. 13.



premises. Up to 800 of the 3,000 lawyers registered with the Casablanca Bar Association are reportedly “homeless” lawyers, who prey on the uninformed and often maintain frivolous suits in order to collect higher fees.

Moroccan lawyers are predominantly generalists and sole practitioners. They focus on litigation and provide little pre-litigation counselling.<sup>41</sup> Consequently, they may not have the leverage necessary to provide pro bono services. In addition, the legal community in Morocco does not have a tradition or culture of providing pro bono services.

## Pro Bono Resources

Some of the more active entities offering pro bono services are as follows:

Droit et Justice ([www.droitetjustice.org](http://www.droitetjustice.org) (last visited on September 4, 2015))

In August 2013, with the support of the Euro-Mediterranean Foundation of Support to Human Rights Defenders, the British Embassy in Morocco and the Arab Human Rights Fund, the association Droit et Justice launched a program of legal aid for asylum seekers in Morocco.

Migrants in Morocco mainly come from sub-Saharan Africa. Some of them have had to flee their country after being persecuted because of their race, religion, nationality or political opinion or because they are members of a particular social group. They are therefore eligible for asylum but do not have access to information on the procedures for granting refugee status in Morocco. Those who apply for asylum are often not assisted by a lawyer.

The goal of this association is to train a team of lawyers and jurists willing to invest voluntarily in legal aid for asylum seekers by being assigned one case per year under the supervision of the Droit et Justice. In this way, lawyers use their skills to assist migrants in their application for asylum in Morocco. The association also provides permanent legal support as well as ongoing training to the volunteer lawyers and jurists. These issues have gained so much importance recently that the Moroccan authorities have decided to establish a national refugee status determination system. Until recently, the United Nations High Commissioner for Refugees (“UNHCR”) was the decision-making body in this area.

ABCDS - Association Beni Znassen pour la Culture, le Développement et la Solidarité ([www.abcds-maroc.org](http://www.abcds-maroc.org) (last visited on September 4, 2015))

The Beni Znassen association for Culture, Development and Solidarity (“ABCDS”) is an association governed by Moroccan law and was established on June 12, 2005 by a group of young activists. Among other programs, ABCDS leads a program of humanitarian and legal support to migrants, refugees and asylum seekers in distress in the zone of Oujda and its neighborhood. ABCDS is engaged, alongside other associations, in the denunciation of the pitiful living conditions of migrants in transit in Morocco, and the infringements of their rights and physical integrity from which they are victims in Morocco and during their crossing attempts towards Europe.

ADFM - Association Démocratique des Femmes du Maroc ([www.adfm.ma/index.php?lang=fr](http://www.adfm.ma/index.php?lang=fr) (last visited on September 4, 2015))

The democratic association of women in Morocco, ADFM, is an autonomous, feminist and non-profit non-governmental organization (“NGO”). Its principal objective is the promotion of women’s rights and strategic interests. ADFM is a member of the Euromed Human Rights Network’s Migration and Asylum Working group.

AMAPPE - Association Marocaine d’Appui à la Promotion de la Petite Entreprise ([www.amappe.org.ma](http://www.amappe.org.ma) (last visited on September 4, 2015))

This association runs a socio-economic integration project in partnership with the UNHCR in Morocco. This creates micro income-generating activities.

---

<sup>41</sup> Morocco: Legal and Judicial Assessment, supra n. 13.



AMDH - L'Association Marocaine des Droits Humains ([www.amdh.org.ma](http://www.amdh.org.ma) (last visited on September 4, 2015))

AMDH is an independent NGO which promotes respect for all human rights. AMDH intervenes with officials and those responsible to protect and ensure respect for human rights, and support and bring justice to victims of human rights violations. The AMDH is a member of the Euromed Human Rights Network's Migration and Asylum Working group.

GADEM - Groupe Antiraciste d'Accompagnement et de Défense des Étrangers et Migrants ([www.gadem-asso.org](http://www.gadem-asso.org) (last visited on September 4, 2015))

This is a Moroccan association established on December 18, 2006 and aimed at effective respect of the rights of foreigners and migrants in Morocco. It also ensures (within its means and ability to take action) accompaniment and legal defence of foreigners who apply, regardless of their status (i.e. this includes migrants, asylum seekers, refugees, or persons in regular or irregular administrative situations).

OMDH – l'Organisation Marocaine des Droits Humains (Morocco Human Rights Organization) ([www.omdh.org](http://www.omdh.org) (last visited on September 4, 2015))

OMDH has a partnership with UNHCR. In Rabat, besides legal assistance to refugees at all stages of the refugee status determination process, the center offers legal representation before a court or in police stations. In Oujda, OMDH works to prevent the refoulement of refugees to the borders. If needs be, the center also helps refugees organize their return to their home country. In most big cities in Morocco, OMDH is developing a network of lawyers who are able and willing to intervene on behalf of refugees.

OPALS - Organisation PanAfricaine de Lutte contre le Sida ([www.opalsmaroc.ma](http://www.opalsmaroc.ma) (last visited on September 4, 2015))

In collaboration with UNHCR, OPALS Maroc offers HIV/AIDS services for refugees and migrants. This includes education and prevention (including information in the refugees' own language), medical care, psychosocial services, and legal support from OPALS lawyers (a legal helpline). There are 17 sections of this association across the country although refugee services are concentrated in three major cities - Rabat, Casablanca and Fes.

## CONCLUSION

In Morocco, deficiencies in the legal provisions of legal aid has hindered the development of a robust legal aid system, despite the fact that it has long been asserted that each person in Morocco has guaranteed access to justice under the Constitution. Indigents may obtain free judicial assistance but the Moroccan legal community does not have a strong tradition of providing such services.

Pro bono organizations promoting various voluntary activities are quite proactive in various fields of society; however in the field of legal services, especially the provision of legal advice, there is a lot of room for improvement. Nevertheless, Morocco has engaged in intensive reforms. For resourceful lawyers, such circumstances may be regarded as opportunities to position themselves as useful counsels to the Moroccan government or to NGOs and to foster legal reforms with respect to legal aid and the development of pro bono work in the legal profession.

September 2015

Pro Bono Practices and Opportunities in Morocco

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

# Pro Bono Practices and Opportunities in the Netherlands<sup>1</sup>

## INTRODUCTION

The Dutch Constitution<sup>2</sup> (the “**Constitution**”) (and the European Convention on Human Rights)<sup>3</sup> provide for a right to access to justice and legal representation. As a result, people with limited means seeking legal advice are generally well-represented by a comprehensive system of government-subsidized legal services. Accordingly, the nature of the available pro bono work in the Netherlands, performed primarily by large Dutch law firms, is less focused on indigents and more on interest groups and foundations serving broader social needs and advocating for human rights. These foundations are not entitled to receive government-subsidized legal aid, and therefore have a substantial need for pro bono legal services. This chapter describes the system of government-subsidized legal services in the Netherlands (which are provided by both non-profit organizations and attorneys in private practice), and the opportunities for, and barriers to, rendering pro bono legal services outside of this system.

## OVERVIEW OF THE LEGAL SYSTEM

### Constitution and Governing Laws

Chapter one of the Constitution enshrines the fundamental rights of all persons in the Netherlands, including equal treatment before the law, and prohibits discrimination on the grounds of religion, belief, political opinion, race, or sex. The Constitution was revised in 1983 to include a number of social rights, including a right to counsel in legal and administrative proceedings. Subsequent Acts of Parliament further outline rules regarding legal aid to indigent persons.

### The Courts

#### Levels, Relevant Types, and Locations.

The judicial system of the Netherlands consists of 11 district courts (*rechtbanken*). Appeals in civil and criminal cases are heard by one of five Courts of Appeal (*gerechtshoven*). Appeals against administrative law judgments are sent to specialized tribunals — the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*), the Central Appeals Tribunal (*Centrale Raad van Beroep*), or the Trade and Industry Appeals Tribunal (*College van Beroep voor het bedrijfsleven*). In civil, criminal, and tax cases, appellate decisions can generally be contested by appealing in cassation (*cassatie*) to the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*). Citizens must generally be represented in court by counsel, except (i) in cases involving less than €25,000, (ii) in criminal cases, and (iii) in administrative cases, in which citizens have the right of self-representation.

#### Appointed vs. Elected Judges

All Dutch judges are appointed by Royal Decree and serve life terms. The Supreme Court consists of 35 judges appointed by Royal Decree, including a president, six vice-presidents, 24 justices (*raadsheren*), and four justices in exceptional service (*buitengewone dienst*). The Supreme Court is divided into four chambers: civil, criminal, tax, and ombuds.

<sup>1</sup> This chapter was drafted with the support of Michiel Coenraads at Stibbe Amsterdam.

<sup>2</sup> GRONDWET [CONSTITUTION] art. 18 (implemented in the WET OP DE RECHTSBIJSTAND [LEGAL AID ACT]); Eur. Convention for the Protection of Human Rights and Fundamental Freedoms (Nov. 1950, as later amended), E.T.S. 5, Art. 6.

<sup>3</sup> The Netherlands is a signatory of the European Convention on Human Rights. Article 6 of this Convention requires persons to have access to an impartial tribunal as well as representation. See, e.g., *Albert & Le Compte v. Belgium*, 7299/75 Eur. Ct. H.R. (Feb. 10, 1983); *Schmautzer v. Austria*, 15523/89 Eur. Ct. H.R. (Oct. 23, 1995); *Gnahoré v. France*, 40031/98 Eur. Ct. H.R. (Sep. 19, 2000).



## The Practice of Law

### Education

Legal education in the Netherlands consists of a three-year Bachelor of Laws (LL.B.) degree, a one-year Master of Laws (LL.M.) degree, and optional further studies. Any student who completes a legal education is a *jurist* (lawyer). However, to become an *advocaat* (attorney admitted to the bar), Dutch law students must complete both a bachelor's program and a master's program with specific courses to receive *civiel effect*. This prerequisite allows the student to enroll in professional training to ultimately become either an *advocaat* or judge. The professional training (*Beroepsopleiding*) for an *advocaat* takes three years and consists of coursework and an apprenticeship under a supervising senior attorney (the patron).<sup>4</sup> Pro bono work is not a requirement at any point in the legal education of an *advocaat*.

### Licensure

After completing the professional training and apprenticeship, the lawyer becomes an *advocaat*. Every *advocaat* practising in the Netherlands is a member of the Dutch Bar Association (*Nederlandse Orde van Advocaten*). They are subject to the Dutch Act on Attorneys (*Advocatenwet*), and the administrative decrees and other rules, including the general rules regulating attorney conduct (*Gedragsregels*), issued by the Dutch Bar Association.<sup>5</sup> Lawyers who do not comply with these rules are subject to disciplinary proceedings, and can ultimately be disbarred. A *jurist*, who does not practice in court but is allowed to give legal advice, is not a member of the Bar nor subject to codes of conduct or other requirements.

An in-house counsel (*bedrijfsjurist*) can be admitted to the bar and therefore be an *advocaat*, in which case all regular rules from the Dutch Bar Association (and some specific rules) apply. Only an in-house counsel that is an *advocaat* can represent his/her company in court.

Foreign attorneys from EU countries who are qualified in their home jurisdiction must first pass an aptitude test before they are allowed to practice law in the Netherlands.<sup>6</sup>

### Demographics

As of January 1, 2015, there were approximately 17,315 members of the Dutch Bar. The lawyer-to-inhabitant ratio is relatively low with approximately one lawyer per 1,000 inhabitants. Over 50% of all law firms in the country consist of solo practitioners, totalling 2,724 firms; 88% of law firms in the Netherlands have fewer than six lawyers, and 98% have fewer than 21.<sup>7</sup> In 2015, approximately 4,108 lawyers (or about 23% of lawyers) were working at the 50 largest law firms in the Netherlands.<sup>8</sup>

## Legal Regulation of Lawyers

The Dutch Attorney Act, its implementing regulations, and the Dutch Bar Association provide rules on the practice of an *advocaat*. As discussed above, these regulations include rules on education and entry into the profession, as well as professional rules of conduct.

---

<sup>4</sup> See Christian Kolb, International Bar Association, How to Qualify as a Lawyer in Netherlands, [http://www.ibanet.org/PPID/Constituent/Student\\_Committee/qualify\\_lawyer\\_Netherlands.aspx](http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Netherlands.aspx) (last visited on September 4, 2015).

<sup>5</sup> All available at <https://www.advocatenorde.nl/advocaten/juridische-databank/wetenregelgeving> (last visited on September 4, 2015).

<sup>6</sup> See Council Directive 89/48/EEC, Preamble (Dec. 21, 1988); ADVOCATENWET (ACT ON ATTORNEYS), art. 16a-k.

<sup>7</sup> Dutch Bar Association, 2014 annual report, <https://www.advocatenorde.nl/11339/jaarverslag-2014> (last visited on September 4, 2015).

<sup>8</sup> See <http://www.advocatie.nl/top50> (last visited on September 4, 2015).



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

#### In Civil Proceedings

Dutch civil procedure rules mandate that all cases with limited financial impact, all landlord-tenant disputes, and all employment-related disputes are within the exclusive subject matter jurisdiction of a one-judge tribunal (*Kantonrechter*), in which representation by an attorney is not required (and legal aid is not normally provided).<sup>9</sup> In addition, legal representation is not required in administrative cases. Consequently, persons with limited means are not required to retain counsel for the types of legal disputes they encounter most frequently. However, representation is always allowed. Whether an attorney is required or not, litigants in civil cases can always avail themselves of state-subsidized legal aid if they meet certain criteria, primarily based on income. Any attorney who provides legal aid services for a subsidized fee is often called a *pro deo* attorney; by contrast, pro bono attorneys receive no compensation at all.

#### In Criminal Proceedings

The Legal Aid Law provides that legal aid is free, regardless of income, if the defendant is held in custody prior to the first hearing before a court. If a defendant is not in custody, they fall under the same Legal Aid Law rules as civil litigants and so, depending on the nature of the case and their income, may obtain *pro deo* counsel for free or at a lower rate. If they are acquitted, they are refunded any fees they paid.<sup>10</sup>

### State-Subsidized Legal Aid

#### Eligibility Criteria

Indigency is the primary criterion for receiving legal aid subsidies.<sup>11</sup> The subsidy consists of a statutory hourly fee or a fixed fee per submission in the proceedings, paid by the government to the attorney. To discourage frivolous litigation, indigents are also required to pay a limited, one-time fee to the attorney. The amount owed varies, depending on the amount of time spent on the case and the client's ability to pay.<sup>12</sup>

Attorneys admitted to provide legal services to indigents are required to submit a specific application for each client to the Legal Aid Board before taking on new engagements.<sup>13</sup> Applications must indicate the facts and circumstances of the case, the arguments that will be presented, and the client's legal interest in bringing the case.<sup>14</sup> The Dutch Legal Aid Act provides that the Legal Aid Board is required to deny the application if: (a) it lacks any basis in law or fact; (b) the costs of the proceedings are excessive in comparison with the interest at issue; or (c) the case can reasonably be expected to be resolved by the

---

<sup>9</sup> A jurist (or any other person) is allowed to represent someone before the *Kantonrechter*, even though they cannot otherwise appear in court.

<sup>10</sup> WET OP DE RECHTSBIJSTAND, art. 44(2).

<sup>11</sup> Persons with a relatively low income – €24,000 for single persons or €34,700 for non-single persons – may qualify for funded legal assistance. See <http://www.advocatenorde.nl/579/consumentengeen-geld-voor-een-advocaat.html> (last visited on September 4, 2015).

<sup>12</sup> See Besluit eigen bijdrage rechtsbijstand, available at <http://kenniswijzer.rvr.org/wet-en-regelgeving> (last visited on September 4, 2015).

<sup>13</sup> See WET OP DE RECHTSBIJSTAND, arts. 24(2) & 28(1)(a).

<sup>14</sup> Id. art. 24(3), (5).



client with or without the assistance of another person or organization not employing attorneys covered by this specific legal regime.<sup>15</sup>

Finally, the Legal Aid Board is required to deny subsidized legal assistance to an immigrant seeking admission to the Netherlands, unless the immigrant seeks asylum or is threatened with imminent incarceration.<sup>16</sup>

## Assignments to Legal Aid Matters

### Assignments to Matters: Ways of Receiving Aid

The Dutch Legal Aid Act requires attorneys to be admitted to a specific panel of attorneys providing legal services to indigents before they are eligible to receive statutory representation fees from the government.<sup>17</sup> In order to be admitted, an attorney in private practice must submit an application to the Legal Aid Board (*Raad voor Rechtsbijstand*). The Board consists of five regional offices and one central office.

Under the supervision of the Legal Aid Board, two parties provide primary and secondary legal assistance to indigents: (1) Legal Services Counters (*Juridisch Loketten*), commonly known as the “front office,” serve as the primary point of contact for legal aid and, if necessary, will assist with referrals to a lawyer or mediator; and (2) private lawyers and mediators, registered with the Legal Aid Board, provide secondary legal aid in more complicated or time-consuming matters.

In addition to attorneys in private practice, a variety of nonprofit organizations subsidized by national and local governments are available to provide legal services to indigents. For instance, there is a national organization of “social advisers” (*Sociaal Raadslieden*), subsidized primarily by municipalities, with approximately 80 offices across the Netherlands, that assists indigents in completing forms, writing letters and bringing administrative appeals.<sup>18</sup>

The legal aid system, therefore, is a mixed model, consisting of public first-line and private second-line help. In 2014, Legal Services Counters provided easily accessible, free legal services to over 300,000 clients.<sup>19</sup>

### Unmet Needs and Access Analysis

Legal aid is only available to individuals. As a result, non-profit organizations and foundations with limited funding have turned to large law firms for pro bono legal assistance.

### Alternative Dispute Resolution

#### Mediation

Administrative regulations issued under the Dutch Legal Aid Act govern the provision of legal aid during mediation. All regulations governing legal aid extend to mediation, including the limitations on indigence.<sup>20</sup>

---

<sup>15</sup> Id. art. 12(2)(a), (b), and (g). The statutory criteria for denying legal assistance is further explained in a January 11, 1994 administrative regulation regarding criteria for subsidized legal assistance (Besluit Rechtsbijstand en Toevoegingscriteria), available at <http://kenniswijzer.rvr.org/wet-en-regelgeving> (last visited on September 4, 2015). For instance, if recent legal developments indicate a claim is very likely to fail, or if the monetary interest is less than €250, legal aid is generally denied.

<sup>16</sup> Regulation on Criteria for Subsidized Legal Assistance, art. 8(1)(a).

<sup>17</sup> See WET OP DE RECHTSBIJSTAND, arts. 14 and 13(1) lit. a.

<sup>18</sup> See SOCIAAL RAADSLIEDENWERK, available at <http://www.sociaalraadslieden.nl> (last visited on September 4, 2015).

<sup>19</sup> Legal Aid in the Netherlands, available at <http://www.rvr.org/english> (last visited on September 4, 2015).

<sup>20</sup> See Besluit Toevoeging Mediation arts. 2 and 3, available at <http://kenniswijzer.rvr.org/wet-en-regelgeving/besluit-toevoeging-mediation/besluit-toevoeging-mediation.html> (last visited on September 4, 2015).



### Ombudsman

In the Netherlands, the National Ombudsman is an independent agency charged with investigating complaints from citizens about improper behavior by other government agencies and the police. However, it cannot issue any legally binding resolutions and must rely on Parliament to apply political pressure to implement its findings.<sup>21</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

Given the government provision of extensive legal aid, attorneys have no legal duty to provide pro bono assistance. Working with the subsidized legal aid program (*pro deo*) or providing services for free (pro bono) is a decision left entirely to the individual attorney.

#### Law Firm Pro Bono Programs

Only a few large, commercial law firms in the Netherlands provide pro bono legal services. As previously discussed, the nature of the pro bono work in the Netherlands is less focused on indigents and more on interest groups and foundations serving public or social needs and human rights. These foundations are not entitled to receive government-subsidized legal aid and therefore have a substantial need for pro bono legal services. Large law firms that provide pro bono legal services to such organizations often require that the case holds demonstrable social significance or sets a legal precedent.

#### Non-Governmental Organizations (NGOs) & University Clinics

There are many non-profit organizations in the Netherlands that provide legal advice at no cost. Those foundations are commonly known as *Rechtswinkels* (Law Stores). Staff usually consists of law students and other volunteers, and they can exist as separate foundations or be part of a university.<sup>22</sup> Generally, these organizations perform a function similar to the Legal Services Counters. Because most Law Stores receive almost no subsidies, there has been some controversy over Law Stores disappearing in recent years.

### Historic Development and Current State of Pro Bono

#### Historic Development of Pro Bono

Legal aid in the Netherlands has a long history, and as a consequence true pro bono work has been very limited. Some form of legal aid has been provided for indigents since the 15th and 16th centuries. Government-sponsored legal aid expanded throughout the 20th century. In the 1960s and 1970s, social movements focused on access to justice, and the first Law Stores were founded by law students. In 1983, a constitutional right to legal aid for individuals was enshrined.<sup>23</sup>

#### Current State of Pro Bono including Barriers and Other Considerations

Recently, globalization and the rise of large international law firms have spurred further development of pro bono activities in the Netherlands. Influenced by the Anglo-American model, Dutch firms (or Dutch offices of large multinational firms) are increasingly looking abroad for impactful pro bono work. For

---

<sup>21</sup> Nationale Ombudsman, Parlement & Politiek, Leiden University, [http://www.parlement.com/id/vh8lnhrpmtxvr/nationale\\_ombudsman](http://www.parlement.com/id/vh8lnhrpmtxvr/nationale_ombudsman) (last visited on September 4, 2015).

<sup>22</sup> See, e.g., De Leidsche Rechtswinkel, <http://www.leidserechtswinkel.nl/> (last visited on September 4, 2015) (part of Leiden University).

<sup>23</sup> Raad voor Rechtsbijstand, Informatie over de Raad: Geschiedenis, <http://www.rvr.org/Informatie-over-de-raad/organisatie/taken-van-de-raad/geschiedenis.html> (last visited on September 4, 2015).



instance, large law firms have worked in developing countries in democracy-building efforts, have helped track the Charles Taylor process in Sierra Leone, and have aided organizations opposing the death penalty in the U.S. and elsewhere.<sup>24</sup>

## Laws and Regulations Impacting Pro Bono

### Rules on Fees

Like many other continental European jurisdictions, the Dutch regulatory regime does not generally allow attorneys to provide their services based on a contingency fee.<sup>25</sup> However, attorneys in the Netherlands are permitted to provide legal services completely free of charge (i.e., pro bono legal services).<sup>26</sup> Lawyers are not required to charge VAT on their services and there are no anti-competition regulations that require lawyers to charge minimum tariffs.

The Netherlands has a mitigated “loser pays” law in civil litigation. The winner can recover his or her legal fees based on a statutory fee system that caps compensation based on the amount of work performed.<sup>27</sup> Generally, this statutory compensation does not reflect the costs actually incurred.

### Rules Directly Governing Pro Bono Practice

The primary barriers to pro bono work are regulations on lawyer publicity. The Dutch Bar has restrictive advertising regulations that may discourage commercial law firms from providing pro bono services by limiting law firms’ ability to approach potential clients. The Dutch Bar Association has issued a publicity decree (*Verordening op de Publiciteit*) restricting both the content and the manner in which lawyers can advertise their services, with the stated aims of protecting the public and promoting a spirit of trust and cooperation among attorneys.<sup>28</sup> Although it limits competition among attorneys and hinders their ability to search for clients, the decree does allow law firms to advertise pro bono efforts by distributing annual pro bono reports or brochures, but regulates their content.<sup>29</sup>

### Practice Restrictions on Foreign-Qualified Lawyers

The rules on foreign lawyers practicing in the Netherlands are fairly complex, and differ for EU and non-EU citizens. In practice, there are no reports of foreign lawyers practicing pro bono in the Netherlands. While pro bono projects may be multi-jurisdictional, Dutch attorneys normally act as local counsel and deal with the Dutch elements of a project.

### Concerns About Pro Bono Eroding Public Legal Aid Funding

In the Netherlands, pro bono work complements *pro deo* work performed in the context of legal aid; pro bono clients are usually organizations, and *pro deo* clients are individuals. Plus, pro bono work is

---

<sup>24</sup> Advocatie, Pro Bono-Activiteiten van Nauta, de Brauw, en CC (Aug. 22, 2007), <http://www.advocatie.nl/pro-bono-activiteiten-van-nauta-de-brauw-en-cc> (last visited on September 4, 2015).

<sup>25</sup> See Verordening op de Praktijkuitoefening (onderdeel Resultaatgerelateerde Beloning), available at <http://maxius.nl/verordening-op-de-praktijkuitoefening-onderdeel-resultaatgerelateerde-beloning> (last visited on September 4, 2015).

<sup>26</sup> See, e.g., Nederlandse Orde van Advocaten, Verordening op de Praktijkuitoefening (onderdeel Resultaatgerelateerde Beloning), available at <http://snipurl.com/2a76itu> (last visited on September 4, 2015).

<sup>27</sup> For the regulations on the point system and fees, see Tariffs for Trial Courts and Courts of Appeals (Liquidatietarief Rechtbanken en Gerechtshoven), <https://www.rechtspraak.nl/Procedures/Landelijke-regelingen/Sector-civiel-recht/Pages/Liquidatietarief-rechtbanken-en-gerechtshoven.aspx> (last visited on September 4, 2015).

<sup>28</sup> See Verordening op de Publiciteit, available at <http://maxius.nl/verordening-op-de-publiciteit> (last visited on September 4, 2015).

<sup>29</sup> See, e.g., STIBBE, Pro Bono, <http://www.stibbe.nl/stibbe/view/About/template.do?UID=8ae45a010ab71d2ebf015328>, and Nauta Dutilh, CSR, <http://www.nautadutilh.com/en/home/our-firm/corporate-social-responsibility/> (last visited on September 4, 2015).

generally only performed by large law firms. As a result, there are no real erosion concerns. While legal aid funding is currently the subject of public controversy, that is not because of pro bono work.<sup>30</sup>

**Availability of Professional Indemnity Legal Insurance Covering Pro Bono Activities by Attorneys**

Generally, professional insurance covers liability arising out of pro bono work. However, there are no reports of any claim against a firm in relation to pro bono work. In addition, Dutch law firms ordinarily limit liability in their engagement letters or terms and conditions to the amount of fees paid (which is zero for pro bono engagements).<sup>31</sup>

**Availability of Legal Insurance for Clients**

Legal insurance is commonly and cheaply available from a variety of large and small insurance carriers in the Netherlands for people of moderate means (who would not otherwise qualify for subsidized legal aid). A recent European decision has provided that insurance companies cannot restrict an insured’s choice in attorney, protecting the interests of the insured.<sup>32</sup> As a result, individuals rarely if ever need pro bono assistance.

**Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System**

Given the structure of legal aid in the Netherlands, there are very few barriers to participation in the formal legal system for individuals. Public trust in the legal system is fairly high compared to other countries,<sup>33</sup> and pro bono work complements existing structures rather than serves as an alternative.

**Pro Bono Resources**

- Stibbe, Pro Bono Committee  
 Address: Stibbetoren, Strawinskyiaan 2001, 1077 ZZ Amsterdam, Netherlands  
 Phone: +31.20.546.06.06  
 Website: <http://www.stibbe.com>  
 Email: [probono@stibbe.com](mailto:probono@stibbe.com) (last visited on September 4, 2015)
- The Raad voor Rechtsbijstand (Legal Aid Board) provides information on access to government-sponsored legal aid. See *Legal Aid in the Netherlands*, available at [http://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/brochure-legalaid\\_juni2013\\_webversie.pdf](http://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/brochure-legalaid_juni2013_webversie.pdf) (last visited on September 4, 2015)

**CONCLUSION**

In the Netherlands, people with limited means seeking legal advice are well-represented by the system of government-subsidized legal services. A variety of government and non-profit organizations are available to provide legal services and the Dutch government subsidizes legal assistance provided to indigents by attorneys in private practice.

Because of the comprehensive regime of government-subsidized legal services for indigents, pro bono legal services – engaged in primarily by large law firms – are more focused on interest groups and foundations serving social needs and human rights, which are not entitled to receive legal aid. Presently only a few large commercial law firms provide pro bono services. Lawyers in such firms looking to engage in pro bono work may consider seeking opportunities for pro bono representation of organizations in legal matters that hold demonstrable social significance or have the potential to set new legal precedent.

<sup>30</sup> See, e.g., Eerste Kamer Trekt Streep door Bezuiniging op Rechtsbijstand [Senate Rejects Legal Aid Budget Cuts], NRC (Jan. 20, 2015), <http://www.nrc.nl/nieuws/2015/01/20/eerste-kamer-trekt-streep-door-bezuiniging-op-rechtsbijstand/> (last visited on September 4, 2015).

<sup>31</sup> It is unclear whether this limitation on liability is permitted; it has never been tested in court.

<sup>32</sup> Case C-442/12, Sneller v. DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV (2013).

<sup>33</sup> See Bert Niemeijer & Peter van Wijck, Verschillen Tussen Burgers in Vertrouwen in de Rechtspraak, 34 *Recht der Werkelijkheid* (Dec. 2013), available at <https://media.leidenuniv.nl/legacy/pvw-2013-02.pdf> (last visited on September 4, 2015).



September 2015

Pro Bono Practices and Opportunities in the Netherlands

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in New Zealand<sup>1</sup>

### INTRODUCTION

New Zealand's population of approximately 4.4 million residents is served by approximately 12,480 lawyers, amongst which just under 12,000 lawyers practise locally, with a further 550 based overseas holding a practising certificate issued by the New Zealand Law Society ("NZLS").<sup>2</sup> Two thirds of law firms spend 1-5% of practice time on pro bono work, and the value of pro bono work in New Zealand is estimated to be between approximately \$13 million and \$68 million annually.<sup>3</sup> Community Law Centres ("CLCs") provide certain categories of legal services at no cost to people who are unable to meet the cost of a private lawyer or do not have access to legal aid. Direct pro bono work undertaken by CLCs equates to almost \$1.4 million annually.<sup>4</sup>

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

New Zealand is an independent state. It is a democracy and a constitutional monarchy, meaning that the Queen of England, as head of state, is the source of legal authority in New Zealand, but that she and her representative, the Governor-General, act on the advice of the democratically elected government, in all but the most exceptional circumstances. It has inherited a Westminster system of government, maintaining a separation of powers between the legislature, the executive and the judiciary. New Zealand does not have a full and entrenched written constitution, and the sources of its constitution include various statutes with constitutional significance (e.g. the Constitution Act 1986, the Electoral Act 1993, the New Zealand Bill of Rights Act 1990), British laws adopted by New Zealand through the Imperial Laws Application Act 1988, such as the Magna Carta, court decisions, constitutional conventions, the Treaty of Waitangi and the prerogative powers of the Queen.<sup>5</sup>

##### The Courts

##### Court system

New Zealand has a hierarchical court system. At the top is the Supreme Court. Below it, in descending order, are the Court of Appeal, the High Court and the District Courts. These are "courts of general jurisdiction", which handle both criminal and civil matters. There are also a number of specialist courts dealing with employment matters, family issues, youth offending, Maori land disputes as well as environmental issues. Separately, the Waitangi Tribunal operates as a permanent commission of inquiry that examines claims made by a Maori or groups of Maori who may have been prejudiced by laws and

---

<sup>1</sup> This chapter was drafted with the support of Bell Gully.

<sup>2</sup> NEW ZEALAND LAW SOCIETY, Snapshot of the Profession 2015, available at [http://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/87388/NZLS-Snapshot-of-the-Profession-2015.pdf](http://www.lawsociety.org.nz/_data/assets/pdf_file/0007/87388/NZLS-Snapshot-of-the-Profession-2015.pdf) (last visited on September 4, 2015) (Feb, 2015).

<sup>3</sup> LAW FOR CHANGE, Profession's gift to the community, Law Talk 820, available at <http://www.lawforchange.co.nz/wp-content/uploads/2013/07/Pro-Bono-Law-Talk-1.pdf> (last visited on September 4, 2015) (Jun, 2013).

<sup>4</sup> Ibid.

<sup>5</sup> CONSTITUTIONAL ADVISORY PANEL, New Zealand's constitution: The conversation so far, available at [http://www.ourconstitution.org.nz/store/doc/The\\_Conversation\\_So\\_Far.pdf](http://www.ourconstitution.org.nz/store/doc/The_Conversation_So_Far.pdf) (last visited on September 4, 2015) (Dec, 2012).



regulations or by acts, omissions, policies, or practices of the Crown since 1840 that are inconsistent with the principles of the Treaty of Waitangi.<sup>6</sup>

### Appointment of Judges

Judicial appointments are made by the Governor-General, the Sovereign's representative and nominal chief executive, on the recommendation of the Attorney-General, the chief law officer of the Crown who also has ministerial jurisdiction over the Crown Law Office, the Parliamentary Counsel Office and the Serious Fraud Office. Although judicial appointments are made by the Attorney-General (as part of the executive), there is strong constitutional convention for the Attorney-General to act independently of party political considerations. Judges are appointed according to their qualifications, personal qualities, and relevant experience.

## The Practice of Law

### Education

Completion of a law degree is a pre-requisite to admission as a barrister and solicitor in New Zealand. The New Zealand Council of Legal Education further requires that lawyers complete practical legal training prior to being admitted to the profession, which can be completed by undertaking an accredited practical legal studies course.

### Licensure

All legal practitioners are admitted to the High Court of New Zealand as both barristers and solicitors, such that no person may be admitted as a barrister or a solicitor only.<sup>7</sup> All lawyers must obtain a practicing certificate from the NZLS in order to practice as a lawyer. A minimum of ten hours of Continuing Professional Development ("CPD") each year is required of all lawyers.<sup>8</sup>

Once admitted, a lawyer may practice either as (i) a barrister and solicitor or (ii) a barrister sole. A barrister - solicitor may be employed by a law firm or employed by an incorporated law firm<sup>9</sup> as an in-house counsel, a director and/or shareholder in an incorporated law firm or practice on his/her own account as a sole practitioner or partner in a law firm. Barristers sole are not permitted to practice in partnerships but may employ other barristers. An incorporated law firm structure is also open to barristers, as long as the barrister is the sole director and shareholder.

### Demographics

Of New Zealand-based lawyers, 59% practise in law firms with more than one practising certificate. Another 8% are in sole practice (SP), while 21% are in-house lawyers (IHL) employed by an organization. The remainder are barristers (11%) or not currently working.<sup>10</sup>

### Legal Regulation of Lawyers

The number of lawyers per capita is 367.<sup>11</sup> Lawyers can only provide legal aid services if they have a contract with the Ministry of Justice. Regulation of New Zealand lawyers is governed by the Lawyers and

---

<sup>6</sup> COURTS OF NEW ZEALAND, Diagram of the Courts Structure, available at <https://www.courtsofnz.govt.nz/about/system/structure/diagram/courts-diagram.pdf> (last visited on September 4, 2015) (Jul, 2006).

<sup>7</sup> Section 48(1), Lawyers and Conveyancers Act 2006.

<sup>8</sup> Section 6, Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education – Continuing Professional Development) Rules 2013.

<sup>9</sup> NEW ZEALAND LAW SOCIETY, Incorporated law firms, available at <https://www.lawsociety.org.nz/for-lawyers/legal-practice/incorporated-law-firms> (last visited on September 4, 2015): An incorporated law firm is distinctive from a law firm, the concept of law incorporation was introduced by the Lawyers and Conveyancers Act 2006 (LCA). Under the LCA and its associated regulations, an incorporated law firm has a separate legal identity, which continues to exist regardless of any changes in its membership. Incorporation also allows its members to enjoy limited liability.

<sup>10</sup> Ibid.

<sup>11</sup> Calculated based on number of lawyers practicing in New Zealand.



Conveyancers Act 2006 (“**LCA**”) and the regulations and rules made thereunder. The New Zealand Law Society carries regulatory functions and powers conveyed to it by the LCA.<sup>12</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

#### In Civil Proceedings<sup>13</sup>

Civil legal aid is available for private disputes and other non-criminal disputes that could go to court or a tribunal, including proceedings over debt recovery, breach of contract, defamation and bankruptcy. Although legal aid is available for proceedings before tribunals or specialist courts such as the Human Rights Tribunal and the Employment Court, it is not available for matters relating to cases before the Disputes Tribunal or the Motor Vehicle Disputes Tribunal, problems with educational institutions or matters for companies or groups of people.

#### In Criminal Proceedings<sup>14</sup>

Criminal legal aid is available to anyone who cannot afford a lawyer and has been charged with an offence that could be punished with a prison term of at least six months. Legal aid may also be available for the appeal of such conviction or sentence. Non-serious criminal charges where a duty solicitor can assist the defendant do not qualify for legal aid, such as driving offences. However, legal aid may be available for certain non-serious charges if the defendant faces a special barrier of disability, which includes difficulties with reading or writing, or mental illness.

### State-Subsidized Legal Aid<sup>15</sup>

New Zealand has a legal aid system that uses public funds to provide free legal services to those who cannot afford a lawyer. Individuals who qualify for legal aid, save for those involved in non-serious criminal cases, will be able to select a lawyer from any practicing lawyers authorized to serve as a legal aid provider to advise and represent them. The Ministry of Justice oversees the legal aid programs.

#### Eligibility Criteria

The eligibility requirements for legal aid services are set out in the Legal Services Act 2011<sup>16</sup> (the “**LSA**”) and the Legal Services Regulations 2011 (the “**LSR**”). There are four key considerations for establishing eligibility: (i) status of the applicant, (ii) financial eligibility, (iii) merits and (iv) nature of the proceeding.<sup>17</sup> Firstly, with respect to status, according to the LSA<sup>18</sup> the applicant does not have to be a resident in New Zealand when making the application. If the applicant is overseas and unable to sign the application, their

---

<sup>12</sup> Part 4, Lawyers and Conveyancers Act 2006.

<sup>13</sup> MINISTRY OF JUSTICE, Civil Legal Aid, available at <http://www.justice.govt.nz/services/legal-help/legal-aid/civil/eligibility> (last visited on September 4, 2015).

<sup>14</sup> MINISTRY OF JUSTICE, Criminal Legal Aid, available at <http://www.justice.govt.nz/services/legal-help/legal-aid/criminal/eligibility> (last visited on September 4, 2015).

<sup>15</sup> Authors should ensure that the concepts of “legal aid” and “pro bono” are kept completely separate. The former is state-funded legal aid and the latter is the voluntary contribution of private attorneys. This report is focused solely on pro bono. The legal aid system in a jurisdiction should be discussed only to give context to the opportunities for the provision of pro bono services in that jurisdiction.

<sup>16</sup> Sections 6 to 8, Legal Services Act.

<sup>17</sup> MINISTRY OF JUSTICE, Eligibility Guidelines, available at <http://www.justice.govt.nz/services/service-providers/information-for-legal-professionals/information-for-legal-aid-providers/documents/manuals-and-policies/grants-manual/Eligibility%20manual.pdf> (2014) (last visited on September 4, 2015).

<sup>18</sup> Section 10(1)(a), Legal Services Act 2011.



lawyer may make the application. However, if the applicant is overseas and the proceedings might reasonably be brought in an overseas jurisdiction, then legal aid in New Zealand may not be available to the applicant.<sup>19</sup> Secondly, in determining whether an applicant in a civil matter is financially eligible, the following factors are considered: gross annual income taking into account family size and composition,<sup>20</sup> disposable capital,<sup>21</sup> whether insurance funding is available<sup>22</sup> etc. In relation to criminal matters, legal aid is granted where the Legal Services Commissioner (the “**Commissioner**”) is of the opinion that the applicant does not have sufficient means, having regard to the applicant’s income and disposable capital.<sup>23</sup> Thirdly, when assessing the merits of the case, aid for civil matters will be refused if the applicant cannot show that they have reasonable grounds for taking or defending the proceedings or for being a party to the proceedings.<sup>24</sup> The applicant will have to show they have a significant personal interest in the outcome which justifies pursuing the matter or that the proceedings involve domestic violence or mental health.<sup>25</sup> In relation to criminal matters, the Commissioner may grant aid if it appears that the interests of justice require aid to be granted.<sup>26</sup> Lastly, the applicant of a civil matter meets the criterion for aid if he or she can show that the nature of the proceeding requires legal representation (having regard to the nature of the proceedings and to the applicant’s personal interest) and that he or she would suffer substantial hardship if aid were not granted.<sup>27</sup> In relation to criminal matters, aid is generally available if it relates to a criminal charge, sentencing or appeal to be heard in the District Court, High Court, Court of Appeal or Supreme Court.<sup>28</sup> As of September 2, 2013, criminal offenders are entitled to aid and to be legally represented<sup>29</sup> on a range of matters if the case appears before the New Zealand Parole Board, including conditions of release on the statutory release date, parole, residential restrictions etc.

## Mandatory assignments to Legal Aid Matters

Private legal practitioners are not required to accept matters assigned to them by a court or the Ministry of Justice. Lawyers can only provide legal aid services if they have a contract with the Ministry of Justice. More specifically, New Zealand provides a Public Defence Service to help defend individuals on criminal charges who are eligible for legal aid. The Public Defence Service also oversees the duty lawyer service in the courts where it operates. The object of the duty lawyer service is to ensure that a sufficient number of lawyers are available at each District Court for the purpose of assisting, advising, and representing unrepresented defendants charged with an offence.<sup>30</sup>

---

<sup>19</sup> Section 10(4)(c), *ibid.*

<sup>20</sup> Regulation 5, Legal Services Regulations 2011.

<sup>21</sup> Regulation 6, *ibid.*

<sup>22</sup> Section 13, Legal Services Act 2011.

<sup>23</sup> Section 8, *ibid.*

<sup>24</sup> Section 10(3), *ibid.*

<sup>25</sup> Section 11(4), *ibid.*

<sup>26</sup> Section 8(1)(c), *ibid.*

<sup>27</sup> Section 7(1)(e), *ibid.*

<sup>28</sup> Section 6, *ibid.*

<sup>29</sup> Section 49 (3)(c), Parole Act 2002.

<sup>30</sup> MINISTRY OF JUSTICE, Duty Lawyer Service Operational Policy, available at [http://www.google.com.hk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCMQFjAB&url=http%3A%2F%2Fwww.justice.govt.nz%2Fservices%2Fservice-providers%2Finformation-for-legal-professionals%2Finformation-for-duty-lawyers%2Fdocuments%2Fduty-lawyer-service-operational-policy.pdf%2Fdownload%2Ffile&ei=GZmQVbG4EsewoqTj3JqWAg&usq=AFQjCNHCr6A3\\_LOxGqSVpE-SocMdVVqDbQ&sig2=Knaf82ckDRiEfMLAfDbd5w](http://www.google.com.hk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCMQFjAB&url=http%3A%2F%2Fwww.justice.govt.nz%2Fservices%2Fservice-providers%2Finformation-for-legal-professionals%2Finformation-for-duty-lawyers%2Fdocuments%2Fduty-lawyer-service-operational-policy.pdf%2Fdownload%2Ffile&ei=GZmQVbG4EsewoqTj3JqWAg&usq=AFQjCNHCr6A3_LOxGqSVpE-SocMdVVqDbQ&sig2=Knaf82ckDRiEfMLAfDbd5w) (2012) (last visited on September 4, 2015).



## Unmet Needs and Access Analysis

In addition to these programs, there are 24 CLCs across Aotearoa New Zealand. Since CLCs provide outreach services to suburbs and smaller towns, they have a presence in over 140 locations, covering major city centres as well as rural communities. CLCs are independent. They run either as charitable trusts or incorporated NGO organisations. CLCs generally provide free legal consultation and representation to everyone, with a focus on individuals with limited financial resources. CLCs provide potential access to the justice system for up to 20% of New Zealand households – nearly 326,000 households, a large proportion of which are Māori and Pacific Island households.<sup>31</sup> CLCs operate as gateways to the legal system for those with an unmet legal need, serving members of the community who struggle to afford private legal assistance but are not covered by legal aid.

## Alternative Dispute Resolution

Mediation, Arbitration, Etc.

Internationally and in New Zealand, alternative dispute resolution (“ADR”), including, inter alia - arbitration, negotiation and mediation, has been promoted as encouraging early civil case settlement and delivering consequent benefits to both the courts and disputants.

Ombudsman

Apart from ADR, the Office of the Ombudsman (the “Ombudsman”) handles complaints and investigates the administrative conduct of state sector agencies. The Ombudsman has authority to investigate approximately 4000 entities in the state sector, including government departments and ministries; local authorities and state-owned enterprises. Making a complaint to the Ombudsman is free; as such, it acts as an alternative means for indigent individuals to resolve disputes with a state section agency.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Law Firm Pro Bono Programs

There is no mandate for private attorneys to engage in pro bono work in New Zealand. Regardless, law firms have developed pro bono programs to facilitate pro bono work. As firms and companies with global brands expand into New Zealand, many are bringing their existing pro bono programs with them. For example, DLA Piper New Zealand targets to provide pro bono services with a notional value of at least 3% of the firm's annual revenue, and counts all hours spent on pro bono projects towards its lawyers' billable targets.<sup>32</sup> Bell Gully publishes a Pro Bono & Community Report annually and targets to contribute approximately \$660,000 annual fee equivalent to pro bono work.<sup>33</sup>

Bar Association Pro Bono Programs

Despite being limited, there is a pro bono legal assistance service in Auckland that provides free, limited assistance to persons without legal representation with the drafting and preparation of initial Court

---

<sup>31</sup> NEW ZEALAND INSTITUTE OF ECONOMIC RESEARCH, NZIER report to Community Law Centres of Aotearoa, Benefits of Community Law, available at <http://www.scoop.co.nz/stories/AK1207/S00368/community-law-provides-sound-value-for-money.htm> (last visited on September 4, 2015)

<sup>32</sup> DLA PIPER, Pro Bono, available at <https://www.dlapiper.co.nz/about-us/corporate-responsibility/pro-bono> (last visited on September 4, 2015).

<sup>33</sup> BELL GULLY, A Helping Hand: Bell Gully's Pro Bono & Community Report, available at <http://www.bellgully.co.nz/resources/pdfs/Pro-bono-report-2014-2015.pdf> (2015) (last visited on September 4, 2015).



documents (either a statement of claim or statement of defence) at the Auckland Employment Court.<sup>34</sup> Apart from the CLCs, the Citizens Advice Bureaux provides free legal services where members of the public can receive free legal advice from a lawyer during specified times. All Bureaux are also able to put individuals in need in contact with other free legal services available in their area such as the local CLC or lawyers in the community who offer pro bono legal advice.

### University Legal Clinics and Law Students

The University of Canterbury Law School has implemented 100 hours of community/professional engagement over the life of the degree as a graduating requirement from 2015.<sup>35</sup> Based on the “Harvard model”, graduation ceremonies at the University of Canterbury Law School will formally recognize students in two higher tiers: those who do more than 400 hours and those who do more than 750 hours of pro bono work.<sup>36</sup>

### Historic Development and Current State of Pro Bono

Historically, New Zealand’s pro bono has been relatively individualistic. In the 1970s, Sir Edmund Thomas led pro bono work aiming to raise awareness of apartheid South Africa and to protest against New Zealand’s ties with the country; while in the 1980s, Sian Elias together with David Baragwanath spearheaded litigation to protect indigenous rights.<sup>37</sup> Consistent with the increasing focus on corporate social responsibility internationally, in the 21<sup>st</sup> century the profession has moved towards formalizing and appropriately recognizing pro bono contributions. While pro bono work has always been undertaken by the New Zealand profession, it now has a higher profile and is more quantifiable than it was previously. That said, there is no mandatory or centralized reporting of pro bono work and the extent of pro bono efforts and reporting is an individual decision for each practitioner or firm.

Despite still being criticized for the lack of structured support networks and funding pools for recent pro bono lawyering, there have been some promising developments over the past few years.

Despite contrary suggestion by the New Zealand Attorney-General in 2010, it is not compulsory for any practicing lawyers to do pro bono law work at present.<sup>38</sup> However, according to the University of Waikato Institute for Business Research inter-firm comparison research in 2011, two-thirds of responding firms spent between one and five percent of time on pro bono work. Extrapolated nationally, the value of pro bono work could be between \$20 and \$100 million annually. New Zealand’s three largest law firms – Russell McVeagh, Bell Gully and Chapman Tripp, all have formal pro bono teams. Awards such as the Corporate Citizen Firm of the Year and the Community Service in Law Award<sup>39</sup> serve as encouragement for more active participation in pro bono.

Last but not least, the New Zealand Centre for Human Rights Law, Policy and Practice as well as the New Zealand Human Rights Lawyers’ Association were established in 2012 to provide pro bono services

---

<sup>34</sup> EMPLOYMENT COURT OF NEW ZEALAND, available at <http://www.justice.govt.nz/courts/employment-court/information-and-guidance/professional-assistance> (last visited on September 4, 2015).

<sup>35</sup> UNIVERSITY OF CANTERBURY SCHOOL OF LAW, Strategic Objectives 2013-2015, available at <http://www.laws.canterbury.ac.nz/documents/law-strategic-plan-2013.pdf> (last visited on September 4, 2015).

<sup>36</sup> Ibid.

<sup>37</sup> OXFORD HUMAN RIGHTS HUB, Pro Bono Law in New Zealand: A Work in Progress, available at <http://ohrh.law.ox.ac.uk/pro-bono-law-in-new-zealand-a-work-in-progress/> (last visited on September 4, 2015).

<sup>38</sup> Ibid.

<sup>39</sup> BELL GULLY, Pro Bono, available at <http://www.bellgully.co.nz/aboutus/probono.asp> (last visited on September 4, 2015).



with a focus on human rights cases. JustSpeak was also set up in 2011 to build awareness of and to encourage contribution to criminal justice policy.<sup>40</sup>

## CONCLUSION

Although New Zealand's pro bono framework remains somewhat unstructured, many organizations and individuals are currently working to build effective programs. Opportunities exist for law students and young lawyers to get involved with projects that will have a lasting impact on New Zealand's legal system. However, there are challenges facing legal aid reform, for example: (1) the inadequate fixed fee pay structure and the reduced legal aid budget leading to a low revenue for legal aid lawyers may disincentivize them and compromise the quality of their work, (2) the overall economic unviability of legal aid work may lead to a shortage of criminal lawyers in the long run, and (3) the eligibility test does not sufficiently provide for all the people facing legal issues. As such, the legal needs of many New Zealanders remain unmet. Pro bono services programs must grow on a community level as well as a national level to widen access to justice in New Zealand.

September 2015

Pro Bono Practices and Opportunities in New Zealand

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>40</sup> OXFORD HUMAN RIGHTS HUB, Pro Bono Law in New Zealand: A Work in Progress, available at <http://ohrh.law.ox.ac.uk/pro-bono-law-in-new-zealand-a-work-in-progress/> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in Nicaragua<sup>1</sup>

### INTRODUCTION

The provision of pro bono services in Nicaragua increased in recent years with both Non-Governmental Organizations (**NGOs**) and private law firms providing pro bono services to individuals and other organizations. However, underfunding, lack of information and lack of legislation promoting pro bono practices continue to inhibit growth in pro bono engagement.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Nicaragua is a Civil Law jurisdiction with each of its bills and regulations subordinate to the provisions established by the Constitution. The Supreme Court of Justice (*Corte Suprema de Justicia*) is the institution responsible for the administration of Justice.

##### Courts

The applicable Courts and Jurisdictions for litigation in Nicaragua can be divided into: the Criminal Court, the Labor Court, the Civil Court, and the Family Court, for their respective matters. The Supreme Court of Justice is authorized to rule over any matter in its corresponding division.

##### The practice of law

The Supreme Court of Justice is responsible for the granting of licenses to practice law in Nicaragua which grants the individual the title of advocate or attorney (*abogado*). The requirements for obtaining such a license include having a bachelor's degree in Law and sworn references. The practices and representation of Nicaraguan attorneys in procedures is currently governed by the Organic Law of the Judicial Branch (*Ley Orgánica del Poder Judicial*) and the Law of Judicial Career (*Ley de Carrera Judicial*). The legal profession is subject to mandatory regulation under different governmental institutions that are subordinated to the judicial branch, such as the National Council for Administration and Judicial Career (*Consejo Nacional de Administración y Carrera Judicial*).<sup>2</sup>

### LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

#### The right to legal assistance

Under Nicaraguan constitutional principles, access to justice must be free and everyone has the right to be represented by an attorney and to be granted an attorney chosen by the court when no other attorney has been appointed.<sup>3</sup> Accordingly, regardless of the matter and the economic status of the victim or citizen, Nicaragua must grant access to justice with no cost to the interested party.

---

<sup>1</sup> This chapter was drafted with the support of Rafael Medina and Marcela Deras at Arias & Muñoz

<sup>2</sup> For more information, refer to Ley Orgánica del Poder Judicial in <http://www.poderjudicial.gob.ni/arc-pdf/LOPJ.pdf> (last visited on September 4, 2015).

<sup>3</sup> For more information, refer to Constitución Política de Nicaragua in <http://www.ineter.gob.ni/Constitucion%20Politica%20de%20Nicaragua.pdf> (last visited on September 4, 2015).



## State-subsidized legal aid

The Office of Public Defense (*Defensoría Pública*) is the institution responsible for the representation of any indigent Nicaraguan citizen or resident that requires legal representation in any type of proceedings.

## Unmet needs and access analysis

While the Office of Public Defense is an effective institution, the need for additional public defenders is rising with the current workload of the public defenders exceeding capacity, creating the risk that the quality of the legal representation that is being provided.<sup>4</sup>

## NGOs and Legal Aid

There are NGOs throughout Nicaragua that concentrate on providing the impoverished with legal representation. Some NGOs provide legal assistance with obtaining required documentation to proceed and represent victims. For example, the Nicaraguan Center of Human Rights (*Centro Nicaragüense de Derechos Humanos*) is an NGO that focuses on the defense of human rights and the representations of victims before state and private institutions. This entity has represented Nicaraguan citizens at the international Courts of Human Rights of the Inter-American system.<sup>5</sup>

According to the Constitution, any civil or commercial dispute can be resolved through arbitration or other alternative dispute resolution such as mediation or conciliation. Any person who wishes to resolve a dispute through the use of any of the mechanisms mentioned above is free to do so, but these mechanisms have barriers. One of the most significant barriers to the use of arbitration is the cost. The parties involved cover the cost of arbitration. Currently, there is no legal aid or pro bono available for people who desire to submit their dispute to arbitration. Given that access to justice is free in Nicaragua and everyone that does not have enough financial capacity has the right to be represented in the Nicaraguan Courts through the Public Defense (*Defensoría Pública*), these methods have not been used much and low income people find themselves in need of a different process.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### National Pro Bono opportunities

There is a wide range of pro bono practices throughout Nicaragua. Most of the major private law firms have pro bono programs covering a variety of subjects. Moreover, a great number of NGOs have been established for this purpose, whose work ranges from general legal advice and representation to representation in specific areas.

Among the NGOs, some of the best known are the practices established by the universities *Universidad Centroamericana* and *Universidad Politécnica de Nicaragua* and their faculties. These programs allow law students to provide legal services (for free) on a range of legal matters under the supervision of qualified attorneys. Other institutions provide specialized representation on various matters ranging from consumer rights to mediation processes.

---

<sup>4</sup> For more information, refer to the webpage of Defensoría Pública at <http://www.defensoria.poderjudicial.gob.ni> (last visited on September 4, 2015).

<sup>5</sup> For more information, refer to the webpage of Centro Nicaragüense de Dechos Humanos at <http://www.cenidh.org> (last visited on September 4, 2015).



## Regional Pro Bono Opportunities

Many Nicaraguan NGOs and private law firms have made themselves available to specialized programs that provide pro bono legal assistance in a more standardized way and reach a wider range of applicants. Amongst these regional organizations, Nicaragua is a part of Lex Mundi Pro Bono Foundation, Red Pro Bono Internacional, Pro Bono en Defensa del Ambiente, Red Pro Bono de las Américas and Fundación Pro Bono (amongst others).

## Barriers to Pro Bono

The exercise of legal representation in Nicaragua is limited only to those who have a valid license as a lawyer or attorney. Otherwise, there are no laws that restrict an attorney from providing pro bono legal services in Nicaragua. In particular, there is no mandatory or minimum fee schedule applicable.

One barrier to pro bono practices is the lack of advertising for the available pro bono services. While every private attorney, private law firm, and NGO that provides these services advertises the pro bono program on their own website, there is no official site or entity in charge of gathering and summarizing such information.

Finally, the greatest barrier that pro bono practices in Nicaragua face is the lack of financial aid or funding for these organizations. The underfunding of NGOs and the compromised funding of private law firms severely limits the volume of pro bono services that can be taken in by NGOs and private law firms, placing greater strain on the State's legal aid provision.

## CONCLUSION

The practice of pro bono is very likely to continue developing over the next few years. The amount of hours provided as pro bono by private lawyers and law firms is rapidly increasing, while the regional NGOs are consistently becoming more visible amongst Salvadoran residents. The problems of underfunding and the lack of legislation promoting pro bono practices still remain, but more pro bono initiatives exist and the focus on providing free access to quality justice remains a priority in Nicaragua.

September 2015

Pro Bono Practices and Opportunities in Nicaragua

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Nigeria<sup>1</sup>

### INTRODUCTION

This chapter examines the current pro bono system in Nigeria, including the governmental and legal infrastructure of the country, and discusses pro bono practices and opportunities.

Current levels of pro bono engagement in Nigeria are relatively low but recent high-profile initiatives are seeking to change this and encourage pro bono activities to fill the desperate need for increased access for indigent persons to legal assistance in Nigeria.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing laws

Nigeria is a federal republic, divided into 36 states and one federal capital territory. Each state is divided into local government areas; there are 774 in total.<sup>2</sup> Nigeria's current constitution (the "**Constitution**") was adopted in May 1999. The President is elected every four years by universal adult suffrage and is required to include at least one representative of each of the 36 states in the cabinet. There is a bicameral National Assembly made up of a House of Representatives (with 360 seats) and a Senate (with 109 seats), each elected for four-year terms. The state governors and assemblies are also elected every four years.<sup>3</sup>

The sources of Nigerian law are (i) the Constitution, (ii) legislation passed by State Assemblies, (iii) certain English laws (by virtue of colonization and subsequent incorporation of laws), (iv) customary law (including Islamic (Shari'ah)) and personal and civil law (which is available particularly in the northern states), (v) Islamic penal law (which is partially enforced in a few northern states), and (vi) judicial precedents.

#### The Courts

The court system is comprised of federal and state trial courts, the Court of Appeal, the Supreme Court and Shari'ah and customary courts of appeal for each state and the federal capital territory of Abuja.<sup>4</sup> Although the Court of Appeal and the Supreme Court are both part of the Federal Government, appeals from both the Federal and State High Courts lie to the Court of Appeal and from there to the Supreme Court.

The President is responsible for judicial appointments to the federal courts (upon the recommendation of the National Judicial Council) including the Chief Justice of Nigeria, the President of the Court of Appeal and the Chief Judge of the Federal High Court, all three of which require confirmation by the Senate.

---

<sup>1</sup> This chapter was drafted with the support of Templars.

<sup>2</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434067/Nigeria\\_CIG\\_Background\\_information\\_v1\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434067/Nigeria_CIG_Background_information_v1_0.pdf)

<sup>3</sup> See <http://thecommonwealth.org/our-member-countries/nigeria/constitution-politics> (last visited on September 4, 2015).

<sup>4</sup> See <http://www.nationsencyclopedia.com/Africa/Nigeria-JUDICIAL-SYSTEM.html> (last visited on September 4, 2015).



## The Practice of Law

### Education

It takes five years to complete a law degree in Nigeria. Upon completion, graduates are awarded a “Bachelor of Laws” (LL.B.) degree. This is followed by a mandatory one-year period of vocational training at The Nigerian Law School under the supervision of the Council of Legal Education. Admission for foreign trained graduates is possible after they have first successfully completed a course of introduction to Nigerian law known as the Bar Part one course.<sup>5</sup>

### Governing Body

The Nigerian Bar Association (the “**NBA**”) is the professional association for lawyers in Nigeria.<sup>6</sup> The activities and conduct of members of the legal profession are regulated by statutory bodies, like the General Council of the Bar, Legal Practitioners Disciplinary Committee and the Body of Benchers. These bodies were established by the Legal Practitioners Act.<sup>7</sup>

### Demographics

There are approximately 92,800 lawyers practicing in Nigeria, a country with a population of over 170 million.<sup>8</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The right to legal assistance is enshrined in the Constitution<sup>9</sup> but, in practice, accessibility of such assistance varies across the different states. In those parts of Northern Nigeria that have suffered occupation by the Boko Haram it appears that access to justice may be severely limited.<sup>10</sup>

### State Subsidised Legal Aid

The Legal Aid Council (the “**LAC**”), under the Federal Ministry of Justice, was set up in 1976 by the federal government to provide free legal assistance and advice to Nigerian citizens who could not afford the services of a private lawyer. The Legal Aid Act 2011 (the “**Act**”) lays out the current rules and policies of the LAC. According to the Act, legal aid shall be granted only to people whose income does not exceed the national minimum wage. The Federal Executive Council does, however, have discretion to authorize legal aid on a contributory basis to a person whose income exceeds this amount provided that that person then pays the LAC a certain percentage of their income.<sup>11</sup>

The LAC handles both relatively serious criminal cases such as murder, manslaughter, rape, affray and stealing and certain civil cases including claims arising from breach of fundamental rights enshrined in

---

<sup>5</sup> See [http://www.ibanet.org/PPID/Constituent/Student\\_Committee/qualify\\_lawyer\\_Nigeria.aspx](http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Nigeria.aspx) (last visited on September 4, 2015).

<sup>6</sup> See <http://www.nigerianbar.org.ng/> (last visited on September 4, 2015).

<sup>7</sup> See <http://www.nigeria-law.org/Legal%20Practitioners%20Act.htm> (last visited on September 4, 2015).

<sup>8</sup> Templars interview with Mrs Eire Ifueko Alufohai, Executive Director of the Nigerian Bar Association.

<sup>9</sup> Chapter IV, 30(6).

<sup>10</sup> See, for example, the recent Amnesty International report on Boko Haram dated April 13, 2015.

<sup>11</sup> Section 10 of the Act.



Chapter IV of the Constitution and mediation on disputes on various issues such as Landlord/Tenant, Master/Servant, Employer/Employee, Husband/Wife, inheritance and family matters etc.<sup>12</sup>

### Mandatory assignment to Legal Aid<sup>13</sup>

Legal aid provided by the LAC ranges from rendering legal services through consultation, advice, or representation in court. The LAC guarantees the provision of such services through either the salaried lawyers staffed in the LAC's offices or private practitioners. If an application for legal aid is approved, the LAC may make referrals to private legal practitioners, whose names are registered on panels of practitioners maintained by the LAC and who receive a nominal fee. Lawyers who are willing to assist persons seeking legal aid are entitled to be included on the panel, unless the LAC has good reason for excluding them.

### Alternative Dispute Resolution

Mediation, Arbitration, Etc.

The Rules of Civil Procedure in Nigerian courts mandate lawyers to advise and aid their clients in exploring alternative dispute resolution options before proceeding to litigation.<sup>14</sup> These rules are intended to help avoid delay and reduce the high number of cases pending in courts. Furthermore, the courts also allow parties to explore settlement through negotiation or mediation even during the pendency of a matter in court. Where a settlement is reached outside of court, the terms of settlement or settlement agreements are adopted by the court as a "consent judgement" which is binding on the parties.

### Ombudsman

The official Ombudsman in Nigeria, the Public Complaints Commission, has a mandate to seek control of administrative excesses for non-adherence to procedures or abuse of law. The Commission aims to promote social justice for individual citizens. It also provides a viable option for Nigerians or persons resident in Nigeria seeking redress for administrative errors or injustice, abuse by officials of government or limited liability companies in Nigeria.<sup>15</sup>

### Unmet Needs and Access to Legal Aid

Legal aid provision in Nigeria is extremely limited. In an interview in August 2013, the Director-General of the LAC, Mrs Joy Bob-Manuel, stated that there are not enough lawyers to meet the increasing need for free legal services in the country. The council only had 280 lawyers, a number that was grossly inadequate to cover all the 36 states of the federation and the Federal Capital Territory.<sup>16</sup> Further reasons for the LAC's seeming ineffectiveness include inadequate funding, lack of publicity, inadequate information on access to justice, delays in investigating crime by the police, prison congestion, delays in the administration of justice, lack of empowerment of LAC to provide legal aid in respect to certain categories of persons and in respect to certain matters and the limited scope of eligibility for such aid. Funding levels are so poor that some lawyers on the panel have done legal aid work free of charge because it has not been worthwhile to claim the nominal fee.<sup>17</sup>

---

<sup>12</sup> Second Schedule to the Act.

<sup>13</sup> See [http://www.legalaidcouncil.gov.ng/index.php?option=com\\_content&view=article&id=143%3Alegal-aid-in-nigeria&catid=43%3Alatest-news&Itemid=60](http://www.legalaidcouncil.gov.ng/index.php?option=com_content&view=article&id=143%3Alegal-aid-in-nigeria&catid=43%3Alatest-news&Itemid=60) (last visited on September 4, 2015).

<sup>14</sup> Order 3 Rule 11; and Order 25 Rule 2 of the High Court of Lagos State (Civil Procedure) Rules, 2012.

<sup>15</sup> See <https://pcc.org.ng/about/> (last visited on September 4, 2015).

<sup>16</sup> See <http://www.mynewswatchtimesng.com/legal-aid-council-decries-shortage-lawyers/#sthash.KFrHnMBN.dpuf> (last visited on September 4, 2015).

<sup>17</sup> Id.



Lack of funding and resources directly affect the overcrowding in prisons since inmates must wait for legal assistance. The overcrowding is due, in part, to delays in trials and failure to provide enough lawyers to represent the detainees. As a result, the percentage of the prison population who are pre-trial detainees/remand prisoners is extremely high (in 2014 it was 69.3%, or 39,577 individuals).<sup>18</sup>

According to the LAC there are, however, some signs of improvement.<sup>19</sup> The number of new legal aid cases handled by LAC increased during 2013, showing that a larger number of Nigerians have been able to access their services. The number of new cases granted from January 2013 to December 2013 rose by 6.03% (from 9,206 to 9,761) for criminal cases and by 74.51% (from 2,130 to 3,717) for civil cases. The LAC in part attributes this rise to the Peer Review Mechanism and Merit Awards, which motivate the lawyers to respond to the LAC's increased mandate.

During 2013, the World Bank sponsored training sessions for 273 LAC lawyers to bridge skills gaps. The World Bank also engaged in a project to develop a databank for the LAC through which clients can report on the services they were provided, and magistrates can comment on the lawyers' performance. This initiative allows for an evaluation of each lawyer's skills, facilitating the provision of training.

The LAC in partnership with the NBA and Prisoners Rehabilitation and Welfare Action and with funding from the Department for International Development (the "DFID"), have partnered to provide effective legal representation to all prisoners awaiting trial in the Federal Capital Territory (the "FCT"). The LAC has seen a 30% increase in the number of cases handled in the FCT since this one-year project began in May 2013. The DFID is working towards renewing this project.

In 2014 the Lagos State's Attorney General pledged that the state would create a special fund to assist young lawyers to offer legal services to the poor.<sup>20</sup>

## PRO BONO IN NIGERIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

### Pro bono Opportunities

As illustrated above, the need for, and opportunities to provide, pro bono assistance in Nigeria are legion.

#### Private Attorneys

Private attorneys in Nigeria are not required by law to carry out pro bono activities, although the 2009 Pro bono Declaration for Members of the Nigerian Bar Association states that members of the NBA have a responsibility to provide pro bono legal services and that this responsibility stems from the profession's role and purpose in society, and from its implicit commitment to a fair and equitable legal system.<sup>21</sup> The declaration states that members should commit to provide, on a pro bono basis, more than 20 hours or three days of legal services per individual lawyer per annum, or in the case of law firms, institutions or other groups of lawyers, an average of more than 20 hours per lawyer per annum.

Notwithstanding the above, private attorneys in Nigeria engage in pro bono activities on a personal basis. This is driven in part by the declarations described above but also by the need for senior lawyers seeking appointment to the revered rank of Senior Advocate of Nigeria (which is the Nigerian equivalent of a

---

<sup>18</sup> See <http://www.prisonstudies.org/country/nigeria> (last visited on September 4, 2015).

<sup>19</sup> See [http://www.legalaidcouncil.gov.ng/index.php?option=com\\_content&view=article&id=47&Itemid=139](http://www.legalaidcouncil.gov.ng/index.php?option=com_content&view=article&id=47&Itemid=139) (last visited on September 4, 2015).

<sup>20</sup> See <http://www.pilnet.org/events/201-lagos-state-pro-bono-week.html> (last visited on September 4, 2015).

<sup>21</sup> See [www.internationalprobono.com/resources/attachment.163155](http://www.internationalprobono.com/resources/attachment.163155) (last visited on September 4, 2015).



British Queens Counsel) to take on sufficient pro bono cases to meet the criteria for appointment.<sup>22</sup> There is currently no mandatory requirement on legal practitioners in Nigeria to report pro bono activities.

In May 2015, the NBA made a further Pro bono Declaration, encouraging law firms and individual lawyers to provide, on a pro bono basis, legal representation and advice to at least five indigent individuals, group of persons or communities annually.<sup>23</sup> It also declared its intention to strengthen the profession's commitment to the provision and expansion of pro bono legal services by emphasizing their importance and practice in legal education and to establish, develop and operate a National Pro Bono Centre dedicated to the delivery of pro bono legal services in the public interest.

### Law Firm Pro bono Programs

Law firms in Nigeria are not required by law to engage in pro bono activities. However, as stated above, the declaration by the NBA states that law firms should commit an average of more than 20 hours per lawyer per annum to pro bono activities. Most leading firms in Nigeria have a pro bono practice. A number of leading law firms have entered into partnership with the Nigerian government and non-profit organisations like the Lagos State Public Interest Law Partnership in order to provide pro bono legal services to indigent Nigerians.<sup>24</sup>

### Legal Department Pro bono Programs

As stated above, the declaration by the NBA states that institutions or other groups of lawyers should commit an average of more than 20 hours per lawyer per annum to pro bono activities. There is a dearth of information regarding the participation of in-house lawyers or legal practitioners employed by Nigerian companies in pro bono activities. However, some Nigerian companies promote engagement in pro bono activities to their employees as part of their corporate social responsibility programs.<sup>25</sup>

### Duty Solicitor Scheme (“DSS”)

A separate Duty Solicitor Scheme was created in 2000 through a partnership between the Law Society of England and Wales and the Legal Defense and Assistance Project (“LEDAP”), a Nigerian non-governmental organization (“NGO”).<sup>26</sup> It is aimed at providing legal support for both the police and detained suspects at the point of first contact with the criminal justice system. Funding for this scheme was paused for a review conducted in 2012 following which it was restored and the Scheme reinitiated in December 2013 with the support of Open Society West Africa and the Right Enforcement and Public Law Centre. Progress has been made in seeking to entrench and expand the project to more states of Nigeria.<sup>27</sup> The number of cases granted to the DSS in 2013 totalled 2,314. The LAC would like to encourage more pro bono support for the work of the DSS.<sup>28</sup>

### Legal Defense and Assistance Project<sup>29</sup>

LEDAP was founded in 1997 by a group of pro bono lawyers working to protect and support political prisoners, and has now grown to 1,700 members across Nigeria. LEDAP provides free legal

<sup>22</sup> See <http://www.punchng.com/feature/the-law-you/new-sans-emerge-amid-calls-for-reform/> (last visited on September 4, 2015).

<sup>23</sup> See <http://www.nigeriabar.com/2015/05/pro-bono-declaration-for-members-of-the-nigerian-bar-association#.Vbjxs7NViko> (last visited on September 4, 2015).

<sup>24</sup> See [http://www.justiceresearchinstitute.org/?page\\_id=526](http://www.justiceresearchinstitute.org/?page_id=526) (last visited on September 4, 2015).

<sup>25</sup> See <http://www.justiceresearchinstitute.org/> (last visited on September 4, 2015).

<sup>26</sup> See <http://www.thelawyer.com/law-soc-lends-weight-to-nigeria-human-rights-pro-bono-scheme/125169.article> (last visited on September 4, 2015).

<sup>27</sup> See [http://www.legalaidcouncil.gov.ng/docs/2014\\_LAC\\_NBA\\_Report.pdf](http://www.legalaidcouncil.gov.ng/docs/2014_LAC_NBA_Report.pdf) (last visited on September 4, 2015).

<sup>28</sup> See [http://www.legalaidcouncil.gov.ng/index.php?option=com\\_content&view=article&id=153%3Asure-p-is-helping-with-pro-bono-cases&Itemid=145](http://www.legalaidcouncil.gov.ng/index.php?option=com_content&view=article&id=153%3Asure-p-is-helping-with-pro-bono-cases&Itemid=145) (last visited on September 4, 2015).

<sup>29</sup> See <http://ledapnigeria.org/ledap-profile/> (last visited on September 4, 2015).



representation to poor and vulnerable victims of human rights violations. It undertakes programs to raise awareness within the legal community in Nigeria of international human rights norms and how they can be integrated into the system of administration of justice in Nigeria. It works with the Directors of Public Prosecutors to improve administration of criminal justice in the country. It also works to promote and protect rights of women under its domestic violence and reproductive health programs. It promotes rights of children through legal and other support to children in conflict with the law, and seeks to advance the rule of law and good governance through impact litigation and social advocacy. It focuses on improving the legal and human rights framework for economic and social justice through its social security project as well as on human security under its Impunity Project and Death Penalty Project.

In particular, LEDAP's Indigent and Human Rights Defense Program<sup>30</sup> aims to provide free legal assistance to indigent remand prisoners. It also provides legal assistance to indigent victims of human rights violations, other than those caused by the prison remand system. Through this, the project aims to reform state-level criminal justice administration. Some of the program's objectives include: (i) depopulating the prisons through legal support and release; (ii) improving lawyers' skills and expertise; and (iii) publishing The Prosecutor Magazine to help criminal justice practitioners.

### National Human Rights Commission<sup>31</sup>

The National Human Rights Commission was established by the National Human Rights Commission (NHRC) Act, 1995, as amended by the NHRC Act, 2010, in line with the resolution of the United Nations General Assembly which enjoins all member states to establish national human rights institutions for the promotion and protection of human rights.

In addition to its public enlightenment and education programs, the Commission serves as an extra-judicial mechanism for the enhancement of the enjoyment of human rights, investigation of complaints and provision of mediation conciliation and conflict resolution services. A complaint treatment mechanism is in place at the headquarters and all the six zonal offices of the Commission to handle complaints from any victim of human rights violations enforceable under powers granted under the NHRC (Amendment) Act, 2010.

The Commission regularly holds workshops, seminars, conferences and interactive sessions with relevant stakeholders. By way of example, the National Human Rights Commission partnered with the NBA, UNICEF and local NGOs to help train magistrates, policy makers, prison officers, lawyers and social workers on juvenile justice administration, and in supporting the provision of free legal services for children and young people.<sup>32</sup>

### NGOs

Many NGOs provide free legal assistance, particularly in the human rights arena. Although some NGOs have a staff of only a few lawyers, or retain external consultant lawyers to provide legal aid, others have more elaborate legal aid and law reform programs. Although most NGOs provide some kind of legal advice and assistance, demand tends to far exceed supply, especially in rural regions. The number of personnel available for case litigation is often inadequate to meet the numerous legal assistance requests from the public.

Principal NGOs active in the field include:<sup>33</sup>

- **The Human Rights Law Service ("HURILAWS")**.<sup>34</sup> Established in 1997, HURILAWS is an independent, non-profit service, dedicated to providing public interest and human rights law services. It is also a public policy think-tank and pressure group working in partnership with multi-

<sup>30</sup> See <http://ledapnigeria.org/programmes/rule-of-law-and-access-to-justice/> (last visited on September 4, 2015).

<sup>31</sup> See <http://www.nigeriarights.gov.ng/> (last visited on September 4, 2015).

<sup>32</sup> See [http://www.unicef.org/nigeria/protection\\_2169.html](http://www.unicef.org/nigeria/protection_2169.html) (last visited on September 4, 2015).

<sup>33</sup> See <https://www1.umn.edu/humanrts/africa/nigeria.htm> (last visited on September 4, 2015).

<sup>34</sup> See <http://www.hurilaws.org/> (last visited on September 4, 2015).

sector development and change actors to promote accountable and transparent governance in Nigeria. HURILAWS has been particularly active in presenting the case for abolition of the death penalty in Nigeria.

- **The Institute of Human Rights and Humanitarian Law (“IHRHL”).**<sup>35</sup> IHRHL, established in August 1988, focuses on structural human rights education, conflict resolution, conflict prevention, research, public interest advocacy and documentation in Nigeria, with a particular focus on the Niger Delta region. IHRHL regularly works in cooperation with the MacArthur Foundation, National Endowment for Democracy, Swedish NGO, Cordaid, Open Society Institute for West Africa, and Oxfam GB.
- **The Social and Economic Rights Action Center (“SERAC”).**<sup>36</sup> SERAC, founded in 1995, has a more specific focus on economic and social rights, marking a departure from the emphasis on civil and political rights shown by NGOs in the 1980s. Examples of SERAC projects include its Forced Eviction Prevention Project (aimed at addressing the occurrence of forced evictions in Nigeria through the provision of advocacy assistance) and its Strategic Legal Advocacy Project (which aims to foster greater recognition and effective application of economic, social and cultural rights through strategic legal advocacy before municipal courts).
- **The Network of University Legal Aid Institutions (“NULAI”).**<sup>37</sup> NULAI promotes clinical legal education, legal education reform, legal aid and access to justice and the development of future public interest lawyers. Since NULAI was established in 2004, 18 university-based law clinics have opened in Nigeria, providing new avenues for free legal services. NULAI receives support in its activities from Open Society Foundations, the MacArthur Foundation and the European Union.
- **The Women’s Rights Advancement and Protection Alternative (“WRAPA”).**<sup>38</sup> WRAPA works to promote and protect the rights of Nigerian women including in relation to domestic violence, sexual harassment, employment issues, widow disinheritance and early and forced marriage. It offers a pro bono legal aid advocacy service for applicants who have reported their issue directly to WRAPA or who have been referred from individuals, institutions and partner organisations.
- **The Prisoners Rehabilitation and Welfare Action (“PRAWA”).**<sup>39</sup> PRAWA is a non-governmental organization aimed at promoting security, justice and development in Africa. It was established in 1994 and by 1998, it secured observer status with the African Commission on Human and Peoples’ Rights. PRAWA works to provide treatment/rehabilitation and support to torture victims, prisoners, youths-at-risk and their families. The organisation also carries out research and advocacy on a pro bono basis on issues of torture, justice, prisons and security sector reform.

## Historic Development and Current State of Pro bono

The development of pro bono in Nigeria has been slow and current participation levels in pro bono activities are low. This is the case notwithstanding that the Pro bono Declaration for Members of the Nigerian Bar Association states that all members of the Nigerian legal profession should commit to provide, on a pro bono basis, more than 20 hours or three days of legal services per individual lawyer per annum, or in the case of law firms, institutions or other groups of lawyers, an average of more than 20 hours per lawyer per annum.<sup>40</sup>

<sup>35</sup> See <http://www.insightonconflict.org/conflicts/nigeria/peacebuilding-organisations/ihrhl/> (last visited on September 4, 2015).

<sup>36</sup> See <http://www.serac.org/> (last visited on September 4, 2015).

<sup>37</sup> See <http://www.nulai.org/> (last visited on September 4, 2015).

<sup>38</sup> See <http://wrapanigeria.org/> (last visited on September 4, 2015).

<sup>39</sup> See <http://www.prawa.org/> (last visited on September 4, 2015).

<sup>40</sup> See [www.internationalprobono.com/resources/attachment.163155](http://www.internationalprobono.com/resources/attachment.163155) (last visited on September 4, 2015).



In recent years however, a number of initiatives have sought to increase the focus on pro bono amongst the legal profession in Nigeria. One such key initiative was the establishment in November 2012 of the Lagos State Public Interest Law Partnership (the “LPILP”) with the clear aim of expanding access to justice and further securing the right of every citizen to justice, irrespective of his or her financial means. In April 2014 the LPILP organized the inaugural Lagos State Pro bono Week which brought together NGOs and the legal community to set the stage for the future of access to justice in the region. The LPILP conducted a series of seminars, workshops and also established and funded law clinics in universities as well as the Nigerian Law School. Under this initiative, a series of pro bono activities was undertaken in collaboration with partner law firms in Lagos state and as such, over 100 law firms have now committed their resources to the LPILP’s pro bono scheme. Members are encouraged to render at least 50 hours of pro bono work yearly. As of April 2014, the total number of people receiving pro bono assistance under this project totaled 423.<sup>41</sup>

Further, engagement by legal practitioners in Nigeria in pro bono activities may show signs of improvement in the near future following the NBA’s recent declaration in May 2015 endorsing pro bono activities and committing to encourage law firms and individual lawyers to provide pro bono services to at least five indigent individuals, group of persons or communities a year.<sup>42</sup>

Despite this progress, key challenges remain. As part of the presentations during the launch event for the LPILP, commentators cited key issues such as delays in the judicial process by the courts, poor knowledge of the sacrifices of pro bono practitioners by officials of the lower courts and many other challenges in the criminal justice system including the challenge posed by the police, especially as prosecutors at the lower courts, where more training is needed.<sup>43</sup>

## CONCLUSION

The current state of pro bono services in Nigeria is a work in progress. Further improvements are needed to help provide access and information to people who are in need of pro bono services; however, it is encouraging to see that affirmative steps are being taken in this regard.

September 2015

Pro Bono Practices and Opportunities in Nigeria

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>41</sup> See <http://www.pilnet.org/events/201-lagos-state-pro-bono-week.html> (last visited on September 4, 2015).

<sup>42</sup> The May 2015 Pro bono Declaration of the Nigerian Bar Association - <http://www.nigeriabar.com/2015/05/pro-bono-declaration-for-members-of-the-nigerian-bar-association#.Vb6B5E10xzk> (last visited on September 4, 2015).

<sup>43</sup> See <http://www.pilnet.org/events/201-lagos-state-pro-bono-week.html> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in Norway<sup>1</sup>

### INTRODUCTION

Norwegian legal culture has promoted free legal aid for centuries dating back to the Royal Decree of September 9, 1638, an act that encouraged the provision of legal aid to all those who could not afford it.<sup>2</sup> Although legal assistance in litigation was historically commonplace, it was not until the 1950s that free legal assistance outside the courtroom began to take hold.<sup>3</sup> Due in large part to Norway's comprehensive state-subsidized legal aid system, pro bono work is not widespread or a significant part of the legal culture in Norway. Currently, the Norwegian legal aid system is based almost entirely on the work of individual private attorneys, as Norway does not have an established network of government-funded legal aid offices staffed with full-time attorneys.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### The Constitution and Governing Laws

The highest level of legal authority in Norway is the Constitution of Norway (*Kongeriget Norges Grundlov*), signed on May 17, 1814 (the "**Constitution**"). The Constitution was founded on the basic principles of sovereignty of the people, separations of powers, and a safeguarding of human rights. Similar to the American Constitution, The Constitution establishes a legislative branch, an executive branch, and a judicial branch of government. In addition to the Constitution, Norway has Statutory laws that are adopted pursuant to the Constitution, and subordinate to the Constitution. All statutory laws are enacted by the Norwegian parliament (*Stortinget*) and apply to the entire Norwegian state territory. Furthermore, Parliament has the authority to delegate limited legislative authority to the executive branch, by allowing the executive branch to implement regulations. These regulations have the same force as statutory laws.

##### The Courts

The court system in Norway consists of one Supreme Court sitting in Oslo (*Høyesterett*), six Courts of Appeal (*Lagmannsrett*), and a fluctuating number of district courts (*Tingrett*), depending on the year (currently, there are 66 District Courts, including the Oslo "*byfogdembete*," a court which predominantly deals with claims for interim measures and bankruptcy in Norway).

The six Courts of Appeals adjudicate appeals against decisions from the District Courts within their circuits. These courts hear both civil and criminal appeals. These courts are also supplemented by specialty courts that include the Labor Court (*Arbeidsrett*), sitting in Oslo, and the Land Consolidation Courts (*Jordskiftedomstolene*) which sit in numerous locations throughout Norway.

Additionally, the majority of civil claims are initially heard by Conciliation Boards (*Forliksråd*). In fact, according to section 6-2 of The Disputes Act, conducting initial proceedings in the Conciliation Boards is mandatory for all cases where the disputed amount exceeds NOK 125,000 kroner (approximately \$21,000), and both parties are represented by attorneys.<sup>4</sup> These Conciliation Boards are found in every municipality and are run by lay employees who help mediate disputes with the intent that parties will reach a resolution before invoking more formal legal process in the District Courts. The Conciliation Boards are authorized to enter judgments in certain cases, including, if both parties consent, if one party

---

<sup>1</sup> This chapter was drafted with the generous support of Wiersholm.

<sup>2</sup> STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *The Norwegian Bar Association*, 315 (2010).

<sup>3</sup> Jon T. Johnsen, *A New Scheme for Short Legal Advice in Norway*, (2011), at 4.

<sup>4</sup> Act of June 17, 2005 No. 90 Relating to Mediation and Procedure in Civil Disputes, § 6-2.



is absent and the other party requests a judgment of absence, or if the disputed amount does not exceed NOK 125,000.<sup>5</sup>

As set out in Section 55 of the Court of Justice Act of 1915, the Judicial Appointments Board (the “**Board**”) nominates judges for appointment. The Government, exercising the executive power constitutionally vested in the King, appoints the members of the Board every four years, and members can be re-appointed for one additional period. Generally, the Board consists of three judges from among the Supreme Court, the Courts of Appeal, or the District Courts, one lawyer, one jurist employed by the public sector, and two members who are not jurists.

The King then officially selects judges based on the Board’s recommendation. The King may also appoint an applicant not recommended by the Board, but must first request a statement from the Board regarding the applicant. In order to be eligible for selection as a judge, an applicant must be a Norwegian citizen, who is trustworthy and has not been deprived of their right to vote in respect of public affairs. Furthermore, Supreme Court judges, Appellate Court judges, and District Court judges must all have earned a law degree before serving (see section c below). Supreme Court and Appellate Court Chief Judges must be at least 30 years of age, Appellate judges must be at least 25 years old, and District Court judges at least 21 years old. The King is meant to select judges from among lawyers who satisfy exacting requirements concerning both professional qualifications and personal characteristics, and are from a variety of professional backgrounds.

Unlike other court systems, Norwegian courts actively involve lay judges in their proceedings. Although, typically, District Courts only have one judge, the Courts of Justice Act allows proceedings to be held before one judge and two lay judges. Similarly, Court of Appeal proceedings may be heard in front of three judges and two lay judges. Furthermore, in criminal cases where the question of criminal liability is under appeal and the crime in question carries a prison sentence of six years or more, the Court of Appeal may be tried by a jury. However, the Supreme Court may never include lay judges or a jury. Lay judges are selected by municipal councils and are appointed for four-year terms. These civilian judges participate in civil and criminal cases in both the District and Appellate courts. To be selected as a lay judge, one must be between the ages of 21 and 70 with a clean criminal record and the ability to stand in municipal elections.

### The Practice of Law

Section 218 of The Courts of Justice Act of 1915 grants attorneys the right to render legal assistance.<sup>6</sup> To practice as an attorney and provide legal assistance under Section 218, an attorney must be licensed through the state.<sup>7</sup> Historically, this mandate has been enforced in order to protect the public from unskilled legal advice and to help regulate the legal profession. The Supervisory Council for Legal Practice (*Tilsynsrådet*) is the regulatory body authorized to issue licenses.<sup>8</sup>

In order to obtain a license to practice as an attorney before courts, other than the Supreme Court, an applicant must have a degree in law from a Norwegian university. Additionally, the applicant must be at least 20 years of age and have demonstrated through their criminal record certificate that they have conducted themselves honestly. Furthermore, Section 220 requires that the applicant must have practiced for at least two years after earning a law degree as an associate, a deputy judge, a university lecturer in jurisprudence, or in any other position with prosecuting authority that involves a significant element of conducting legal proceedings. During their time as an associate, the applicant must have tried three civil cases before the courts, or one civil case and four criminal cases, or another applicable composition of cases. For deputy judges, it is sufficient that the applicant has practiced as a judge for two

---

<sup>5</sup> Id at note 4, § 6-10.

<sup>6</sup> Law of the Courts (Courts of Justice Act) § 218.

<sup>7</sup> Id.

<sup>8</sup> Working as a lawyer in Norway, ADVOKATFORENINGEN, available at <http://www.advokatforeningen.no/om/om-medlemskapet/english/working-as-a-lawyer-in-norway/> (last visited on September 4, 2015).



years. Finally, the applicant must participate in a special six-day course that addresses issues practicing attorneys must face.

Additionally, in order to appear as an attorney in front of the Supreme Court, Section 221 requires that the applicant meet certain additional requirements.

Currently a proposal for a new "Attorney's Act" is under review. The proposed bill was submitted for review in 2015, and seeks to implement substantial changes to this area of the law. Accordingly, the proposal has already sparked controversy within the legal profession. One of the most significant changes in this proposal is the change in the requirements necessary to earn a practice license. First, it has been proposed that the aforementioned requirement for an associate to lead cases in court be removed completely. In its place, the proposal states that the amount of time an attorney has to practice in order to be granted a license will be expanded from two to three years. Additionally, the proposal seeks to increase mandatory practice courses from approximately six days to up to six months. It has also been proposed to make membership in a bar association mandatory.

The Supervisory Council for Legal Practice may grant the right to render legal assistance to applicants who are not attorneys. According to Section 218 of the Courts of Justice Act, applicants who have a relevant law degree but are not licensed as an attorney or applicants who are certified as public accountants, may provide legal assistance. Additionally, other applicants may provide legal assistance if the Supervisory Council for Legal Practice finds it appropriate and gives special permission for such assistance. Special permission is often given to free legal aid organizations run by law students such as Juss Buss (Oslo), Jussformidlingen (Bergen), Jusshjelpa i Nord Norge (Tromsø), Jushjelpa i Midt-Norge (Trondheim) and Jurk (Legal Counseling in Oslo for Women). If approved by the Supervisory Council, foreign legal practitioners may also be granted the right to render legal assistance on certain terms set by the Ministry of Justice in Regulation of Attorney Practice (*Advokattforskriften*).

In order to practice as an attorney, it is necessary to provide security. This security payment covers liability that an attorney may incur during practice. Members of the Norwegian Bar Association (*Advokatforeningen*) (the "NBA") may either obtain insurance through the NBA, or take out individual insurance from an insurance company. Furthermore, the King may decide that certain individuals providing legal services that do not have a license to practice as an attorney have to pay security to cover any liability to pay compensation that the person concerned may incur during the provision of the legal services.

Coupled with the initial requirements to practice law, Norwegian attorneys must also undergo mandatory continuing training. However, there are no requirements for attorneys to complete a requisite amount of pro bono hours; pro bono services are provided on an entirely voluntary basis.

Today, more than 90% of all Norwegian attorneys are members of the NBA. According to the NBA, its membership has increased more than 50% over the last decade from 4,764 members in 2000 to 8146 in 2014. Of those members, 36% are women; a 1% decrease from 2013. Over 75% of attorneys in Norway work in the private sector, with 38% working at firms with more than 50 employees. The remaining majority in the private sector work as either sole practitioners or as one of two to four employees in small practices. Those attorneys who are not employed in private law firms either serve as in-house legal counsel for companies and organizations, or work in the public sector.<sup>9</sup>

### Legal Regulation of Lawyers

All attorneys are subject to The Norwegian Code of Conduct for Lawyers, which was promulgated by the NBA and ratified as the Regulation of Attorney Practice by the Ministry of Justice. Disciplinary committees within the NBA are responsible for hearing all alleged violations by attorneys, both of the Code of Conduct and applicable Norwegian law. The NBA committee's decision may be appealed to a government-appointed disciplinary committee, of which the NBA committee acts as secretariat. The Supervisory Council also assists in disciplinary matters. Upon advice of the Supervisory Council or the disciplinary committees, the Lawyer License Committee (*Avokatbevillingsnemnden*) may revoke an attorney's license.

---

<sup>9</sup> See <http://www.advokatforeningen.no/Global/RAPPORT%202014.pdf> (last visited on September 4, 2015).



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Norway is one of the top countries in Europe in terms of legal aid funding per inhabitant. According to the 2012 report of the European Commission for the Efficiency of Justice, Norway allocates approximately €39.90 per inhabitant for legal aid, a rate ranked first in Europe. This is a significant increase compared to 2010.

In 2014, the Norwegian constitution was amended to include several of the human rights provisions from the European Convention on Human Rights (the "ECHR") and the International Covenant on Civil and Political Rights (the "ICCPR"). Among these new provisions, article 95 grants everyone the right to a fair trial within a reasonable period of time. While the human rights treaties and the rights and obligations arising under these treaties were incorporated into Norwegian law and took precedent over domestic law prior to these amendments, many of these rights themselves were not directly included in the Constitution. Now, through these amendments, the right to a fair trial arising from the ECHR and the ICCPR enjoys protection both under the Constitution and under the treaties as well.<sup>10</sup>

The culture of Norwegian legal aid is rooted in the belief that access to free legal aid is a welfare benefit that should be made available only for legal problems of great personal and welfare significance to the applicant.<sup>11</sup> Cases that involve serious interventions into an individual's integrity by the government or other citizens are of particular importance in this legal aid scheme.<sup>12</sup> These cases are of such importance that the government will provide free legal advice or representation to applicants regardless of their financial situation. Provision in these instances is based on the belief that anyone suffering loss of liberty or personal integrity should not have to pay for the legal costs inflicted as a result.<sup>13</sup>

In accordance with these foundational conventions, Norway has both a civil and criminal legislative scheme in place to provide free legal assistance. The Legal Aid Act of 1980 (the "LAA") (*Rettskjelpsloven*) provides for free legal advice and representation in civil cases, while the Criminal Procedure Act of 1981 (*Straffesprossessloven*) provides free representation for defendants and victims. Legal aid in Norway is largely publicly funded. However, in some cases, the use of legal aid insurance contributes to a reduction in federal funding, as the private companies and their policy holders pay the costs for legal assistance.

State-funded legal aid applications in Norway are administered by legal and administrative bodies. The LAA provides that legal aid may be granted by either the court or administrative body hearing the case, or the Ministry of Justice. Under the LAA, the Ministry may delegate approval authority to other parties. Often, County Governors are tasked with handling legal aid request applications.

While there may be specific underlying motivations for the provision of aid in Norway, the manner in which that aid is administered is often generalized. Instead of a comprehensive aid system that contemplates

---

<sup>10</sup> Although these amendments have clearly made the obligations of the ECHR and ICCPR binding Norwegian law, the rights guaranteed by these conventions have always taken precedent over conflicting domestic legislation.

<sup>11</sup> Jon T. Johnsen, *Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, (2009), at 9.

<sup>12</sup> Specifically, cases that involve criminal charges that carry a prison sentence, involuntary expulsion from the country, public child custody, involuntary health treatment, conscientious objectors to military conscription, loss of legal competence, compensation for crime victims, sexual crimes, female circumcision and forced marriage fall into this category. (Jon T. Johnsen, *Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, (2009), at 14).

<sup>13</sup> Jon T. Johnsen, *Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, (2009), at 14.



multiple forms of service in order to solve any given problem, Norway's aid system focuses largely on providing access to courts and funding to hire counsel.<sup>14</sup>

## State-Subsidized Legal Aid Eligibility Criteria

### The Legal Aid Act

Under the LAA, there are three different types of legal aid. First, there is free legal advice, which is legal aid outside of legal proceedings, including consultation on legal issues, and information about the law. Second, there is free legal representation, constituting free legal assistance in cases that proceed to court, with the exception of the conciliation board, and certain administrative agencies. Last, there is exemption from court fees, where the indigent party does not have to pay to get their case to court.

Both the LAA and the Criminal Procedure Act place a number of restrictions on the provision of aid. The LAA lists in detail the types of civil cases that are eligible for free legal advice or representation. For instance, according to Section 11, cases involving foreign nationals, child welfare, military conscription, violent crimes, and forced marriage, may be covered by the LAA without the need for meeting any financial requirements.

However, to receive legal aid under the LAA for cases involving marriage disputes, personal injury claims, and living/working conditions claims, the applicant must meet the financial requirements of the Legal Aid Regulation of 2005 (*Forskrift til lov om fri rettshjelp*). Under this regulation, an applicant is eligible for free legal aid if their gross income does not exceed NOK 246,000 (approximately \$41,000). For applicants who are married or living with someone else, their joint gross income must not exceed NOK 369,000 (approximately \$61,500).

In spite of these detailed specifications, the LAA also leaves room for discretion, permitting additional matters to be eligible for free legal aid if the applicant meets financial requirements and the case is objectively "pressing." Moreover, the Supreme Court is given complete discretion to authorize free legal representation in civil cases where application to enter the Supreme Court is accepted and where it is reasonable based on public importance.

Pursuant to Section 16 of the LAA, in civil cases individuals can be refused legal aid for lack of merit of the case. This occurs when it is considered unreasonable for the legal assistance to be paid out of public funds.

Section four of the LAA allows for both individuals and non-profit organizations to receive legal aid. However, in practice, it is usually only exceptional cases where an association or foundation will receive legal aid.

According to Section two of the LAA, free legal aid can be provided by both private law firms and public law offices. A practicing attorney able to provide free legal assistance, pursuant to the LAA, has an obligation to inform their clients about the possibility of applying for free legal aid, as long as it is reasonable that their client would be eligible for such assistance.

The King is in charge of prescribing the rules for compensating attorneys providing assistance under the LAA. For legal work that is paid out of public funds, the individual providing the legal aid is eligible to collect a contribution from the client. This amount will be based on the type of legal aid received, and is calculated on a base amount equivalent to the current fee rate for criminal cases and legal aid cases.

### Barriers to Legal Aid

According to Section 9 of the LAA, some clients are required to pay "contributions" for the legal advice or representation they receive under the LAA. Cases where an applicant must meet certain financial requirements before receiving public aid are considered "means-tested" cases. Under the LAA, aid

---

<sup>14</sup> Jon T. Johnsen, *Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, (2009), at 9. There are some provisions in the LAA that provide financial aid for research regarding broad reforms and policy initiatives, but such provisions are rarely used. *Id.* at 16.



recipients in means-tested cases must pay a contribution to their provider for the legal costs incurred.<sup>15</sup> The amount of the contribution is calculated on a base amount equivalent to the fee rate for criminal cases in place at the time.

For subsidized legal advice, the client's contribution is equal to the base amount, which is NOK 970 (or \$120) as of January 1, 2015. For subsidized legal representation, the client's contribution is 25% of all the legal costs incurred, but cannot exceed five times the base amount.<sup>16</sup>

Client contributions are not required in cases where the applicant did not have to meet financial requirements in order to obtain aid. As a result, only applicants in financial need bear the burden of contribution.<sup>17</sup> A client is not required to pay a value-added tax on top of the client's contribution.<sup>18</sup> Despite being entitled to a contribution, an attorney may choose to waive the contribution requirement. However, if an attorney does not waive the contribution in cases where such a contribution is required, a client may be denied legal assistance if he is not able to pay the contribution.

Aside from the aforementioned contribution requirements, attorneys may not demand, or receive, any further compensation from their client. Furthermore, while expenses deriving from a client choosing a lawyer with an office outside the court's jurisdiction or not reasonably close to the client's residence cannot be paid out of public funds, the Ministry may, by regulation, issue exemptions to this rule.

Norway also has in place a "loser pays" statute where the loser must pay all of the costs and fees of the litigation. These costs include attorney's fees, court costs, and costs related to producing evidence (including compensation to witnesses). For losing parties that were granted legal aid, the LAA has provisions that allow these parties to apply to have the legal costs of the other party either partially or entirely covered by the state. However, it is not certain that such applications will be granted. If the parties settle their dispute, each party typically pays their own costs, though the parties are free to find other solutions as well.

Not every case in need of legal aid is covered by the existing legal aid system. The LAA specifically states that it is a subsidiary act that provides aid only when such aid will not be provided by other schemes.<sup>19</sup> Additionally, the LAA only provides aid in specific types of cases, primarily those which demonstrate a bias to urban problems.<sup>20</sup> This same limited coverage exists in volunteer and membership organizations that operate separately from the LAA. As a result, there are problems requiring legal assistance that fall outside the scope of both the LAA and outside aid organizations.<sup>21</sup> Therefore, attorneys interested in taking on these cases must do so at their own expense, without any outside assistance.

Furthermore, legal aid in Norway arguably lacks a sufficient quality assurance system. While all attorneys, regardless of their membership, are subject to the ethical standards and disciplinary boards of the NBA,

---

<sup>15</sup> Legal Aid Act, ch. 1, § 9.

<sup>16</sup> *Id.*

<sup>17</sup> However, applicants with a gross annual income below NOK 100,000 (roughly \$16,600) are not required to pay a contribution. (Legal Aid Regulations, ch. 2, § 2-2).

<sup>18</sup> *Id.* at ch. 2, §§ 2-3.

<sup>19</sup> For instance, the LAA does not provide aid to help pay for counsel in criminal cases (since the provision of counsel is governed by the Criminal Procedure Act), in matters covered by private insurance, in cases under section 36 of the Public Administration Act, in matters assisted by public service and advisory offices, or in cases covered by funding through membership organizations. (Legal Aid Act, ch. 1, § 5).

<sup>20</sup> Jon T. Johnsen, *Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, (2009), at 11. (Examples of cases demonstrating an urban bias include: dissolution of marriage and cohabitation, compensation for personal injuries, loss of provider and crime injuries, job dismissal, rental termination and complaints over social security denials).

<sup>21</sup> *Id.* at 10-11.



those standards have been deemed, by some, insufficient for legal aid purposes.<sup>22</sup> Moreover, the NBA has repeatedly reported that the fee rate paid by the government to attorneys taking on legal aid cases is too low and therefore affects the quality of the work provided.<sup>23</sup> In its 2009 Parliamentary Policy Report, the Norwegian government proposed that a new set of standards be put in place to apply specifically to attorneys performing legal aid work.<sup>24</sup> The report further recommended the implementation of a system to approve permanent legal aid attorneys in order to encourage the specialization of legal aid work.<sup>25</sup> However, none of these recommendations have been implemented yet.<sup>26</sup> This same Parliamentary Policy Report published in 2009 attempted to supplement the existing system of legal aid providers as well as extend the reach of the LAA. The plan aimed to provide legal aid for a wider array of cases, liberalize financial requirements for applicants, and improve quality assurance measures. Roughly 24 municipalities participated in the plan, setting up Municipality Service Centers and contracting with local attorneys to provide legal advice for matters both inside and outside the court system.<sup>27</sup> However, this program was discontinued in 2012. Today, one of the central issues for the NBA continues to be the low hourly rate that attorneys are paid by the government when taking on legal aid cases.<sup>28</sup>

Finally, the financial eligibility criteria ("means testing") for legal aid is regarded by some as too stringent, particularly in relation to the limitation on gross income. These limitations have not been adjusted to the economic development in Norway and are now regarded by many as unreasonably low, especially since they may even be surpassed by people who are predominantly relying on welfare benefits. Furthermore, the discretionary criteria for granting free legal aid in spite of not meeting the financial criteria is relatively strict and seldom applied. This is reflected in the decreasing number of approved applications for free legal aid. Although this issue is currently subject to heavy criticism and widespread debate, no measures have been implemented to remedy the issue.

### The Criminal Procedure Act

The provision of legal aid in criminal matters is based on the Norwegian Criminal Procedure Act. The Act allows for free representation for both defendants and victims. However, like the LAA, the Criminal Procedure Act contains certain requirements for the provision of free aid. As a general rule, a criminal defendant is entitled to legal representation at every stage of the case. However, there are certain cases where the person charged is not entitled to counsel. This includes cases where the defendant has violated specific provisions of the Road Traffic Act, cases which give the option of a fine (pursuant to Section 268 of the Criminal Procedure Act), and cases only relating to confiscation. Additionally, if a defendant has confessed and waived his right to a trial and the maximum sentence allowable does not exceed six months, then counsel is not provided. Finally, based on the circumstances of the case, the court may determine that it is "unobjectionable" for the defendant to proceed without counsel.

For criminal cases, where a defendant is entitled to counsel, the court will appoint an official defense counsel for the defendant, unless the defendant elects to be assisted by private defense counsel which the defendant has engaged. If the defendant does not choose a counsel of their own, then a member of the permanent defense counsel will be appointed for them. The Ministry engages a sufficient number of attorneys entitled to conduct cases in each court to serve as permanent official defense counsel for these cases.

---

<sup>22</sup> Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011), at 11.

<sup>23</sup> NORWEGIAN BAR ASSOCIATION, Annual Report 2010, 1 (2010).

<sup>24</sup> Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011), at 13.

<sup>25</sup> Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011) at 11.

<sup>26</sup> As confirmed by the Norwegian Civil Affairs Authority.

[footnote reference no. 27 is missing text.]

<sup>28</sup> NORWEGIAN BAR ASSOCIATION, Annual Report 2014, 5 (2014). The fee rate was increased by 5 NOK, an increase so nominal it lead to protest by the NBA.





assistance is rarely utilized in place of classical legal assistance performed by authorized attorneys. As a result, private attorneys are the central providers of legal aid in Norway.<sup>32</sup> To help facilitate attorney availability, the NBA has established short pro bono legal advice services at local bar associations. Depending on the location, the offices are staffed anywhere from once a month to once a week and receive drop-in clients for 30-minute consultations. The Oslo-based service reported that attorneys were able to solve approximately 70% of the problems they were presented with during the 30-minute consultation.<sup>33</sup> Additionally, there is a network of membership and volunteer organizations that also provide individuals with pro bono legal advice. Membership organizations for farmers, homeowners, tenants, car owners, taxpayers, consumers and unions offer liberal advice to their members and in some cases will even provide financing for private attorneys.<sup>34</sup> Volunteer organizations include student clinics and attorney's organizations. For example, student clinic intake centers are set up in prisons and immigrant reception camps, and a "street lawyer" program (*Gatejuristen*) seeks out drug and alcohol abusers to offer assistance.<sup>35</sup>

Furthermore, individuals can receive free legal aid from Juss-Buss, a student run legal aid clinic based in Oslo. Juss-Buss is organized into four separate groups, each of which addresses different individuals' needs: INNVA works with cases related to the Immigration Act, FEG protects the rights of Norwegian prisoners and works with cases relating to tenancy, GOF works with cases related to family law and problems associated with debt, and SAF handles cases related to labor, pensions, and social welfare.

## Current State of Pro Bono

As noted above, Norway's well developed and broad system of state-funded legal aid services limits the need for pro bono services, and therefore so are the opportunities. However, there are few barriers to pro bono work from a statutory perspective or under the Norwegian Code of Conduct for Lawyers; accordingly, there is room for Norwegian lawyers to continue to develop more initiatives to encourage participation in pro bono work outside of the state sponsored legal aid opportunities.

## Laws and Regulations Impacting Pro Bono

In Norway, there are a few barriers affecting an attorney's ability to administer pro bono assistance, as well as a citizen's ability to obtain such aid. These barriers, however, are all related to practicing law in Norway in general, since the provision of pro bono services is unregulated altogether.

### "Loser Pays" Statute

Norway has in place a "loser pays" statute where the loser must pay all of the costs and fees of the litigation. These costs include attorney's fees, court costs, and costs related to producing evidence (including compensation to witnesses).

### Practice Restrictions on Foreign-Qualified Lawyer

Attorneys must have the right standing in order to be able to provide legal advice in cases that are likely to end up in the court system or are already in the courts. Specifically, the right standing means the attorney has obtained the necessary paperwork or certifications in order to practice legally within Norway.

Foreign attorneys practicing in countries outside the European Economic Area (the "EEA") that would like to set up a permanent practice in Norway must obtain a license from the Supervisory Council for Legal

---

<sup>32</sup> Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011), at 22, confirmed by the Norwegian Civil Affairs Authority.

<sup>33</sup> Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011) at 8, available at <http://www.advokatenhjelperdeg.no/advokatvaktten/> (last visited on September 4, 2015).

<sup>34</sup> Jon T. Johnsen, Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland, (2009), at 7, 16.

<sup>35</sup> Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011) at 21.



Practice, insurance for their practice, make a financial contribution to the Supervisory Council for Legal Practice and the Disciplinary Council for Attorneys, and provide a willingness declaration from a registered public accountant. However, these attorneys may only advise on matters related to foreign and international law, and therefore only provide pro bono services within these fields.<sup>36</sup>

Foreign attorneys practicing within the EEA who wish to set up a permanent practice in Norway must submit notice to the Supervisory Council along with a completed application, obtain insurance (like every Norwegian attorney), and submit a certificate verifying attorney registration in their domiciliary state.<sup>37</sup> That attorney is then free to advise on matters in both foreign and international law as well as Norwegian law. Finally, foreign attorneys may also temporarily serve as “guest attorneys.” Guest attorneys are not required to obtain a license from the Supervisory Council, but may be required to submit documentation that certifies their ability to practice law abroad.<sup>38</sup> Guest attorneys are free to advise on matters of foreign, international and Norwegian law. To perform by oneself in court, all foreign attorneys must master the Norwegian language. If Norwegian language skills are not obtained by the foreign attorneys, the attorney must perform jointly with a Norwegian attorney, unless the court agrees to proceed otherwise.

Furthermore, though certain individuals without licenses (such as accountants and foreign attorneys) are permitted to provide legal services, this privilege may be revoked. Section 219 of the Courts of Justice Act grants the Lawyer Licensing Committee of the Norwegian Supervisory Council for Legal Practice the power to issue bans prohibiting anyone with a law degree, but no license, from carrying on legal aid practice if this individual is deemed unfit or unworthy to provide legal aid, or if this individual breaches certain provisions of the Courts of Justice Act. Similarly, the Council may revoke permits issued to foreign attorneys and other individuals whom were deemed to have sufficient qualifications to provide legal aid, if the Council believes that they are unfit or unworthy to provide legal aid, or breaches certain provisions of the Courts of Justice Act.

### Socio-Cultural Attitudes towards Pro Bono or Participation in the Formal Legal System

Norwegians appear to have a generally positive view of pro bono and support the provision of free legal services. While some attorneys may be discouraged from participating in the current state-subsidized legal aid regime because of the low compensation provided by the government or the belief that many of those who marginally fail to fulfil the stringent financial requirements struggle to afford legal advice, there does not appear to be any socio-cultural barriers towards the provision of pro bono work outside of the legal aid system. In fact, a recent Supreme Court case<sup>39</sup> between the state of Norway and a recipient of pro bono legal services suggests that Norwegian courts are supportive of pro bono services and might be amenable to providing compensatory incentives in certain cases. In that case, the Supreme Court ruled in favour of the state of Norway, and therefore the majority did not address the question of whether or not the pro bono attorneys were entitled to have their legal costs covered by the other party. However, five judges ruled in favour of the party receiving pro bono services and, accordingly, addressed this question. The dissenting judges noted that the provision of pro bono services is done solely to benefit the recipient of the services and is not meant to benefit or harm the other party. Accordingly, these dissenting judges stated that the pro bono attorneys should be entitled to compensation for their legal costs if the case is won, regardless of the fact that the client does not have to pay the legal costs if the case is lost.

### Pro Bono Resources

- NBA: <http://www.advokatforeningen.no/om/om-medlemskapet/english/the-norwegian-bar-association/> (last visited on September 4, 2015)

<sup>36</sup> Advokatforeningen, <http://www.advokatforeningen.no/om/om-medlemskapet/english/working-as-a-lawyer-in-norway/> (last visited on September 4, 2015).

<sup>37</sup> Regulations for Advocates, § 10-2.

<sup>38</sup> See <http://www.advokatforeningen.no/om/om-medlemskapet/english/working-as-a-lawyer-in-norway/> (last visited on September 4, 2015).

<sup>39</sup> Rt-2012-1985.



- Rights in Exile Program: <http://www.refugeelaidinformation.org/norway-pro-bono-directory> (last visited on September 4, 2015)
- Norwegian People's Aid<sup>40</sup>: <http://www.npaid.org/> (last visited on September 4, 2015)
- Prospera Network: <http://prosperanetwork.org/no/> (last visited on September 4, 2015)
- Online attorney-matching program: <http://www.advokatenhjelperdeg.no/> (last visited on September 4, 2015)
- Student-run clinics<sup>41</sup>
- Juss-Buss: <http://foreninger.uio.no/jussbuss/english/about/> (last visited on September 4, 2015)
- Jussformidlingen : [http://jussformidlingen.no/?page\\_id=89](http://jussformidlingen.no/?page_id=89) (last visited on September 4, 2015)
- Jushjelpa i Midt-Norge: [http://www.jushjelpa.no/publikasjoner/haandbok\\_eng.pdf](http://www.jushjelpa.no/publikasjoner/haandbok_eng.pdf) (last visited on September 4, 2015); <http://www.jushjelpa.no/kontraktsrett.html> (last visited on September 4, 2015)

## CONCLUSION

The provision of pro bono services in Norway is unregulated. Therefore, any legal practitioner is able to offer pro bono services as long as they have the necessary legal status. Foreign attorneys interested in pursuing legal aid or pro bono work in Norway should therefore first obtain the necessary legal status. It is also advisable to seek the assistance of the NBA before providing pro bono.

September 2015

Pro Bono Practices and Opportunities in Norway

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>40</sup> Norwegian People's Aid ("**NPA**") specializes in first aid and rescue services, as well as asylum and integration cases. The NPA works both domestically and internationally. NORWEGIAN PEOPLE'S FUND, available at <http://www.npaid.org/About-us> (last visited on September 4, 2015).

<sup>41</sup> Juss-Buss specializes in cases involving the Immigration Act, Norwegian prisoners' rights, family law and debt cases, and labor, pensions and social welfare work, Jussformidlingen handles similar cases.



## Pro Bono Practices and Opportunities in Pakistan

### INTRODUCTION

This chapter describes the legal practice in Pakistan, including major challenges to the rule of law, as well as efforts to promote the rights of marginalized communities. International and domestic human rights monitors have documented pervasive human rights abuses in Pakistan in several areas, including extra-judicial killings, gender-based discrimination and curtailed rights for refugee and displaced populations.<sup>1</sup> While many government-funded and non-governmental organizations (“NGOs”), as well as a handful of domestic law firms, offer legal services to the country’s underserved populations, there remains a strong demand for further action among the legal community.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution, Governing Laws and the Courts

Pakistan is a federal republic,<sup>2</sup> made up of four provinces—Balochistan, Khyber Pakhtunkhwa, Punjab and Sindh, and four territories—Islamabad Capital Territory, Federally Administered Tribal Areas, Azad Kashmir and Gilgit Baltistan.<sup>3</sup> Since its inception in 1947, the country has endured periodic bouts of military coups and interventions involving the abeyance of its Constitution.<sup>4</sup> In a milestone event, however, elections held in 2013 marked the first time a democratically elected government successfully transitioned power through the ballot after completing a full term.<sup>5</sup>

Pakistan’s legal system is based on common law, inherited from the British legal system, and Islamic (*Sharia*) law.<sup>6</sup> The Constitution recognizes fundamental human rights, such as the right to a fair trial,<sup>7</sup> and also requires that legislation be adopted in accordance with the tenets of Islam.<sup>8</sup> However, as a result of different interpretations of Islam, this mandate at times creates ambiguity and inconsistencies in the application and enforcement of the law.<sup>9</sup> Additionally, the jurisdiction of the Constitution is not extended evenly throughout Pakistan. For example, the territory of Azad Kashmir functions as an independent sovereign body, with its own constitution and judicial hierarchy.<sup>10</sup> Meanwhile, the jurisdiction

---

<sup>1</sup> World Report 2015: Pakistan, HUMAN RIGHTS WATCH, see <http://www.hrw.org/world-report/2015/country-chapters/pakistan> (last visited on September 4, 2015).

<sup>2</sup> Special Rapporteur on the Independence of Judges and Lawyers, Mission to Pakistan, 4, U.N. Doc. A/HRC/23/43/Add.2 (April 4, 2013) (by Gabriela Knaul) (hereinafter “**U.N. Report**”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* Pakistan’s third and current Constitution was established on August 14, 1973 and has been through 20 subsequent amendments.

<sup>5</sup> BBC, Pakistan Country Profile, BBC NEWS, <http://www.bbc.com/news/world-south-asia-12965779> (last visited on September 4, 2015).

<sup>6</sup> U.N. Report, *supra* note 2, at 5.

<sup>7</sup> *Id.* at 6 (citing PAKISTAN CONST., Ch. 1, part II).

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 9.



of Pakistan's courts is either not extended, or in dispute in the remaining territories which continue to have a relatively high incidence of resolving conflict through informal tribal justice systems.<sup>11</sup>

The Pakistani Judiciary is an independent branch<sup>12</sup> of government consisting of three broad categories of courts: the superior judiciary, subordinate courts, and special courts and tribunals.<sup>13</sup> The Constitution contains detailed provisions on the composition, jurisdiction, power and function of the superior courts, which are tasked with responsibility to "preserve, protect and defend" the laws of the land.<sup>14</sup>

The Supreme Court is the apex court and exercises original, appellate and advisory jurisdiction.<sup>15</sup> The Supreme Court exercises original jurisdiction in disputes between the federal government provincial government as well as disputes among provincial governments.<sup>16</sup> It has appellate jurisdiction in criminal and civil matters.<sup>17</sup> Unlike U.S. courts, the Supreme Court of Pakistan has the jurisdiction to issue advisory opinions to the government on questions of law.<sup>18</sup> Additionally, the Supreme Court has original jurisdiction, on its own motion or through petition, over "Fundamental Rights" cases, where a question of "public importance" is involved.<sup>19</sup> This power is concurrently held by the High Courts.<sup>20</sup> Recognizing the high volume of these cases and the need for expeditious and inexpensive remedies for poor and vulnerable members of society, the Supreme Court established a Human Rights Cell under the supervision of the Chief Justice of Pakistan.<sup>21</sup> The Human Rights Cell performs expedited processes and receives over 4,000 applications for a review each month.<sup>22</sup> Matters under review can range from allegations of rape to claims of environmental pollution.<sup>23</sup> In 2014, the Supreme Court established a separate wing within the Human Rights Cell to address the rights of Pakistani citizens living abroad, which tend to primarily relate to property claims.<sup>24</sup>

Directly below the Supreme Court are the High Courts. There is a High Court in each of the four provinces and a High Court for the Islamabad Capital Territory.<sup>25</sup> The High Courts exercise original jurisdiction (concurrent with the Supreme Court) over Fundamental Rights matters and appellate jurisdiction over civil and criminal judgments entered by subordinate courts.<sup>26</sup>

---

<sup>11</sup> Id. at 16.

<sup>12</sup> Dr. Faqir Hussain, *The Judicial System of Pakistan*, SUPREME COURT OF PAKISTAN, 10 (Feb. 15, 2011), available at [http://www.supremecourt.gov.pk/web/user\\_files/File/thejudicialsystemofPakistan.pdf](http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf) (last visited on September 4, 2015) (citing PAKISTAN CONST. art. 2A) (The Constitution calls for the "separation of the judiciary from the executive" and the "independence of the judiciary.").

<sup>13</sup> Id.

<sup>14</sup> PAKISTAN CONST. art. 178 & 194 read with 3rd Sched.; Hussain, *supra* note 12, at 10.

<sup>15</sup> PAKISTAN CONST. art. 184, 185 & 186.

<sup>16</sup> PAKISTAN CONST. art. 184 (1).

<sup>17</sup> PAKISTAN CONST. art. 185.

<sup>18</sup> PAKISTAN CONST. art. 186.

<sup>19</sup> PAKISTAN CONST. art. 184 (3). Fundamental Rights are protected in Chapter II of the Constitution.

<sup>20</sup> Id.

<sup>21</sup> Supreme Court of Pakistan Annual Report, April 2013 to April 2014 (Izzat J. Aqduş, et. al. eds.), available at <http://www.supremecourt.gov.pk/Links/sc-a-rpt-2013-14/index.html#p=130> (last visited on September 4, 2015).

<sup>22</sup> Id. at 119. The Human Rights Cell heard over 44,662 matters between April 2013 and April 2014.

<sup>23</sup> Id. at 125.

<sup>24</sup> Id. at 119.

<sup>25</sup> Id. at 16.

<sup>26</sup> Id. at 18.



Standing apart, the Federal Shariat Court was established in 1980 and has jurisdiction to determine, on its own motion or through petition by a citizen or the Federal or a provincial government, whether or not any government law is in conflict with the rules of Islam.<sup>27</sup> The Federal Shariat Court also exercises appellate jurisdiction over the criminal courts deciding cases relating to the *Hudood Ordinances*,<sup>28</sup> which criminalize activities thought to be in violation of Islamic principles such as adultery, fornication, theft and alcohol consumption.<sup>29</sup> Federal Shariat Court judgments are binding on the High Courts and the subordinate judiciary.<sup>30</sup> Appeals against Federal Shariat Court judgments are heard by the Shariat Appellate Bench of the Supreme Court.<sup>31</sup>

The subordinate judiciary is broadly made up of civil and criminal courts in the provinces established by statute.<sup>32</sup>

The Constitution also allows the legislature to establish special courts, as well as administrative courts and tribunals over federal issues.<sup>33</sup> These include drug courts, loan recovery courts, tax courts, labor courts, anti-terrorism courts, and anti-corruption courts, among others.

While the Constitution guarantees the functioning of an independent judiciary, as noted above, the Constitution itself has been suspended several times in Pakistan's short history. In what became known as the Lawyer's Movement in the spring of 2007, legal professionals engaged in weeks of protest after then-President Pervez Musharraf dismissed the Chief Justice of the Supreme Court.<sup>34</sup> Against a backdrop of social unrest, the Supreme Court ruled that the President did not have the power to dismiss the Chief Justice and reinstated him one month later.<sup>35</sup> The situation was further intensified a few months later when the Supreme Court presided over hearings to determine whether Musharraf was eligible to run for elected office while simultaneously serving as the country's military commander.<sup>36</sup> While the proceedings were pending, Musharraf suspended the Constitution, imposed emergency rule, required judges at all levels to take renewed oaths under a provisional Constitution and placed others under house arrest.<sup>37</sup> Lawyers across the country protested and received widespread international media coverage, becoming regarded as the protectors of Pakistan's independent judiciary.<sup>38</sup> Many lawyers, including one

---

<sup>27</sup> PAKISTAN CONST. art. 203-D.

<sup>28</sup> PAKISTAN CONST. art. 203-D, 203-G.

<sup>29</sup> In Islamic jurisprudence, the term *Hudood*, or *Ḥudūd*, refers to fixed and mandatory punishments for certain offenses mentioned in the *Qur'ān* and *Sunnah*. The *Hudood Ordinances* as well as the *Shariat Courts* were established as part of a controversial Islamicization policy under the military rule of Zia-ul-Haq in the 1980s. See Rudolph Peters, *Ḥudūd*, THE OXFORD ENCYCLOPEDIA OF THE ISLAMIC WORLD, OXFORD ISLAMIC STUDIES ONLINE, available at <http://www.oxfordislamicstudies.com/article/opr/t236/e0322> (last visited on September 4, 2015) (Although the court's jurisdiction was narrowed with regard to so-called *Zinā* offenses relating to forbidden sexual acts such as adultery in connection with the Protection of Women Act in 2006, human rights activists continue to press for further reform).

<sup>30</sup> *Id.*

<sup>31</sup> PAKISTAN CONST. art. 203-F.

<sup>32</sup> Hussain, *supra* note 12, at 21. Civil courts are established under the West Pakistan Civil Courts Ordinance, W. P. Ord. II of 1962; criminal courts are established under the Code of Criminal Procedure (Pakistan), Act. V of 1898.

<sup>33</sup> *Id.*

<sup>34</sup> Jane Perlez and David Rohde, Pakistan Attempts to Crush Protests by Lawyers, N.Y. TIMES, Nov. 6, 2007, available at <http://www.nytimes.com/2007/11/06/world/asia/06pakistan.html?pagewanted=all> (last visited on September 4, 2015).

<sup>35</sup> *Id.*

<sup>36</sup> U.N. Report, *supra* note 2, at 5.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*



of Pakistan's most prominent corporate lawyers, were arrested or beaten by state forces during the period of unrest.<sup>39</sup> The rule of law was eventually restored with elections in 2008 and subsequent transition of power in 2013.<sup>40</sup>

### The Practice of Law

The practice of law in Pakistan is primarily governed by the Legal Practitioners and Bar Councils Act of 1973, last amended in 2005 (the "**Bar Councils Act**").<sup>41</sup> The Bar Councils Act established the Pakistan Bar Council, as well as provincial bar councils in each of the four provinces.<sup>42</sup> The provincial bar councils are representative bodies consisting of council members elected for five-year terms from districts within each province.<sup>43</sup> The Pakistan Bar Council, together with the provincial councils, nominates judges to the bench, engages in rulemaking, promotes legal reform, holds examinations for the purpose of admission to the bar, accredits law schools, admits persons as lawyers on the council's roll and determines cases of misconduct against lawyers.<sup>44</sup>

Under the Bar Councils Act, there are four classes of lawyers or "advocates": senior advocates of the Supreme Court; advocates of the Supreme Court; advocates of the High Court; and all other advocates.<sup>45</sup> The Bar Councils Act makes clear that "unless otherwise provided for in the Bar Councils Act, no person shall be entitled to practice the profession of law unless he is an advocate."<sup>46</sup> It further sets forth the qualifications for admission as an advocate, which include: (i) Pakistani citizenship, or one year of residency in Pakistan and citizenship in a country that allows Pakistani citizens to qualify in the practice of law; (ii) a law degree from a university recognized by the Pakistan Bar Council; (iii) passing the bar exam; and (iv) payment of related accreditation and other fees.<sup>47</sup> In 2014, the Supreme Court reported that there were approximately 114 law colleges in Pakistan located at 18 universities.<sup>48</sup> The court also reported a total of 57,494 advocates enrolled with the provincial bar councils at the lower court levels, and 69,285 advocates enrolled with bar councils at the High Court levels.<sup>49</sup> Of these, Punjab, the most populous province, contains the largest legal population.<sup>50</sup>

The relative stability achieved through successful democratic elections in 2013 has increased investment in Pakistan's capital markets, energy and banking sectors, leading in turn to increased activity across law firms in Pakistan.<sup>51</sup> While international transactions are mainly handled by a handful of large successful multi-practice firms, most lawyers in Pakistan practice law in smaller organizations.<sup>52</sup> Further, many legal

<sup>39</sup> Perlez and Rhode, *supra* note 34.

<sup>40</sup> BBC, Pakistan Country Profile, *supra* note 5.

<sup>41</sup> Legal Practitioners and Bar Councils (Amendment) Act, chs. II & III, 2005, available at [http://www.pbbarcouncil.com/downloads/barcouncil\\_act\\_amended\\_2005.pdf](http://www.pbbarcouncil.com/downloads/barcouncil_act_amended_2005.pdf) (last visited on September 4, 2015).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at ch. VI, § 21.

<sup>46</sup> *Id.* at ch. VI.

<sup>47</sup> *Id.* at ch. VI, § 26.

<sup>48</sup> Supreme Court of Pakistan Annual Report, *supra* note 21, at 298-301.

<sup>49</sup> *Id.* at 295-297.

<sup>50</sup> *Id.*

<sup>51</sup> THE LEGAL 500, Pakistan, <http://www.legal500.com/c/Pakistan> (last visited on September 4, 2015).

<sup>52</sup> *Id.* (noting the legal market is dominated by a few domestic firms); See also Chambers & Partners, Country Practice Guide – Litigation 2014-2015 (Pakistan), available at <http://www.chambersandpartners.com/guide/practice-guides/location/241/7277/1202-0> (last visited on



professionals in the public sector continue to face poor working conditions, such as lack of stable electricity, water and sanitation, separate offices, libraries, and electronic equipment.<sup>53</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### State-funded Legal Aid Committees

Exercising rulemaking powers granted to it under the Bar Councils Act, the Pakistan Bar Council established rules for the provision of legal aid in 1988 and revised those rules in 1999 (“**1999 Rules**”).<sup>54</sup> The 1999 Rules state that their purpose is to establish a system to provide legal services to “the poor, destitute, orphans, widows, indigent and other deserving litigants”<sup>55</sup> needing assistance in the following categories of cases: accidents, succession certificate, family law, ejectment, illegal detention, abuse of power and authority by police, law enforcing agency, neglect of duties by government or local bodies, public interest litigation, and other cases as approved by a committee.<sup>56</sup> The 1999 Rules create legal aid committees at the national level, in each provincial bar council and in each bar council at the district level.<sup>57</sup> Administration of the committees is funded by the Pakistan Bar Council, provincial bar councils, government grants and other contributions.<sup>58</sup>

The national Central Free Legal Aid Committee seeks to provide legal aid to eligible litigants at the Supreme Court or federal tribunals.<sup>59</sup> Applications for legal aid are accepted at each registry of the Supreme Court.<sup>60</sup> Provincial committees provide representation in the High Court and any provincial-level tribunal, while the district committees provide aid at district-level proceedings.<sup>61</sup> The 1999 Rules provide a template application letter for those seeking legal aid to complete.<sup>62</sup>

The 1999 Rules require that each free legal aid committee maintain a panel of lawyers willing to provide pro bono services or work for reduced fees.<sup>63</sup> The 1999 Rules also set forth maximum legal fees by type of level of the judiciary; for example, a maximum fee of 5,000 Pakistani rupees (US\$ 52) is imposed on fees for legal aid cases litigated at the Supreme Court.<sup>64</sup> While the 1999 Rules do not require lawyers to offer pro bono services as a general matter, a free legal aid committee may request any lawyer to

---

September 4, 2015) (explaining that although there are almost no large international firms in Pakistan, the dominant domestic firms often take on clients that are referred by law firms based in the United Kingdom, the United Arab Emirates or China).

<sup>53</sup> See U.N. Report, *supra* note 2, at 11 (reporting on the inadequate working conditions of judicial actors, including lawyers, practicing at the lower levels of the judiciary).

<sup>54</sup> Pakistan Bar Council Free Legal Aid Rules, PAKISTAN BAR COUNCIL NOTIFICATION, 139 (Sep. 8, 1999), available at <http://pakistanbarcouncil.org/wp-content/uploads/2012/07/1999.pdf> (last visited on September 4, 2015).

<sup>55</sup> The criteria for eligibility is described elsewhere in the 1999 Rules as “a person who is entitled to Zakat or his financial position and income resources are not sufficient to bear the expenses for engaging an Advocate to prosecute, defend and protect his legal rights in genuine litigation.” *Id.* at § 2(2).

<sup>56</sup> *Id.* § 3.

<sup>57</sup> *Id.* § 4.

<sup>58</sup> *Id.* § 9(i).

<sup>59</sup> *Id.* § 5.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* §§ 5-6.

<sup>62</sup> *Id.* sched.

<sup>63</sup> *Id.* § 8.

<sup>64</sup> *Id.* sched.



conduct one case in a year, free of charge.<sup>65</sup> Notably, some reports argue that because empaneled lawyers are prompted to work for reduced or no fees without direct government subsidy, they lack the financial capacity and incentive to offer pro bono services.

Further, despite the mandate of the 1999 Rules, a special United Nations report commissioned in 2013 concluded that “there [was] no institutionalized legal-aid program” in Pakistan at a national level and noted that access to justice for all populations is generally hindered by a backlog of cases in the judicial system.<sup>66</sup> The report noted that while the Punjab province had established a preliminary system of legal assistance, the program was not effective in practice because of stringent eligibility criteria and lengthy processing times.<sup>67</sup> That same year, a survey conducted by a local NGO concluded that the vast majority of vulnerable populations in Pakistan were unable to access free legal aid services.<sup>68</sup> The survey found that 95% of litigants surveyed in targeted low-income areas had never received free legal services and lacked awareness of how to enforce their basic legal rights.<sup>69</sup> Although in its 2014 annual study, the Supreme Court declared that an empirical study would be undertaken to examine deficiencies in the legal system, including financial barriers to judicial access, after which changes to the 1999 Rules would be recommended<sup>70</sup>, it is not clear what changes have been implemented.

Among the populations who continue to face barriers to judicial access or other legal remedies include the several thousand Afghani refugees who have cited harassment, arrests, detentions and evictions pushing them to return to their native country<sup>71</sup>; illegal child and bonded laborers<sup>72</sup>; women and girls who suffer from domestic abuse and gender-based violence<sup>73</sup>; and religious minority groups, many who seek asylum overseas to flee persecution.<sup>74</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities in Private Firms

In practice, pro bono work is only regularly taken on by a small number of firms and is not commonly part of firm culture in Pakistan. However, a thriving pro bono culture is sometimes found in Pakistani law firms

---

<sup>65</sup> Id. § 8(f).

<sup>66</sup> U.N. Report, supra note 2, at 12.

<sup>67</sup> Id.

<sup>68</sup> SCHUNAIZIA RELIEF AND DEVELOPMENT ORGANIZATION, Rule of Law, available at <http://www.srdopakistan.org/ruleoflaw> (last visited on September 4, 2015) (surveying the targeted districts of Kohat, Karak, Bannu & Haripur).

<sup>69</sup> Id.

<sup>70</sup> Supreme Court of Pakistan Annual Report, supra note 21, at 44.

<sup>71</sup> BBC, Harassment drives Afghan refugees from Pakistan, BBC NEWS, February 26, 2015, available at <http://www.bbc.com/news/world-asia-31588821> (last visited on September 4, 2015).

<sup>72</sup> HUMAN RIGHTS COMMISSION OF PAKISTAN, State of Human Rights in 2013, 214 available at <http://www.hrcpweb.org/hrcpweb/report14/AR2013.pdf> (last visited on September 4, 2015) (citing an estimated 2,000,000 to 2,200,000 people in various forms of slavery in Pakistan).

<sup>73</sup> See U.N. Report, supra note 2, at 16 (noting that “access to justice for women remains illusory” because of high illiteracy and lack of awareness of their legal rights).

<sup>74</sup> HUMAN RIGHTS WATCH, World Report 2014: Pakistan, available at <https://www.hrw.org/world-report/2014/country-chapters/pakistan> (last visited on September 4, 2015). See also, Suhail Obed, Exodus of Religious Minorities, DAILY TIMES, June 5, 2015, available at <http://www.dailytimes.com.pk/opinion/05-Jun-2015/exodus-of-religious-minorities> (last visited on September 4, 2015) (a Pakistani opinion page noting that an estimated 1,338 Pakistani’s applied for asylum abroad in 2013, most of whom were religious minorities).



that employ a high number of foreign-trained lawyers.<sup>75</sup> For example, several large corporate law firms in Pakistan have litigated appeals of blasphemy prosecutions, race and gender discrimination claims, and advocated for reform of the juvenile justice system.<sup>76</sup> Some firms also engage in pro bono services by advising charitable bodies, setting up charitable corporate trust structures, helping to form non-profit organizations and assisting rights organizations to navigate various local laws.<sup>77</sup>

NGOs also solicit lawyers offering pro bono services in support functions during seminars and human rights conferences. In 2013, for example, the Human Rights Commission of Pakistan (the “**HRCP**”) joined with the International Commission of Jurists to initiate dialogue on Pakistan’s engagement with the United Nations. Lawyers as well as other community activists attended and discussed ways to strengthen the role of human rights efforts in Pakistan.<sup>78</sup> Additionally, in 2015, Islamabad-based NGO, Struggle for Change (“**SACH**”), organized a workshop for the public with a special focus on the legal status of refugees in Pakistan, as well as available legal support for victims of sexual gender based violence.<sup>79</sup>

### Barriers to Pro Bono Work or Participation in the Formal Legal System

There are a number of obvious barriers to foreign-trained lawyers engaging in pro bono work in Pakistan. As discussed above, under the Bar Councils Act, only individuals admitted as lawyers may formally practice law in Pakistan.<sup>80</sup> Citizenship and residency requirements make admission unworkable for the typical pro bono attorney. Additionally, while much of the Pakistani legal system operates in English, client-based services likely require some linguistic fluency.<sup>81</sup>

Nonetheless, foreign lawyers can make an important impact by partnering with local counsel and NGOs in support roles of capacity building, training, organizing, and public education and human rights abuse documentation projects.

When engaging in such capacities, it is important that practitioners be cognizant that progressive legal reform remains controversial and, as noted above, can at times be dangerous. Lawyers, particularly those in the public sector, continue to face threats by both private and state actors in the defense of human rights. In May 2014, a lawyer working for the HRCP was killed after facing threats for defending a university professor accused of blasphemy.<sup>82</sup> That same month, 68 lawyers were themselves charged with blasphemy after protesting the detainment of a colleague by police forces.<sup>83</sup>

---

<sup>75</sup> Id.

<sup>76</sup> See, e.g., MINTO & MIRZA, Pro Bono Work, <http://www.mintoandmirza.com.pk/probono.htm> (last visited on September 4, 2015) (identifying involvement in several “landmark cases involving minority rights, labor rights, gender discrimination, freedom of movement, assembly, political participation . . .”).

<sup>77</sup> See, e.g., HAIDERMOTA & CO., Areas of Practice, <http://www.hmco.com.pk/main.htm> (last visited on September 4, 2015).

<sup>78</sup> HUMAN RIGHTS COMMISSION OF PAKISTAN, STATE OF HUMAN RIGHTS IN 2013, 297 (March 2014).

<sup>79</sup> SACH – Struggle for Change, Workshop with “Public Prosecution,” <http://sach.org.pk> (last visited on September 4, 2015).

<sup>80</sup> Legal Practitioners and Bar Councils (Amendment) Act, *supra* note 41.

<sup>81</sup> See generally, Chambers & Partners, *supra* note 52 (noting that regional and lower courts tend to use Urdu as the preferred language).

<sup>82</sup> Katharine Houreld, Gunmen Kill Pakistan Lawyer Defending Blasphemy Case, REUTERS (May 8, 2014), available at <http://www.reuters.com/article/2014/05/08/us-pakistan-blasphemy-idUSBREA4709N20140508> (last visited on September 4, 2015).

<sup>83</sup> Syed Raza Hassan, Pakistani Police Charge 68 Lawyers with Blasphemy over Protest, REUTERS (May 13, 2014), available at <http://www.reuters.com/article/2014/05/13/us-pakistan-blasphemy-charges-idUSBREA4C08220140513> (last visited on September 4, 2015).



## Pro Bono Resources

Given the nascent pro bono environment in Pakistan and the lack of major clearinghouse organizations for pro bono opportunities, finding meaningful projects requires research and building relationships with local contacts. However, since many well-regarded NGOs in Pakistan have a limited formal web presence, this initial contact can be challenging.<sup>84</sup> A few well-known organizations are noted below:

Established in 1980 by Asma Jahangir,<sup>85</sup> AGHS Legal Aid (“AGHS”) was the first free legal aid organization in the Pakistan.<sup>86</sup> AGHS focused on the rights of women, children and minorities in Pakistan.<sup>87</sup> It established a women’s shelter in 1990, and has expanded its mandate to support other disadvantaged and marginalized populations.<sup>88</sup> AGHS is involved in litigation, education, publication, domestic and international lobbying, organizing and abuse documentation projects.<sup>89</sup>

The HRCP has also been a leading voice in the struggle for human rights and democratic development in Pakistan since 1987.<sup>90</sup> The HRCP provides legal aid and assistance to victims of human rights abuses, and engages in education, organizing and advocacy work around the ratification and implementation by Pakistan of the Universal Declaration of Human Rights and of other related internationally adopted norms.<sup>91</sup> It also publishes comprehensive annual reports on the status of human rights in Pakistan.<sup>92</sup>

In addition, several NGOs provide legal and other support services to the estimated over 2.9 million refugees, asylum seekers and internally displaced persons in Pakistan.<sup>93</sup> These include CHC-Community Help Community, Norwegian Refugee Council Pakistan, Rights Now Pakistan and Society for Human Rights and Prisoners Aid (SHARP).<sup>94</sup>

A number of international NGOs also engage in important project-based work in Pakistan. Projects are usually targeted in scope and benefit from long-standing relationships with local NGOs. For example, Reprieve, a London-based international NGO focused on the human rights of prisoners, has two employees in Pakistan working on various detention issues.<sup>95</sup> International Crisis Group is also regularly

---

<sup>84</sup> Although many NGOs lack formal websites, many are more active on social media platforms such as Facebook and Twitter.

<sup>85</sup> Asma Jahangir is an internationally renowned human rights activist, a Supreme Court advocate and a critical voice against anti-democratic forces in Pakistan. She helped to establish AGHS, Women’s Action Forum and the HRCP. She has served as U.N. Special Rapporteur on Extrajudicial Executions, U.N. Special Rapporteur on Freedom of Religion or Belief and President of the Supreme Court Bar Association of Pakistan.

<sup>86</sup> See AGHS LEGAL AID CELL, About AGHS (Jul. 6, 2007), <http://aghsblog.wordpress.com> (last visited on September 4, 2015).

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id.

<sup>90</sup> HUMAN RIGHTS COMMISSION OF PAKISTAN, HRCP, About Us, <http://hrcp-web.org/hrcpweb/> (last visited on September 4, 2015).

<sup>91</sup> Id.

<sup>92</sup> Id.

<sup>93</sup> 2015 UNHCR Country Operations Profile – Pakistan, UNHCR: THE UN REFUGEE AGENCY, available at <http://www.unhcr.org/pages/49e487016.html>, (last visited on September 4, 2015) (reporting as of December 2014).

<sup>94</sup> See Rights in Exile Programme (IRRI), <http://www.refugeelegalaidinformation.org/about-us-0> (last visited on September 4, 2015) providing contact details for the above named organizations.

<sup>95</sup> REPRIEVE, About Reprieve, <http://www.reprieve.org.uk/about/> (last visited on September 4, 2015).



engaged in research and documentation projects in Pakistan, covering areas from natural disasters to political unrest.<sup>96</sup>

Finally, top-tier law firms may have a pro bono docket, and foreign-trained graduates might serve as an important inroad to that work. Interested attorneys can reach out to such firms to build local connections.

## CONCLUSION

Despite human rights abuses by government forces and widespread social discrimination, Pakistan's legal community remains invested in the rule of law and opposed to anti-democratic forces. Local NGOs, law firms and international organizations are engaged in direct representation and broader reform work. Foreign lawyers interested in pro bono opportunities in Pakistan have ample opportunity to assist if they are willing to think creatively about how their skills could be deployed.

September 2015

Pro Bono Practices and Opportunities in Pakistan

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>96</sup> See INTERNATIONAL CRISIS GROUP, Pakistan, <http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan.aspx> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in Panama

### INTRODUCTION

Pro bono is gaining ground in Panama, with the legal community increasingly recognizing the value of a pro bono culture and the significant impact pro bono work can have on democracy and justice. The Pro Bono Declaration for the Americas is the founding document that is helping to institutionalize altruistic and other pro bono activities of Panamanian lawyers.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

Constitutional power in Panama, although distributed among the executive, legislative and judicial branches of government, is concentrated in the executive branch. The 1978 and 1983 amendments to the Constitution decreased the powers of the executive and increased those of the legislature, but the executive branch of government remains the dominant power in the governmental system.

The executive branch is headed by the president and two vice presidents. Together with the 12 ministers of state, they make up the Cabinet Council. The Cabinet Council is given several important powers, including decreeing a state of emergency and suspending Constitutional guarantees, nominating members of the Supreme Court, and overseeing national finances, including the national debt.

The Legislative Assembly is a unicameral body with 67 members, each of whom has an alternate. Members and alternates are elected for five-year terms that run concurrently with those of the president and vice presidents. The legislature holds two four-month sessions each year and may also be called into special session by the president.

The Constitution also creates a Public Ministry, headed by the attorney general, who is assisted by the solicitor general, the district and municipal attorneys, and other officials designated by law. The functions of the Public Ministry include supervising the conduct of public officials, serving as legal advisers to other government officials, prosecuting violations of the Constitution and other laws, and arraigning before the Supreme Court officials over whom the Court "has jurisdiction."

#### The Courts

##### Levels, relevant types and locations

The judicial branch is headed by the Supreme Court of Justice, which is the highest judicial body in the Panama. Judges must be Panamanian by birth, be at least 35 years of age, hold a university degree in law, and have practiced or taught law for at least ten years. The number of members of the court is not fixed by the constitution. The judiciary is divided into three chambers; civil, penal, and administrative.

The Constitution defines the Supreme Court as the guardian of "the integrity of the Constitution." In consultation with the attorney general, it has the power to determine the constitutionality of all laws, decrees, agreements, and other governmental acts. The Supreme Court also has jurisdiction over cases involving actions or failure to act by public officials at all levels and is the final appellate court.

The nation is divided into three judicial districts: the first encompasses the provinces of Panamá, Colón, and Darién; the second, Veraguas, Los Santos, Herrera, and Coclé; the third, Bocas del Toro and Chiriquí. Directly under the Supreme Court are four superior tribunals, two for the first judicial district and one each for the second and third districts. Within each province there are two circuit courts, one for civil and one for criminal cases. The lowest regular courts are the municipal courts located in each of the nation's 65 municipal subdivisions.



## Appointed vs. Elected Judges

Judges (and their alternates) are nominated by the Cabinet Council and subject to confirmation by the Legislative Assembly. They serve for a term of ten years. Article 200 of the Constitution provides for the replacement of two judges every two years. The Supreme Court also selects its own president every two years.

In the tribunals, the judges are nominated by the Supreme Court, while lower judges are appointed by the courts immediately above them.

The attorney general and the solicitor general are appointed in the same way as Supreme Court justices, but serve for no fixed term. Lower-ranking officials are appointed by those immediately above them.

## The Practice of Law

Legal regulation of lawyers is established in Law No. 9, of April 18, 1984 (*Ley por la cual se regula ejercicio de la Abogacía*). Pursuant to article 3 of Law No. 9, modified by Law 8/1993, in order to become a lawyer, a student must obtain a law degree granted by the University of Panama, Santa María La Antigua University or by any other university established in Panama whose law degree is legally recognized. For a law degree obtained abroad to be recognized, it must be validated by the University of Panama, except in the case of an international agreement clearly exempting the student to fulfill this requirement. In addition to the educational requirements and being a Panamanian citizen, one must obtain a certification issued by the Supreme Court of Justice to be able to practice law in Panama.<sup>1</sup>

## Legal Regulation of Lawyers

The Panama Bar (*Colegio Nacional de Abogados de Panama*) is regulated by the Statute of the National Bar of Panama, which was approved by the plenary general assembly of national lawyers on February 19, 2000 (*Estatuto del Colegio Nacional de Abogados de Panamá Aprobado en Asamblea General Plenaria en el Marco del V Congreso Nacional de Abogados el 19 de Febrero de 2000*).<sup>2</sup> The Bar was created to oversee lawyers' professional conduct, help improve the administration of justice in all its branches and strive for a judiciary and public prosecutor that are independent, and morally and academically sound.

Since 2010, 5000 students have obtained a law degree from one of the universities in Panama. In 2014, over 600 students obtained the degree, which has caused some concern within the Panama Bar that law degrees have been awarded too liberally.<sup>3</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

Article 201 of Panama's constitution establishes that "*The administration of justice is free, expeditious and uninterrupted.[...]*"<sup>4</sup> In addition to the stipulations of "free, prompt, and uninterrupted" administration of justice and the establishment of the Public Ministry, the Constitution also provides for the application of laws, treatment of citizens under the law, and handling of prisoners.

The Bill of Rights of Individuals before the Justice in the Public Prosecutor of the Republic of Panama (*Carta de Derechos de las Personas ante la Justicia en el Ministerio Público de la República de Panamá*) states in article 57 that "*All persons entitled to free legal aid are entitled to counsel. The Public Ministry*

---

<sup>1</sup> See <http://www.cnapanama.com/leyes.htm> (last visited on September 4, 2015).

<sup>2</sup> See <http://www.cnapanama.com/estatutos.htm> (last visited on September 4, 2015).

<sup>3</sup> See [http://www.prensa.com/angel\\_lopez\\_quia/Universidades-Panama-graduaron-nuevos-abogados\\_0\\_4033846753.html](http://www.prensa.com/angel_lopez_quia/Universidades-Panama-graduaron-nuevos-abogados_0_4033846753.html) (last visited on September 4, 2015).

<sup>4</sup> See [http://www.unesco.org/culture/natlaws/media/pdf/panama/pan\\_constpol\\_04\\_spaorof](http://www.unesco.org/culture/natlaws/media/pdf/panama/pan_constpol_04_spaorof) (last visited on September 4, 2015).



*under the Code of Criminal Procedure will request the Institute of Public Defender's Office to provide for the respective designation."*

The Institute of Public Defender's Office is formed by qualified lawyers appointed by the Supreme Court to act in defense of any person who is entitled to free legal assistance in cases within the competence of ordinary justice, and is regulated in the First Book of the Judicial Code and by the Agreement 239 of November 19, 1993 handed down by the Supreme Court.<sup>5</sup>

The mission of the Institute of Public Defender's Office is to defend the rights, and constitutional and legal safeguards for persons of limited economic resources through timely service of the administration of justice, to ensure compliance with due process and strengthen the democratic rule of law. Access to justice is defined as "*access by all to the benefits of justice and the legal and judicial advice, adequately to the importance of each topic or subject, without expensive or affordable costs, by all natural or legal persons, without discrimination by sex, race or religion*".

## PRO BONO ASSISTANCE

### Pro bono Opportunities

The Pro bono Declaration for the Americas (the "**PBDA**"), spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched at a congress in January 2008 by a committee of leading practitioners in Latin America and the United States. The congress was attended by representatives from prestigious law firms, law schools, bar associations and NGOs. Signatories, including Panama, endorsed the principle that it is the duty of the legal profession to promote a fair and equitable legal system and respect for human and constitutional rights. The PBDA calls for each signatory to promote an average of at least 20 hours of annual pro bono work per practicing attorney.<sup>6</sup>

Morgan & Morgan, a law firm, is a pioneer in pro bono in Panama. In 2011, Morgan & Morgan signed the PBDA, thus becoming the first Panamanian entity involved with this initiative. Lawyers at Morgan & Morgan, along with its non-profit organization Fundalcom,<sup>7</sup> have participated in several "Legal Orientation Open Houses" with the sole purpose of providing free legal advice in different fields.

Morgan & Morgan has undertaken several pro bono projects in Panama, including drafting a bill to organize national volunteering in the Republic of Panama, for which they received recognition from the "International Association for Volunteer Effort" (IAVE).

The Pro bono Network of the Americas, led by the Vance Center and the Foundation Pro bono Chile, organized, with support from law firms Morgan & Morgan and Galindo, Arias & Lopez, the first roundtable on pro bono work in Panama and the Americas on the March 11, 2015. Panama was represented by 11 lawyers from seven different law firms, all of who stressed the importance of having an institution that promotes the pro bono culture and institutionalization within local law firms.

### Historic Development and Current State of Pro Bono

Panama does not have a clearinghouse organization to promote and coordinate the distribution of pro bono cases amongst local lawyers and law firms. The implementation of the PBDA, pursuant to which signatories committed to provide an average of at least 20 pro bono hours annually per practicing lawyer, has given a boost to pro bono activities in Panama.

There are still many challenges and key obstacles to overcome. The principal barriers to pro bono services in Panama is a lack of explicit legal regulations governing pro bono activities and a lack of public

---

<sup>5</sup> See <http://www.organojudicial.gob.pa/> (last visited on September 4, 2015).

<sup>6</sup> See <http://www.vancecenter.org/vancecenter/images/stories/vancecenter/111811pbda.pdf> (last visited on September 4, 2015).

<sup>7</sup> See <http://www.fundalcom.com/> (last visited on September 4, 2015).



awareness. Additionally, minimum fees for legal services are regulated by the Decree on Professional Fees for Legal Services,<sup>8</sup> which requires those providing legal services to charge fees for their services, with an express prohibition against reducing or eliminating such fees. This has slowed the creation of new pro bono organizations and it may also be one of the reasons why only a select number of law firms are signatories to the PDBA and do not actively engage in pro bono.

## Pro bono Resources

Pro bono efforts in Panama are led by Morgan & Morgan, the first Panamanian law firm to sign the PDBA in 2011. Through its several foundations Morgan & Morgan promotes the access to justice and pro bono. (<https://www.morimor.com/pro-bono/> (last visited on September 4, 2015))

Fundalcom is a foundation created by Morgan & Morgan in 2007. Its mission is to contribute to building a society with greater social justice, serving as an instrument for the most vulnerable groups in the country to have free and efficient access to justice on equal terms for cases of family law and domestic violence. Since 2007 Fundalcom has provided its services to more than 5000 people. (<http://www.fundalcom.com/> (last visited on September 4, 2015))

## CONCLUSION

Pro bono services in Panama are slowly but steadily growing, although the pro bono movement is not yet fully developed, despite having a legal system that recognizes a right of free access to justice for all citizens. The pioneer in pro bono in Panama is Morgan & Morgan and is also its main promoter. Although there have lately been advances in Panama, including the organization of a round table to encourage greater development of a pro bono culture within local law firms, the need for an institution that promotes pro bono activities and serves as a clearinghouse for pro bono cases was stressed. This also includes developing a pro bono culture in firms, and greater clarity on how pro bono work should be rewarded within the interpretation of the current legislation.

September 2015

Pro Bono Practices and Opportunities in Panama

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>8</sup> See <http://www.cnapanama.com/tarifa.htm> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in Paraguay<sup>1</sup>

### INTRODUCTION

Paraguay has a tradition of providing free legal assistance for citizens with limited means, and the Ministry of Public Defense has over 300 paid attorneys who support and provide legal advice to such individuals. In addition to legal aid provided by the public sector there is also an increasing movement among private law firms to provide free legal advice to indigent individuals, with pro bono culture expanding across local law firms and universities throughout Paraguay. This chapter summarizes the existing legal regime relevant to the provision of pro bono legal services in Paraguay.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

The supreme law applicable in Paraguay is the National Constitution of Paraguay (the “**Constitution**”), in force since June 1992, followed in legal rank by: (i) treaties, conventions and international agreements approved and ratified by the National Congress of Paraguay; (ii) laws enacted by the National Congress of Paraguay; and (iii) any other legal provisions of lower rank enacted in consequence thereof. All the aforementioned regulations constitute Paraguay’s national governing positive law.

#### The Courts

The judiciary is responsible for safeguarding the Constitution, interpreting it, applying it and assuring its compliance. The judiciary is also responsible for the administration of justice through the Supreme Court of Justice (*Corte Suprema de Justicia*) of Paraguay, tribunals and the courts. The Supreme Court is the highest court in the Paraguayan judicial system and is composed by (9) nine members, referred to as Ministers. The Supreme Court is organized in three chambers: (i) the Constitutional Court (*Sala Constitucional*); (ii) the Commercial and Civil Division (*Sala Civil-Comercial*); and (iii) the Criminal Division (*Sala Penal*). The President of the Supreme Court is appointed annually by the Supreme Court’s members. The Supreme Court has the authority to adjudicate legal matters, as well as supervisory duties and disciplinary authority over Paraguayan courts, tribunals, court officers and judiciary offices.

#### The practice of law

##### Education

In order to be legally admitted to practice law in Paraguay, it is mandatory to have a university law degree, which usually takes five to six years to complete.

The requirements for practicing law in Paraguay are governed by article 87 et seq. of the Judicial Organization Code, which, among other things, regulates the legal profession. The Code sets forth the following requirements to become a lawyer in Paraguay:

- obtaining a law degree issued by a duly acknowledged and authorized Paraguayan university (or having a foreign degree validated by the national education council);
- being of legal age;
- demonstrating a reputation of honor and good behavior;
- taking an oath before the Supreme Court of Justice; and
- registering with the Supreme Court Register of Lawyers.

---

<sup>1</sup> This chapter was drafted with the support of local counsel, Mr. Carlos Vasconsellos and Mr. Valentín Sánchez Quintana, from the Paraguayan office of the law firm FERRERE Abogados.



## Demographics

Currently, there are over 40,000 lawyers in Paraguay, amounting to one lawyer per 168 citizens.

## Legal Regulation for Lawyers

At present, the practice of law in Paraguay is not regulated by any bar associations and it is not mandatory to be admitted by the Paraguayan Bar Association in order to be able to practice law.

# LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

## The Right to Legal Assistance

Article 16 of the Constitution provides that every person has the right to be assisted by a legal aid attorney in criminal proceedings or any other proceedings that may result in the imposition of a penalty or fine, provided such person lacks sufficient economic resources to afford a private attorney.

## State-Subsidized Legal Aid

The Ministry of Public Defense (*Ministerio de la Defensa Pública*) is a judicial institution made up of approximately 330 professional lawyers who are paid by the Paraguayan State to defend individuals who (i) have limited economic resources, or are absent; (ii) are legally incapacitated; or (iii) are minors in the context of civil, labor, minor-related, administrative or criminal proceedings. Furthermore, the Ministry of Public Defense is independent from other powers of the State of Paraguay. Although the Ministry of Public Defense is part of the judicial branch, it has functional and financial autonomy and independence.

Individuals seeking legal assistance from the Ministry of Public Defense must visit the public defender (*Defensor*) on duty in the relevant jurisdiction and constituency. Each judicial district has public defenders who may act within the limits of such district. The legal assistance provided by the Ministry of Public Defense is free and the defendants are exempt from court fees. Defendants are required to pay only those legal fees, notices and/or edicts specifically designated by law.

## Mandatory assignments to Legal Aid Matters

In Paraguay, courts and judges have no legal authority to assign lawyers to legal aid matters in judicial cases.

## Unmet needs and access analysis

There is a clear consensus amongst legal attorneys and the Paraguayan government that there are not enough public defenders to meet the demands of Paraguay's citizens with limited economic resources and ensure that their constitutional protections are observed.

This has resulted in significant shortfalls in the provision of legal aid services.

## Alternative dispute resolution

### Mediation

Pursuant to the law regulating the Ministry of Public Defense (*Ministerio de la Defensa Pública*), the Ministry of Public Defense must promote the voluntary use of centers of mediation and conciliation. In practice, the Ministry of Public Defense has assigned a group of public defendants to mediate in certain controversies (e.g., family related matters).

### Ombudsman

The Constitution provides that the Ombudsman (*Defensor del Pueblo*) is a parliamentary commissioner whose functions are to defend human rights, channel people's claims and protect the interests of the community. The Ombudsman has the following duties: (i) to receive and investigate complaints relating to the violation of human rights and to publicly condemn any actions contrary to human rights; (ii) to execute



projects and implement programs to promote the awareness and practice of human rights and mechanisms for their protection; (iii) to prepare and distribute reports on the status of human rights in Paraguay; (iv) to report the violation of human rights by public officers and other individuals to the Public Ministry (*Ministerio Público*); (v) to promote actions to protect general interests; (vi) to propose amendments to rules and proceedings implemented by the State or by government officials in case of violation of human rights; and (vii) to propose amendments of rules and proceedings implemented by the state or by government officials with a view to improving the services provided by state bodies.

The Ombudsman does not have any judicial functions or executive authority.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### The Interdisciplinary Centre for Social Law and Political Economy

The Interdisciplinary Center for Social Law and Political Economy (“**CIDSEP – UC**”), in association with the Paraguayan bar association, is Paraguay’s leading clearinghouse for pro bono work. The CIDSEP – UC is an agency of the Catholic University, which mission is to contribute to building the rule of law, promote the strengthening of public institutions and civil society organizations, and to provide access to justice and democratic participation through advice, training, research and publications. The principal activities of CIDSEP - UC include:

- Strengthening democratic institutions: training and updating legal practitioners and court officers in Paraguay, including legal research and publication activities and initiatives to strengthen local governments.
- Fostering a culture of transparency and citizen participation: monitoring key state institutions at central and local levels, including training community leaders and civil society on mechanisms of social control, accountability and access to information.
- Promotion of rights: promoting rights through radio programs, newspapers and neighborhood and cultural activities, supporting networking amongst public institutions, social organizations and legal volunteers.

In this context, CIDSEP – UC has launched a pro bono Legal Volunteer Project and a blog to discuss pro bono services, and to raise awareness in connection with the Statement of Pro Bono Work for the Americas (*Declaración de Trabajo Pro Bono para las Américas*) and the right to access justice. The Legal Volunteer Project began in 2005, when lawyers from various Latin American countries, the United States, Spain and South Africa met in New York City to discuss the role of the legal profession in democratic societies and the specific ways in which the legal profession could help facilitate access to justice for all sectors of the community.

Additionally, CIDSEP – UC is currently working with six major law firms and approximately 60 independent lawyers. The eligibility requirements for individuals to be assigned a pro bono lawyer under the CIDSEP – UC program are the following: (i) not having been assigned a previous lawyer; (ii) not having sufficient economic resources to pay professional fees for private legal services; and (iii) being part of a vulnerable group of society, as defined in the Brasilia Regulations Regarding Access to Justice for Vulnerable People (*100 Reglas de Brasilia sobre acceso a la Justicia de las personas en condicion de vulnerabilidad*).

At present, the cases under the CIDSEP – UC program cover the following areas amongst others: (i) violence against women and family; (ii) compensation for damages; (iii) victims of criminal acts; and (iv) labor issues, in each case which are located within the area of Asunción and Great Asunción.

#### The International Pro Bono Network

CIDSEP – UC is also a member of the International Pro Bono Network (“**IPBN**”), which was created in April 2011, when *Fundación Pro Bono Chile* and the Cyrus R. Vance Center of the Bar Association of the



City of New York convened the International Conference, “The Legal Profession & Pro Bono: Strengthening Access to Justice”.

#### Catholic University of Asunción

Law students at the Catholic University of Asunción are required to do pro bono work as part of the Legal Clinics Program (*Consultorio Jurídico*). During their fifth year, law students are assigned matters related to civil and other minor issues, and in their sixth year, law students are assigned criminal cases.

### Historic Development and Current State of Pro Bono

In Paraguay, there is no obligation for lawyers to provide pro bono services. One barrier to the provision of pro bono services in Paraguay is a law that was passed by the National Congress in 1988, pursuant to which legal fees are subject to regulation. Article one of the referred law obliges legal services providers to charge professional fees for such legal services, expressly prohibiting the reduction or suppression of fees.

However, the Professional Ethics Code of the Paraguay bar association (*Código de Etica Profesional*) sets out the obligation to provide free judicial assistance to people with limited economic resources at the request of the defendant or by judicial designation, provided that the eligibility criteria of the beneficiaries of free judicial assistance are defensible.

Currently, there is an increasing movement amongst private law firms providing free legal advice and the pro bono culture is expanding throughout all local law firms and law schools in Paraguay.

### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

A significant barrier to pro bono work in Paraguay is the cultural bias that exists against the legal system in Paraguay due to ongoing mistrust towards law enforcement officers and judicial proceedings. This has created an environment in which people prefer to rely on informal agreements and extrajudicial resolutions when facing a controversy, even where formal remedies are available. Moreover, people in rural areas show even less willingness to use formal legal procedures.

Programs are being developed in order to increase people’s trust in the judicial system, such as a radio program named “Defending your rights” (*Defendiendo tus derechos*) that airs once a week in “*Radio Fe y Alegria 1300 AM*”. This radio program offers a public service through telephonic inquiries and interviews with public defendants. Nevertheless, it will take time for the judicial system to gain people’s trust after years of corruption and inefficiency.

In recent years, there has been a trend in the private legal sector among young professionals educated and trained abroad to return to Paraguay, bringing with them cultural awareness of better practices, including a commitment to pro bono legal services. However, there are practical and financial considerations that may affect lawyers’ willingness or ability to provide pro bono services. Also, there is a lack of cultural awareness towards pro bono services, together with poor infrastructure, which results in a failure to provide systematic and organized pro bono services.

### Pro Bono Resources

#### International Red Pro Bono

International Red Pro Bono is a foundation that assists and organizes pro bono services for lawyers and law firms. The foundation was created in 2000 and since then has implemented work programs to provide opportunities for attorneys to get involved in pro bono opportunities. The foundation facilitates pro bono services across various areas, including corporate advice, dispute advice, legal reports and judicial representation to improve access to free justice in Paraguay.

- **Address:** Mariano Sánchez Fontecilla N° 370 Las Condes – Santiago de Chile  
**Phone:** (562 38) 156 60



Website: <http://redprobono.org/> (last visited on September 4, 2015)  
Email: [contacto@redprobono.org](mailto:contacto@redprobono.org)

CISDEP – UC

Useful contact details for CISDEP – UC (as outlined at IV(A)(1) above) are as follows

- **Address:** Alberdi 855 casi Piribebuy, Paraguay  
**Phone:** (595 21) 445429  
**Website:** <http://www.buenaspracticas.uca.edu.py/cidsep.php> (last visited on September 4, 2015)  
**Email:** [cidsep@uc.edu.py](mailto:cidsep@uc.edu.py)

Paraguayan Bar Association

The Paraguayan Bar Association is a legal entity that has brought together practitioners from Paraguay since 1942. It raises awareness among its members, supervises legal academia, supports its members and offers its opinion on issues of legal importance.

- **Address:** 14 de Mayo 988 e/Manduvirá, Asuncion, Paraguay  
**Phone:** (595 21) 441882  
**Website:** <http://www.facebook.com/pages/Colegio-de-Abogados-del-Paraguay/266234063394042> (last visited on September 4, 2015)

FERRERE

FERRERE is the only multi-jurisdictional South American law firm. It has 150 attorneys across Uruguay, Paraguay, Ecuador and Bolivia and employs US-style structure, methodologies and policies. The firm seeks to foster and value social commitment among its lawyers, and requires - as an essential element of its professional culture - that community interest initiatives receive the same quality of service as its corporate clients.

FERRERE has a pro bono committee which is in charge of receiving, processing and approving each pro bono case.

- **Address:** Acá Carayá No 271, Asunción, Paraguay  
**Phone:** (595 21) 3183000  
**Website:** <http://www.ferrere.com/donde-trabajamos/asuncion> (last visited on September 4, 2015)  
**Email:** [ferrereparaguay@ferrere.com](mailto:ferrereparaguay@ferrere.com)

CONCLUSION

Pro bono activities in Paraguay are increasing slowly but surely, particularly as a result of law firms joining the CISDEP – UC program. Additionally, both Paraguayan society and politicians are becoming increasingly aware of the need for all Paraguayan citizens to have equal access to justice provided by high-quality attorneys.

September 2015

Pro Bono Practices and Opportunities in Paraguay

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Peru<sup>1</sup>

### INTRODUCTION

The legal community in Peru, based primarily in the capital city of Lima, is increasingly recognizing the value of developing a pro bono culture and the significant impact that pro bono work can have on democracy and justice. The Pro Bono Declaration for the Americas is the founding document that has helped to institutionalize these practices by Peruvian lawyers along with the emergence of institutions such as the 'Alianza Pro Bono'. This report provides an overview of the Peruvian legal system, legal aid available for low-income individuals, and the recent growth in the pro bono movement in Peru.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The 1993 Constitution (the “**Constitution**”) is the fundamental and supreme law of Peru. It has two primary functions: (i) to establish the government and its powers; and (ii) to recognize the fundamental human rights of individuals and the constitutional procedure to enforce them. Accordingly, Article 43 of the Constitution establishes a unitary, representative and decentralized government. There are three governmental branches, in accordance with the principle of separation of powers, which are the Executive, Legislative and Judiciary branches. The Executive branch, composed of the President of the Republic and the Council of Ministers, is in charge of the administration of the State, ensuring that laws are duly executed and enforced. The Legislative branch, which resides in Congress, has the authority to make, amend and repeal laws. Finally, the Judiciary Power, through the court system, administers and enforces the laws, and is expressly bound by the Constitution to adhere to the principle of due process of law.

Peru has signed and ratified (among other Human Rights Treaties and Declarations) the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights, including the international jurisdiction of the Inter-American Court of Human Rights. These treaties provide remedies for a denial of justice in Peruvian courts.

##### The Courts

The Peruvian Court System is comprised of the Supreme Court, the Superior Courts (Courts of Appeal), Trial Judges and, at the lowest level, Justices of the Peace (*Jueces de Paz*). The Constitutional Court is an autonomous entity, distinct from the Judicial Branch, which plays a critical role in the enforcement of laws. The Constitutional Court has two primary functions: (i) implementing procedures to enforce the Constitution as the supreme law of the State (the procedure of unconstitutionality and the procedure to solve conflicts between government entities); and (ii) implementing procedures to enforce constitutional rights (*habeas corpus*, *proceso de amparo*, *habeas data*).

In accordance with the Constitution (Article 155), all judges are selected and appointed by the National Council of the Judiciary; an independent body composed of seven members that are elected as follows: (i) one by the Supreme Court; (ii) one by the Board of Supreme Court Prosecutors; (iii) one by the members of Peru's Bar Associations; (iv) two by other professional associations; (v) one by the presidents of Peru's public universities; and (vi) one by the presidents of Peru's private universities.

---

<sup>1</sup> This chapter was drafted with the support of Estudio Eche copar



## The Practice of Law

### Education

In order for a student to become a lawyer, he/she must complete an undergraduate university degree, which normally takes three to six years depending on the university. Thereafter, the student must also obtain a legal degree by completing certain additional requirements established by the university (thesis, degree examination, among others).

Peruvian law does not require that students perform a minimum number of pro bono hours in order to obtain the lawyer degree.

### Legal Regulation of Lawyers

Decree No. 25873 (*Decreto No. 25873*) requires that every practicing attorney be affiliated with a Bar Association<sup>2</sup>. There are 31 national Bar Associations<sup>3</sup> geographically distributed, which, among other functions, oversee attorneys' professional conduct. To join a Bar Association, an attorney must hold a law degree from one of the universities in Peru. Attorneys holding law degrees from foreign universities may be admitted to practice, if their degree is evaluated and considered by the authorities to be the equivalent of a Peruvian degree.

### Demographics

As of 2014, there were 130,000 Bar affiliated lawyers (on which see below). That equates to roughly one lawyer for every 234 habitants.<sup>4</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The obligation to provide legal aid is stipulated in the Constitution:

*“Article 139. The Justice System has the following principles and rights: (...) 14. (...) Every person (...) has the right to communicate personally with a defender of his choice and to be advised by the latter since the moment that is summoned or arrested by the authority. (...) 16. Free administration of justice (court fees) and free defense for low-income people and for everyone in cases stipulated by legislation.”*

Furthermore, the 1991 Judicial Branch Organic Act (applicable for all types of legal procedures) provides that legal practice shall serve a social role in favor of justice and law and that every person has the right to be defended by a lawyer of their choice (Article 284).

For criminal proceedings, the 2004 Code of Criminal Proceedings provides that “Every person has the inviolable and unrestricted right to be informed of his rights, to be communicated immediately and in detail the complaint against him, and to be assisted by counsel of their choice or, where appropriate, by a state-sponsored / legal aid lawyer, since he is summoned or arrested by the authorities (...)”.

For civil proceedings, the 1993 Code of Civil Proceedings promotes legal aid (*Auxilio Judicial*) providing “Judicial assistance will be provided to individuals in order to cover procedural expenses for their subsistence and the subsistence of their dependents in danger” (Article 179).

---

<sup>2</sup> A Bar Association affiliation does not mean that the attorney in question may only exercise its profession within such Bar Association's jurisdiction. Once affiliated to a Bar Association, a lawyer can practice law in any part of the Peruvian territory.

<sup>3</sup> See <http://diarioelcallao.org/de1902.html> (last visited on September 4, 2015).

<sup>4</sup> See <http://laley.pe/not/1215/los-abogados-en-el-peru/> (last visited on September 4, 2015).



## State-Subsidized Legal Aid

State-sponsored legal aid is available to indigent individuals for the defense of criminal and some civil and family law matters<sup>5</sup> under the 2009 Public Defender Service Act. This service is provided by the Justice Department (*Ministerio de Justicia*) and covers individuals who either (i) lack sufficient financial resources to hire a private defender, or (ii) are unemployed or have a salary below the minimum vital remuneration (S/.750, equivalent to approximately US\$230) (Article 15).

In civil matters<sup>6</sup>, under the 1993 Code of Civil Proceedings, beneficiaries of free legal services are not required to pay court fees (Article 182) and are entitled to a free defense provided by a lawyer of a Bar Association (Article 183). This legal aid is granted by the judge in charge of the applicable trial, and such assistance must be requested on a special form approved by the Administrative Government of the Judiciary Branch (Article 180).

The Justice Department has also recently launched a program to provide legal advice to the public in respect of labor matters.<sup>7</sup>

## Mandatory assignments to Legal Aid Matters

According to Article 288.12 of the 1991 Judicial Branch Organic Act, all lawyers are legally obliged to assume at least one defense annually, without remuneration. This legal aid requirement is overseen and administered by the various Bar Associations. However, in reality, this obligation is not being enforced.

## Unmet Needs and Access Analysis

As noted above, the legal aid scheme only provides aid in respect of criminal matters and limited civil (mainly family matters) and labor matters, and only to indigent persons. State funding for legal services is criticized as insufficient to meet the needs of those eligible for legal aid.<sup>8</sup>

## Alternative Dispute Resolution

Mediation, Arbitration, Etc.

In addition to negotiation (a dispute resolution mechanism carried out directly between the parties) Peruvian Law recognizes the following alternative dispute resolution mechanisms: (i) mediation (the mediator is not compelled to propose a solution to the parties); (ii) conciliation (the conciliator is generally obliged to propose a solution to the parties); and (iii) arbitration (the arbitrator's decision is binding and has practically the same effects as a judge's sentence).<sup>9</sup> Legal aid is not available for such processes.

---

<sup>5</sup> According to Article 9 of the Act's bylaw, such family matters are restricted to: (i) alimony claim (including claim for its raising); (ii) conventional separation and ulterior divorce; (iii) registry records' rectification; (iv) intestacy; (v) death inscription; (vi) extramarital filiation in favour of an underage; (vii) custody; (viii) family council; (ix) interdiction; (x) familiar violence, only aiding the affected part; and, (xi) de facto union. The other civil matters are limited to eviction.

<sup>6</sup> Those civil matters include family (non patrimonial civil matters) and other patrimonial civil matters.

<sup>7</sup> See <http://www.minjus.gob.pe/defensapublica/> (last visited on September 4, 2015).

<sup>8</sup> See <http://www.elpueblo.com.pe/noticia/opinion/la-defensa-publica-en-el-peru> (last visited on September 4, 2015) and <http://archivo.larepublica.pe/22-01-2015/faltan-defensores-publicos-en-la-fiscalia-para-atender-a-victimas-de-abuso-sexual> (last visited on September 4, 2015).

<sup>9</sup> See <http://blog.pucp.edu.pe/blog/derysoc/2008/08/18/los-medios-alternativos-de-solucion-de-conflictos/> (last visited on September 4, 2015).



## Ombudsman

Under the Constitution, an Ombudsman has also been established as a constitutionally autonomous entity to defend fundamental rights and supervise with compliance of duties of the Government's administration in Peru. The Ombudsman deals with all complaints, consultations and requests from Peruvian citizens that have seen their rights violated<sup>10</sup>. However, it does not impose sanctions or resolutions and does not replace the functions of the prosecutor or the judge.<sup>11</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

The Pro Bono Declaration for the Americas (the "**Americas Pro Bono Declaration**"), spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched in January 2008 by a committee of leading practitioners in Latin America and the United States. The Americas Pro Bono Declaration calls for each signatory to promote an average of at least 20 hours of annual pro bono work per practicing attorney.

### Mandated to do or report on Pro Bono Matters?

Apart from the obligation established in Article 288.12 of the 1991 Judicial Branch Organic Act (as explained above), under Peruvian law, there is no enforceable rule for private attorneys to do, or report on, pro bono matters.

### Law Firm Pro Bono Programs

Those law firms that are signatories to the Americas Pro Bono Declaration have established pro bono programs of their own. In addition, in 2013, 17 leading law firms joined to launch Alianza Pro Bono,<sup>12</sup> a non-profit organization created with the purpose of institutionalizing pro bono culture in Peru. Since its creation, Alianza Pro Bono has provided legal assistance to poor and vulnerable individuals and to the organizations that assist them. All member firms are signatories of the Americas Pro Bono Declaration.

Alianza Pro Bono was established as a civil association (*asociación civil*) under Peruvian law. It is governed by an assembly comprised of its 17 members, and a seven-member board of directors who are appointed for periods of three years. Each member firm is represented by one partner and one associate, the latter acting as pro bono coordinator for each such firm.

---

<sup>10</sup> The Defender's actions during an investigation include the power to request information from the authorities on the issues under consideration and access to official documents (including judicial) as well as to carry out measures of inspections and everything that contributes to the collection of evidence or proof that can clarify the violation of rights or failure to official duties.

Therefore, the Constitution imposes on the Government the duty to cooperate with the Ombudsman. The task of the Ombudsman's defence is performed in partnership with citizens. Because of this, in some cases, it is the citizens themselves who accompany officials in their proceedings.

In the following link you will find a statistical table with the number of cases handled until July 2015.  
<http://www.defensoria.gob.pe/Downloads/estadisticas/cuadro-jul-2015.pdf> (last visited on September 4, 2015).

Another pie chart can be found in the following website: [http://www.defensoria.gob.pe/casos.php#casos\\_anuales](http://www.defensoria.gob.pe/casos.php#casos_anuales) (last visited on September 4, 2015).

As can be noticed, the greater amount of complaints admitted to consideration.

<sup>11</sup> See <http://www.defensoria.gob.pe/defensoria.php> (last visited on September 4, 2015).

<sup>12</sup> See <http://www.alianzaprobono.pe/quienes-somos/> (last visited on September 4, 2015).



## Bar Association Pro Bono Programs

Article 296 of the 1991 Judicial Branch Organic Act (which must be read jointly with article 288.12 explained above) establishes that Bar Associations must designate a lawyer to handle cases in favor of persons with low resources without charging a fee.

## University Legal Clinics and Law Students

Law students are not required by law to undertake pro bono work nor are they typically obliged to do so by their universities.

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

Pro bono work has faced some important obstacles in Peru, including:

Article 32 of the Income Tax Act states that a law firm must pay income tax on any legal services that it provides for free, based on an imputed “market value” for such services. However, that obstacle can be overcome by rendering the relevant services through a non-profit organization and obtaining a Certificate of Exemption From Income Tax granted by the Peruvian Tax Authority.

Many lawyers at law firms can be reluctant to do pro bono work because it diverts efforts from their achieving the billable targets set for them by their firm. This obstacle can be addressed if law firms considered pro bono work as “billable” for the purposes of their individual lawyer’s goals.

### Laws and Regulations Impacting Pro Bono

According to Peruvian law, the loser (in a civil trial) shall pay the expenses of the trial and the winning party lawyers’ fees.

### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

There are genuine concerns with respect to the formal legal system, such as corruption, judicial efficiency, a lack of public trust in the judiciary, efficacy of elected versus appointed judges, and the professionalism of judges and some lawyers. These concerns lead individuals to avoid the formal legal system and seek informal dispute resolution.

## Pro Bono Resources

### Law Firms

Many law firms, including Ehecopar, have pro bono programs that provide free legal assistance to low income individuals and NGOs in need of legal assistance with regard to matters that can have a societal impact. Website: <http://www.ehecopar.com.pe/>

### TrustLaw Connect

TrustLaw is the Thomson Reuters Foundation’s global pro bono legal program. Even though it is not designed to do pro bono work itself, TrustLaw connects the best law firms and corporate legal teams around the world with high-impact NGOs and social enterprises working to create social and environmental change. Website: <http://www.trust.org/trustlaw/>

### Alianza Pro Bono

See outline above. For more information please visit their website: <http://www.alianzaprobono.pe/>

## CONCLUSION

Pro bono work has taken a big step forward thanks to initiatives like Alianza Pro Bono, and participation by lawyers in pro bono in Peru continues to increase slowly but surely. Lawyers are becoming



increasingly conscious of the need to provide pro bono services in a society where there is a high percentage of individuals who do not have access to justice. In recent years, pro bono practices have improved and are more widely understood; law students are choosing where to work based upon the pro bono work undertaken and, in universities, more seminars about pro bono are offered. Additionally, significant Peruvian law firms and universities have joined the pro bono movement, providing pro bono services alongside foundations and other NGOs.

September 2015

Pro Bono Practices and Opportunities in Peru

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



# Pro Bono Practices and Opportunities in the Philippines<sup>1</sup>

## INTRODUCTION

Due to widespread poverty and frequent human rights violations, the Philippines presents numerous opportunities for lawyers to engage in pro bono work.

## OVERVIEW OF THE LEGAL SYSTEM

### Constitution and Governing Laws

The Philippine legal system is unique because it combines civil law, common law, Muslim law, and indigenous law.<sup>2</sup> The 1987 Philippine Constitution (the “*Constitution*”) provides the basis for the country’s law and was established after a period of martial law, which was declared by President Ferdinand E. Marcos in 1972 and lasted until 1986.<sup>3</sup>

### The Courts

#### Types and levels of courts

The Constitution delineates the powers granted to the Philippine Supreme Court, and lower courts (the Court of Appeals, regional trial courts, and special courts), which together comprise the Philippine court system.<sup>4</sup> The Philippine Supreme Court is unique in that it has rule-making power in the protection and enforcement of constitutional rights, court proceedings, practice of law and legal assistance to the underprivileged under Article VIII, Section 5(5) of the Constitution.<sup>5</sup>

The two special courts are the Court of Tax Appeals and the “Sandiganbayan.”<sup>6</sup> The Court of Tax Appeals serves as an appellate court to review tax cases and has exclusive jurisdiction to review by appeal decisions made by the Commissioner of Internal Revenue, regional trial courts in local tax cases, and the Secretary of Agriculture, among others.<sup>7</sup> It also has jurisdiction over related criminal offences in certain situations.<sup>8</sup> The Sandiganbayan (the People’s Advocate) is a special appellate collegial anti-corruption court created to maintain integrity and honesty in government.<sup>9</sup> The regional trial courts are second-level courts and are divided into 13 judicial regions. Certain branches of the regional trial courts

---

<sup>1</sup> This chapter was drafted with the support of Picazo Buyco Tan Fider & Santos

<sup>2</sup> Trade Chakra, Legal System in Philippines, <http://www.tradechakra.com/economy/philippines/legal-system-in-philippines-235.php> (last visited on September 4, 2015).

<sup>3</sup> Milagros Santos Ong, Update: Philippine Legal Research, § 3 (2015), available at <http://www.nyulawglobal.org/globalex/philippines1.htm> (last visited on September 4, 2015).

<sup>4</sup> *Ibid* at § 3.3.

<sup>5</sup> Renato Bautista Jr., The Philippine Legal System (March 31, 2010), available at <http://suite101.com/article/the-philippine-legal-system-a212057> (last visited on September 4, 2015).

<sup>6</sup> The Lawphil Project, Philippine Court System, <http://www.lawphil.net/courts/courts.html> (last visited on September 4, 2015).

<sup>7</sup> Santos Ong, n2 at § 3.3.

<sup>8</sup> *Ibid*.

<sup>9</sup> Santos Ong, n2 at § 3.3.



handle different types of cases exclusively.<sup>10</sup> Regional trial courts have jurisdiction over a variety of civil matters depending on the amount of damages at issue.<sup>11</sup>

There are also first-level courts in each city and municipality, namely the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts.<sup>12</sup> In 2008, these courts were granted jurisdiction to hear small claims cases. There are also Shari'a Courts, which are special courts created by the Code of Muslim Personal Laws.<sup>13</sup>

The Philippines also has a system known as the "Katarungang Pambarangay" or "Barangay Justice System."<sup>14</sup> This operates at the level of the barangay, which is a local government unit (similar to a town or village) and is based on traditions used to mediate local disputes.<sup>15</sup> It is run by appointed government officials, but has limited jurisdiction.<sup>16</sup>

### Appointed judges

All members of the judiciary in the Philippines are appointed by the President from a list of nominees submitted by the Judicial and Bar Council (the "JBC").<sup>17</sup> The JBC is supervised by the Supreme Court and serves the primary purpose of screening potential appointees to the judiciary.<sup>18</sup> Alongside the Chief Justice (the *ex-officio* Chairman), the Secretary of Justice and representatives of Congress, who serve as *ex-officio* members, the JBC also comprises a representative of the Integrated Bar, a professor of law, a retired member of the Supreme Court and a representative of the private sector.<sup>19</sup>

All applicants for positions within the judiciary must complete training at the Philippines Judicial Academy.<sup>20</sup> Appointments of members of the Supreme Court are also made by the President from a list of nominees provided by the JBC, and must be made within 90 days of a position becoming vacant.<sup>21</sup> The Supreme Court is composed of a Chief Justice and 14 Associate Justices who serve until the age of 70.<sup>22</sup>

---

<sup>10</sup> Ibid. The types of cases include criminal, juvenile, domestic relations, agrarian and urban land reform.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Stephen Golub, Non-state Justice Systems in Bangladesh and the Philippines: Paper Prepared for the United Kingdom Department for International Development, p.12 (2003), available at <http://www.gsdr.org/docs/open/DS34.pdf> (last visited on September 4, 2015). See also Republic Act No. 7160, the Local Government Code of 1991, Chapter 7, Title One, Book III.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid at p.12-13. For example, it can only hear disputes arising between people in the same or neighboring barangays, and cannot hear criminal cases where the penalty exceeds certain limitations.

<sup>17</sup> Article VIII, Section 8 of the Constitution; Santos Ong, n2, at § 3.3.

<sup>18</sup> Ibid.

<sup>19</sup> Santos Ong, n2, at § 3.3. See also the 1987 Philippine Constitution, Article VIII, Section 9 available at (<http://www.lawphil.net/consti/cons1987.html>) (last visited on September 4, 2015).

<sup>20</sup> The PHILJA (created by the Supreme Court on March 12, 1996) was established by Administrative Order No. 35-96, and institutionalized under the Republic Act No. 8557. The Philippine government website, The Judicial Branch, available at <http://www.gov.ph/about/gov/judiciary/> (last visited on September 4, 2015). See also The 1987 Philippine Constitution, Article VIII, Section 8 available at (<http://www.lawphil.net/consti/cons1987.html>) (last visited on September 4, 2015).

<sup>21</sup> Santos Ong, n2, at § 3.3. See also The 1987 Philippine Constitution, Article VIII, Section 8 available at (<http://www.lawphil.net/consti/cons1987.html>) (last visited on September 4, 2015).

<sup>22</sup> Ibid. See also the 1987 Philippine Constitution, Article VIII, Sections 4 and 11, available at (<http://www.lawphil.net/consti/cons1987.html>) (last visited on September 4, 2015).



## The Practice of Law

### Education

Rule 138, sections 5 and 6 of the Rules of Court contain the academic requirements which candidates must fulfill in order to be allowed to take the annual Bar examination.<sup>23</sup> Section 5 (as amended by Bar Matter No. 1153, March 9, 2010) provides that the candidate must have studied law for four years and successfully completed all prescribed courses (e.g. civil law, commercial law, criminal law, legal ethics) for the degree of Bachelor of Laws or its equivalent, in a law school or university, officially recognized by the Philippine Government or by the proper authority in the foreign jurisdiction where the degree has been granted.<sup>24</sup>

Section six states that the pre-law requirement, is a four-year high school course and a Bachelor's degree in arts or sciences, with a major, field or concentration (non-mandatory) in political science, logic, English, Spanish, history or economics.<sup>25</sup>

### Licensure

In the Philippines, there is no distinction between solicitors and barristers as all candidates who wish to practise law must take the Bar examinations to be admitted. After fulfilling the academic requirements successfully, the candidate can file an application to take the Bar examinations, provided he or she is "a citizen and resident of the Philippines, at least 21 years of age and of good moral character".<sup>26</sup>

After passing the Bar examinations, the successful candidate is entitled to take the oath of office, receive his or her certificate of membership to the Philippine Bar and finally, sign the roll of attorneys at the Supreme Court.<sup>27</sup> Only then does the candidate officially become a lawyer and can use the title of "Attorney". Once admitted, the lawyer must remain in good standing by maintaining membership in the Integrated Bar of Philippines (the "IBP") and by complying with the requirements on Mandatory Continuing Legal Education ("MCLE").<sup>28</sup>

Foreign lawyers cannot engage in the practice of law in the Philippines and therefore must be represented by a member of the IBP in all matters connected with such practice.<sup>29</sup>

### Demographics

Aproximately 50,000 attorneys have qualified for and passed the Bar examination and taken the attorney's oath,<sup>30</sup> which equates to five attorneys per every 10,000 people in the Philippines.<sup>31</sup>

---

<sup>23</sup> Santos Ong, n2 at § 6.

<sup>24</sup> Ibid. See also Rules of Court, Rule 138, Section 5 (as amended by Bar Matter No. 1153, March 9, 2010).

<sup>25</sup> Ibid at Section 6.

<sup>26</sup> Rules of Court, Rule 138, Section 5 available at ([http://www.lawphil.net/courts/rules/rc\\_138\\_bar.html](http://www.lawphil.net/courts/rules/rc_138_bar.html)) (last visited on September 4, 2015).

<sup>27</sup> International Bar Association, n29. See also Rules of Court, Rule 138, Sections 17 to 19 available at ([http://www.lawphil.net/courts/rules/rc\\_138\\_bar.html](http://www.lawphil.net/courts/rules/rc_138_bar.html)) (last visited on September 4, 2015).

<sup>28</sup> Ibid. See also Bar Matter No. 850 (August 22, 2000).

<sup>29</sup> Ibid. See also Rules of Court, Rule 138, Section 2 available at ([http://www.lawphil.net/courts/rules/rc\\_138\\_bar.html](http://www.lawphil.net/courts/rules/rc_138_bar.html)) (last visited on September 4, 2015) and the 1987 Philippine Constitution, Article XII, Section 14 available at (<http://www.lawphil.net/consti/cons1987.html>) (last visited on September 4, 2015).

<sup>30</sup> IBP History, <http://ibp.ph/history.html> (last visited on September 4, 2015).

<sup>31</sup> Based on a population of 92,337,852 as of May 1, 2010 (<http://www.nso-ncr.ph/>) (last visited on September 4, 2015).



## Legal Regulation of Lawyers

The practice of law in the Philippines is primarily regulated by the IBP. The IBP is a mandatory Bar Association created by the Philippine Supreme Court in the 1970s.<sup>32</sup> All Philippine lawyers are required to join the IBP and cannot practise law in the Philippines without doing so.<sup>33</sup> The IBP's stated mission consists of three fundamental objectives: (1) to elevate the standards of the legal profession; (2) to improve the administration of justice; and (3) to enable the Bar to discharge its public responsibility more effectively.<sup>34</sup> Generally, lawyers in the Philippines are classified by the following fields of law: civil law, commercial law, labor law, land law, taxation law, criminal law, political law, and international law.<sup>35</sup>

While paralegals are not recognized as legal professionals under Philippine law, they do play an increasingly significant role in addressing immediate legal issues and disputes involving community members' rights.<sup>36</sup> Community based paralegals are trained in the relevant laws for a particular specialization, thereby enabling them to relay that information to community members in need.<sup>37</sup> Paralegals can also provide legal literacy education, refer and assist community members in accessing government and other legal services, and mobilize community support around local issues.<sup>38</sup> Finally, paralegals may appear in some municipal courts on behalf of clients if there are no available lawyers and before quasi-judicial bodies.<sup>39</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The Philippine Bill of Rights provides that "free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty".<sup>40</sup>

### State-Subsidized Legal Aid

There are a number of governmental programs offering legal assistance to indigent persons in the Philippines. The Public Attorney's Office (the "PAO"), an agency under the Department of Justice, was established to provide free legal representation to individuals who either have no income or are below certain income thresholds in civil, criminal and administrative cases.<sup>41</sup> The PAO, in its effort to fulfil the

---

<sup>32</sup> IBP History, <http://ibp.ph/history.html> (last visited on September 4, 2015).

<sup>33</sup> Ibid.

<sup>34</sup> IBP Mission, <http://ibp.ph/mission.html> (last visited on September 4, 2015).

<sup>35</sup> IDE-JETRO, available at [http://d-arch.ide.go.jp/idedp/IAL/IAL000500\\_006.pdf](http://d-arch.ide.go.jp/idedp/IAL/IAL000500_006.pdf) (last visited on September 4, 2015).

<sup>36</sup> American Bar Association, Access to Justice Assessment for Philippines Mindanao, 32 (January 2012), available at [http://www.americanbar.org/content/dam/aba/directories/roli/philippines/philippines\\_access\\_to\\_justice\\_assessment\\_2012.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/roli/philippines/philippines_access_to_justice_assessment_2012.authcheckdam.pdf) (last visited on September 4, 2015).

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Philippine Bill of Rights, available at [The 1987 Philippine Constitution, Article III, Section 11](http://www.lawphil.net/consti/cons1987.html) (<http://www.lawphil.net/consti/cons1987.html>) (last visited on September 4, 2015).

<sup>41</sup> Carlos P. Medina, Legal Aid Services in the Philippines, available at <http://juniorstud.blogspot.co.uk/2005/01/legal-aid-services-in-phils.html> (last visited on September 4, 2015); Department of Justice, Public Attorney's Office, <http://www.chanrobles.com/legal3dojpao.html> (last visited on September 4, 2015).



constitutional mandate (set out at subparagraph a. above) provides legal representation, as well as mediation and various other legal services.<sup>42</sup> Other government based agencies provide free legal assistance in a specific area of the law, e.g. agrarian reform.<sup>43</sup> The Philippine courts may also appoint lawyers to provide free representation to indigent defendants in criminal cases.<sup>44</sup>

The IBP also provides legal assistance to indigent Filipinos.<sup>45</sup> In part to meet its third stated objective of discharging its public responsibility more effectively, the IBP's National Committee on Legal Aid runs the IBP Legal Aid Program, which includes 83 local legal aid committees throughout the Philippines.<sup>46</sup> This committee provides free legal counselling and advice to those who qualify, and also drafts necessary documentation for them.<sup>47</sup> Free legal representation before the courts, quasi-judicial or administrative bodies, is provided to individuals who qualify for representation under "the double M tests." Such tests consider the "means" of the individual and the "merits" of the case.<sup>48</sup> Applicants can go to the National Committee on Legal Aid offices in the IBP Building in Doña Julia Vargas Avenue, Ortigas Center Pasig City or go directly to any of the 83 local legal aid committees.<sup>49</sup>

#### Eligibility Criteria:

##### Immigration Status

Indigent aliens qualify for assistance under the same qualifications of financial means as native Filipinos.<sup>50</sup> However, for citizens with limited resources there is a policy of giving preference to "deserving citizens".<sup>51</sup>

##### Financial Means

To qualify for legal assistance it is necessary to prove indigence, which is defined by varying criteria depending on the residence of the person seeking aid. The PAO states that an applicant must have a net income of less than PHP 14,000 a month (US\$ 309) if a resident of Metro Manila, less than PHP 13,000 (US\$ 287) if a resident of another city, or less than PHP 12,000 (US\$ 265) if a resident of any other place.<sup>52</sup> This test is applied without consideration of land ownership which plays no part in determining the right to legal aid.<sup>53</sup>

##### Merits (likelihood of case succeeding)

A case is considered meritorious if an assessment of the law and evidence regarding the matter suggests that the legal services provided will contribute to the cause of justice.<sup>54</sup> Cases that do not fulfil this criteria are those that have no chance of a successful outcome or are brought with the sole intention of harassing

---

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Medina, n41.

<sup>46</sup> National Committee On Legal Aid, <http://www.ibp.ph/ncla.html> (last visited on September 4, 2015).

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> The 2<sup>nd</sup> Indorsement of the Undersecretary of Justice, dated March 25, 1974. Public Attorney's Office, available at <http://www.pao.gov.ph/28/Persons-Qualified-for-Legal-Assistance> (last visited on September 4, 2015).

<sup>51</sup> Public Attorney's Office, Memorandum Circular no. 02 Series of 2010 available at [http://www.pao.gov.ph/UserFiles/Public\\_Atorney's\\_Office/file/DOWNLOAD%20M\\_C\\_%20No\\_%202.pdf](http://www.pao.gov.ph/UserFiles/Public_Atorney's_Office/file/DOWNLOAD%20M_C_%20No_%202.pdf) at § 3 (last visited on September 4, 2015).

<sup>52</sup> Public Attorney's Office, n51. See also Implementing Rules and Regulations of Republic Act No. 9406, Section 24.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.



or injuring the opposing party or to cause oppression or harm.<sup>55</sup> Defendants of criminal cases are considered meritorious given the presumption of innocence until proven otherwise.<sup>56</sup>

### Cases not handled

PAO lawyers are not allowed to handle cases where they would be representing conflicting interests or the prosecution of criminal cases in court.<sup>57</sup> As a matter of policy, PAO lawyers should also refrain from undertaking the defence of persons accused of violating *Batas Pambansa* Blg. 22 (an anti-bouncing checks law) and adoption cases except when either parent of the person to be adopted is the petitioner-adopter and provided that he/she passes the indigency test.<sup>58</sup> There appear to be no equivalent restrictions for IBP lawyers providing free legal aid. Only applicants already receiving adequate legal assistance from another source will be denied IBP legal assistance.<sup>59</sup>

### Applicant Type

Only qualifying individual clients may take advantage of the free legal assistance offered by PAO.<sup>60</sup> The same appears to be true for the IBP legal assistance program.<sup>61</sup>

## Mandatory assignments to Legal Aid Matters

A court may assign a case to an attorney to provide professional legal aid to a party if upon investigation it appears that the party is destitute and unable to employ an attorney and the services of counsel are necessary to secure the ends of justice and to protect the party's rights. It is the duty of the attorney so assigned (*counsel de officio*) to render the required services, unless he or she is excused therefrom by the court for sufficient cause shown.<sup>62</sup> Furthermore, a lawyer cannot decline, except for serious and sufficient cause, an appointment as *counsel de officio* or a request from the IBP or any of its chapters to provide free legal aid.

Subject to availability of funds, the court may, in its discretion, order an attorney employed as *counsel de officio* to be compensated in such sum as the court may fix in accordance with the Rules of Court. Whenever such compensation is allowed, it shall not be less than PHP 30 US\$ 0.66 in any case, nor more than the following amounts: (1) PHP 50 (US\$ 1.11) in light felonies; (2) PHP 100 (US\$ 2.21) in less grave felonies; (3) PHP 200 (US\$ 4.42) in grave felonies other than capital offences; and (4) PHP 500 (US\$ 8.84) in capital offences.

Furthermore, the National Committee on Legal Aid has a discretion to award a portion of the reward from successful litigation to the attorney.<sup>63</sup>

In 2014 the PAO assisted a total of 7,514,325 clients and handled 783,569 cases.<sup>64</sup>

While the IBP obligates lawyers to render services to indigent parties, they have not been successful in disseminating information about their legal aid programs to the citizens that the programs are intended to

---

<sup>55</sup> Ibid. See also Implementing Rules and Regulations of Republic Act No. 9406, Section 25.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid. See also PAO Memorandum Circular No. 18, Series of 2002, Article II, section 7.

<sup>59</sup> IBP Guidelines on Legal Aid available at <http://www.ibp.ph/d10.html> at § 24 (last visited on September 4, 2015).

<sup>60</sup> Public Attorney's Office, How to Avail of Services of the PAO located at <http://www.pao.gov.ph/24/How-to-avail-of-services-of-the-PAO> (last visited on September 4, 2015).

<sup>61</sup> IBP Guidelines, n60.

<sup>62</sup> Rules of Court, Rule 138, Section 31 available at ([http://www.lawphil.net/courts/rules/rc\\_138\\_bar.html](http://www.lawphil.net/courts/rules/rc_138_bar.html)) (last visited on September 4, 2015).

<sup>63</sup> IBP Guidelines, n60.

<sup>64</sup> See <http://www.pao.gov.ph/138/Accomplishment-Report-2014> (last visited on September 4, 2015).



serve. In particular, for the most marginalized who live in rural areas, these citizens are often unaware of the IBP's legal aid programs and believe that lawyers only concentrate their practice in city centers. While the PAO also provides legal services to the poor and citizens are more aware of them, the average caseload per public attorney lawyer numbers is in the hundreds, so the quality of service is likely to suffer.

## Unmet Needs and Access Analysis

There is a lack of information and satisfactory reporting on whether the current legal aid scheme in the Philippines meets the needs of indigent and marginalized individuals and NGOs. However, given the very low number of lawyers per capita in the Philippines and the fact that many citizens (in particular, marginalized individuals who live in rural areas) are not aware of what legal aid programs are available, it is likely that the current scheme does not sufficiently service the legal needs of the Philippine people.

## Alternative Dispute Resolution

The PAO can provide mediation and conciliation services as part of its free legal assistance.<sup>65</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Widespread poverty in the Philippines makes the provision of legal aid as well as pro bono legal services particularly important.<sup>66</sup>

#### Private Attorneys

The Constitution and the Code of Professional Responsibility for Lawyers (the “**Code**”) both reflect the principle that attorneys should provide legal representation to indigent individuals.<sup>67</sup>

The Constitution states that “free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.”<sup>68</sup> In a section titled “A Lawyer Shall Not Refuse His Services to the Needy,” the Code requires that absent serious and sufficient cause to decline representation, lawyers must accept certain pro bono cases assigned to them.<sup>69</sup> In 2009, the Supreme Court introduced a requirement that all “practising lawyers”<sup>70</sup> provide a minimum of 60 hours per year of free legal aid or pro bono services in all cases involving “marginalized and poor litigants” (the “**Rule on Mandatory Legal Aid Service**”).<sup>71</sup>

The Rule on Mandatory Legal Aid Service and its implementing rules were supposed to take effect on July 1, 2009. On June 23, 2009 the Supreme Court issued a resolution deferring its implementation until December 31, 2009, to take effect on January 1, 2010 provided its implementing rules had been

---

<sup>65</sup> See <http://www.pao.gov.ph/25/List-of-Services> (last visited on September 4, 2015).

<sup>66</sup> US Department Of State, Background Note: Philippines (February 5, 2015) available at <http://www.state.gov/r/pa/ei/bgn/2794.htm> (last visited on September 4, 2015).

<sup>67</sup> Code of Professional Responsibility, Canon 14, Rule 14.02.

<sup>68</sup> Philippine Bill of Rights, n40.

<sup>69</sup> Code of Professional Responsibility, n68.

<sup>70</sup> For exclusions to who qualifies as a “practising lawyer”, see Rule on Mandatory Legal Aid Service, Bar Matter No. 2012 dated February 10, 2009 at Section 4.

<sup>71</sup> Patrick Hume SJ, Pro Bono: Still Relevant for Access to Justice (November 2009), available at <http://www.workingnotes.ie/index.php/item/pro-bono-still-relevant-for-access-to-justice> (last visited on September 4, 2015). See also Rule on Mandatory Legal Aid Service, Bar Matter No. 2012 dated February 10, 2009 at Section 5 available at (<http://www.ibp.ph/d11.html>) (last visited on September 4, 2015).



published.<sup>72</sup> However, according to the Office of the Bar Confidant, such implementing rules have not yet been promulgated and the Rule on Mandatory Legal Aid Service has not yet been implemented.<sup>73</sup>

Under the Rule on Mandatory Legal Aid Service, continuation of practice by an attorney depends on being issued a compliance certificate by the IBP attesting to the minimum of 60 pro bono hours.<sup>74</sup>

### Non-Governmental Organizations (“NGOs”)

A variety of NGOs and private law firms, also provide free legal services to indigent individuals and disadvantaged groups, and promote certain public interest causes.<sup>75</sup> Member organizations of a coalition called the Alternative Law Groups (the “ALG”) provide free legal services to poor and marginalized groups and communities in the Philippines, and seek to enable greater access to justice for these groups. They also engage in matters relating to public issues, such as the environment, gender equality and human rights.<sup>76</sup> ALG programs are generally aimed at promoting the pursuit of the public interest, respect for human rights, and social justice. The work of the participating organizations includes impact litigation, policy reform efforts, education initiatives to inform marginalized groups about their legal rights and concerns, and an effort to create groups of paralegals in communities and organizations that can provide legal assistance from within.<sup>77</sup> Member groups of the coalition often maintain relationships with law schools to carry out these objectives.<sup>78</sup>

### University Legal Clinics and Law Students

Law students have also played a role in providing pro bono legal services. In the Philippines, law students who have completed a required amount of study and are supervised in a clinical legal education program may represent clients without compensation in civil, criminal or administrative cases.<sup>79</sup> Philippine law schools, including the Ateneo de Manila Law School in Makati City and the University of Philippines College of Law, have set up clinical programs through which their students and alumni may provide free legal assistance.<sup>80</sup> Foreign law schools have also provided such assistance.<sup>81</sup>

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

The absence of effective access to justice by the poor and marginalized presents one of the most prominent opportunities for pro bono work in the Philippines. A number of NGOs committed to

---

<sup>72</sup> Supreme Court Notice dated September 18, 2012.

<sup>73</sup> Based on an oral inquiry on July 16, 2015 with the Office of the Bar Confidant of the Supreme Court of the Philippines.

<sup>74</sup> Rule on Mandatory Legal Aid Service (n72) at Sections 5 and 7.

<sup>75</sup> Baker & McKenzie, Working in the Philippines, available at <http://www.bakermckenzie.com/careers/philippines/> (last visited on September 4, 2015); Chan Robles Law Firm, Pro Bono, available at <http://lawfirm.chanrobles.com/index.php/component/content/article/78-the-firm/89-pro-bono-services> (last visited on September 4, 2015); Medina, n41.

<sup>76</sup> Medina, n41.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Medina, n41.

<sup>80</sup> Ateneo Law School [http://law.ateneo.edu/?page\\_id=67](http://law.ateneo.edu/?page_id=67) (last visited on September 4, 2015).

<sup>81</sup> YFILE, Osgoode Students Provide Pro Bono Legal Service in the Philippines, available at <http://www.yorku.ca/yfile/archive/index.asp?Article=8607> (last visited on September 4, 2015). In 2007, students from the Osgoode Hall Law School of York University in Canada traveled to the Philippines as part of an effort to provide pro bono legal assistance to developing nations. While there, they hosted a forum addressing the legal issues regarding the Philippine’s worst oil spill.



empowering the poor and marginalized have emerged to help meet these needs.<sup>82</sup> For example, one such project aims to help farmers obtain access to justice where they have been falsely and arbitrarily accused of crimes by wealthy landowners or elite land claimants.<sup>83</sup> The project, led by a Philippine lawyer, also seeks to provide paralegal training to local women so that they may monitor court cases, gather evidence, write affidavits, and help farmers navigate the legal system.<sup>84</sup>

Some of the most urgent legal issues in the field of environmental law include large-scale mining, destruction of marine resources, and indiscriminate logging due to the increasing demand for land and natural resources.<sup>85</sup> These practices frequently occur to the detriment of the poor and marginalized, causing community displacement, increasing urban migration, usurpation of indigenous people's ancestral rights, illegal land conversion, dwindling food production and depletion of freshwater resources, militarization and other human rights abuses, air and water pollution, and other environmental disasters. In 2010, a pro bono environmental lawyer helped climate change activists take their fight against flooding to the Philippines Supreme Court.<sup>86</sup>

Gender equality issues also present pro bono opportunities. While the Philippine government has passed a number of laws addressing women's development and gender equality issues, the recognition of certain rights - particularly in the realm of reproductive health - is still unresolved and is an area for potential advocacy.<sup>87</sup>

In addition to these opportunities, extra-judicial executions have been a significant problem in the Philippines. The Philippines has experienced an unprecedented surge in extra-judicial executions since 2005,<sup>88</sup> prompting extensive investigations by the United Nations, Amnesty International and Human Rights Watch.<sup>89</sup>

Smaller organizations have also engaged in both research and service projects aimed at protecting human rights in the Philippines. For example, the Center for Constitutional Rights, based in New York, has collaborated with the GABRIELA Network, an organization that works in support of women's rights both in the US and the Philippines. The Asia Foundation, funded in part by the United States Agency for International Development, has also run numerous programs, including a project to train judges and

---

<sup>82</sup> Aurora E. Bewicke, *Asian Developments in Access to Counsel: A Comparative Study*, 10 NW. U. J. INT'L HUM. RTS. 27 (2011), available at <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1124&context=njihr> (last visited on September 4, 2015).

<sup>83</sup> *Ibid.* (referencing Rosselynn Jae de la Cruz, Legal Consultant, AKBAYAN Citizens Action Party).

<sup>84</sup> *Ibid.*

<sup>85</sup> WWF, *Environmental Problems in the Philippines* available at [http://wwf.panda.org/who\\_we\\_are/wwf\\_offices/philippines/environmental\\_problems\\_in\\_philippines/](http://wwf.panda.org/who_we_are/wwf_offices/philippines/environmental_problems_in_philippines/) (last visited on September 4, 2015).

<sup>86</sup> Purple S. Romero, *Pro Bono Lawyer Leads Landmark Court Challenge in Philippines*, TRUSTLAW, (June 29, 2010), available at <http://www.trust.org/trustlaw/news/pro-bono-lawyer-leads-landmark-court-challenge-in-philippines/> (last visited on September 4, 2015).

<sup>87</sup> International Labour Organization, *Gender Equality in the Philippines* (November 2014), available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms\\_173283.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_173283.pdf) (last visited on September 4, 2015).

<sup>88</sup> Seth Mydans, *Rights Groups Say Military Is Behind Killings in Philippines*, New York Times, August 25, 2006, available at <http://www.nytimes.com/2006/08/25/world/asia/25filip.html?pagewanted=print> (last visited on September 4, 2015) (stating that there has been an increase from 2005 to 2006); See UNHCR, *Extrajudicial killings have a corrosive effect on civil society and political discourse in the Philippines*, says UN independent expert at the end of visit (February 21, 2007), available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/7B6094F7150CDC99C125728A003B12B1?opendocument> (last visited on September 4, 2015).

<sup>89</sup> *Ibid.* Human Rights Watch has released several reports in the last several years, the most recent being in 2015. Amnesty International releases yearly reports, the most recent being in 2013.



prosecutors in an effort to develop a more accountable judiciary,<sup>90</sup> and a project to increase confidence in election results, which included creating a voter's guide and bringing in election monitors.<sup>91</sup> Additionally, Romeo Capulong, a prominent human rights lawyer and judge serving on the UN Tribunal for the Former Yugoslavia, started the nation's first public interest firm, Public Interest Law Center in the 1980s.<sup>92</sup>

### Current State of Pro Bono including Barriers and Other Considerations

As in any developing country with an intermittently unstable government, attorneys may experience some barriers to performing pro bono legal services in the Philippines.

#### Laws and Regulations Impacting Pro Bono

Article 2208 of the Civil Code of the Philippines (Republic Act. No. 386) enumerates the instances when a court may award (reasonable) attorney's fees and expenses of litigation (other than judicial costs) in favour of a prevailing party in a case. However, the Supreme Court has ruled that the award of attorney's fees is an exception rather than the general rule and attorney's fees are not to be awarded every time a party wins a suit.<sup>93</sup>

There is no statutory minimum legal fee schedule in the Philippines, however the Code of Professional Responsibility provides that a lawyer shall not charge rates lower than those customarily prescribed unless the circumstances so warrant.<sup>94</sup>

It is difficult for foreign lawyers to offer pro bono services in the Philippines, since non-Filipino lawyers are not permitted to offer advice as to Philippine law, and foreign law firms are not allowed to have offices in the Philippines. Also, very few domestic law firms have associations with large foreign firms or foreign lawyers. These restrictions have been criticized, and some have argued that the country should open itself to cross border practice, particularly in light of globalization.

In-house counsel may engage in pro bono services if this is permitted by the terms of their employment.

It is uncommon for law firms to take out professional indemnity insurance in the Philippines and consequently, in most cases pro bono services would not be covered by such insurance.

#### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

Perhaps the biggest obstacle for pro bono service is the fact that citizens are not aware of their resources and what services are available to them. According to the American Bar Association's 2012 report on the Mindanao region in the Philippines, the cost of hiring a private lawyer is estimated to range from 10,000 PHP (US\$ 232.56) to 50,000 PHP (US\$ 1,162.79). This is out of reach for most citizens who earn on average PHP 1,403 (US\$ 32.63) per month.

#### Pro Bono Resources

The following organizations may provide pro bono opportunities for lawyers to participate in:

- Sentro Ng Alternatibong Lingap Panligal: <http://www.saligan.org/> (last visited on September 4, 2015). Provides litigation support, legal literacy and alternative legal education, paralegal information, policy advocacy, research and publication, and internships for law students.
- Balay Alternative Legal Advocates for Development in Mindanaw, Inc.: <http://balaymindanaw.org> (last visited on September 4, 2015). Provides legal services to marginalized sectors and communities in Mindanao, conducts capacity building interventions on local legislation and dispute resolution, and advances legal issues of different marginalized sectors and communities.

---

<sup>90</sup> The Asia Foundation, Philippines Overview, available at <http://asiafoundation.org/country/overview/philippines> (last visited on September 4, 2015).

<sup>91</sup> Ibid.

<sup>92</sup> Public Interest Law Center, [http://palomapolo.com/unrest/public\\_interest\\_law\\_center.html](http://palomapolo.com/unrest/public_interest_law_center.html) (last visited on September 4, 2015).

<sup>93</sup> Article 2208 of the Civil Code of the Philippines (Republic Act. No. 386).

<sup>94</sup> Rule 2.04, Code of Professional Responsibility.



Legal clinics which provide pro bono services include:

- The Office of Legal Aid at the University of the Philippines, College of Law: [http://law.upd.edu.ph/index.php?option=com\\_content&view=category&id=64:what\\_is\\_office\\_of\\_legal\\_aid\\_ola&Itemid=73&layout=default](http://law.upd.edu.ph/index.php?option=com_content&view=category&id=64:what_is_office_of_legal_aid_ola&Itemid=73&layout=default) (last visited on September 4, 2015). Provides free legal assistance to indigent litigants and is actively involved in public interest cases.

## CONCLUSION

There is a great need for pro bono legal assistance in the Philippines and to educate the population on the availability of pro bono legal services. Because of the potential barriers to providing such assistance, the best opportunities may be found by reaching out to, and supporting, groups that are already well-established in the Philippines. A potentially promising area for near term investment and growth could be community paralegals and law schools, as these avenues serve as valuable resources and options for citizens in the Philippines where access to lawyers may be unavailable for a variety of reasons.

September 2015

Pro Bono Practices and Opportunities in the Philippines

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Poland<sup>1</sup>

### INTRODUCTION

The pro bono culture in Poland emerged in the early twentieth century and developed throughout World War II. However, due to the political climate, access to pro bono services became limited after the war. It wasn't until 1989, when, as a result of the involvement of non-governmental organizations (“NGOs”), multinational and domestic law firms as well as professional legal associations and successful governmental initiatives, an active pro bono culture re-emerged and now continues to grow. As a member of the European Union (“EU”), Poland also became bound by EU's legal requirements and extensive jurisprudence on the right of access to justice.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

Poland is a republic with a democratic form of government. The legislative power is vested in the Parliament, which consists of the lower house (*Sejm*) and the upper house (*Senat*). The executive power is vested in the President (*Prezydent Rzeczypospolitej Polskiej*) and the Council of Ministers (*Rada Ministrów*). The judicial power is vested in the courts and tribunals.<sup>2</sup> The sources of law are the Constitution, statutes (*ustawa*), ratified international agreements and regulations (*rozporządzenie*), with the Constitution considered the supreme law. The Constitution, enacted in 1997, contains provisions governing the Polish legal system, institutional organization, the judicial system and local authorities.<sup>3</sup> It also covers political freedoms and rights. Another source of legal rights and obligations stems from EU regulations.

#### The Courts

##### Levels, Relevant Types, and Locations

The judiciary system is composed of courts (Supreme Court, common, administrative and military courts) and tribunals (Constitutional and State). The Supreme Court (*Sąd Najwyższy*) is the highest court. It exercises judicial supervision over the decisions of all other courts, ensuring consistency in the interpretation of laws and judicial practice. The system of common courts includes the appellate (*sądy apelacyjne*), provincial (*sądy okręgowe*) and district courts (*sądy rejonowe*). These courts decide, among other things, cases concerning criminal, civil, family and juvenile law, commercial law, labor and social security laws. The system of administrative courts includes the High Administrative Court (*Naczelny Sąd Administracyjny*) and regional administrative courts (*wojewódzkie sądy administracyjne*).<sup>4</sup>

The Constitutional Tribunal (*Trybunał Konstytucyjny*) is a separate body from the court system and was established to decide the conformity of issued laws with the Constitution, disputes concerning competence between the organs of central administration, the conformity of the political parties' tasks

---

<sup>1</sup> This chapter was drafted with the support of Centrum Pro Bono

<sup>2</sup> European Justice Portal, Law, Poland , at: [https://e-justice.europa.eu/content\\_member\\_state\\_law-6-pl-en.do?member=1](https://e-justice.europa.eu/content_member_state_law-6-pl-en.do?member=1) (last visited on September 4, 2015).

<sup>3</sup> European Justice Portal, Law, Poland , at: [https://e-justice.europa.eu/content\\_member\\_state\\_law-6-pl-en.do?member=1](https://e-justice.europa.eu/content_member_state_law-6-pl-en.do?member=1) (last visited on September 4, 2015) and The Polish Legal System, at: [http://eur-lex.europa.eu/n-lex/info/info\\_pl/index\\_en.htm](http://eur-lex.europa.eu/n-lex/info/info_pl/index_en.htm) (last visited on September 4, 2015).

<sup>4</sup> European Justice Portal, Judicial systems in Member States, Poland, at [https://e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states-16-pl-en.do?member=1](https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-pl-en.do?member=1) (last visited on September 4, 2015).



with the Constitution and to hear constitutional complaints filed by citizens.<sup>5</sup> The Tribunal of State (*Trybunał Stanu*) adjudicates cases in which high ranking government officials are charged with violations of the Constitution or other legislative Acts.<sup>6</sup>

### Appointed vs. Elected Judges

Professional judges and lay judges preside over the Polish legal system. Professional judges (*sędziowie zawodowi*) are appointed by the President based on a motion made by the National Judiciary Council (*Krajowa Rada Sądownictwa*). The powers of the National Judiciary Council guarantee judicial independence in Poland. The independence of judges is further guaranteed by their judicial immunity and their disciplinary subordination to their professional organizations, which include the appellate courts and the Supreme Court.

Lay judges (*lawnicy*) in provincial and district courts are chosen by the councils of municipalities within the jurisdiction of these courts. They sit alongside professional judges to ensure citizen participation in the judicial system, but they receive no formal legal training. Lay judges are also independent in exercising their powers. Provincial court lay judges are designated by the presidents of the relevant appellate courts to consider employment and social security law cases in such courts. In general, lay judges may neither preside over a trial or session, nor perform the functions of a professional judge outside of trial.<sup>7</sup>

## The Practice of Law

### Education

After completing a five-year law program, a university graduate becomes a jurist (*prawnik*). In order to be admitted to practice, a three-year bar apprenticeship (*aplikacja*) is required followed by the bar exam. The apprenticeship for advocates and legal advisers consists of theoretical and practical courses, with greater focus on the latter.<sup>8</sup> The National School of Judiciary and Public Prosecution (*Krajowa Szkoła Sądownictwa i Prokuratury*) is responsible for the initial and continuing education of judges and prosecutors. On-site training for judges lasts five years, followed by a clerkship. On-site training for prosecutors lasts three years.<sup>9</sup> Pro bono service is not a requirement of the legal education system.

### Licensure

Licensed legal professions include: judges (*sędzia*), prosecutors (*prokurator*), advocates (*adwokat*), legal advisers (*radca prawny*), notaries (*notariusz*) and judicial officers (*komornik*). The legal professionals licensed to provide legal advice consist of advocates (*adwokat*), who provide a range of legal services, and legal advisers (*radca prawny*), who practice predominantly in the business and administrative sectors.<sup>10</sup> Prior to July 1, 2015, legal advisers were restricted from providing representation for criminal offenses beyond misdemeanors.

---

<sup>5</sup> Piotr Rakowski and Robert Rybicki, An Overview of Polish Law, available at <http://www.nyulawglobal.org/globalex/Poland1.htm> (last visited on September 4, 2015).

<sup>6</sup> European Justice Portal, Judicial systems in Member States, Poland, at: [https://e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states-16-pl-en.do?member=1](https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-pl-en.do?member=1) (last visited on September 4, 2015).

<sup>7</sup> European Justice Portal, Legal professions, Poland, at: [https://e-justice.europa.eu/content\\_legal\\_professions-29-pl-en.do?member=1](https://e-justice.europa.eu/content_legal_professions-29-pl-en.do?member=1) (last visited on September 4, 2015).

<sup>8</sup> Lawyers training systems in the EU (Poland) at <https://e-justice.europa.eu/> (last visited on September 4, 2015).

<sup>9</sup> National School of Judiciary and Public Prosecution, at <https://www.kssip.gov.pl/angielski> (last visited on September 4, 2015).

<sup>10</sup> European Justice Portal, Legal professions, Poland, at: [https://e-justice.europa.eu/content\\_legal\\_professions-29-pl-en.do?member=1](https://e-justice.europa.eu/content_legal_professions-29-pl-en.do?member=1) (last visited on September 4, 2015) and Naczelna Rada Adwokacka, at: <http://www.nra.pl/> (last visited on September 4, 2015) and Krajowa Izba Radców Prawnych, at: <http://kirp.pl/> (last visited on September 4, 2015).



## Demographics

As of January 1, 2015 there were 36,582 advocates and legal advisers in Poland.<sup>11</sup> According to the Council of Bars and Law Societies of Europe, the number of lawyers per capita increased significantly over the past ten years, from one lawyer for every 1,253 people in 2005 to one lawyer for every 716 people in 2015.<sup>12</sup> Due to a decentralized legal aid system, there is no data available on the number of legal aid lawyers per capita. However, the Open Society Justice Initiative, in a 2015 report, published the amounts spent on legal aid in 2013, reporting approximately €23 million spent, roughly €0.59 per capita or 0.01% of GDP.<sup>13</sup>

## Legal Regulation of Lawyers

The May 26, 1982 Law on Attorneys (*Prawo o Adwokaturze*) regulates the organization and responsibilities of advocates while the July 6, 1982 Law on Legal Advisers (*Ustawa o Radcach Prawnych*) regulates the organization and responsibilities of legal advisers.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

There is no unified system of legal aid in Poland and no specific legal aid legislation to address its provision in a systemic and organized manner. The Polish government has expressed its commitment to significant legal aid reform, including the development of a model whereby the government could fund local municipal authorities in order to provide and manage legal aid.<sup>14</sup>

#### In Civil Proceedings

Neither the Constitution nor the Code of Civil Procedure provides for mandatory representation or legal aid in civil cases. However, a party who has been exempted from court fees on his own motion, or granted a statutory exemption in whole or in part or a party not exempt from court fees, may apply for the appointment of an *ex officio* attorney.<sup>15</sup>

#### In Criminal Proceedings

A defendant in a criminal proceeding has a constitutional right to defense in all stages of the proceeding; the defendant may hire counsel of his choice or have one appointed *ex officio*, according to principles specified by law.<sup>16</sup> These principles are echoed by the Code of Criminal Procedure, which provides that every accused person has the right to a fair hearing, including the right to counsel of his choice.<sup>17</sup>

---

<sup>11</sup> CCBE Lawyers' Statistics 2015, available at: [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/2015\\_Table\\_of\\_Lawyer1\\_1433140834.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2015_Table_of_Lawyer1_1433140834.pdf) (last visited on September 4, 2015).

<sup>12</sup> Number of lawyers on the rise, Polskie Radio, available at: <http://www.thenews.pl/1/9/Artykul/209592,Number-of-lawyers-on-the-rise> (last visited on September 4, 2015).

<sup>13</sup> Legal Aid in: Poland, available at: <https://www.opensocietyfoundations.org/fact-sheets/legal-aid-poland> (last visited on September 4, 2015).

<sup>14</sup> Legal Aid in: Poland, available at: <https://www.opensocietyfoundations.org/fact-sheets/legal-aid-poland> (last visited on September 4, 2015).

<sup>15</sup> Article 117, Section 1 of the Code of Civil Procedure of the Republic of Poland.

<sup>16</sup> Article 42, Point 2, of the Constitution of the Republic of Poland.

<sup>17</sup> Article 6 and Article 83 of the Code of Criminal Procedure of the Republic of Poland.



## State-Subsidized Legal Aid

### Eligibility Criteria

An applicant for exemption from court costs and/or appointment of *ex officio* attorney is obliged to submit detailed information, supported by evidence, regarding his or her familial situation, property, and income, and, as in the case of criminal legal aid, must demonstrate that he is unable to pay attorney's fees without impeding his ability to support himself and his family.<sup>18</sup> The court determines whether the presence of counsel or a legal adviser is necessary in such a case.<sup>19</sup> Discretionary exemptions are granted based on the legal and factual complexity of the case, as assessed by the court, and on the vulnerability of the applicant. Once the court determines eligibility, the local Council of the Bar (*Rada Adwokacka*) or Council of Legal Advisers (*Rada Radcow Prawnych*) appoints an *ex officio* attorney.

The eligibility criteria for legal aid in criminal cases include substantive and financial standards. Substantively, the presence of counsel is mandatory in the following instances: (1) juvenile cases; (2) cases where a defendant is deaf, blind, or mute; (3) cases involving reasonable doubt as to whether defendant's ability to recognize the gravity of the act or defendant's ability to control his or her conduct was absent or substantially limited at the time of the crime; (4) cases involving reasonable doubt as to whether defendant's mental health allows him or her to participate in the proceedings or conduct the defense in an independent and reasonable way; (5) when the court determines the necessity for counsel in light of the circumstances and (6) cases where the defendant has been accused of a serious crime.<sup>20</sup> If the defendant does not hire his own counsel, the court will appoint one for the defendant.<sup>21</sup> In addition, the court appoints an *ex officio* attorney at the request of the defendant who does not have his own counsel.<sup>22</sup>

Financially, a criminal defendant is obliged to demonstrate that he or she is unable to pay attorney's fees without impeding his ability to support himself or his family.<sup>23</sup> If approved, the costs of the *ex officio* counsel are covered by the Treasury. However, the court may reverse its decision to appoint counsel if circumstances permitting such appointment are found to be false.<sup>24</sup>

The financial eligibility criteria have been criticized for lacking clarity and being potentially arbitrary and difficult to enforce. This is especially concerning since it is within the court's prerogative to refuse legal aid without clearly stating the grounds for its decision and making appellate review difficult.<sup>25</sup>

### Mandatory Assignments to Legal Aid Matters

All practicing attorneys are required to take on *ex officio* criminal cases, which are assigned by the court from an alphabetical list. Such attorneys are compensated by the State.<sup>26</sup> There is no separate or

---

<sup>18</sup> Article 117 of the Code of Civil Procedure of the Republic of Poland.

<sup>19</sup> Article 117, Section 4, of the Code of Civil Procedure of the Republic of Poland.

<sup>20</sup> Article 79, Sections 1 and 2, and Article 80 of the Code of Criminal Procedure of the Republic of Poland.

<sup>21</sup> Article 81 of the Code of Criminal Procedure of the Republic of Poland.

<sup>22</sup> Article 80a of the Code of Criminal Procedure of the Republic of Poland.

<sup>23</sup> Article 78, Section 1, of the Code of Criminal Procedure of the Republic of Poland.

<sup>24</sup> Article 78, Section 2, of the Code of Criminal Procedure of the Republic of Poland.

<sup>25</sup> "There are no clear guidelines for defendants about what evidence to provide to the judge to demonstrate that they cannot afford a lawyer. There is no explicit duty on judges to provide detailed reasons for their decision." Legal Aid in: Poland, available at <https://www.opensocietyfoundations.org/fact-sheets/legal-aid-poland> (last visited on September 4, 2015).

<sup>26</sup> L. Bojarski, "The Role of the Nongovernmental Sector in Pursuing Reform of the Legal Aid System: The Case of Poland." This report accompanies "Making Legal Aid a Reality; A Resource Book for Policy Makers and Civil



specialized group of lawyers acting in legal aid cases. The judge appoints a lawyer from a list provided by the local bar associations, irrespective of their field of expertise or availability, meaning that lawyers who have little or no experience in criminal law can be appointed to complex criminal trials.<sup>27</sup> Legal aid fees are relatively low, with no differentiation in payments according to the time spent on a case or its complexity.

Although the codes of professional responsibility of the respective bar associations require equal treatment of all clients, regardless of whether the legal assistance is provided at no cost, there are no standards of professional conduct for legal aid cases. There is also no effective mechanism for quality control or assurance. All responsibility for disciplinary proceedings lies within professional bodies that are widely criticized for not fulfilling this task properly.<sup>28</sup>

### Unmet Needs and Access Analysis

In cases where the state is not able to provide assistance to indigent people due to organizational limitations, NGOs provide support, albeit limited. One such example is the “Strategic Litigation Program” (*Program Spraw Precedensowych*) of the Helsinki Foundation for Human Rights (the “HFHR”), which aims to join or initiate strategically important judicial and administrative proceedings of individuals involving human rights violations. Through its participation in these proceedings, the HFHR aims to achieve breakthrough judgments, and changing practice or legislation in respect of specific legal issues which raise serious concerns with regard to human rights protection.<sup>29</sup> Additionally, the legal aid team of the Federation for Women and Family Planning (*Federacja na rzecz Kobiet i Planowania Rodziny*) provides free legal advice by phone and an online forum. For many women, this is the only chance to obtain legal advice anonymously and free of charge.<sup>30</sup>

### Alternative Dispute Resolution

#### Mediation, Arbitration, Etc.

Under Polish law, mediation can be applied in civil law, commercial law, employment law, family law, minors’ matters, criminal law and judicial-administrative matters. In recent years, the Ministry of Justice has been focusing on the development and popularization of mediation and other forms of alternative dispute resolution, or ADR, and increasing the effectiveness of the justice system and its accessibility to citizens. There are also a large number of NGOs and companies that play an important role in promoting mediation and determining its internal standards. In addition, professional bodies (e.g. Bar Associations) promote mediation through institutionalized activities, including the Mediation Center by Council of the Bar (*Centrum Mediacyjne przy Naczelnej Radzie Adwokackiej*) and Commercial Law Mediation Center by Council of Legal Advisers (*Centrum Mediacji Gospodarczej przy Krajowej Izbie Radców Prawnych*).<sup>31 32</sup> In criminal matters and cases involving minors, the legal fees are covered by Treasury resources. In other

---

Society” (2009), by Public Interest Law Institute available at <http://www.pilnet.org/public-interest-law-resources/19-making-legal-aid-a-reality-a-resource-book-for-policy.html> (last visited on September 4, 2015).

<sup>27</sup> Legal Aid in: Poland, available at <https://www.opensocietyfoundations.org/fact-sheets/legal-aid-poland> (last visited on September 4, 2015).

<sup>28</sup> Legal Aid in: Poland, available at <https://www.opensocietyfoundations.org/fact-sheets/legal-aid-poland> (last visited on September 4, 2015).

<sup>29</sup> Program Spraw Precedensowych, at <http://www.hfhrpol.waw.pl/precedens/> (last visited on September 4, 2015).

<sup>30</sup> Federacja na rzecz Kobiet i Planowania Rodziny, at <http://www.federa.org.pl/kampanie-i-projekty-porozumienia/zespol-pomocy-prawnej> (last visited on September 4, 2015).

<sup>31</sup> Centrum Mediacyjne przy Naczelnej Radzie Adwokackiej, at <http://centrummediacji.nra.pl/> (last visited on September 4, 2015).

<sup>32</sup> Centrum Mediacji Gospodarczej przy Krajowej Radzie Radców Prawnych, at <http://www.cmg.kirp.pl/> (last visited on September 4, 2015).



types of cases, the cost of legal fees is subject to agreement between the mediator and the parties. The mediator may agree to conduct the mediation on a pro bono basis.<sup>33</sup>

### Ombudsman

The Polish Ombudsman (or Human Rights Defender) is the constitutional authority for legal control and protection of constitutional freedoms and rights.<sup>34</sup> In his activities, the Ombudsman is integral and independent from other state authorities, safeguarding human and civic freedoms and rights specified in the Constitution and other legal acts. The Ombudsman examines whether there has been any violation of civil right and liberties resulting from an act or omission of the governmental authority, organizations or institutions. After determining such violation, the Ombudsman requests the competent authority whose actions led to the infringement, or to a superior authority to ensure redress for the infringement, and monitors implementation of the recommended actions. The Ombudsman may also request the Constitutional Tribunal to determine the conformity of laws concerning civil right and liberties with the Constitution. Motions directed to the Ombudsman are free of charge.<sup>35</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

While all practicing attorneys are required to take on *ex officio* criminal cases, there is no legal requirement in Poland to provide pro bono services. Professional ethical rules of the bar associations do not require a minimum of pro bono hours. Private attorneys may take a case or participate in pro bono activities voluntarily through their respective bar association as described below under “Bar Association Pro Bono Programs”.

#### Law Firm Pro Bono Programs

Private law firms have been instrumental players in the creation of a pro bono culture in Poland. Initially, foreign law firms with offices in Poland provided the majority of pro bono services, bringing the practice to Poland mainly from the United States and Western Europe. More importantly, however, a culture of pro bono has started to emerge in Polish domestic law firms. The Pro bono Center (Centrum Pro Bono) publishes an annual report that highlights the activities of all private law firms in Poland that collaborate with the Pro bono Center in the pro bono sector. According to the most recent report, in 2013, law firms collaborating with the Pro bono Center provided legal advice in a wide range of cases, including matters involving non-profit organizations, people with disabilities, environmental protection, and animal rights. Lawyers were also advising on intellectual property law, privacy law, labor law, tax law, business law, internet law and public procurement.<sup>36</sup>

#### Non-Governmental Organizations (NGOs)

##### Pro bono Center

---

<sup>33</sup> European Justice Portal, Mediation in Member States, Poland, at: [https://e-justice.europa.eu/content\\_mediation\\_in\\_member\\_states-64-pl-en.do?member=1](https://e-justice.europa.eu/content_mediation_in_member_states-64-pl-en.do?member=1) (last visited on September 4, 2015) and <http://ms.gov.pl/pl/dzialalnosc/mediacja/> (last visited on September 4, 2015).

<sup>34</sup> Human Rights Defender, at: <http://www.brpo.gov.pl/en/content/about-human-rights-defender> (last visited on September 4, 2015) and Act of July 15, 1987 on the Human Rights Defender at <http://www.brpo.gov.pl/en/content/act-human-rights-defender> (last visited on September 4, 2015).

<sup>35</sup> How does the Human Rights Defender and his Office work? at <https://www.rpo.gov.pl/en/content/what-we-do> (last visited on September 4, 2015).

<sup>36</sup> 2013 Report available at <http://www.centrumprobono.pl/wp-content/uploads/2014/02/RAPORT-CPB-2013.pdf> (last visited on September 4, 2015).



The Pro bono Center serves as a clearinghouse for pro bono activities.<sup>37</sup> It is part of the Legal Clinics Foundation (described below). Its main goal is to create an institutional framework for the further development of pro bono legal assistance in Poland. The Pro bono Center has set up and coordinates a cooperative network between law firms and NGOs. Most aspects of pro bono work distribution between NGOs and private law firms are now handled by the Pro bono Center. The law firms participating in the program are assigned specific cases depending on the difficulty and area of expertise involved. There are currently 55 law firms collaborating with the Pro bono Center. Additionally, the Pro bono Center offers a series of legal educational programs for NGOs and others engaged in social work. All such educational programs are run by lawyers and experts associated with the Pro bono Center.

#### Helsinki Foundation for Human Rights

The HFHR,<sup>38</sup> based in Warsaw, is a foundation devoted to research and education in the field of human rights in Poland and abroad (primarily in the Russian Federation, Ukraine, Belarus, the Caucasus and Central Asia). As part of its wide array of initiatives, the HFHR runs several programs aimed at providing cost-free legal advice. Since 1992, through its Legal Assistance for Foreigners and Refugees Program (which includes a Migration and Refugee Law Clinic), the HFHR has assisted non-nationals and refugees in obtaining free legal assistance in Poland. Under the auspices of this program, the HFHR litigates cases on behalf of non-nationals, and also monitors the legality of the actions of the Polish government with respect to non-nationals. Lawyers are on call to interview and give advice to non-nationals and refugees. Lawyers also represent non-nationals and refugees at administrative proceedings, prepare opinions on legal act drafts, and educate the public about laws concerning non-nationals through leaflets, lectures, and seminars. The HFHR has also founded several legal programs related to litigation, legal intervention, ownership rights and wrongful convictions.<sup>39</sup>

#### Bar Association Pro Bono Programs

The National Council of the Bar and the National Council of Legal Advisers coordinate annual countrywide events for people who cannot afford to pay for legal services to receive free legal advice. The National Council of the Bar has hosted a “Day of Free Legal Advice” every year since 2006.<sup>40</sup> This initiative has become very popular and so far, thousands of people have received free legal assistance in various areas of law, including inheritance law, rights to alimonies, distribution of marital property, labor law, insurance law, real estate and traffic accidents. The 2015 edition took place on April 18, 2015 in 190 locations across the country. Over 600 attorneys provided legal advice to several thousand people.<sup>41</sup>

The “Blue Umbrella” is another free legal advice program and week-long event organized by the National Council of Legal Advisers. First held in 2009, “Blue Umbrella” is now a bi-annual event. Free legal advice is provided in certain areas, with a primary theme for each event. In 2014, participating lawyers advised over 8,500 people.<sup>42</sup> Most clients have sought assistance in matters related to inheritance, alimonies, and distribution of marital assets in cases of divorce. Persons also often inquire about issues related to labor law, insurance law, as well as real estate and traffic accidents.

---

<sup>37</sup> Centrum Pro bono, available at <http://www.centrumprobono.pl/> (last visited on September 4, 2015).

<sup>38</sup> Helsinki Foundation for Human Rights, at <http://www.hfhr.pl/en/fundacja/> (last visited on September 4, 2015).

<sup>39</sup> Helsinki Foundation for Human Rights, Legal Programs, at: <http://www.hfhr.pl/en/programy/programy-prawne/> (last visited on September 4, 2015).

<sup>40</sup> IX Dzień Bezpłatnych Porad Prawnych już 18 kwietnia, at: <http://www.adwokatura.pl/z-zycia-nra/dzien-bezpłatnych-porad-prawnych-18-kwietnia/> (last visited on September 4, 2015).

<sup>41</sup> Kolejny sukces akcji Dnia Bezpłatnych Porad Adwokackich, at <http://www.adwokatura.pl/z-zycia-nra/pro-bono/> (last visited on September 4, 2015).

<sup>42</sup> Krajowa Izba Radców Prawnych, Pro bono, Niebieski Parasol, at: <http://kirp.pl/pro-bono/niebieski-parasol/> (last visited on September 4, 2015).



In addition, the National Notary Council organizes an annual “open door” event offering free advice in cases involving various aspects of real estate or estate law.<sup>43</sup>

### University Legal Clinics and Law Students

The Legal Clinics Foundation, in its goal to establish clinics at law faculties nationwide, aims to “provide legal aid to poor members of the community” and seeks to “enlighten students on the public service aspect of the legal profession.”<sup>44</sup> While the Legal Clinics Foundation itself does not provide legal assistance, it has set up a network of legal clinics and promoted pro bono work throughout Poland. The first legal clinic was established in 1997 and was modeled on the legal clinics in the United States. Today, there are 26 legal clinics in 16 cities. The Legal Clinics Foundation’s programs and initiatives are especially promising because they aim to incorporate pro bono ethics into legal education. During the academic year of 2013/2014 the legal clinics provided legal advice in 11,181 cases.<sup>45</sup> While providing those in need with legal aid, the clinics provide the law students with educational and practical skills, preparing them to serve the public.

The Legal Clinics Foundation involves lawyers in its pro bono activities as well. In 2004, the Legal Clinics Foundation launched the “Pro bono Lawyer” competition, which has now become an annual event. The qualifications for the competition include “provision of free of charge and voluntary legal services” to charity organizations or the community, participation in programs and initiatives aiming at the development of a system of free legal advice, and achievement of goals in the area of public interest law.<sup>46</sup>

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

In the early twentieth century, members of the Polish Bar began to provide free legal advice in criminal cases and to political prisoners. During World War II, they mostly represented detainees. After the war, during the Communist era, free legal aid was provided by official organizations by members of the Polish Bar as well as by underground organizations, mostly to political prisoners or persons oppressed by state institutions.<sup>47</sup> During this period the growth of pro bono culture was hindered by the political climate. However, in the 1990s, this attitude started to change as a result of a general ideological shift from state-sponsored legal aid (as it was under Communism) to the provision of free legal assistance by civil society and private citizens.

In the past 20 years, many new pro bono programs have developed and the pro bono activities initiated earlier in the decade have expanded and diversified. NGOs have been instrumental in establishing a long-term pro bono presence in Poland. In 2007, the Legal Clinics Foundation, along with the HFHR, PILnet and the Ashoka Foundation organized a roundtable pro bono conference at the Polish Constitutional Tribunal in Warsaw, Poland. The conference contributed yet another important step to the establishment of pro bono culture in Poland. It was attended by many prominent members of the Polish legal community including judges, members of the Polish Bar Association and the National Association of

---

<sup>43</sup> Dzień Otwarty Notariatu, at <http://www.porozmawiajznotariuszem.pl/> (last visited on September 4, 2015).

<sup>44</sup> Legal Clinics Foundation, Legal Clinics Foundation available at <http://www.fupp.org.pl/en/foundation/history-mission> (last visited on September 4, 2015).

<sup>45</sup> Legal Clinics, 2013/2014 report, available at: <http://www.fupp.org.pl/kliniki-prawa/publikacje/raporty> (last visited on September 4, 2015).

<sup>46</sup> Lawyer Pro bono, Legal Clinics Foundation, available at <http://www.fupp.org.pl/en/lawyer-pro-bono/lawyer-pro-bono-contest-s> (last visited on September 4, 2015).

<sup>47</sup> Marta Janina Skrodzka (red.) „System poradnictwa prawnego i obywatelskiego w Polsce; Wdrażanie rozwiązań modelowych” (2014), available at <http://www.edukacjaprawnicza.pl/aktualnosci/a/pokaz/c/aktualnosc/art/system-poradnictwa-prawnego-i-obywatelskiego-w-polsce-wdrazanie-rozwiazan-modelowych.html> (last visited on September 4, 2015).



Legal Advisers, as well as representatives from many law firms. The highlight of the roundtable was the signing of the Pro bono Publico Declaration, a public affirmation of the commitment to the provision of legal services to those in need. In addition, a new pro bono program was introduced in Poland, the Pro bono Center.<sup>48</sup>

At the European level, Poland has also shown greater involvement. In 2009, Poland participated in the European Pro bono Forum hosted by the Public Interest Law Institute (“PILnet”). The forum, which focused on the global economic crisis and its effect on legal aid, encouraged greater commitment to pro bono service by providing advice, as well as setting up a network forum for law firms and private practitioners. At the 2011 European Pro bono Forum, the HFHR was one of the recipients of the PILnet European Pro bono Awards for its exceptional work in the public interest.<sup>49</sup> In 2012, Filip Czernicki, one of the founders of the Pro bono Center and president of the Legal Clinics Foundation since 2002 (both described above), received the PILnet’s European Award for extraordinary contribution to the development of pro bono culture.<sup>50</sup> In 2013 the Seventh European Pro bono Forum was hosted in Warsaw.

## Current State of Pro bono including Barriers and Other Considerations

### Laws and Regulations Impacting Pro Bono

Although pro bono opportunities have increased in recent years, barriers still remain. Many NGOs and advocates have lobbied for reform of the legal profession to improve accessibility and transparency, and increase legal aid activity. Recent legislation and proposals attempt to respond to these criticisms. In June 2013, a law was passed to facilitate broader access to the legal profession, thereby increasing the number of practicing attorneys available to provide greater access to legal aid.<sup>51</sup> Recently, on June 25, 2015, the lower house of the Polish Parliament approved a draft bill on free legal aid, free legal information and legal education for citizens (*Projekt ustawy o nieodpłatnej pomocy prawnej, nieodpłatnej informacji prawnej oraz edukacji prawnej społeczeństwa*). Pursuant to the draft, from January 1, 2016, more than 1,500 offices will be established throughout the country where legal professionals will provide legal assistance to people on welfare, youth under 26 years of age, seniors over 65 years of age, large families, veterans and victims of natural disasters. It is anticipated that 22 million citizens will be covered by this legal assistance system.<sup>52</sup>

Although the current draft bill emphasized that high costs are the largest barrier to legal aid access, the draft lacks clear provisions eliminating value added tax (VAT) on free legal services.<sup>53</sup> Both the National Council of the Bar and the National Council of Legal Advisers expressed major concerns regarding the unfavorable interpretation of regulations on VAT that lawyers must pay for enumerated forms of legal assistance, including pro bono aid. According to the Pro bono Center, a tax on free legal aid is now one of the most serious barriers to pro bono activity. Both the National Council of the Bar and the National Council of Legal Advisers agree. In response, the Pro bono Center began an initiative to abolish the tax

---

<sup>48</sup> The Polish Legal Clinics Foundation is going to establish Pro bono Center, Legal Clinic Foundation, available at <http://www.fupp.org.pl/en/foundation/statute/37-angielski/news-en/178-the-polish-legal-clinics-foundation-is-going-to-establish-pro-bono-center> (last visited on September 4, 2015).

<sup>49</sup> Winners Announced for PILnet’s 2011 European Pro bono Awards, November 21, 2011, available at <http://pilnet.org/events/133-winners-announced-for-pilnets-2011-european-pro-bono-awards.html> (last visited on September 4, 2015).

<sup>50</sup> “PILnet Announces 2012 European Pro bono Awards”, at: <http://www.pilnet.org/events/171-pilnet-announces-2012-european-pro-bono-awards-.html> (last visited on September 4, 2015).

<sup>51</sup> See “Ustawa o zmianie ustaw regulujących wykonywanie niektórych zawodów” (“Bill amending laws regulating certain professions”), June 13, 2013, see at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130000829> (last visited on September 4, 2015).

<sup>52</sup> See <http://ms.gov.pl/pl/dzialalnosc/darmowa-pomoc-prawna/> (last visited on September 4, 2015).

<sup>53</sup> See <http://ms.gov.pl/pl/informacje/news.6633.projekt-ustawy-o-nieodplatnej-pomocy-prawnej-i.html> (last visited on September 4, 2015).



and enlisted tax experts of the 18 largest Polish law firms who have created an informal group now dedicated to the development of specific legal solutions in this area.<sup>54</sup>

Other broad systemic changes have been promoted in recent years. An initiative to develop a model system encompassing both free legal advice and civic counseling was coordinated by the Department of Public Benefit of the Ministry of Labor and Social Policy from December 2011 to July 2014.<sup>55</sup> The project was co-financed by the European Union under the European Social Fund. The Ministry worked on the project in partnership with NGOs which are directly engaged in providing free legal advice and civic counseling or support to such activities. The project focused on extensive research examining current relations between providers of free advice and counseling and those receiving such services as well as the role of the justice system in this area. NGOs and public institutions participating in the project as well as experts in the field gathered in February 2015 at a convention to discuss the status and outcome of the four-year plan and to agree on the policies affecting legal and civic counseling in Poland.<sup>56</sup>

**Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System**

Polish society appears to trust the formal legal system, and people tend to choose the judicial system over alternative methods of dispute resolution. The legal community also helps boost confidence in the formal legal system. In recent years, all Polish Bar Associations actively promoted various pro bono programs, each attracting thousands of people seeking free legal advice. Although actual pro bono activities remain insignificant relative to the resources available in Poland, especially to Polish law firms, in recent years there has been a noticeable increase in interest in pro bono practice, according to the Pro bono Center. Information regarding pro bono services is more commonly included on websites of corporate law firms, as the annual rankings of law firms include a category distinguishing law firms for their outstanding pro bono activity. Up until recently, only a few law firms actively promoted pro bono services. Currently, many firms have dedicated pro bono programs and policies providing for significant legal assistance.<sup>57</sup>

**Pro bono Resources**

- Centrum Pro bono  
 Address: ul. Szpitalna 5 lok. 5, Warszawa  
 00-031 Poland  
 Phone: +48 572 440 150  
 E-mail: [biuro@centrumprobono.pl](mailto:biuro@centrumprobono.pl)  
 Website: <http://www.centrumprobono.pl/> (last visited on September 4, 2015)
- Ministry of Justice – Free Legal Services (*Darmowa Pomoc Prawna*) provides information about the new Pro bono system to be available from January 1, 2016 (subject to completion of the legislative process): <http://www.ms.gov.pl/pl/dzialalnosc/darmowa-pomoc-prawna/> (last visited on September 4, 2015)

<sup>54</sup> Centrum Pro bono, at <http://www.centrumprobono.pl/o-programie/> (last visited on September 4, 2015).

<sup>55</sup> Department of Public Benefit of the Ministry of Labor and Social Policy, at: <http://pozytek.gov.pl/Main,Page,532.html> (last visited on September 4, 2015).

<sup>56</sup> Kongres Poradnictwa Prawnego i Obywatelskiego at <http://www.inpris.pl/kongres/> (last visited on September 4, 2015) and Marta Janina Skrodzka (red.) „System poradnictwa prawnego i obywatelskiego w Polsce; Wdrażanie rozwiązań modelowych” (2014), available at <http://www.edukacjaprawnicza.pl/aktualnosci/a/pokaz/c/aktualnosc/art/system-poradnictwa-prawnego-i-obywatelskiego-w-polsce-wdrazanie-rozwiazan-modelowych.html> (last visited on September 4, 2015).

<sup>57</sup> Centrum Pro bono, at <http://www.centrumprobono.pl/o-programie/idea-pracy-prawnikow-pro-bono/> (last visited on September 4, 2015).



## CONCLUSION

The pro bono presence and culture continues to gain strength in Polish society. Pro bono initiatives are numerous and welcomed by the public. The related ongoing efforts by the government will benefit not only the pro bono culture but the overall legal system in Poland.

September 2015

Pro Bono Practices and Opportunities in Poland

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Portugal

### INTRODUCTION

Access to justice in Portugal is a right provided by the Constitution, and lawyers have a general duty to help protect this right. Portugal has increased its efforts to make legal assistance available to those who cannot afford it through a system that involves cooperation between Portuguese Social Security services and the Portuguese Bar Association. In addition, several NGOs in Portugal provide legal assistance to the public in particular areas such as criminal law, consumer law and refugee law. In recent years, law firms have started their own pro bono programs, providing legal assistance, usually to non-profit associations.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Article 110 of the Portuguese Constitution provides that the President of the Republic, the Parliament, the Government and the Courts constitute bodies of the State. Portugal is a semi-presidential Republic with a President elected by universal suffrage for a five-year term<sup>1</sup>. The President is the Head of State<sup>2</sup>. The Government is formed by the Council of Ministers, headed by the Prime Minister, who is politically accountable to the President and Parliament. The President does not have a seat in the Council of Ministers (but can be invited to do so). The Government is appointed by the President<sup>3</sup>, following elections. The legislative power is exercised by Parliament, elected for four-year terms<sup>4</sup>. The President may order the dissolution of Parliament or the dismissal of the Government.

Legislative responsibility is attributed to the Parliament<sup>5</sup> and the Government<sup>6</sup> (on matters that are not the exclusive responsibility of the Parliament). Laws must be signed by the President and counter-signed by the Government.

Courts administer justice and are independent from the other bodies of the State. Judges of the courts enjoy security of tenure and cannot be transferred, suspended, retired or removed from office except in cases expressly laid down by applicable legislation.<sup>7</sup>

##### The Courts

##### Levels, relevant types (e.g. family and housing courts), and locations

The Portuguese court system is comprised of two main types of courts: (i) the administrative and tax courts, with jurisdiction to settle disputes arising from legal relationships of a public law nature (administrative or fiscal), and (ii) the judicial courts, whose jurisdiction covers civil, commercial and criminal law matters in general.

The judicial courts are organised into three levels: (i) first instance courts (which may, according to the scope of matters with which they are entrusted, be general jurisdiction courts or specialised jurisdiction courts); (ii) the courts of appeal (*Tribunal da Relação*), located in Lisbon, Porto (or Oporto), Coimbra,

---

<sup>1</sup> Id. at Article 128 of the Portuguese Constitution.

<sup>2</sup> Id. at Article 120.

<sup>3</sup> Id. at Article 187.

<sup>4</sup> Id. at Article 171.

<sup>5</sup> Id. at Article 164 and 165.

<sup>6</sup> Id. at Article 198.

<sup>7</sup> Id. at Article 216.



Guimarães and Évora, and (iii) the Supreme Court of Justice, located in Lisbon. The precise jurisdiction of each of these judicial courts is determined on the basis of several criteria, namely: subject-matter, territorial scope, hierarchy and value of the proceedings.

The Constitutional Court is a special court established directly by the Constitution and has unique competences related to the review of the constitutionality of legislative and judicial acts as provided by the Constitution.<sup>8</sup> It is composed of 13 judges. The Constitutional Court sits in Lisbon.

### Appointed vs. Elected Judges

Judges of judicial courts are appointed after their approval in a public competition by the Judiciary Superior Council.<sup>9</sup> Judges of the Constitutional Court are the only elected judges in Portugal, elected by the Parliament. Of the 13 elected judges, at least six must originate from other courts and; at least six must be jurists (generally lawyers or legal scholars).<sup>10</sup>

### The Practice of Law

#### Education and Licensure

In order to practice law in Portugal, a lawyer (*advogado*) must be registered with the Portuguese Bar Association.<sup>11</sup> The Portuguese Bar Association was created by Law No. 11,715 of June 12, 1926,<sup>12</sup> and is organised into seven districts: Lisbon, Porto, Coimbra, Évora, Faro, Açores, Madeira. Its current articles of association are set forth in Law No. 15/2005 of January 15, 2005.

In order to register with the Portuguese Bar Association, an individual must have (i) obtained a law degree from an accredited university; (ii) undertaken a 24-month internship divided in two phases: (a) six-months of training on the regulations and principles applicable to the profession, at the end of which the candidate must sit four exams in order to pass to the second training phase and be able to appear in Court, and (b) 18-months of practical training in a law firm, having a lawyer with at least five years of professional experience as a tutor; and (iii) passed a final entrance examination to the Portuguese Bar Association.<sup>13</sup>

#### Pro bono specific rules and requirements

There are no legal requirements on attorneys to practice pro bono in Portugal.

#### The Role of Foreign Lawyers (as applicable)

Fully qualified lawyers from other member countries of the European Union are allowed to practice law in Portugal.<sup>14</sup> So are lawyers qualified in Brazil, subject to a previous request of enrolment with the Portuguese Bar Association and the fulfilment of certain conditions (e.g., proof of due registration with the Brazilian Bar Association, and proof of professional address in Portugal).<sup>15</sup> Foreign citizens who obtained their degree in Portugal may be registered with the Portuguese Bar Association in the same way as Portuguese citizens provided their country of nationality grants reciprocal rights to Portuguese citizens.<sup>16</sup>

---

<sup>8</sup> Article 277 et. al. of the Portuguese Constitution.

<sup>9</sup> The Judiciary Superior Council is established by the Portuguese Constitution (Article 218) to guarantee the independence of the judges of judicial courts. It has competence to appoint, transfer and promote judges, as well as to apply any disciplinary action.

<sup>10</sup> Article 222 (2) of the Portuguese Constitution and Article 13 of the Constitutional Court Law.

<sup>11</sup> Articles 61 and 200 of the Statutes of the Portuguese Bar Association approved by Law No. 15/2005, of January 15, 2005 ("Law No. 15/2005" or, as defined in the main text, "the Statute").

<sup>12</sup> Available online at: <http://www.oa.pt/> (last visited on September 4, 2015).

<sup>13</sup> Id. at Article 188.

<sup>14</sup> Id. at Article 196.

<sup>15</sup> Id. at Article 194.

<sup>16</sup> Id. at Article 194.



**Demographics: Number of Lawyers per Capita; Number of Legal Aid Lawyers per Capita.**

According to the Portuguese Bar Association, in 2008 there was one lawyer per 350 inhabitants in Portugal, which is a comparatively high rate within Europe.

Also according to the statistical portal Pordata, in 2014 there were approximately 16 lawyers for each judicial magistrate.<sup>17</sup> This statistic shows an increasing trend since the 1990s, when the number of lawyers per magistrate was 11.1.

### Legal Regulation of Lawyers

Legal activity in Portugal is regulated by Law No. 15/2005, which provides the ethics rules with which lawyers must comply (the “**Statute**”). Article 61 provides that only lawyers duly registered with the Portuguese Bar Association can practice ‘acts of lawyers’, namely representing a client in court or other legal matters and provide legal advice.<sup>18</sup>

The Statute also sets forth the legal regime of “impediments or incompatibilities”. In general, to perform the functions of a lawyer with due independence, a lawyer may be prohibited from undertaking certain occupations, such as becoming a member of the government, or a judge, accountant or real estate mediator.

The Statute also sets out the rules on confidentiality, public discussion on professional matters and advertisement. The Statute is highly protective of the confidentiality obligations and duties of a lawyer. The waiver of such duties requires special approval before a court and the Portuguese Bar Association.

Moreover, a lawyer should not discuss pending proceedings in public. In specific circumstances, for example, to protect the client from offenses, a lawyer may request permission to do so to the competent district council of the Portuguese Bar Association.

Advertisement of legal services is very restricted. A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading.

In Portugal, lawyers and clients are not allowed to agree to contingency fees. However, lawyers and clients may agree to success fees or results-based fees.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

#### In Civil Proceedings<sup>19</sup>

The Portuguese Constitution guarantees access to law and judicial review for everyone. Furthermore, it prohibits access to justice being denied because of a lack of financial means, and confirms that everyone has the right to legal information and counsel, by means of legal aid, if necessary.<sup>20</sup> This constitutional right of access to justice is enshrined in Law No. 34/2004, of July 29, 2004,<sup>21</sup> Administrative Ordinances

---

<sup>17</sup> See <http://www.pordata.pt/Portugal/N%C3%BAmero+de+advogados+por+magistrado+judicial+ao+servi%C3%A7o+nos+Tribunais+Judiciais-649> (last visited on September 4, 2015).

<sup>18</sup> Pursuant Article 1 of the Law No. 49/2004, holders of a Master in Laws or Ph.D. in Law are authorised to provide legal advice.

<sup>19</sup> In the context of civil and commercial litigation, representation by a qualified lawyer is compulsory in legal proceedings involving potential appeals and in any cases directly brought before a court of appeal (Tribunal da Relação) or the Supreme Court of Justice.

<sup>20</sup> Article 20 of the Portuguese Constitution.

<sup>21</sup> Law No. 34/2004 was amended by Law No. 47/2007, of August 28, 2007. Law No. 34/2004 revoked by Law No. 30-E/2000, of December 20, 2000, which first introduced the current structure of access to justice being required through social security services. Law No. 34/20004 transposes into the Portuguese territory the European



Nos. 1085-A/2004, of August 31, 2004, No. 10/2008, of January 3, 2008 and No. 11/2008, of January 3, 2008 (in each case, as subsequently amended); and Internal Regulation No. 330-A/2008, approved by the general council of the Portuguese Bar Association.<sup>22</sup>

According to Law No. 34/2004, no one should be prevented from being informed of, exercising or defending their rights due to their social or cultural status, or lack of financial means.<sup>23</sup> Access to justice includes the provision of “legal information” and “legal protection” mechanisms.<sup>24</sup>

The Ministry of Justice is in charge of ensuring access to “legal information,” and fulfils this obligation by providing publications and other measures which contain information on legal rights and duties. In addition, the Ministry of Justice is responsible for ensuring that all individuals have a means to exercise these rights.<sup>25</sup>

“Legal protection” involves: a. “legal advice or consultancy” and/or b. “legal aid.”<sup>26</sup>

#### Legal advice or consultancy

Legal advice/consultancy generally includes providing an individual with guidance regarding the application of laws to particular issues. It may also include providing an individual with extra-judicial steps or informal mechanisms of reconciliation. Law firms and “legal consultancy offices” (*gabinetes de consulta jurídica*) created by the Portuguese State, together with the Portuguese Bar Association, may provide legal advice or consultancy in relation to any type of legal issue.<sup>27</sup>

#### Legal aid

Legal aid includes the payment, by the State of legal fees to lawyers who represent individuals or non-profit legal entities in need. It also includes providing a total or partial exemption or a deferment of payment of court fees and other procedural charges.<sup>28</sup> Legal aid may be granted for the resolution of any type of legal dispute or litigation, before any type of court, and will include any appeals as well as enforcement of legal decisions.<sup>29</sup>

Legal protection in both instances can be requested from the Portuguese Social Security services directly by the individual or non-profit organization in need, or by a lawyer on behalf of its client. The request is decided by the District Services of the Social Security Office with jurisdiction over the area where the applicant resides.<sup>30</sup>

---

Directive No 2003/8/CE, of January 27, 2003, concerning the improvement of access to justice in cross border disputes, available online at [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/pdf/national\\_law\\_la\\_por\\_en.pdf](http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/national_law_la_por_en.pdf) (last visited on September 4, 2015).

<sup>22</sup> See [http://www.oa.pt/CD/Conteudos/Artigos/detalhe\\_artigo.aspx?sidc=31834&idc=31890&idsc=30361](http://www.oa.pt/CD/Conteudos/Artigos/detalhe_artigo.aspx?sidc=31834&idc=31890&idsc=30361) (last visited on September 4, 2015).

<sup>23</sup> Law No. 34/2004, Article 1(1).

<sup>24</sup> Id. at Article 1(2).

<sup>25</sup> Id. at Article 4.

<sup>26</sup> Id. at Article 6.

<sup>27</sup> Id. at Articles 14 and 15.

<sup>28</sup> Id. at Article 16.

<sup>29</sup> Id. at Articles 17 and 18.

<sup>30</sup> See Social Security Guide On Legal Protection, available at [www4.seg-social.pt/documents/10152/15011/proteccao\\_juridica](http://www4.seg-social.pt/documents/10152/15011/proteccao_juridica) (last visited on September 4, 2015).

## In Criminal Proceedings<sup>31</sup>

The same legal provisions and rules described above regarding legal assistance in civil proceedings apply to legal assistance in criminal proceedings.

## State-Subsidised Legal Aid

Eligibility Criteria, i.e., eligibility limitations based on:

### Financial Means (income and assets guidelines)

According to the Article 8-A of Law No. 34/2004, State-Subsidized Legal Aid – comprising legal advice or consultancy and legal aid – is granted to individuals who have a monthly income equal to or lower than three quarters of the social benefits index (approximately €315). The social benefits index has been €419,22 since 2009.<sup>32</sup> Individuals that have a monthly income higher than three quarters of the social benefits index (approximately €315), but equal to or lower than two and half times the social benefits index (approximately €1048), are entitled to legal aid, but not to legal advice or consultancy.

### Applicant Type (individual client versus agency/NGO), etc.

Under Law No. 34/2004, only individuals and non-profit organisations can benefit from State-Subsidized Legal Aid.

## Mandatory assignments to Legal Aid Matters

Are private lawyers required to accept matters assigned to them by a court or legal aid scheme, or are assignments voluntary?

The Portuguese Bar Association requires lawyers to assist in increasing access to justice within their local communities.<sup>33</sup> Portuguese lawyers may volunteer to have their names included in the list of lawyers available to provide legal assistance based on Law No. 34/2004, and to provide legal assistance in one of the Legal Consulting Offices set up by the Portuguese Bar Association.

Are private lawyers compensated, even at a reduced fee, for such assigned matters?

As a general rule, lawyers are expected to charge an adequate amount for their services (Law No. 15/2005, Article 100) and are prohibited from advertising free legal services (Law No. 15/2005, Article 89 (4)(b)). At the same time, it is a duty of lawyers registered with the Portuguese Bar Association to assist with increasing access to justice (Law No. 15/2005, Article 85 (2)(f)).

Lawyers may receive payments by the Portuguese state if they provide services under Law No. 34/2004. Outside this scenario, however, the legislation is not clear about whether lawyers that decide not to charge for their services could be in breach of professional ethics. Although there is no formal process for this scenario, it is advisable that lawyers wanting to engage in pro bono work to contact the Portuguese Bar Association to obtain prior authorisation for providing the free services or confirm that no such authorisation is needed.

---

<sup>31</sup> Legal representation by a qualified lawyer (Portuguese law does not distinguish between solicitors and barristers) is required in criminal cases for acts where the Criminal Procedure Code requires the appointment of a defence lawyer. See Criminal Procedure Code, Article 64, which provides that representation by Lawyer is mandatory in interrogations, during judgment, in appeals and in every act if the plaintiff is blind, deaf, dumb, illiterate, does not speak Portuguese or is under 21 years old.

<sup>32</sup> The amount is approved by the State Budget of each year. In 2015, the amount was approved in Article 117 of the Law No. 82-B/2014, available in [http://www.dgo.pt/politicaorcamental/OrcamentodeEstado/2015/Or%C3%A7amento%20Estado%20Aprovado/Documentos%20do%20OE/Lei\\_82-B\\_2014-OE2015\\_versaoDR.pdf](http://www.dgo.pt/politicaorcamental/OrcamentodeEstado/2015/Or%C3%A7amento%20Estado%20Aprovado/Documentos%20do%20OE/Lei_82-B_2014-OE2015_versaoDR.pdf) (last visited on September 4, 2015).

<sup>33</sup> Law No. 15/2005, Article 85 (2).



## Unmet Needs and Access Analysis

In Portugal, State-Subsidized Legal Aid is regarded as a universal system for providing access to justice for individuals who may not have sufficient income. It provides a service that helps inform the type of legal aid that may be granted to a specific person<sup>34</sup> based on their personal situation. There have been complaints that the income thresholds (as described above) are too low, resulting in the lack of assistance to people who would still have low income, albeit they might be above such legal threshold.<sup>35</sup>

In recent years, extensive delays in judicial proceedings reaching the courts have been regarded as one of the main obstacles to access to justice. In 2012, the Portuguese state was sued before the European Court of Human Rights in 36 cases involving the right to a fair trial within a reasonable time.<sup>36</sup> In 2013, statistics indicated that the 'congesting rate' in Portugal, representing the difference between closed and pending proceedings in judicial courts, is 193%.<sup>37</sup>

### Alternative Dispute Resolution

#### Mediation, Arbitration, Etc.

Mediation and arbitration are being developed in Portugal, in specialised areas relating to commercial and corporate law. There is also a network of arbitration centres that resolve any conflicts related to consumer law<sup>38</sup> and trademarks, corporate and domain names.<sup>39</sup>

#### Ombudsman

Citizens have direct access to the free services of the Ombudsman. They have the right to make complaints to the Ombudsman, regardless of their age, nationality or residence. A complaint may be submitted individually or collectively, independent of direct interest, personal or legitimate, via the Ombudsman website: <http://www.provedor-jus.pt/>. Pursuant to Article 23 of the Constitution, complaints can only be made against actions or omissions by Portuguese public authorities. The Ombudsman does not have the power to take decisions, but sends recommendations to the competent bodies, as necessary, in order to prevent or make good any injustices.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Lawyers

There is no formal obligation for private lawyers to undertake pro bono activities.

#### Law Firm Pro Bono Programs

Portuguese law firms generally have pro bono programs providing free legal assistance to charity institutions that work in the social, cultural or educational areas. Law firms often have designated pages on their firm websites dedicated to pro bono programs and the contact information of lawyers engaged in the programs.

---

<sup>34</sup> Available at <http://www4.seg-social.pt/calculo-do-valor-de-rendimento-para-efeitos-de-proteccao-juridica> (last visited on September 4, 2015).

<sup>35</sup> See [http://www.dn.pt/Inicio/interior.aspx?content\\_id=991899](http://www.dn.pt/Inicio/interior.aspx?content_id=991899) (last visited on September 4, 2015).

<sup>36</sup> See <http://www.publico.pt/portugal/noticia/maioria-das-queixas-por-atrasos-na-justica-resolvida-por-acordo-no-tribunal-europeu-1618125> (last visited on September 4, 2015).

<sup>37</sup> See <http://www.pordata.pt/Portugal/Taxa+de+congest%C3%A3o+nos+tribunais+%28percentagem%29-631> (last visited on September 4, 2015).

<sup>38</sup> See <http://www.arbitragemdeconsumo.org/index.php> (last visited on September 4, 2015).

<sup>39</sup> See [https://www.arbitrare.pt/en/centro\\_a.php](https://www.arbitrare.pt/en/centro_a.php) (last visited on September 4, 2015).



According to the Thompson Reuters Foundation Index of Pro Bono 2015<sup>40</sup>, 75% of Portuguese firms have a pro bono coordinator in place and have a pro bono committee.

### Non-Governmental Organisations (NGOs)

Some non-profit organisations and associations in Portugal offer legal support services to the public. For instance, the Association of Support to Victims (*Associação de Apoio à Vítima*) (“**APAV**”) provides support, including legal assistance, to the victims of crimes and their families, through offices spread across different locations in Portugal.<sup>41</sup> Another example is DECO, an association that provides support to consumers and indebted individuals, including offering legal assistance to help consumers enforce their rights and solve conflicts.<sup>42</sup> The Portuguese Counsel for Refugees provides assistance in relation to human rights.<sup>43</sup> Moreover, the Portuguese Ministry of Justice lists different associations that have organised arbitration centres (*Centros de Arbitragem de Conflitos de Consumo*) in order to solve conflicts in respect of consumer law issues.<sup>44</sup>

### Bar Association Pro Bono Programs

The Portuguese Bar Association has a network of “Legal Consulting Offices”, which are staffed by volunteer lawyers and where any individual may obtain guidance regarding legal matters.<sup>45</sup>

Legal advice provided under this consultancy mechanism is free of charge for interested parties, although the applicable regulations limit the number and duration of consultancy requests any one person may benefit from. In addition, in the past, the Portuguese Bar Association has organised an annual “Legal Consulting Day”, during which lawyers are available at a number of locations to assist the public with legal questions.

### University Legal Clinics and Law Students

In Portugal, as a rule it is forbidden for non-qualified lawyers to provide legal advice or to accept to legally represent a client before the court, even for pro bono matters.

Legal agents (*solicitadores*) and trainee lawyers may exceptionally represent clients in certain legal matters where the law does not require the intervention of a qualified lawyer, such as in the case of injunction proceedings.

### Others

There are some state organisations that provide legal consulting assistance to the public concerning specific legal areas, such as the Authority for Working Conditions (*Autoridade para as Condições do Trabalho*), which provides legal advice on labor law issues.

---

<sup>40</sup> Available at <http://www.trust.org/contentAsset/raw-data/870662fb-5deb-4549-8cc5-d4e3d02b311f/file?bylnode=true> (last visited on September 4, 2015).

<sup>41</sup> See <http://www.apav.pt/apav.html> (last visited on September 4, 2015).

<sup>42</sup> See <http://www.deco.proteste.pt/> (last visited on September 4, 2015).

<sup>43</sup> See <http://www.cpr.pt/> (last visited on September 4, 2015).

<sup>44</sup> See <http://www.arbitragemdeconsumo.org/> (last visited on September 4, 2015).

<sup>45</sup> See [http://www.oa.pt/CD/Conteudos/Artigos/detalhe\\_artigo.aspx?sidc=32530&idc=32533&idsc=19112](http://www.oa.pt/CD/Conteudos/Artigos/detalhe_artigo.aspx?sidc=32530&idc=32533&idsc=19112) (last visited on September 4, 2015). To benefit from this assistance, one should contact the Portuguese Bar Association (General Council), which will indicate the Legal Consulting Office closer to your residency area: [https://www.oa.pt/conteudos/contactos/lista\\_contactos.aspx?idc=31631](https://www.oa.pt/conteudos/contactos/lista_contactos.aspx?idc=31631) (last visited on September 4, 2015).



## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

Portuguese lawyers have always provided pro bono services to their clients, especially lawyers in individual practice. In recent years, however, there has been an increase in the number of law firms with pro bono programs. Moreover, the Portuguese Bar Association has been promoting pro bono activities, as mentioned above, with the creation of Legal Consulting Offices. These programs have provided helpful assistance to individuals and non-profit organisations in their day-to-day activities.

### Current State of Pro Bono including Barriers and Other Considerations

#### Laws and Regulations Impacting Pro Bono

##### “Loser Pays” Statute

Decree-Law No. 34/2008 (as amended) provides that the losing party must pay to the winning party the fees paid to the court and 50% of the amount of the fees paid by both parties to the court, as compensation for the payments made to lawyers.

##### Rules Directly Governing Pro Bono Practice

There are no specific rules for pro bono activities. The ethics rules governing legal activity generally also apply.

As outlined previously, lawyers are prohibited from advertising free legal services (Law No. 15/2005, art. 89 (4)(b)) and the advertisement of legal services is very restricted.

##### Practice Restrictions on Foreign-Qualified Lawyers

Foreign-qualified lawyers are not specifically restricted from providing legal services. European and Brazilian qualified lawyers can provide legal services as long as they are registered with the Portuguese Bar Association. Lawyers from other jurisdictions need to comply with the general provisions for the registration in the Bar Association.

#### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

##### Public concerns about the formal legal system

The main criticism of the Portuguese legal system in recent years relates to extensive delays in judicial proceedings. Important reforms have been implemented to address these concerns. For example, the Financial Assistance Program agreed in 2011 with the European Union and the IMF required the reform of the Portuguese Civil and Criminal Procedure Codes. The new Codes were approved in 2013.

##### Opposition from the Bar

The Portuguese Bar Association has restricted the advertisement of pro bono services,<sup>46</sup> and has also restricted the provision of pro bono services by a non-profit organization, since according to the Bar legal consulting can only be provided by a lawyer or by a legal consulting office organized by the Portuguese Bar Association in cooperation with the Ministry of Justice.<sup>47</sup>

#### Pro Bono Resources

The Portuguese Social Security published a guide with information of how to obtain legal protection/aid from the state. It can be found at [http://www4.seg-social.pt/documents/10152/15011/proteccao\\_juridica](http://www4.seg-social.pt/documents/10152/15011/proteccao_juridica) (last visited on September 4, 2015).

---

<sup>46</sup> See General Council's Opinion no. 34/PP/2009, available at [http://www.oa.pt/Conteudos/Pareceres/detalhe\\_parecer.aspx?idc=5&idsc=158&ida=119841](http://www.oa.pt/Conteudos/Pareceres/detalhe_parecer.aspx?idc=5&idsc=158&ida=119841) (last visited on September 4, 2015).

<sup>47</sup> See General Council's Opinion no. 12/PP/2011-P, available at <https://www.oa.pt/upl/%7Bd6602f75-d5b6-448e-b745-7df792f0f7af%7D.pdf> (last visited on September 4, 2015).



## CONCLUSION

The Portuguese state has increased its efforts to make legal protection available to those who cannot afford it. State-subsidised legal protection is available for those who qualify and several non-governmental associations provide legal assistance to the public, for instance in relation to criminal law, consumer law and refugee law. In recent years, there has been an increase in the number of law firms developing and promoting pro bono programs. Furthermore, the Portuguese Bar Association has been promoting pro bono activities, through the creation of Legal Consulting Offices.

September 2015

Pro Bono Practices and Opportunities in Portugal

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Romania<sup>1</sup>

### INTRODUCTION

Historically, few lawyers in Romania engaged in pro bono work.<sup>2</sup> Partially due to the country's communist/ socialist past, a culture of civic disengagement persists, with many Romanians still harbouring feelings of distrust towards unpaid community work.<sup>3</sup> However, following Romania's accession to the European Union in 2007, increased competition in the legal profession, the proliferation of law firms and the arrival of several international law firms, Romania's legal community is increasingly recognizing the value of pro bono services. As such, the infrastructure supporting pro bono opportunities and lawyers who perform this work has continued to improve. This chapter describes the current framework governing the provision of legal services, reviews the legal aid system, and discusses pro bono opportunities in Romania.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Romania's justice system is a civil law system. The basic law of Romania is the Constitution, adopted in November 1991 and further amended in October 2003<sup>4</sup>, and establishes the structure of the government of Romania, the rights and obligations of the country's citizens and its mode of passing laws. Other sources of law in Romania are the laws adopted by the Parliament, presidential decrees, normative acts of the Government, normative acts issued by the central and local public administrative authorities, European Union law (directives, regulations) and international treaties to which Romania is a signatory. The treaties establishing the European Union prevail over contrary provisions of national laws.<sup>5</sup>

##### The Courts

##### Levels, relevant types and locations

The principles, structure and organization of the Romanian judicial system are established by the Constitution and Law no. 304/2004.<sup>6</sup> Justice is accomplished through (a) the High Court of Cassation and Justice; (b) courts of appeal; (c) tribunals and specialized tribunals; (d) first instance courts; and (e) military courts.<sup>7</sup>

---

<sup>1</sup> This chapter was drafted with the support of Andrea Toma and Cristina Togan at Leroy și Asociații SCA

<sup>2</sup> Kandis Scott, *Decollectivization and Democracy: Current Law Practice in Romania*, 36 *GEO. WASH. INT'L L. REV.* 817, 817 (2004).

<sup>3</sup> *Id.*

<sup>4</sup> The initial form of the Constitution was amended by Law no. 429/2003 for the revision of Romania's Constitution.

<sup>5</sup> Article 5 of the Romanian Civil Code. See also Art. 148 § 2 of the Romanian Constitution, available at <http://legeaz.net/constitutia-romaniei/articolul-148-constitutie> (last visited on September 4, 2015).

<sup>6</sup> ROMANIAN SUPERIOR COUNCIL OF MAGISTRACY, *Presentation of the Romanian judicial system*, available at <http://www.csm1909.ro/csm/index.php?cmd=9401&lb=en> (last visited on September 4, 2015).

<sup>7</sup> ROMANIAN SUPERIOR COUNCIL OF MAGISTRACY, *Presentation of the Romanian judicial system*, available at <http://www.csm1909.ro/csm/index.php?cmd=9401&lb=en> (last visited on September 4, 2015).



The High Court of Cassation and Justice is Romania's highest court. It is located in the capital Bucharest, has four sections (Section I- Civil; Section II-Civil; Section III-Criminal; Section IV-Fiscal and administrative), as well as joint sections and five judge panels.<sup>8</sup>

The courts of appeal are at the next level. There are currently 15 courts of appeal. Within the courts of appeal there are sections or specialized panels for, among other things, civil, criminal, commercial, family, fiscal, administrative, labor, social insurances, maritime and fluvial cases.<sup>9</sup>

Tribunals are the next level of courts and are organized at the county level and in Bucharest. There are currently 42 tribunals established by law. Within tribunals, there are sections, or panels for civil, criminal, commercial, minors and family cases, fiscal and administrative claims, labor conflicts and social insurances, as well as maritime or fluvial cases and other matters. In certain areas, sections or specialized tribunals can be established at the county level or in Bucharest, depending on the nature and number of cases.<sup>10</sup>

First instance courts are the lowest ranking courts and are organized at the level of the most important cities in Romania and in the districts of Bucharest. There are approximately 188 first instance courts with general jurisdiction (*rationae materiae*). A decision rendered by courts of first instance may be challenged in appeal at the next court level.<sup>11</sup>

### Appointed vs. Elected Judges

Judges in Romania are appointed by the Superior Council of Magistracy (the "SCM") following a two year course at the National Magistrates Institute (*Institutul National de Magistratura*). The SCM is the institution responsible for guaranteeing the independence of the judiciary system and for disciplining judges and prosecutors.<sup>12</sup> The SCM is made up of 19 members: nine judges and five prosecutors, elected by the general assemblies of judges and prosecutors, two representatives of the civil society (law specialists nominated by the Senate) and three members *de jure* – the President of the High Court of Cassation and Justice, the Minister of Justice and the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.<sup>13</sup>

### The Practice of Law

#### Education and Licensure

In order to practice law in Romania, one must complete a Romanian law degree and then pass a bar exam in order to apply for admission to one of the 41 regional bar associations in Romania as a trainee lawyer.<sup>14</sup> A trainee lawyer needs to complete a two-year professional training period under the supervision of a permanent lawyer who has been practicing for at least six years.<sup>15</sup> Following completion of the training period, a trainee lawyer can acquire the status of a permanent lawyer by either passing the bar exam for permanent lawyers or the graduation exam of the National Institute for the Training and

---

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> ROMANIAN SUPERIOR COUNCIL OF MAGISTRACY, Presentation of the Romanian judicial system, <http://www.csm1909.ro/csm/index.php?cmd=9401&lb=en> (last visited on September 4, 2015). For example, the law provides for the organization of sections and specialized panels for minors and family cases.

<sup>12</sup> Id.

<sup>13</sup> Id. See also The Regulation of organization and functioning of the Superior Council of Magistracy, 2005.

<sup>14</sup> The Statute on the lawyers' profession and the Law 51/1995 on the organization and exercise of the lawyers' profession, available at <http://www.avocatura.com/11493-legea-51-din-1995-privind-organizarea-si-exercitarea-profesiei-de-avocat.html> (last visited on September 4, 2015).

<sup>15</sup> Id.



Improvement of Lawyers (*Institutul National pentru Pregatirea si Perfectionarea Avocatilor*).<sup>16</sup> The trainee lawyer is allowed to argue cases only in front of first-instance courts. Only after the trainee lawyer becomes a fully-qualified lawyer, is he or she allowed to argue cases in front of most Romanian courts (subject to certain exceptions), and to work on his or her own.<sup>17</sup>

There are new rules on continuing professional training of lawyers, which require a Romanian lawyer to participate in at least three seminars, conferences or debates, organized at the regional bar association every two years.<sup>18</sup> Romanian legislation contains no specific rules mandating pro bono work for Romanian lawyers – applicable provisions only set forth the right to benefit from legal aid and how legal aid is financed and organised.

### Demographics

Among a population of approximately 19.5 million, there were 23,244 practicing lawyers (*avocati cu drept de exercitare a profesiei*) in Romania, as of March 1, 2015.<sup>19</sup> Of these practicing lawyers, 5,012 were registered as legal aid lawyers with the Legal Aid Registries maintained by the local bars.<sup>20</sup>

### Legal Regulation of Lawyers

The regulation of the legal profession in Romania is decentralized.<sup>21</sup> A practicing lawyer needs to be a member of one of the 41 regional bar associations in Romania.<sup>22</sup> The regional bar associations hold most of the regulatory power.<sup>23</sup> There is a National Association of Romanian Bars (*Uniunea Nationala A Barourilor Din Romania* or *UNBR*), which consists of representatives from each regional bar association and has advisory jurisdiction over issues related to the regulation and discipline of Romanian lawyers.<sup>24</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

Though many Romanians are poor, few are destitute. Most are able to afford the relatively low fees for legal representation and/or legal advice.<sup>25</sup> Additionally, due to the surge in the number of lawyers, many attorneys are willing to negotiate their fee in order to secure more business. Nonetheless, Romania also maintains a legal aid system.

---

<sup>16</sup> UNIUNEA NATIONALA A BAROURILOR DIN ROMANIA, Decision No. 04/2011 of the National Association of the Romanian Bars, available at [http://www.unbr.ro/fisiere/file/consilii\\_si\\_cp/CONS-CP-07-09-IUL-2011/HOTARAREA\\_04-2011\\_2011\\_CONSILIUL\\_UNBR\\_APROBARE\\_REGULAMENT\\_EXAMENE\\_150711RevDOClean-OK-WEBSITE.pdf](http://www.unbr.ro/fisiere/file/consilii_si_cp/CONS-CP-07-09-IUL-2011/HOTARAREA_04-2011_2011_CONSILIUL_UNBR_APROBARE_REGULAMENT_EXAMENE_150711RevDOClean-OK-WEBSITE.pdf) (last visited on September 4, 2015).

<sup>17</sup> DREPT ONLINE, Legal Profession Career, available at [http://www.dreptonline.ro/cariere/cariera\\_avocat.php](http://www.dreptonline.ro/cariere/cariera_avocat.php) (last visited on September 4, 2015).

<sup>18</sup> The Decision no.12/2011 of The Lawyers' Congress on the continuous professional training of lawyers.

<sup>19</sup> UNIUNEA NATIONALA A BAROURILOR DIN ROMANIA, 2014, Activity Report of the National Association of the Romanian Bars, page 58, available at [http://unbr.ro/ro/wp-content/uploads/2015/05/0000-MATERIALE\\_CONGRES\\_2015-UNBR+CAA\\_V1.0\\_260515-OPTIM.pdf](http://unbr.ro/ro/wp-content/uploads/2015/05/0000-MATERIALE_CONGRES_2015-UNBR+CAA_V1.0_260515-OPTIM.pdf) (last visited on September 4, 2015).

<sup>20</sup> Id.

<sup>21</sup> THE LAW SOCIETY OF ENGLAND AND WALES, How to practice in Romania (Sep. 2014), available at <http://communities.lawsociety.org.uk/international/regions/europe-and-cis/romania/how-to-practise-in-romania/5043182.article> (last visited on September 4, 2015).

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> See Scott, *supra* n.1, at 831-32.



## The Right to Legal Assistance

The Constitution provides for the right to representation by a lawyer (selected by the person or appointed by the state) during any judicial proceeding.<sup>26</sup> As discussed in more detail below, legal representation is mandatory in certain cases and in such cases a lawyer will be appointed by the state if an individual has not hired counsel.<sup>27</sup> In other cases, indigent persons may request and be granted state-sponsored legal aid (either in the form of legal representation or legal advice).<sup>28</sup> Lawyers interested in providing legal aid must make a request to be included in the Legal Aid Registry (*Registrul de Asistenta Judiciara*) maintained by each local bar.<sup>29</sup> If the number of attorneys listed in the Legal Aid Registry is insufficient, the local bar may designate other lawyers to provide legal aid.<sup>30</sup> Each local bar also has a Legal Aid Bureau (*Serviciu de Asistenta Judiciara*, or “**SAJ**”) responsible for, among other things, designating the lawyers who provide legal aid.<sup>31</sup>

### State-Sponsored Legal Aid in Civil Proceedings

Before 2008, state-sponsored legal assistance in civil proceedings was only available to a limited category of persons, specifically, victims of domestic violence, children, refugees and asylum seekers, persons petitioning to obtain or re-obtain Romanian citizenship, owners of property expropriated during the 1945-1989 period, heroes of the 1989 Romanian revolution, or citizens of a foreign state (together, “**special legal aid matters**”).<sup>32</sup> Special legal aid matters are still applicable today, but a 2008 Emergency Ordinance (the “**Ordinance**”) has added a general mechanism for providing indigent persons with state-sponsored legal aid for all civil matters, thus expanding the eligibility criteria.<sup>33</sup>

According to the Ordinance, legal aid is provided upon request by an applicant for any civil, commercial, administrative, labor or social security matter or proceeding, as well as certain other matters and proceedings, upon request, if the applicant: (a) is a natural person; (b) resides in Romania or in a member state of the European Union; (c) has had a net monthly income per household member below a certain threshold during the two months preceding the request (subject to certain exceptions); and (d) the costs related to legal proceedings or to obtaining legal advice in order to defend a legitimate right are sufficiently high to jeopardize the applicant’s financial ability to provide for his or her family.<sup>34</sup> As an

---

<sup>26</sup> ROMANIA CONST. art. 24.

<sup>27</sup> See Obancia, *infra* n.39.

<sup>28</sup> *Id.*

<sup>29</sup> Framework Regulations regarding the organization of the Legal Aid Bureaus (*Servicii de Asistenta Judiciara*) of the Romanian Bars, adopted by Decision No. 419 of Sep. 27, 2008 of the UNBR Council, as further amended (hereafter, “Legal Aid Framework Regulations”), art. 1.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at art. 1.

<sup>32</sup> See, for example, Law No. 217/2003 on the Prevention of and Fight Against Domestic Violence, published in MONITORUL OFICIAL no. 367/29.05.2003, as further amended, arts. 6 and 27 (4); Law No. 272/2004 on the Protection and Promotion of Children’s Rights, published in MONITORUL OFICIAL No. 557/23.06.2004, as further amended, arts. 42 (2) and 61; the Romanian Code of Civil Procedure, art. 1084 (2); Ordinance, arts. 41-49; Law No. 122/2006 on Asylum, published in MONITORUL OFICIAL no. 428/18.05.2006, as further amended, art. 17; Law No. 42/1990 on the Honoring of and the Granting of Certain Rights to the Heroes of the Romanian Revolution of December 1989 and Their Families, republished in MONITORUL OFICIAL no. 198/23.08.1996, as further amended, art. 10 (now repealed).

<sup>33</sup> Emergency Ordinance No. 51/2008 on Judicial Public Help with Respect to Civil Matters, published in MONITORUL OFICIAL no. 327/25.04.2008, as subsequently amended.

<sup>34</sup> *Id.*



exception, if an applicant proves lack of financial means and that his or her rights would be prejudiced by delay, then that applicant's legal aid request may also be approved by the dean of the local bar.<sup>35</sup>

From a procedural perspective, the Ordinance provides that the legal aid request must include in an annex evidence of the applicant's income and financial obligations towards his or her family<sup>36</sup> and should be filed with the SAJ of the local bar in order to be approved by the dean of the respective local bar. If the request is granted, the bar then designates a lawyer to provide the requested legal services and such designation is mandatory for the lawyer in question. If the applicant requests the appointment of a certain lawyer by indicating in the petition the lawyer's name, such designation is subject to the respective lawyer's consent.<sup>37</sup>

### State-Sponsored Legal Aid in Criminal Proceedings

The Romanian state must ensure that a criminal defendant is represented by a lawyer (either of his or her choice, or appointed by the state through the SAJ infrastructure described above) throughout all stages of the criminal proceedings, in the following circumstances: (a) the defendant is a minor; (b) the defendant is detained in a rehabilitation center or in an educational medical institution; (c) the defendant is detained or arrested (even in connection with another case); (d) the defendant, as a preventive measure, is detained in a medical institution or is mandated to receive medical treatment (even in connection with another case); (e) the prosecutor or the court determines the defendant is not capable of defending himself or herself; or (f) the defendant is facing a charge for which the sentence is imprisonment for five years or more (this latter instance is limited to trial proceedings only, and does not apply to all stages of criminal proceedings).<sup>38</sup> The provision mandating that the court or the prosecutor appoint a lawyer if the defendant is not capable of defending himself or herself is rarely applied in practice, except in cases where defendants are mentally disabled, sick or handicapped. It is still debated whether this provision also covers indigent defendants.<sup>39</sup> Moreover, defendants accused of a crime for which the maximum sentence is less than five years of imprisonment are not automatically entitled to free legal representation.<sup>40</sup>

The Romanian state must also ensure representation by a lawyer for criminal trial parties other than the defendant, such as: the victim, the civil party or the civilly responsible defendant in the following circumstances: (a) the victim, the civil party or the civilly responsible defendant lacks the capacity to exercise his or her rights, or has a restricted capacity (*capacitate de exercitiu restransa*); (b) the prosecutor or the court determines that the victim, the civil party or the civilly responsible defendant in a criminal case is not capable of defending himself or herself<sup>41</sup> (for example, when that person is a minor or has been declared mentally incompetent by court order).

Romanian legislation also sets forth special cases in which legal representation is required, although the above mentioned conditions are not met, as follows: in case the object of the trial is represented by

---

<sup>35</sup> Law No. 51/1995, art. 71-75; Legal Aid Framework Regulations at arts. 156, 157 and 161.

<sup>36</sup> Emergency Ordinance No. 51/2008 on Judicial Public Help with Respect to Civil Matters, published in MONITORUL OFICIAL no. 327/25.04.2008, as subsequently amended, Article 14.

<sup>37</sup> See Obancia, *infra* n.39; Law No. 51/1995, art 72 (2).

<sup>38</sup> Article 90 of the Romanian Criminal Procedure Code.

<sup>39</sup> Cozmin Obancia, Marinela Cioroaba and Andrei Savescu, Access to Justice in Central and Eastern Europe Country Reports: Romania 423 (2003), available at [http://pilnet.org/component/docman/doc\\_download/48-access-to-justice-in-central-and-eastern-europe-country.html](http://pilnet.org/component/docman/doc_download/48-access-to-justice-in-central-and-eastern-europe-country.html) (last visited on September 4, 2015).

<sup>40</sup> Jill Parker, Comment: West Meets East: A Discussion of European Union Enlargement and Human Rights, 11 TULSA J. COMP. & INT'L L. 603, 625 (2004).

<sup>41</sup> Article 93 (4), (5) of the Romanian Criminal Procedure Code.



crimes such as: human trafficking<sup>42</sup>; serious crimes such as murder, attempted murder, physical bodily harm, rape or sexual perversion<sup>43</sup>; during extradition proceedings, international transfer proceedings, and execution of European arrest warrants.<sup>44</sup>

## Mandatory assignments to Legal Aid Matters

Any attorney registered with the SAJ infrastructure is subject to mandatory assignment to legal aid matters. The condition for assignment is to be registered in the Legal Aid Registry for attorneys. Registration represents an attorney's consent to provide legal aid services. Failure to provide legal aid is subject to disciplinary sanctions.<sup>45</sup>

Although a legal aid assignment by the SAJ is mandatory, and thus not subject to the designated attorney's consent, when a request for legal aid is granted, the applicant may express a preference to be represented by a specific lawyer. Only in this scenario does the lawyer designated at the applicant's request have an option to consent to the assignment. If the legal aid beneficiary does not express a preference for a specific lawyer, SAJ will assign one of the registered lawyers and that appointed attorney has no option to consent (representation in this case is considered a legal duty).

In all cases of state-sponsored legal aid, the lawyer's fees are paid by the state from the budget of the Ministry of Justice.<sup>46</sup> The compensation is set forth in a protocol between the Ministry of Justice and the UNBR (the "Protocol"),<sup>47</sup> as a flat fee for each type of legal aid service.<sup>48</sup> The flat fee is not adjusted to take into account the time spent on the case or the outcome of the case, which does little to motivate committed representation. Moreover, the fees are relatively small, therefore discouraging many experienced lawyers from pursuing these opportunities. As a result, and because legal aid assignments provide an opportunity to gain experience, young lawyers typically volunteer to take them on.<sup>49</sup> In fact, the relevant regulations state that legal aid in civil matters will be primarily assigned to young lawyers.<sup>50</sup>

## Unmet Needs and Access Analysis

Although Romanian state-sponsored legal aid continues to address an increasing number of legal aid requests<sup>51</sup>, access to legal aid remains limited. For actual applicants, access is mostly hindered by the

---

<sup>42</sup> Law No. 678/2001 on the Prevention of and Fight Against Trafficking In Persons, published in MONITORUL OFICIAL no. 783/11.12.2000, as further amended, arts. 43 and 44.

<sup>43</sup> Law No. 211/2004 on Certain Measures for The Protection of Crime Victims, published in MONITORUL OFICIAL no. 505/04.06.2004, as further amended, articles 14, 15, 16.

<sup>44</sup> Law No. 302/2004 on International Judicial Cooperation Regarding Criminal Proceedings, published in MONITORUL OFICIAL no. 594/01.07.2004, as further amended.

<sup>45</sup> Legal Aid Framework Regulations, arts. 1, 11, 70 and 71.

<sup>46</sup> Protocol between the Romanian Ministry of Justice and the National Association of the Romanian Bars No. 48025/2015, available at [http://unbr.ro/ro/wp-content/uploads/2015/06/Protocol\\_Oficii\\_MJ\\_IUNIE\\_2015\\_060615\\_WEBSITE.pdf](http://unbr.ro/ro/wp-content/uploads/2015/06/Protocol_Oficii_MJ_IUNIE_2015_060615_WEBSITE.pdf) (last visited on September 4, 2015).

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> See Obancia, supra n. 39.

<sup>50</sup> See Legal Aid Framework Regulations, supra n.29 at art. 27; supra n.19.

<sup>51</sup> As confirmed verbally with a representative of the Bucharest Legal Aid Office on September 1, 2015, the service is currently addressing 800 pending legal aid requests, which have been approved and fall within the existing budget.



evidentiary criteria they have to meet in order to qualify for legal aid, as well as by the limited staff and financial resources available to process applications. In addition, given the absence of state-sponsored initiatives to promote access to free legal assistance, it is likely that a significant number of potential applicants are simply unaware of the existence of a legal aid system, and thus never apply.

## Alternative Dispute Resolution

### Mediation and Arbitration

One alternative optional dispute resolution procedure recognized in Romania is mediation.

Another recognized alternative dispute resolution procedure in Romania is arbitration, which is regulated by the Romanian Civil Procedure Code.<sup>52</sup> Parties may choose arbitration as an alternative to settle any type of dispute, except for disputes concerning marital status, inheritance, family relations and rights of which the parties may not dispose.

### Ombudsman

Romanian citizens also have the option to submit petitions to the People's Advocate (Avocatul Poporului), the Romanian equivalent of the European Ombudsman institution. The purpose of the People's Advocate is to investigate complaints about maladministration within Romanian institutions. The petition must be submitted in writing and is free of stamp tax. After reviewing the petition and if the petition is upheld, the People's Advocate issues a recommendation to the relevant public institution. Based on such recommendations, the respective institution may take measures to mitigate any damage to the affected citizen.<sup>53</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

A growing number of international and local firms and NGOs in Romania are interested in giving back to their communities and are seeking to foster pro bono work. There is also an increasing interest in pro bono from nonprofit and student organizations. However, the lack of an appropriate legal framework supporting or encouraging pro bono work continues to act as a barrier to the increase in such activities.

### Mandatory Pro Bono for Private Attorneys

Neither the law for the organization and practice of the legal profession<sup>54</sup>, nor the law regarding scholars and students' internships<sup>55</sup> requires practicing lawyers, or law students to do pro bono work. However, European practice generally (following the more established US model) is evolving rapidly. An increasing trend in recent years has seen multinational companies imposing social responsibility policies on outside counsel. Furthermore, according to the stated values of the Council of Bars and Law Societies of Europe (CCBE), pro bono should be one of the key social responsibility aspects of the legal profession.<sup>56</sup> These external factors are bound to contribute to a more favorable perception of pro bono work and should help to incentivize the Romanian legal profession to become more involved.<sup>57</sup>

---

<sup>52</sup> Article 541 et seqq. of the Romanian Civil Procedure Code.

<sup>53</sup> Law 35/1997 on organizing and exercise of the Avocatul Poporului institution.

<sup>54</sup> Law no. 51/1995 for the organization and practice of the lawyer's profession.

<sup>55</sup> Law no. 258/2007 regarding scholars and students' internship.

<sup>56</sup> <http://www.ccbe.eu/index.php?id=32&L=0> (last visited on September 4, 2015).

<sup>57</sup> The initiative is announced within the UNBR Activity Report 2014, p. 79 available at: <http://www.juridice.ro/377902/raportul-de-activitate-al-unbr-in-perioada-2014-2015-si-materialele-supuse-dezbaterii-la-congresul-avocailor-2015.html> (last visited on September 4, 2015).



In the absence of pro bono legislation, Romania currently lacks the legal framework to require mandatory pro bono reporting. Although such a requirement could lead to an increase in reported legal service hours (as it seems to be the case in jurisdictions that have already implemented this measure),<sup>58</sup> there are no apparent plans to introduce such legislation in the near future. There are no specific voluntary reporting options for private attorneys outside law firms.

### Law Firm Pro Bono Programs

In recent years, pro bono programs in Romania have intensified as a result of the commitment of corporate law firms in Bucharest, as well as in Romania's major cities to align the practice of local firms with the pro bono culture of their international partners. Indeed, it has become customary for large Romanian law firms to dedicate part of their resources to pro bono activities.<sup>59</sup>

An area where pro bono service seems to abound is the NGO sector. For example, in 2012 the Foundation for the Development of Civil Society launched a project called "Pro Bono legal services for NGOs" which allowed lawyers to commit available time and resources to provide legal services to different NGOs.<sup>60</sup> This initiative has generated legal support for a variety of NGOs, including organizations dedicated to combating the sexual exploitation of children, improving the lives of the disabled, rehabilitating Romanian rainforests, promoting inclusive education for children with disabilities, and developing sustainable social enterprises in emerging market economies.<sup>61</sup>

In addition to pro bono work for NGOs, Romanian firms are also taking on pro bono representation of individuals and classes of plaintiffs in class action lawsuits.<sup>62</sup>

### Non-Governmental Organizations (NGOs)

There are several international and local issue based NGOs that provide Romanians with free legal assistance. These NGOs tackle a wide variety of issues that Romanians are facing, specifically the rights of the Roma minority, discrimination based on sexual orientation and HIV positive status, prison conditions, mental health treatment, government corruption and microfinance.

For example: (i) the Roma Center for Social Intervention and Studies (Romani CRISS) advocates Roma rights by providing legal assistance in cases of abuse<sup>63</sup>; (ii) the NGO "Accept" created the Anti-Discrimination Coalition which aims to improve access to justice and efficiency of remedies available to persons exposed to discrimination;<sup>64</sup> (iii) the Romanian Association Against AIDS (ARAS) is leading an awareness-raising and prevention campaign and is also providing advocacy help for AIDS-affected

---

<sup>58</sup> Pro bono reporting has been required in Florida for more than two decades and the reported result has been a steady increase in service hours reported and dollars contributed to legal aid groups, as tracked by the Florida bar available at <http://www.theindianalawyer.com/state-bar-approves-pro-bono-reporting-requirement/PARAMS/article/32634> (last visited on September 4, 2015).

<sup>59</sup> See <http://www.avocatura.com/stire/8563/se-implica-marile-case-de-avocatura-in-programe-de-responsabilitate-sociala-nu-p.html> (last visited on September 4, 2015).

<sup>60</sup> See <http://www.fdsc.ro/servicii-juridice-pro-bono-pentru-onguri> (last visited on September 4, 2015).

<sup>61</sup> See [http://www.legal500.com/assets/images/stories/firmdevs/nest12237/nndkp\\_press\\_release\\_30-03-2009.pdf](http://www.legal500.com/assets/images/stories/firmdevs/nest12237/nndkp_press_release_30-03-2009.pdf) (last visited on September 4, 2015); [http://www.legal500.com/firms/12818-tuca-zbarcea-asociatii/press\\_releases/26360](http://www.legal500.com/firms/12818-tuca-zbarcea-asociatii/press_releases/26360) (last visited on September 4, 2015); <http://www.dlapiperprobono.com/what-we-do/signature/index.html?query=romania&search=search> (last visited on September 4, 2015); <http://www.legal500.com/firms/17003-leroy-si-asociatii/offices/11951-bucharest/tab/diversity> (last visited on September 4, 2015).

<sup>62</sup> See <http://www.bancherul.ro/avocatul-gheorghe-piperea-anunta-initierea-unei-actiuni-in-justitie-tip-class-action-pentru-eliminarea-clauzelor-abuzive-din-toate-contractele-unei-banci.-pentru-ca-oamenii-sa-nu-mai-cheltuie-bani-cu-avocatii--13445> (last visited on September 4, 2015).

<sup>63</sup> See <http://www.romanicriss.org/en/> (last visited on September 4, 2015).

<sup>64</sup> See <http://www.antidiscriminare.ro/first-english-page> (last visited on September 4, 2015).



vulnerable groups<sup>65</sup>; (iv) the Association for the Defense of Human Rights in Romania-Helsinki Committee (APADOR CH) is involved in public efforts to improve prison conditions<sup>66</sup>; (v) the ESTUAR Foundation aims to provide basic protection for adults with mental health problems<sup>67</sup>; and (vi) the Advocacy and Legal Assistance Centre (an institutional project of the Transparency International network in South-Eastern Europe set up in Romania in 2003) is dedicated to the assistance and guidance of victims and witnesses of abuse or corruption in the public system.<sup>68</sup>

### Bar Association Pro Bono Programs

In its 2014 activity report, the UNBR emphasized the creation of new programs aimed at increasing awareness about, and involvement in, pro bono activities.<sup>69</sup> In particular, the report identifies the need to diversify the types of events and actions organized by the UNBR, in order to enhance the interaction between the legal profession and non-judicial areas (such as the NGO sphere). The UNBR also aims to initiate pro bono and social responsibility campaigns, similar to other bars in Europe. These projects are designed to alleviate certain derogatory perceptions with respect to the legal profession, in order to increase public confidence.

The first project announced by the UNBR is the connection of the Romanian application *Info-avocat* to the CCBE program “Find-a-Lawyer”<sup>70</sup>, which aims to allow instant access to information about lawyers registered on the connected platform to anyone seeking legal assistance. The UNBR report also contemplates the creation of an annual award for the legal profession, including as an evaluation criterion the pro bono activities undertaken by prospective award recipients.

### University Legal Clinics and Law Students

The concept of a university legal clinic is fairly new in the Romanian legal market. Recently, the idea received some publicity as some universities attempted to implement clinic-style programs.<sup>71</sup> However, because these programs were only internally funded through universities, they lacked basic resources and failed to flourish.

Another likely contributing factor discouraging the establishment of legal clinics is the focus of the Romanian educational system on a theoretical approach. Until recently there used to be no infrastructure or grading system for any practical activity that law students engaged in outside the classroom. Although this has changed in recent years (now one condition to successfully completing each year of law school is conducting at least two weeks of practical activity), universities still do not encourage students to focus on pro bono specifically. Another challenge in setting up such programs is finding mentor lawyers willing to run the legal education clinics on a pro bono basis.<sup>72</sup>

---

<sup>65</sup> See <http://www.aidsactioneurope.org/members/aras-romanian-association-against-aids> (last visited on September 4, 2015).

<sup>66</sup> See <http://www.apador.org/en/studiu-fti-privind-arestul-preventiv-si-alternativele-sale/> (last visited on September 4, 2015).

<sup>67</sup> See <http://www.estuar.org/> (last visited on September 4, 2015).

<sup>68</sup> See [http://www.transparency.org.ro/centru/index\\_en.html](http://www.transparency.org.ro/centru/index_en.html) (last visited on September 4, 2015).

<sup>69</sup> UNBR Activity Report 2014, available at <http://www.juridice.ro/377902/raportul-de-activitate-al-unbr-in-perioada-2014-2015-si-materialele-supuse-dezbaterii-la-congresul-avocailor-2015.html> (last visited on September 4, 2015).

<sup>70</sup> See [https://e-justice.europa.eu/content\\_find\\_a\\_lawyer-334-en.do](https://e-justice.europa.eu/content_find_a_lawyer-334-en.do) (last visited on September 4, 2015).

<sup>71</sup> “George Bacovia” University in Bacau fostered such a Pro bono Clinical program throughout the academic year 2012/2013. Source available at <http://www.desteptarea.ro/avocati-si-studentii-universitatii-george-bacovia-vor-lucra-pro-bono/> (last visited on September 4, 2015).

<sup>72</sup> See <http://www.uaic.ro/studenti/asociatii-si-ligi-studentesti/asociatia-studentilor-la-drept-asd/> (last visited on September 4, 2015).



It is worth mentioning however that, while few university legal clinics seem to be established currently<sup>73</sup>, UNBR representatives have stated their willingness to support pro bono work by creating pro bono community initiatives, including a new legal clinic within the Bucharest University Faculty of Law.<sup>74</sup>

## Historic Development and Current State of Pro Bono

### Historic Development and the Current State of Pro Bono

Historically, Romania, like most Eastern European countries, did not have a culture of pro bono legal assistance (though under the former communist regime, state-sponsored legal aid was mostly free for individuals). However, following the example of western and even neighboring countries, Romania has undergone an ideological shift in recent years, whereby more and more law firms have started to participate in pro bono programs. Furthermore, an increasing number of events advocating pro bono have been organized in Romania recently. During one such event, UNBR representatives stated their position and willingness to get more involved in supporting pro bono work and even in creating certain pro bono partnerships (for example, with NGOs or the Embassy of the United States in Bucharest).<sup>75</sup>

While the culture is changing, Romania still lacks a professional environment that fully supports pro bono work, and there continues to exist an overriding hesitation on the part of Romanian lawyers to voluntarily engage in such activities.

One potential barrier to engaging in pro bono work in Romania is the rules and regulations governing the lawyers' profession. Beyond state-sponsored legal aid, there are no sanctioned referral programs or ethics codes to encourage pro bono work by Romanian bar members. Moreover, UNBR's past portrayal of pro bono work as veiled advertising and unfair competition also works against pro bono efforts.

### Laws and Regulations Impacting Pro Bono

#### Rules Directly Governing Pro Bono Practice

There are no rules or regulations directly governing pro bono practice in Romania. However, the prohibition of advertising for the purpose of attracting clients and the limitations applicable to professional publicity would presumably apply also to pro bono successes. Such practices are still regarded as contrary to the restrictive advertising rules applicable to lawyers and to the fair competition between lawyers.

#### Concerns about Pro Bono Eroding Public Legal Aid Funding

There is little concern about pro bono eroding state-sponsored legal aid in Romania, as there is no direct connection between the sources of funding for these two types of legal services. Pro bono in Romania is an entirely private initiative, funded by private law firms offering pro bono services, whereas state-sponsored legal aid is directly funded by the Ministry of Justice.

Moreover, the financial extent of assistance provided by pro bono and state-sponsored legal aid is different. Legal aid has a monetary threshold imposed by law for each person eligible to receive state assistance.<sup>76</sup> The cost of litigation and the benefits of legal aid also vary depending on the base income of the relevant person benefiting from state assistance. By contrast, pro bono services grant legal assistance throughout the entire litigation process free of charge, usually with no financial cap imposed by the relevant law firm.

However, as of today, pro bono services in Romania remain only a trend, and may be seen as supplementing rather than eroding state-sponsored legal aid. Therefore, until more comprehensive

<sup>73</sup> Id.

<sup>74</sup> See <http://www.infolegal.ro/pledoarie-pentru-pro-bono-includerea-romaniei-in-reteaua-globala/2012/06/08/> (last visited on September 4, 2015).

<sup>75</sup> See <http://www.infolegal.ro/pledoarie-pentru-pro-bono-includerea-romaniei-in-reteaua-globala/2012/06/08/> (last visited on September 4, 2015).

<sup>76</sup> Chapter II of the Emergency Government Ordinance no. 51/2008 on Public Legal Aid.



regulations on pro bono work are adopted in Romania, it is unlikely that any pro bono work would influence legislative decisions with respect to legal aid funding.

### **Regulations Imposing Practice Limitations on In-House Counsel**

Pro bono services in Romania are not limited to practicing lawyers. In-house counsels can effectively assist and represent persons that are unable to afford trial expenses. However they may be subject to certain limitations.

First, a company's organization may contain exclusivity agreements that prohibit in-house counsel from representing persons outside the company or its group. This obstacle can be easily remedied by a waiver. However, there is no record of any significant pro bono services offered by in-house counsel in Romanian companies, primarily because these companies concentrate their efforts on social responsibility and corporate citizenship, offering free services or organizing workshops directly linked to their sphere of activity.<sup>77</sup>

Secondly, in most cases, only lawyers (members of bar associations) may present arguments and procedural exceptions in court but not "jurists" (i.e. law school graduates who are not admitted to a bar association).<sup>78</sup> Given that a preponderance of in-house counsel are "jurists" but not lawyers, in-house pro bono activities tend to be significantly reduced.

### **Availability of Professional Indemnity Legal Insurance Covering Pro Bono Activities by Attorneys**

Romanian lawyers that undertake pro bono activities are required to conclude a legal assistance and representation contract with the beneficiary of the service. Provided that the contract is fully signed, the attorney is insured against any alleged professional misconduct towards the pro bono client, with the exception of willful misconduct or gross negligence in handling the respective case. Standard professional insurance covers any and all legal representation granted by the insurance beneficiary, formalized through a legal assistance and representation contract (even with null consideration).<sup>79</sup>

## **Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System**

### **Public concerns about the formal legal system**

The most recent 2015 Eurobarometer<sup>80</sup>, measuring public trust in the formal legal system<sup>81</sup> provides somewhat ambivalent conclusions. On the one hand, 91% of respondents consider corruption as a constant and current problem in Romanian society, and 90% of respondents consider that improvements must be made with respect to the current legal system. On the other hand, 22% of respondents believe that legal institutions are making progress in the fight against corruption, as compared to only 13% in the 2012 survey. Moreover, 34% of respondents believe that shortcomings in the judicial system have improved (a 14% increase compared to 2012), and 43% of respondents believe that it will continue to improve.<sup>82</sup>

---

<sup>77</sup> Article 3(1) letter c) of EGO no.80/2013.

<sup>78</sup> Articles 83 and 84 of the Romanian Civil Procedural Code.

<sup>79</sup> For a general description of the standard professional insurance, see for instance : <http://www.euroins.ro/asiurarea-pentru-avocati,244.html> (last visited on September 4, 2015).

<sup>80</sup> Eurobarometer is an initiative designed to monitor public opinion within in the European Union (EU) via surveys conducted on behalf of the European Commission on a wide variety of topical issues across EU Member States.

<sup>81</sup> Flash Eurobarometer 406 of January 2015: "The Cooperation and Verification Mechanism for Bulgaria and Romania - second wave", available at [http://ec.europa.eu/public\\_opinion/flash/fl\\_406\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_406_en.pdf) (last visited on September 4, 2015). Flash Eurobarometers are ad hoc thematic telephone interviews conducted at the request of a service of the European Commission; these surveys enable the Commission to obtain results relatively quickly and to focus on specific target groups, as and when required.

<sup>82</sup> Id.



Corruption is considered the blight of public institutions in Romania, decreasing confidence in vital institutions. However, the increasing number of corruption charges against senior politicians has increased public trust and a belief in the independence of the legal system. According to a recent public opinion survey<sup>83</sup> measuring public trust in the institutions of the legal system in Romania, 41% of respondents expressed their trust in the legal system. Based on this survey, the most trusted institution of the Romanian legal system is the National Anticorruption Direction (*Directia Nationala Anticoruptie* or DNA), a prosecutor's office specializing in combating high and medium level corruption.<sup>84</sup>

### Opposition from the Bar

The UNBR and the local bar associations are not opposed to pro bono activities carried out by lawyers in Romania. However, the president of the UNBR expressed some reservations regarding the repeated use of pro bono activity as being contrary to the restrictive advertising rules applicable to lawyers and to fair competition between lawyers.<sup>85</sup>

### Pro Bono Resources

#### Entities Engaged in Pro Bono

Romanian civil society has some strong promoters of pro bono activities, including the Konrad Adenauer Stiftung Foundation, the Pro-Democracy Association, the Horia Russu Foundation, APADOR-CH and the Foundation for the Development of the Civil Society. These NGOs focus on programs aimed at facilitating the connection between individuals or entities in need of legal assistance and lawyers.<sup>86</sup>

As NGOs have dominantly concentrated their efforts on the promotion and protection of human rights in Romania, pro bono projects are usually focused on mitigating human rights violations. In addition, an increasing number of Romanian and international law firms have decided in recent years to engage in pro bono activities, mainly by supporting NGOs which promote social development. For example, Leroy si Asociatii, one of the country's leading law firms<sup>87</sup>, supports several non-profit organizations and foundations by providing pro bono legal services, such as NESsT Romania, a non-profit organization which develops sustainable social enterprises aimed to address critical social problems in emerging market economies, and Lycée Français Anna de Noailles (the French School of Bucharest), a foundation supported by Leroy on an ongoing basis with pro bono legal advice on various matters, including financing, real estate and employment matters.<sup>88</sup>

## CONCLUSION

The legislative framework governing the legal profession in Romania does not regulate pro bono services. As such, there are no actual barriers preventing Romanian lawyers from engaging in pro bono activities. However, the absence of a clear legal framework has led to reluctance on the part of Romanian lawyers to voluntarily engage in pro bono activities.

---

<sup>83</sup> Barometer of trust in institutions, Part I: Justice, representing telephone interviews conducted by Romanian Institute for Evaluation and Strategy (IRE'S) during March 9-10, 2015, available at [http://www.ires.com.ro/uploads/articole/ires\\_barometrul-increderii-in-institutii\\_justitia\\_studiu.pdf](http://www.ires.com.ro/uploads/articole/ires_barometrul-increderii-in-institutii_justitia_studiu.pdf) (last visited on September 4, 2015).

<sup>84</sup> Id.

<sup>85</sup> See <http://www.curieruljudiciar.ro/2014/04/25/av-ghe-florea-presedintele-unbr-problemele-actuale-ale-aplicarii-legislatiei-privind-profesia-de-avocat-i/> (last visited on September 4, 2015).

<sup>86</sup> See <http://www.fdsc.ro/servicii-juridice-pro-bono-pentru-onguri> (last visited on September 4, 2015).

<sup>87</sup> See <http://www.legal500.com/c/romania/corporate-and-manda/corporate-and-manda> (last visited on September 4, 2015).

<sup>88</sup> See <http://www.legal500.com/firms/17003-leroy-si-asociatii/offices/11951-bucharest/tab/diversity> (last visited on September 4, 2015).



Despite this environment, in the past few years an increasing number of the country's leading law firms have allocated time to supporting NGOs or initiatives in need of free legal assistance. In addition, the creation of the first Romanian pro bono legal services clearinghouse in March 2012 by the Foundation for the Development of the Civil Society has paved the way for other clearinghouses or similar initiatives which aim to connect those in need of free legal counseling with Romanian lawyers ready to provide such services.<sup>89</sup>

Although the pro bono culture in Romania is in an incipient stage, these developments show encouraging signs of an incremental shift in the legal profession's perception of voluntary work.

September 2015

Pro Bono Practices and Opportunities in Romania

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>89</sup> For example, the Pro Bono Network for Human Rights (created in 2014 by the Equality and Human Rights Action Centre) is a clearinghouse which aims to provide legal assistance to vulnerable groups. Furthermore, in 2014, the Association "Salvati Bucurestiul" ("Save Bucharest") established a call center providing free legal counseling on planning, construction, heritage protection and environmental protection.



## Pro Bono Practices and Opportunities in the Russian Federation

### INTRODUCTION

While the Russian Federation (“**Russia**”) does not have a legacy pro bono culture, a professional environment that accepts pro bono as part of a lawyer’s role in the community is slowly developing. The government is also taking new steps to expand its role in the provision of free legal aid. There is still much to be accomplished in terms of developing legal infrastructure in Russia and transforming how the local legal community thinks about pro bono. Nonetheless, there are a growing number of pro bono opportunities, both for litigators and transactional attorneys, available in Russia.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Laws

The Constitution of Russia (the “**Constitution**”) was adopted by national referendum on December 12, 1993 and came into force on December 25, 1993. According to Article 15 of the Constitution, it has the supreme legal force, direct application<sup>1</sup> and is in force across the whole territory of Russia. Laws and other legal acts adopted in Russia may not contradict the Constitution of Russia.<sup>2</sup> The governing laws of Russia are comprised of federal constitutional laws, federal laws, laws of the constituent entities of the Russia and the universally-recognized norms of international law and international treaties and agreements of Russia. Local (municipal) governments are authorized to adopt local (municipal) laws within the areas of their competence. Court decisions are not officially recognized as having legal force equal to the force of statute, although in practice they play a critical role in its application.

#### The Courts

The Russian judicial system consists of federal courts (the Constitutional Court of Russia, courts of general jurisdiction, and state “*arbitrazh*” (commercial) courts) and the courts of Russian constituent entities (constitutional courts and magistrates). The Constitutional Court of Russia decides questions of constitutional law, statutory interpretation and allocation of powers; the arbitrazh court handles commercial matters; and the general court hears civil cases, criminal cases and disputes between individuals and state authorities. Recently a specialised court for intellectual property rights (the IPR Court) has been instituted within the system of commercial (‘arbitrazh’) courts of Russia.

The greatest need for pro bono assistance is at the regional court level. Unlike courts in the United States and many European countries, which frequently encourage pro bono representation of amicus curiae at the appellate level, few such opportunities exist in Russia, although Russia maintains a system for provision of free legal aid through state-licensed advocates in criminal matters.

Judges are appointed by the Federation Council, and serve for life. Candidates are recommended by the Qualification Collegia or Supreme Qualification Collegium to the President, who in turn recommends candidates to the Federation Council.<sup>3</sup>

---

<sup>1</sup> Provisions of the Constitution can be applied directly without adoption of additional implementing legal acts.

<sup>2</sup> The English translation of the Constitution of the Russian Federation is available at <http://www.constitution.ru/en/10003000-01.htm> (last visited on September 4, 2015).

<sup>3</sup> The Law of the Russian Federation No. 3132-1 of June 26, 1992 on the Status of the Judges in the Russian Federation.



## The Legal Profession and Practice of Law

### Education

The one-degree (specialist) coexists with the two-degree (bachelor's – master's) scheme due to reforms to bring the domestic educational system in closer compliance with the Bologna accords. Specialist jurist degree is awarded in Russia after five years of study at a university. A bachelor jurist degree is awarded after four years of study at a university and Master degree is awarded after two years. Universities are not a subject to pro bono specific rules and requirements.

### Licensure

The legal profession in Russia is comprised of state-licensed attorneys (called “**advocates**”) and unlicensed lawyers (called “**jurists**”). Broadly speaking, the key distinction between these two types of lawyers is that advocates are allowed to represent clients in all matters, whereas jurists cannot represent clients in criminal cases. Jurists do not need to meet the same licensure requirements as advocates and may still provide a broad range of legal services to the public.<sup>4</sup> Advocates, on the other hand, must successfully complete an examination and application process administered by regional bar chambers. Thereafter they are subject to regulation by the Russian Bar. Given that it is possible to practice law without obtaining advocate status, many attorneys, particularly those practicing in commercial areas, do not ultimately become licensed.

Information about all advocates must be recorded in advocate’s registers, maintained by regional bodies of the Russian Ministry of Justice. As of June 30, 2015, there are 70,953 advocates practicing in Russia.<sup>5</sup> The number of advocates varies dramatically in different regions: as of June 30, 2015 there were 9,061 advocates in the city of Moscow (0.07% of the total population of more than 12 million residents),<sup>6</sup> and 19 advocates in the Chukotka Autonomous District (0.04% of the total population of approximately 50,540 inhabitants)<sup>7</sup>.

Advocates are only allowed to practice in the following four ways: (i) in solo practice; (ii) as part of a collegium of advocates; (iii) within a bureau of advocates; or (iv) though a legal consultation office.

According to the Federal Bar Chamber, as of December 31, 2013, 20,215 (29.6%) of Russian advocates had chosen solo practice. Where an advocate aims to provide legal services as a solo practitioner, he or she must set up an advocate parlor.

Collegia and bureaus are both collective forms of practicing law. A bureau is a partnership providing legal services on behalf of all partners who bear joint responsibility whereas a collegium is a loose association of individual advocates who bear individual responsibility for their own cases. In the most recent report of the Federal Bar Chamber, 44,123 (62%) advocates joined collegia, and 3,373 (4.8%) advocates set up bureaus.

Legal consultation offices must be set up by regional bar chambers in court districts where the number of advocates is lower than two per judge. Therefore, the legal consultation office is a tool designed to secure sufficient legal aid for remote and sparsely populated regions with. According to official statistics, there are currently 129 legal consultation offices operating in Russia, with only 581 (0.82%) advocates supporting their work.

---

<sup>4</sup> Federal Law No. 63-FZ, On Attorney’s Activity and the Bar in the Russian Federation, May 31, 2002.

<sup>5</sup> See <http://lawyers.minjust.ru/lawyers-portal/Lawyers> (last visited on September 4, 2015) (in Russian).

<sup>6</sup> See [http://moscow.gks.ru/wps/wcm/connect/rosstat\\_ts/moscow/ru/statistics/](http://moscow.gks.ru/wps/wcm/connect/rosstat_ts/moscow/ru/statistics/) (last visited on September 4, 2015) (in Russian).

<sup>7</sup> See [http://chukotstat.gks.ru/wps/wcm/connect/rosstat\\_ts/chukotstat/ru/statistics/population/](http://chukotstat.gks.ru/wps/wcm/connect/rosstat_ts/chukotstat/ru/statistics/population/) (last visited on September 4, 2015) (in Russian).



According to the program “Justice”, developed by the Ministry of Justice and approved by the Government of Russia on April 15, 2014, a market for legal services will be reformed and there are plans to establish an “advokate monopoly”, so that only advocates are allowed to represent clients in court.

In contrast, jurists are not subject to registration. As a result there are no official statistics on unregistered lawyers in Russia. As a rough estimate,<sup>8</sup> there are over 800,000 people in Russia who have a law degree.

### Legal Regulation for Lawyers

Advocates have an obligation under the Federal law to provide free legal aid. The mandatory legal aid that advocates provide is free to clients; however, the advocate is paid a minimal fee by the federal or regional governments in accordance with federal laws and local ordinances.<sup>9</sup>

As a professional institute acting independently of the state, the advocates’ society is the most significant link in the chain of legal aid providers in Russia. According to a report prepared by the Federal Chamber of Advocates,<sup>10</sup> in 2014 approximately 9,052 advocates provided free legal aid to 206,924 low-income citizens.<sup>11</sup> Such pro bono services included legal advice on various legal issues, drafting legal documents and providing representation in court in civil proceedings.

Legal aid in criminal cases is administrated chiefly by the judiciary and the investigators’ office through an assigned-counsel system in which courts or investigators appoint counsel for criminal suspects and defendants from a regional registry of licensed advocates.<sup>12</sup> In 2014, 29,480 advocates represented suspects in criminal cases as the assigned counsels. While there are few formal exceptions to providing such services when called upon by the government, in practice many advocates find ways to avoid providing the required legal aid.

The Russian advocates’ society does not have sufficient human resources to meet the legal aid requirements of Russian citizens. This is particularly the case in sparsely populated regions and remote areas of Russia. Presently, demand for free legal aid exceeds the number of advocates, and the government has struggled to address this shortage through the assigned-counsel system and by launching the legal consultation offices. As a result, one advocate may be involved in a number of cases for only minimal fees, and consequently the quality of free legal advice frequently suffers.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### Legal Aid

The Constitution guarantees Russian citizens the right to qualified legal counsel and, in the circumstances specified by law, the right to free legal aid.<sup>13</sup> However, before 2012 this guarantee was not accompanied by any meaningful implementing legislation. Previously, the regulation of legal aid and the provision of free legal services in the Russian Federation were based predominantly on the Code of Criminal Procedure and the Federal Law “On Attorney’s Activity and the Bar in the Russian Federation.”

<sup>8</sup> See <http://www.mos360.ru/mneniya/98059/> (last visited on September 4, 2015) (in Russian).

<sup>9</sup> Under the Criminal Procedure Code and the Federal Law No. 63-FZ advocates’ fees for the provision of legal aid are paid from the federal budget, save for the provision of legal aid in remote and sparsely populated areas. In these areas, advocates’ fees are financed from regional budgets.

<sup>10</sup> See [http://www.fparf.ru/documents/council\\_documents/council\\_reports/13947/?print=Y](http://www.fparf.ru/documents/council_documents/council_reports/13947/?print=Y) (last visited on September 4, 2015) (in Russian).

<sup>11</sup> In 2013, 3,873 advocates provided free legal support to 47,127 law-income citizens.

<sup>12</sup> See The CRIMINAL PROCEDURE CODE, art 5. The investigators’ office is part of the executive branch but separate from the prosecutors’ office. Investigators are officers authorized to conduct pretrial investigations in criminal proceedings.

<sup>13</sup> CONST. RUSSIAN FEDERATION art. 48.1.



At the beginning of 2012, after two years of debate, the Law “On Free Legal Aid” came into force.<sup>14</sup> This document is the first federal law dedicated specifically to regulating free legal aid across Russia.

Since the adoption of the Law “On Free Legal Aid” both the list of recipients of legal aid and the scope of free legal assistance in noncriminal proceedings have been expanded significantly. Free legal aid is provided at governmental (state) and nongovernmental (private) levels.

## State (Governmental) Legal Aid System

State legal aid is administered by federal and regional executive authorities, non-budgetary funds, state legal offices (bureaus in the form of government institutions), advocates or notaries. Under the Law “On Free Legal Aid,” local bar associations are responsible for providing lists of advocates who will participate in the free legal aid program for the next calendar year. These advocates are obliged to render free legal services on a contractual basis and each year submit free legal aid reports to the relevant state authorities.

The right to free legal assistance under the state system is available for the following recipients:

- low income citizens
- disabled people
- the Great Patriotic War veterans; Heroes of the Russian Federation; Heroes of the Soviet Union; Heroes of the Socialist Labor; Labor Heroes of the Russian Federation
- disabled children, orphans, and children left without parental care,
- persons who are willing to care for a child left without parental care regarding the issues relating to the placement of a child in the family
- adoptive parents regarding the issues relating to the protection of adopted children’s rights
- elderly and disabled people who live in social establishments<sup>15</sup>
- minors residing in state institutions with respect to child neglect and those imprisoned
- people with psychological disabilities<sup>16</sup>
- individuals without legal capacity
- persons affected by an emergency situation

The above mentioned groups are entitled to oral advice and assistance with drafting legal documents, claims and petitions in the following areas of practice:

- transactions in relation to real estate and title registration
- consumer rights related to housing utilities provision
- some labor and employment issues
- claims in respect of damages caused by the death of a family provider, as well as death, injury or other health problems caused by working conditions or an emergency situation
- welfare and pension benefits, state-funded social assistance, etc.
- maternity/paternity and alimony
- adoption of children, guardianship and custody
- protection of rights and interests of orphans, children left without parental care
- rehabilitation of the politically repressed
- limitation of legal capacity
- mistreatment of psychiatric patients
- administrative review of acts issued by governmental agencies, local self-governance bodies and public officials
- infringements of rights caused by an emergency situation

---

<sup>14</sup> Federal Law No. 324-FZ, On “Free Legal Aid” in the Russian Federation, Nov. 21, 2011.

<sup>15</sup> Federal Law No. 122-FZ, On Social Services for the Elderly and Disabled People, Aug. 2, 1995.

<sup>16</sup> Federal Law No. 3185-1-FZ, On Psychological Help for People and the Corresponding Guaranties, Jul. 2, 1992.



## Non-governmental (Private) Legal Aid System

Non-governmental legal aid may be performed by law clinics and nongovernmental (private) centers of free legal assistance.

Law clinics are funded by state and private universities as well as public nongovernmental organizations (“NGOs”) as part of education programs. According to information published on the official web-site of the Center Of Development Of Legal Clinics,<sup>17</sup> more than 208 law clinics have been set up across the country, where law students and young lawyers learn the practical skills of their profession by offering free legal assistance to people in need.

Private centers of free legal aid have the right to decide independently the types of legal aid they provide; the category of individuals to whom they will provide aid; and the scope of free legal aid offered. Nevertheless, the law emphasizes that individuals with low income and those in a difficult situation should be prioritized right for free legal aid.

## Alternative Dispute Resolution

### Mediation

In accordance with Article 10 of the Federal Law 193-FZ “On the Alternative Procedure for Settling Disputes with the Participation of an Intermediary (Mediation Procedure)” of July 27, 2010, mediation can be carried out free of charge. However, mediation is not yet popular in Russia.

### Ombudsman

The Commissioner for Human Rights in Russia (the “Ombudsman”) is established with the aim of providing the guarantees of the protection by the state of civil rights and freedoms, their observance and respect by state bodies, institutions of local self-government and officials. In accordance with Federal Constitutional Law 1-FKZ, the Ombudsman considers the complaints of Russian citizens, aliens and stateless persons residing on the territory of Russia; investigates the complaints about decisions or actions (inaction) of state authorities or local self-government bodies and officials, in case the applicant had already appealed against decisions of court or an administrative body, but does not agree with the decisions made on their complaint. There are also specialised bodies such as the Commissioner for Rights of Entrepreneurs and the Commissioner for Rights of Students.

## PRO BONO ASSISTANCE

Historically, there has been no culture of pro bono legal assistance in Russia. Under the communist regime that prevailed for many years in the USSR, legal aid, as well as most other social services, was exclusively the province of the state and was mostly free for individuals. Perhaps as a vestige of the former communist era, and partly because of the immaturity of local business society, Russia still lacks a professional environment that fully supports pro bono work. However, with Russia’s transition to a democratic government and capitalist economy, there has been an ideological shift from the expectation that legal aid be exclusively state-sponsored to an acceptance that private sector attorneys should also play a role in the provision of free legal services. A growing number of international and local firms and nongovernmental organizations are appearing in Russia, many of which seek to promote pro bono and give back to the community.

There have also been some positive steps taken at the federal level which aim to expand regulation of the free legal aid system in the Russian Federation. One of the more significant developments in establishing pro bono services in Russia was the adoption of the Law “On Free Legal Aid,” which provides the legal framework and key principles to both state and private legal aid systems. As a result, a pro bono culture in Russia is slowly developing.

---

<sup>17</sup> See <http://codolc.com/clinics/> (last visited on September 4, 2015) (in Russian).



## Barriers To Pro Bono Work And Other Considerations

Pro bono opportunities for international law firms located in Russia center largely around the representation of NGOs. While there is also a need for legal aid at the individual level, there are numerous barriers to taking on the representation of individuals in Russian courts – among them, the requirement of admission to practice law in Russia and a high degree of fluency in the Russian language.

International NGOs are still relatively new to Russia. These NGOs provide a variety of humanitarian services ranging from the provision of legal assistance to meeting the basic day-to-day needs of Russia's indigent population. The role of NGOs in Russia, however, is not nearly as well-established as it is in the United States or in other developed European countries. This is due, in part, to the Russian federal government not having taken a proactive interest in and has done little to stimulate or encourage the growth of NGOs.<sup>18</sup>

Moreover, Russian NGO legislation is complicated and is often applied by the government unevenly, making it difficult for NGOs to navigate the legal landscape.<sup>19</sup> As a result, most of these organizations look to foreign and private sources, such as the New Eurasia Foundation,<sup>20</sup> for financial and other support. While such organizations are growing in Russia, their resources nevertheless remain limited.

In addition, the Russian legal framework is not comprehensive. The Law "On Free Legal Aid" seeks to address some of the inherent weaknesses. In particular, by regulating the provision of free legal support to foreign nationals and people without citizenship, granting them the right to take free legal advice in certain circumstances provided for by Russian law and in accordance with legally established procedure. Before 2012 the right to receive free legal assistance was guaranteed exclusively to citizens of Russia – to the exclusion of a significant and growing numbers of foreign citizens, including refugees. Although Article 2 of the Law "On Free Legal Aid" declares that foreign citizens and people without citizenship have the right to free legal support, it does not provide any specific regulation.

As the Law "On Free Legal Aid" provides only a very basic framework and the key principles on legal aid in Russia, it requires the subsequent adoption of numerous laws and administrative ordinances establishing more detailed regulation on the free legal services granted.

The existence of "the loser pays" statute may also be considered as a barrier for pro bono development. As a general rule, a losing party shall reimburse litigation costs to a successful party. Certain categories of indigent parties (e.g. disabled, orphans) are released from the obligation to pay stamp duty for initiating an action. However, stamp duty costs are relatively small compared to overall litigation costs that mostly consist of lawyers' fees. The losing party can be fully released from the payment of litigation costs if so decided by the relevant court, but such decisions are taken on a case by case basis. The tax consequences of free legal services are also an issue. Until a legal services agreement defines free legal aid as support for a charity, NGOs are subject to VAT and income tax on the free legal services that they provide. Applicable Russian tax legislation does not contain any provisions in relation to pro bono work. Therefore when providing free legal aid, both lawyers and their pro bono clients must be capable of

---

<sup>18</sup> Jeffrey Thomas, U.S. Says Russian NGO Law Does Not Meet Human Rights Commitments, available at [http://www.pressmon.com/cgi-bin/press\\_view.cgi?id=509090](http://www.pressmon.com/cgi-bin/press_view.cgi?id=509090) (last visited on September 4, 2015) (criticizing Russian NGO legislation which gives the executive wide latitude to determine the fate of NGOs); see also L.U. Grudtsina, History of Russian Bar, THE ADVOCATE (2006).

<sup>19</sup> Alison Kamhi, The Russian NGO Law: Potential Conflicts with International, National, and Foreign Legislation, 9 INT'L J. OF NOT-FOR-PROFIT LAW 1, 34 (Dec. 2006), available at [http://www.icnl.org/research/journal/vol9iss1/art\\_6.htm](http://www.icnl.org/research/journal/vol9iss1/art_6.htm) (last visited on September 4, 2015); see also Moscow Branch of the Salvation Army v. Russia, No. 72881/01, Eur. Ct. H.R. (2006), available at <http://hudoc.echr.coe.int/> (last visited on September 4, 2015)

<sup>20</sup> The New Eurasia Foundation is a nongovernmental, noncommercial organization working to improve the lives of Russian citizens by consolidating the efforts and resources of the public, private and nongovernmental sectors and implementing social and economic development programs at the regional and local levels. See generally, NEW EURASIA FOUNDATION, homepage, <http://www.neweurasia.ru> (last visited on September 4, 2015).



proving to state bodies the charitable nature of the relationship established between them by presenting solid and scrupulously prepared documentation. Nonetheless, the risk remains that tax authorities will deem the free legal services to be taxable.

## Recent developments

Recently, the Russian State Duma adopted several laws introducing the concepts of an “NGO serving as a foreign agent” and an “undesirable organisation”.

Federal Law No. 121-FZ “On Amendments to Certain Legislative Acts of the Russian Federation as to Regulation of Activities of Non-Commercial Entities being Foreign Agents” dated July 20, 2012 introduced a notion of an “NGO serving as a foreign agent” which is a Russian NGO that is financed from abroad and participates in political activity in Russia. Such NGOs have more extensive reporting obligations and they must mark all information and materials distributed by them with a statement “distributed by an NGO serving as a foreign agent”, but there are no restrictions on their activities, except for restrictions on their participation in any elections or referendums.

The concept of an “undesirable organisation” was implemented by the Federal Law No. 129-FZ “On Amending of Certain Legal Acts of the Russian Federation” dated May 23, 2015. The law provides that a foreign or international NGO can be declared undesirable if its activity threatens the foundations of the constitutional system of Russia, state defense or state security. Any activities of such NGOs in the territory of Russia are prohibited. The criteria for declaring an NGO to be undesirable is vague and does not specify any particular test for determining what constitutes a threat to the foundations of the constitutional system, national defense and security, so its interpretation allows a significant discretion by the responsible state authorities.

The uncertainty of legal environment and lack of stability aggravated by the adoption of these two acts may force many Russian and foreign NGOs to reduce or stop their activities in Russia which will impact negatively the provision of pro bono services in Russia.

## Pro Bono Resources

NGOs in Russia have a substantial need for pro bono assistance. In recent times, international law firms located principally in Moscow and Saint Petersburg have provided legal aid to NGOs and other public or charitable institutions on a variety of different matters. Among the dozens of organizations that have requested and received pro bono assistance are the Hermitage Museum,<sup>21</sup> the AIDS Foundation East-West,<sup>22</sup> Doctors Without Borders,<sup>23</sup> the Danish Refugee Council,<sup>24</sup> Integra,<sup>25</sup> the Humanitarian

---

<sup>21</sup> BAKER & MCKENZIE, Pro Bono and Community Service: The Rewards of Giving (2007).

<sup>22</sup> AIDS Foundation East–West (“**AFEW**”) is an international, humanitarian, public health, nongovernmental organization whose mission is to contribute to the reduction of the impact of HIV/AIDS in the Newly Independent States (NIS) of the former Soviet Union. See generally, AIDS FOUNDATION EAST–WEST Homepage, <http://www.afew.org> (last visited on September 4, 2015).

<sup>23</sup> MEDECINS SANS FRONTIERES, homepage, <http://www.doctorswithoutborders.org> (last visited on September 4, 2015).

<sup>24</sup> CHADBOURNE & PARKE LLP, Pro Bono Year in Review 2005, available at <http://www.chadbourne.com/files/upload/Pro%20Bono%20Year%20in%20Review%202005.pdf> (last visited on September 4, 2015).

<sup>25</sup> Integra is a nonprofit partnership whose mission is to alleviate poverty, reduce unemployment and help transform communities by supporting the development of small businesses. See generally, INTEGRA, homepage, <http://www.integrarussia.ru> (last visited on September 4, 2015).



Programs Support Charitable Foundation,<sup>26</sup> the International Center for Not-for-Profit Law,<sup>27</sup> and United Way Moscow.<sup>28</sup>

In December 2007, the Public Interest Law Institute (“PILnet”) launched a pro bono clearinghouse in Moscow.<sup>29</sup> The clearinghouse attempts to bridge the gap between NGOs, which know the legal needs of the community but lack the ability to provide legal representation, and law firms, which possess the legal resources but lack a direct connection to local NGOs and individuals in need. PILnet identifies and screens potential pro bono clients and circulates a bi-monthly newsletter to participating firms that provides a description of clients in need of legal aid and a summary of the respective legal issues with which they need assistance.<sup>30</sup> The clearinghouse also provides Russian NGOs with training and know-how on a variety of issues related to the daily operation of non-profit organizations.<sup>31</sup> A firm having expertise or an interest in a particular area can notify PILnet’s Moscow office and PILnet will then put the firm into direct contact with the relevant client. PILnet also holds quarterly meetings with participating law firms and NGOs in Moscow to discuss the clearinghouse and various topical themes and issues in the sphere of Russian pro bono services. PILnet is currently exploring ways to replicate its Moscow-based clearinghouse in other Russian regions. Dmitry Shabelnikov is the country director for Russia at PILnet.

In addition to working for locally established NGOs, there are also opportunities for Russia-based lawyers to take on broader pro bono work in the European Community. For example, PILnet operates a global clearinghouse out of their headquarters in Budapest, Hungary. The international clearinghouse is open to firms from all countries and generates work relating to Europe, predominately representing *amicus curiae* before European courts. Additionally, through organizations such as the European Human Rights Advocacy Center (“EHRAC”), there are litigation opportunities to work on cases that have been appealed to the European Court of Human Rights.<sup>32</sup>

Finally, the American Bar Association (the “ABA”), through its Rule of Law Initiative program, has made significant inroads in advancing pro bono and developing legal infrastructure in Russia.<sup>33</sup> Among other

---

<sup>26</sup> Humanitarian Programs Support Charitable Foundation (“HPSCF”) is a nonprofit organization aimed at implementing programs that contribute to the improved quality of life of children with disabilities and their families. See generally, HPSCF homepage, <http://www.fpgp.ru> (last visited on September 4, 2015).

<sup>27</sup> The International Center for Not-For-Profit Law (ICNL) is an international not-for-profit organization that seeks to promote an enabling legal environment for civil society, freedom of association, and public participation around the world. See generally, ICNL, homepage, <http://www.icnl.org> (last visited on September 4, 2015).

<sup>28</sup> United Way Moscow is a community based nonprofit organization dedicated to improving the lives of people in Moscow and fostering the concepts of modern philanthropic giving in Russia generally. See UNITED WAY MOSCOW, homepage, <http://www.unitedway.ru> (last visited on September 4, 2015).

<sup>29</sup> See generally, PUBLIC INTEREST LAW INSTITUTE, homepage, <http://pilnet.org/> (last visited on September 4, 2015). The clearinghouse was opened with the assistance of the American Bar Association Rule of Law Initiative and several private law firms. Since 2007, PILnet’s Russian clearinghouse has grown from partnering with four international law firms to more than 20 local and international firms and 2 corporations, and has taken on over 85 matters for more than 40 NGOs.

<sup>30</sup> PILnet connects with civil society networks, working through umbrella organizations such as the International Center for Not-for-Profit Law, Charities Aid Foundation, Lawyers for Civil Society, United Way Russia and UNHCR.

<sup>31</sup> See UNITED STATES AGENCY FOR INTERNAL DEVELOPMENT, Alliances in action: Pro Bono clearinghouse in Moscow, <http://idea.usaid.gov/node/241> (last visited on September 4, 2015).

<sup>32</sup> See <http://www.ehrac.org.uk/about-us/> (last visited on September 4, 2015). Established in January 2003, EHRAC (based at London Metropolitan University) works in Russia in partnership with the Memorial Human Rights Center through a dedicated project office in Moscow. EHRAC’s primary objective is to assist individuals, lawyers and NGOs within the Russian Federation in taking cases to the European Court of Human Rights.

<sup>33</sup> Significant projects have included: assisting in the reintroduction of jury trials in Russia; assisting in drafting a new criminal procedure code based on select adversarial principles; founding clinical legal education programs throughout Russia and publishing Russia’s first clinical legal education textbooks; providing training to social



things, the ABA facilitates a series of public events aimed at publicizing and fostering a commitment to pro bono service within the Russian legal community. The ABA seeks to engage lawyers, judges and academics to publish works on pro bono as well as to attend, speak or otherwise participate at ABA conferences in Russia.

## CONCLUSION

Despite the adoption of the specific Law “**On Free Legal Aid**,” the current regulatory regime, is still limited both in terms of the categories of people that may avail themselves of free legal aid and the scope of services available to them. Funding from the federal and regional budgets remains limited and the fees awarded to lawyers who provide legal aid are minimal, making it difficult to attract lawyers and provide high quality legal aid. In addition, a significant portion of the population is often denied access to legal aid by virtue of their residence in remote and sparsely- populated areas with an inadequate number of legal offices and lawyers. Furthermore, the adoption of the laws on “NGOs serving as a foreign agent” and “undesirable organisations” puts significant pressure on many NGOs operating in Russia.

September 2015

Pro Bono Practices and Opportunities in the Russian Federation

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

advocates to assist victims of domestic violence; and assisting in the adoption of judicial and legal profession codes of ethics. Telephone interview with Anton Alferov, Deputy Country Director, ABA/ROLI in the Russian Federation (Feb. 6, 2008); see also AMERICAN BAR ASSOCIATION, homepage, <http://www.abanet.org> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in Saudi Arabia

### INTRODUCTION

The provision of pro bono legal services is currently not as institutionalized in the Kingdom of Saudi Arabia (“**Saudi Arabia**”) as it is in many western jurisdictions. Whilst the Ministry of Justice (the “**MoJ**”) is planning to make it obligatory for lawyers to provide free legal services to low-income members of the public, Saudi Arabia does not currently regulate, nor does it expressly mandate the provision of legal aid by lawyers practicing in Saudi Arabia. Notwithstanding the lack of formal regulation, attorneys practicing in Saudi Arabia at times enter into *ad hoc* arrangements with local governmental agencies and non-profit organizations to provide pro bono legal services. This chapter sets out the current state of pro bono practice in Saudi Arabia through a description of the regulatory framework of the legal profession and the judicial system and addresses the potential changes and opportunities in pro bono practice.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

The judicial system in Saudi Arabia is subject to an ongoing reorganization pursuant to the Judicial System Act, promulgated by Royal Decree no. M/78 dated 19/09/1428 H. (corresponding to 01/10/2007 G.) (the “**Judicial System Act**”). Following the promulgation of the Judicial System Act, Saudi Arabia recognizes a dual system of courts with separate administrative and non-administrative courts. The administrative arm of the judicial system in Saudi Arabia is regulated by the Board of Grievances Act<sup>1</sup> (promulgated around the same time as the Judicial System Act) and is comprised of the Board of Grievances which has three different levels of courts. The highest court in the Board of Grievances is the supreme administrative court, followed by the administrative appellate courts and the administrative courts. These courts have jurisdiction to hear disputes against the state and other government agencies, pertaining to administrative law.<sup>2</sup> Until the full implementation of the Judicial System Act (the timing of which is currently unclear), the Board of Grievances also has jurisdiction to hear all types of commercial disputes and certain criminal matters.

Under the Judicial System Act, non-administrative courts are categorized in the following order: (i) the supreme court; (ii) the appellate courts; and (iii) the courts of first instance. The courts of first instance include general courts, criminal courts, domestic relations courts, commercial courts and labor courts. The appellate courts are comprised of different legal panels including the criminal, domestic relations, commercial and labor panels each with the jurisdiction to review any appealed judgment from the first instance courts. The Judicial System Act contemplates that the supreme court’s main functions will be to ensure the consistency of local laws with the Islamic principles of *Sharia’a* and to review judgments and decisions of the appellate courts.

Many specialized judicial committees will be abolished under the Judicial System Law except for the customs, commercial and banking committees. Once fully implemented, the new court system will result in a structure that will be familiar to lawyers in many other jurisdictions; it will simplify and clarify the jurisdictions of the courts and is also expected to encourage the development of greater specialization by members of the judiciary, which in turn could lead to greater certainty of judicial interpretation<sup>3</sup>.

---

<sup>1</sup> Board of Grievances Act issued by the Royal Decree number m/78 dated 19/9/1428 H (corresponding to Sep. 30, 2007 G).

<sup>2</sup> Id. at art. 13.

<sup>3</sup> See <http://www.tamimi.com/en/magazine/law-update/section-8/may-7/the-new-court-system-in-saudi-arabia.html> (last visited on September 4, 2015).



## The Practice of Law

The legal profession in Saudi Arabia is regulated by the Code of Law Practice promulgated by Royal Decree no. M/38 dated 28/07/1422H. (corresponding to 15/10/2001 G.) and its implementing regulations (the “**Code of Law Practice**”). Under the Code of Law Practice, the practice of law in Saudi Arabia comprises the representation of third parties before the courts of law and the provision of legal consultancy services.<sup>4</sup> In order to practice law in Saudi Arabia any lawyer must be licensed by the MoJ or else must be supervised by an attorney licensed by the MoJ. Only Saudi nationals, holding a local degree in Sharia’a<sup>5</sup> or law (or the equivalent from a foreign university) and having a minimum number of years of relevant practical experience inside or outside of Saudi Arabia, may be licensed. The required number of years of experience is (i) three years if the candidate holds a bachelor’s degree, (ii) one year if the candidate holds a master’s degree and (iii) no experience if the candidate holds a doctorate degree. A practicing lawyer must also have a good reputation, not be convicted of any major offenses under local laws and be a resident of Saudi Arabia. The Code of Law Practice provides for an exception to the above requirements, whereby a non-lawyer can litigate up to a maximum of three cases at a time when acting on behalf of three different persons and an unlimited number of cases, when acting as the official corporate representative on behalf of an entity, on behalf of close relatives (up to the fourth degree) or as guardian or trustee.<sup>6</sup>

The Code of Law Practice also provides for the possibility of setting up professional partnerships for the practice of law between two or more licensed lawyers. The legal profession in Saudi Arabia is currently regulated by the MoJ and the National Commission of Lawyers, which is the current lawyers’ association in Saudi Arabia (the “**Commission**”).

Non-Saudi lawyers are not able to be licensed to practice law in Saudi Arabia. However, a non-Saudi lawyer is permitted to provide legal consultation services when supervised by a licensed Saudi lawyer by virtue of an employment arrangement.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

Under the current legal framework in Saudi Arabia, there are no laws that expressly provide for legal aid or that mandate the provision of legal aid by lawyers and law firms practicing in Saudi Arabia. However, we understand that a new regulation is being proposed by the MoJ to establish the “Attorneys’ Authority”. This new regulation is expected to include mandatory provisions on legal aid that are expected to apply to all lawyers practicing in Saudi Arabia.<sup>7</sup>

Despite the absence of an express provision of legal aid in Saudi Arabia, the MoJ has developed an unofficial process by virtue of which the MoJ receives requests from courts on behalf of individuals unable to afford lawyers’ fees and puts them in contact with lawyers willing to render free legal services from the list of practicing lawyers maintained by the MoJ.<sup>8</sup> The MoJ is also often approached by the National Society for Human Rights (the “**NSHR**”), which is a human rights organization associated with and funded by the Saudi government and the Commission on behalf of disadvantaged groups of individuals seeking

---

<sup>4</sup> Code of Law Practice issued by the Royal Decree number m/38 dated 28/7/1422 H. (corresponding to Oct. 15, 2001 G.), art. 1.

<sup>5</sup> Sharia’a is the moral code and religious law of Islam which is the supreme law in Saudi Arabia.

<sup>6</sup> Code of Law Practice, supra n.1 at art. 18.

<sup>7</sup> Al-Madina newspaper issue number 16426 on Sunday Apr. 13, 2008, and Okaz newspaper issue 3502 on Tuesday Jun. 18, 2011 and Saudi Gazette article “Pro bono legal services for the poor considered” on Monday Jun. 16, 2014.

<sup>8</sup> Email from Judge Yousuf Al-Farraj (May 20, 2012) (on file with author).



legal aid. In other instances the MoJ has developed a common practice to retain and pay lawyers to plead on behalf of Saudi individuals convicted of terrorism or state security crimes.<sup>9</sup>

Moreover, the Commission and NSHR entered into a memorandum of understanding on 13/01/1429 H. (corresponding to 22/01/2008 G.) by which the Commission has agreed to nominate a certain number of lawyers to represent and provide free legal assistance to individuals who seek the help of NSHR on human rights issues.

Pursuant to the Arab Charter on Human Rights, members of the League of Arab States who have ratified such Charter (“**Arab Charter States**”), including Saudi Arabia<sup>10</sup>, commit to provide adequate help to individuals without enough financial resources to defend their rights by ensuring proper legal aid.<sup>11</sup> Arab Charter States also commit to grant each person charged with a criminal offense the right to have free legal assistance through a defense lawyer, if that person cannot defend himself or herself, or if the interests of justice so require. Although Saudi Arabia is an Arab Charter State, the provisions of the Arab Charter on Human Rights are yet to be fully implemented in Saudi Arabia.

Also, the Riyadh Arab Convention for Judicial Cooperation, to which Saudi Arabia is a signatory, grants nationals of each signatory state the right for free legal assistance within the borders of each other signatory state in the same manner as its own nationals and in accordance with law in force therein.<sup>12</sup>

Saudi Arabia has also promulgated a number of bilateral treaties by virtue of which a right to legal aid is granted to the citizens of both signatory countries in civil, commercial, criminal and domestic relations cases. Among those signatory countries are Kazakhstan,<sup>13</sup> Sudan<sup>14</sup> and Yemen.<sup>15</sup>

## PRO BONO ASSISTANCE

While Saudi Arabia does not yet have an established and formalized pro bono culture, individual attorneys in Saudi Arabia often provide pro bono services on an informal basis. Such participation is typically seen via private practice law firms or through individual collaboration with non-governmental organisations either directly or via referral organisations such as TrustLaw, an affiliate of the Thomson Reuters Foundation. As the legal profession continues to mature in Saudi Arabia, it is expected that pro bono services will become more institutionalized and better regulated.

## CONCLUSION

At present, the practice of providing pro bono legal services in Saudi Arabia is not as widespread or institutionalized as in many western jurisdictions. That said, reform initiatives have been proposed by the MoJ which when implemented, together with the strong presence of international law firms and the increased interest and awareness on human rights in Saudi Arabia, should encourage the emergence and development of a stronger pro bono culture in the foreseeable future.

September 2015

Pro Bono Practices and Opportunities in Saudi Arabia

---

<sup>9</sup> Contact at the Institute of Public Administration.

<sup>10</sup> The following countries are Arab Charter States: Algeria, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Palestine, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen.

<sup>11</sup> Arab Charter on Human Rights dated May 23, 2004 G. which entered into force on Apr. 17, 2009 G.), art. 13.

<sup>12</sup> Riyadh Arab Convention for Judicial Cooperation dated Apr. 6, 1983 G (which entered into force on Oct. 30, 1985 G), art. 4.

<sup>13</sup> Bilateral Treaty for Judicial Cooperation between Kazakhstan and Saudi Arabia dated Apr. 7, 2006 G, art. 3.

<sup>14</sup> Bilateral Treaty for Judicial Cooperation between Sudan and Saudi Arabia dated Apr. 23, 2010 G, art. 5.

<sup>15</sup> Bilateral Treaty for Judicial Cooperation between Yemen and Saudi Arabia dated Oct. 17, 2008 G, art.6.



This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Scotland

### INTRODUCTION<sup>1</sup>

In recent years, pro bono legal services have become an increasingly important focus for law firms within Scotland. The push towards the development of pro bono services in Scotland is the result of various factors, including an awareness that the Legal Aid system does not cater to charitable organizations and the increasing visibility of corporate social responsibility of both law firms and their corporate clients.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Scotland operates under the constitution of the United Kingdom. However, devolution in the United Kingdom means that the Scottish government has the power to take decisions in respect of certain domestic policy areas. Equally, on issues impacting citizens of the United Kingdom (the “**UK**”), decisions are taken at the UK level.<sup>2</sup> Scots Law shares many statutory provisions with the law of England and Wales, but Scots civil law remains substantially based on Scots common law rather than statute.<sup>3</sup> European Union (the “**EU**”) law and decisions of the European Court apply in the same way to Scotland as it does to England, Wales and Northern Ireland by virtue of Scotland’s position as a constituent of the UK.<sup>4</sup>

##### The Courts

Scotland’s Supreme Courts consist of the High Court of Justiciary and the Court of Session.<sup>5</sup> The High Court of Justiciary deals with criminal appeals and serious criminal cases. Although the Court is based in Edinburgh, trials are held throughout Scotland. At first instance, the High Court of Justiciary sits in cities and larger towns around Scotland and has a permanent base in each of Edinburgh, Glasgow and Aberdeen. There are periodic sittings in eight circuit courts and regular sittings at Edinburgh Sheriff Court. As an appeal court, it sits only in Edinburgh.<sup>6</sup> The Court of Session is the supreme civil court that sits in Edinburgh. It sits in an appeal capacity and also as a civil court dealing with disputes between people or organizations. It is divided in two: the Outer House is the first instance court and the Inner House is the appellate court.

The lower courts consist of the Sheriff Courts, which operate in three capacities: (i) civil, (ii) commissary and (iii) criminal. Civil business involves disputes between persons or organizations. Commissary work deals mainly with the disposal of an estate. Criminal cases are brought under either “solemn procedure,” where trials are held before a sheriff sitting before a jury, or, for less serious offences, under “summary

---

<sup>1</sup> This chapter was drafted with the assistance of Shepherd and Wedderburn LLP.

<sup>2</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/79417/Scotland\\_analysis\\_Devolution\\_and\\_the\\_implications\\_of\\_Scottish\\_Independan...\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79417/Scotland_analysis_Devolution_and_the_implications_of_Scottish_Independan..._1_.pdf) (last visited on September 4, 2015).

<sup>3</sup> See <http://www.gov.scot/resource/doc/925/0000078.pdf> (last visited on September 4, 2015).

<sup>4</sup> See <http://thestudentlawyer.com/2013/06/17/the-scottish-legal-system-in-a-nutshell/> (last visited on September 4, 2015).

<sup>5</sup> See <https://www.scotcourts.gov.uk/the-courts/supreme-courts/about-the-supreme-courts> (last visited on September 4, 2015).

<sup>6</sup> See <https://www.scotcourts.gov.uk/the-courts/gazetteer/high-court/about-the-high-court> (last visited on September 4, 2015).



procedure,” where a sheriff sits without a jury. There are 49 Sheriff courts across six sheriffdoms in Scotland.

The Court of Session, the High Court of Justiciary and the Sheriff Courts are administered by the Scottish Courts and Tribunal Service. The Scottish Courts and Tribunals Service supports nine tribunals which exist to safeguard peoples’ rights. Tribunals hear cases on a range of issues including compulsory care and treatment of people with mental health disorders, land and property disputes and disputes between tenants and landlords. Each tribunal is presided over by a judicial head known as the “president,” an expert and a member from the pool of panel members. Those invited to a hearing may have legal representation and decisions of the tribunal can be appealed.<sup>7</sup>

### Appointed vs. Elected Judges

There are no elected judges in Scotland; all individuals are appointed to judicial office. The Judicial Appointments Board for Scotland has been in existence since 2002 and is responsible for recommending to the Scottish Ministers individuals for appointment to judicial offices.<sup>8</sup> The Queen makes all permanent judicial appointments based on recommendations from the First Minister of the Scottish Government who consults with the Lord President.

### The Practice of Law

The legal profession in Scotland is divided into two branches: solicitors and advocates.

### Education

The vast majority of people that qualify as a Scottish solicitor or advocate will have completed three distinct stages of education: (i) a four-year LLB (Legum Baccalaureus – Bachelor of Laws) degree in Scots law; (ii) a one-year Diploma in Professional Legal Practice; and (iii) a traineeship, which is a two-year period of paid, in-office training in a firm of solicitors. To become an advocate, the Faculty of Advocates (the “**Faculty**”) requires additional exams and a period of pupillage known as “devilling”, which is similar to an apprenticeship.<sup>9</sup>

### Licensure

#### The Role of Solicitors

Solicitors are regulated and represented by the Law Society of Scotland (the “**Society**”) and provide advice on all legal matters. Solicitors are instructed by members of the public and have rights of audience in the lower courts and tribunals. Solicitors carry out more general legal practice. Additionally, there are solicitor advocates who have extended rights of audience and can appear before the Court of Session and the High Court of Justiciary.<sup>10</sup>

#### The Role of Advocates

Advocates are equivalent to barristers in England & Wales. They are primarily instructed directly by solicitors, rather than by members of the public, although they may be instructed directly by members of the public in limited circumstances. Advocates, who are regulated by the Faculty, are able to provide advice on all legal matters and have rights of audience in the Court of Session and the High Court of Justiciary.<sup>11</sup>

#### The Role of Foreign Lawyers

There is no bar to lawyers qualified in another jurisdiction working in Scotland provided they do not describe themselves as “solicitors” and do not undertake certain kinds of work reserved by statute for

---

<sup>7</sup> See <https://www.scotcourts.gov.uk/the-courts/the-tribunals/about-scottish-tribunals> (last visited on September 4, 2015).

<sup>8</sup> See <http://www.judicialappointmentscotland.org.uk/Home> (last visited on September 4, 2015).

<sup>9</sup> See <http://thestudentlawyer.com/2013/06/17/the-scottish-legal-system-in-a-nutshell/> (last visited on September 4, 2015).

<sup>10</sup> See <http://thestudentlawyer.com/2013/06/17/the-scottish-legal-system-in-a-nutshell/> (last visited on September 4, 2015).

<sup>11</sup> See <http://www.advocates.org.uk/index.html> (last visited on September 4, 2015).



Scottish-qualified solicitors (Section 32 of the Solicitors (Scotland) Act 1980). These reserved areas are broadly conveyancing of land and/or buildings, litigation (civil or criminal) and obtaining confirmation in favor of executors (the Scottish equivalent of probate).

It is a requirement of the Solicitors (Scotland) Act 1980 that foreign lawyers must be registered with the Society before they can enter into multi-national practices with Scottish solicitors or incorporated practices.<sup>12</sup> A person who wishes to become a registered foreign lawyer must apply in writing to the Society for registration, submit an application and pay any application fee(s).<sup>13</sup>

### **The Role of In-House Counsel**

In-house lawyers are a large and growing part of the Scottish legal profession, with over a quarter of practicing solicitors working in-house.<sup>14</sup>

### **Demographics**

In November 2014, there were more than 11,000 solicitors practicing in Scotland, an all-time high.<sup>15</sup> Membership statistics released by the Society showed there was one solicitor for every 500 people in Scotland.<sup>16</sup> Over 460 advocates are currently practicing in Scotland, approximately one-fifth of whom are Queen's Counsel.<sup>17</sup>

### **Legal Regulation of Lawyers**

The Faculty regulates advocates. The Faculty has published the "Guide to the Professional Conduct of Advocates," which outlines professional conduct for advocates, particularly young advocates.<sup>18</sup> The Society regulates solicitors. In recent years it has attempted to clarify the standards expected of Scottish solicitors. Part of that process has been to introduce practice rules. Standards of conduct can be found under Rule B1 of the 2011 Rules.

## **LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES**

### **State-Subsidized Legal Aid**

The Legal Aid and Solicitors (Scotland) Act 1949, which came into force in 1950 for civil matters and in 1964 for criminal matters, was the original legislative foundation to Scottish Legal Aid and is the forerunner to the current act, the Legal Aid (Scotland) Act 1986. The Scottish government determines Legal Aid policy and the Scottish Parliament is responsible for drafting any legislation required to implement such policy. The Legal Aid system is managed by the Scottish Legal Aid Board (the "**SLAB**"), who is also responsible for administering the Scottish Legal Aid Fund.

Within the umbrella of free legal assistance, there are two kinds of services available. The first is "Advice and Assistance," which helps pay for advice from a solicitor on any matter of Scots law. Advice and

---

<sup>12</sup> See <https://www.lawscot.org.uk/rules-and-guidance/section-d-requirements-of-and-restrictions-on-practice/rule-d7-registration-of-foreign-lawyers/guidance/d7-d8-registration-of-foreign-lawyers-and-multi-national-practices/> (last visited on September 4, 2015).

<sup>13</sup> See <https://www.lawscot.org.uk/rules-and-guidance/section-d-requirements-of-and-restrictions-on-practice/rule-d7-registration-of-foreign-lawyers/guidance/d7-d8-registration-of-foreign-lawyers-and-multi-national-practices/> (last visited on September 4, 2015).

<sup>14</sup> See [http://www.thesundaytimes.co.uk/sto/news/uk\\_news/article1534447.ece?CMP=OTH-gnws-standard-2015\\_03\\_21](http://www.thesundaytimes.co.uk/sto/news/uk_news/article1534447.ece?CMP=OTH-gnws-standard-2015_03_21) (last visited on September 4, 2015).

<sup>15</sup> See <http://www.scotsman.com/news/scotland/top-stories/scotland-has-more-solicitors-than-ever-1-3604154> (last visited on September 4, 2015).

<sup>16</sup> See <http://www.scotsman.com/news/scotland/top-stories/scotland-has-more-solicitors-than-ever-1-3604154> (last visited on September 4, 2015).

<sup>17</sup> See <http://www.advocates.org.uk/profession/index.html> (last visited on September 4, 2015).

<sup>18</sup> See [http://www.advocates.org.uk/downloads/guidetoconduct\\_5thedition.pdf](http://www.advocates.org.uk/downloads/guidetoconduct_5thedition.pdf) (last visited on September 4, 2015).



Assistance may cover some, or all, of the costs of procuring legal advice. The second is “Legal Aid,” which helps pay for a solicitor to act in court and is divided into Civil Legal Aid and Criminal Legal Aid. It covers preparatory work, as well as the hearing itself, and can also provide funding for advocates and experts if needed.<sup>19</sup>

### Eligibility Criteria

Advice and Assistance, Civil Legal Aid and Criminal Legal Aid are subject to several eligibility criteria. Those who qualify for Criminal Legal Aid will receive aid for free, although they may be required to pay for any Advice and Assistance received before Criminal Legal Aid is granted.<sup>20</sup> For “solemn cases”, including murder, rape, robbery, serious drugs cases, large thefts and serious assault, an applicant is automatically entitled to Criminal Legal Aid while in custody, until (i) a decision is made about whether to grant Criminal Legal Aid, or (ii) he or she is given bail. An applicant can choose to engage the duty solicitor or his or her own solicitor during this period when he or she is automatically entitled to Criminal Legal Aid. Once released, the applicant must apply for Criminal Legal Aid and the SLAB must consider whether the applicant paying such legal costs would cause too much hardship.<sup>21</sup>

### Financial Means

In order to qualify for Advice and Assistance, the applicant must meet the financial means tests set out in the most recent Advice and Assistance Keycard, published by the SLAB.<sup>22</sup> For Civil Legal Aid, the applicant is also subject to a financial means test based on the applicant’s income and assets. Depending on an applicant’s income, different arrangements are available, ranging from complete ineligibility for assistance to receiving assistance without having to make any contribution to legal fees.<sup>23</sup> Financial determination for Criminal Legal Aid is based on the financial means test applied in connection with determining eligibility for Civil Legal Aid. Criminal Legal Aid also uses an “undue hardship” test, which considers whether an applicant paying legal costs would cause “undue hardship” to his or her dependents.<sup>24</sup> The financial aid criteria for Criminal Legal Aid differ for summary and solemn cases.<sup>25</sup>

### Merits

To qualify for Civil Legal Aid, an applicant must have a legal basis for his or her case. For Criminal Legal Aid, the extent of the aid an applicant receives will depend on (i) the seriousness of the charges, (ii) whether the applicant is in custody and (iii) whether the applicant plans to plead guilty or not guilty. Criminal Legal Aid is only available after an applicant has pled not guilty, or in more serious cases, when he or she first appears in court.

---

<sup>19</sup> See [http://www.slab.org.uk/export/sites/default/common/documents/publications/Civil\\_legal\\_aid\\_information\\_for\\_applicants\\_July\\_2011\\_FINAL.pdf](http://www.slab.org.uk/export/sites/default/common/documents/publications/Civil_legal_aid_information_for_applicants_July_2011_FINAL.pdf) (last visited on September 4, 2015).

<sup>20</sup> See <http://www.slab.org.uk/public/criminal/info/> (last visited on September 4, 2015).

<sup>21</sup> See <http://www.slab.org.uk/public/criminal/info/> (last visited on September 4, 2015).

<sup>22</sup> See [http://www.slab.org.uk/export/sites/default/common/documents/profession/documents/AxA\\_and\\_Civil\\_Keycard\\_2015.pdf](http://www.slab.org.uk/export/sites/default/common/documents/profession/documents/AxA_and_Civil_Keycard_2015.pdf) (last visited on September 4, 2015).

<sup>23</sup> See [http://www.slab.org.uk/export/sites/default/common/documents/profession/documents/AxA\\_and\\_Civil\\_Keycard\\_2015.pdf](http://www.slab.org.uk/export/sites/default/common/documents/profession/documents/AxA_and_Civil_Keycard_2015.pdf) (last visited on September 4, 2015).

<sup>24</sup> See [http://www.slab.org.uk/export/sites/default/common/documents/documents/Criminal\\_Financial\\_Tests\\_2015.pdf](http://www.slab.org.uk/export/sites/default/common/documents/documents/Criminal_Financial_Tests_2015.pdf) (last visited on September 4, 2015).

<sup>25</sup> See [http://www.slab.org.uk/export/sites/default/common/documents/documents/Criminal\\_Financial\\_Tests\\_2015.pdf](http://www.slab.org.uk/export/sites/default/common/documents/documents/Criminal_Financial_Tests_2015.pdf) (last visited on September 4, 2015).



An applicant must also show that it is “in the interests of justice” to grant Legal Aid; in short, that it would be unfair to the applicant, the court, or a third party if the applicant does not have a solicitor.<sup>26</sup>

### Legal Issues/Case Type

In order to qualify for Advice and Assistance, the matter must concern Scots law. To qualify for Civil Legal Aid it must be considered reasonable to use public funds to support the applicant’s case.

### Applicant Type

Civil and Criminal Legal Aid are only extended to individuals.<sup>27</sup> To qualify for Civil Legal Aid, help must not be available to the applicant from any other source, such as a trade union, insurance company or professional body.

## Mandatory assignments to Legal Aid Matters

Legal assistance (i.e. Advice and Assistance, Civil Legal Aid and Criminal Legal Aid) is available from private practice solicitors, law centers and solicitors employed by the Public Defence Solicitors’ Office (the “PDSO”) (for criminal cases) and the Civil Legal Assistance Office (for civil cases). The PDSO is a national team of publicly funded, specialist criminal defense lawyers who provide advice and representation in criminal cases. Anyone eligible for Criminal Legal Aid is entitled to use the PDSO’s services. The Civil Legal Assistance Office employs solicitors to assist clients with civil legal problems where the client has had difficulty obtaining advice under Civil Legal Aid.

Assignments for private practice lawyers are undertaken on a voluntary basis. Private practice solicitors are paid on a case-by-case basis from public money, whereas employed solicitors are paid a salary as employees of the SLAB. The Legal Aid Fund meets the cost of cases and is uncapped, but funded cases must relate to matters of Scots Law.

### Unmet Needs and Access Analysis

Because Legal Aid is not available to charities and certain other organizations, pro bono legal advice continues to be a significant resource to those institutions as well as those individuals who do not meet Legal Aid eligibility requirements.

Since 2008 there have been cutbacks to the budget for Legal Aid. In 2013-2014, the total expenditure on Legal Aid (criminal and civil) was £150.5 million, exceeding the budgetary allocation of £138.1 million. For civil Advice and Assistance, a slight downward trend in demand has continued from previous years, with grants of Advice and Assistance falling 9% to 77,444 in 2013-2014. Demand for Civil Legal Aid decreased with the total number of applications for Civil Legal Aid falling by 2.7% from 2012-2013 to 20,170 in 2013-2014. Grants of Civil Legal Aid were broadly static at 13,409 in 2013-2014. While demand for Civil Legal Aid decreased slightly compared to 2012-2013, application numbers continue to remain high (only 2,000 below the peak of 2009-10). As the Scottish and UK economies improve there is an expectation that application numbers will decrease to the level experienced before the 2008 economic crash.

In 2013-14, applications for Criminal Legal Aid increased by 11% in respect of summary cases and by 8% in respect of solemn cases compared to the previous year. These increases arguably reflect proactive policing by police in Scotland together with a shift in prosecution policy. Total grants of Criminal Legal Aid relating to summary cases increased by 8% from 2012-13 to 86,191 while grants of Criminal Legal Aid relating to solemn cases increased by 7% to 12,013.<sup>28</sup>

---

<sup>26</sup> See <http://www.slab.org.uk/public/criminal/info/> (last visited on September 4, 2015).

<sup>27</sup> See Phone conversation with SLAB on June 19, 2015 – phone number: 0131 226 7061.

<sup>28</sup> See [http://www.slab.org.uk/common/documents/Annual\\_Report\\_2013\\_2014/A\\_-\\_Annual\\_Report\\_2013-14.pdf](http://www.slab.org.uk/common/documents/Annual_Report_2013_2014/A_-_Annual_Report_2013-14.pdf) (last visited on September 4, 2015).



## Alternative Dispute Resolution

### Mediation and Arbitration

Mediation can be used in all types of cases. The SLAB will consider requests to cover the costs of mediation in civil cases; however, only the applicant's share of the mediation costs will be covered (half). Funding can only be made available for mediation through a solicitor. The costs of mediation will be treated as an outlay in the applicant's account with his or her solicitor.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

There is no administrative body that mandates pro bono work for private practice lawyers in Scotland. A proposal in the formative stages of the Legal Services (Scotland) Bill in 2010 to require solicitors to complete a minimum of 12 hours of pro bono work per year was not included in the final bill.<sup>29</sup>

#### Law Firm Pro Bono Programs

As the profile of pro bono in Scotland has risen, there has been an increase in awareness of corporate social responsibility. As a result, many law firms in Scotland seek to fulfil their pro bono initiative through collaboration with law centers and interaction with the local community. Many large law firms also provide exclusive pro bono legal advice to one or more high profile charities, as charities are unable to access funds through Legal Aid and in many instances require assistance with matters that are in-line with the firms' general practices, such as tax advice.

#### Non-Governmental Organizations (NGOs)

In Scotland, as in England and Wales, there is a national network of advice agencies staffed primarily by volunteers who fulfill many different types of advisory roles, including the provision of legal advice. The most prominent network is the Citizens Advice Bureau ("**CAB**").<sup>30</sup> The CAB is a charity that provides free advice to the public, including on legal matters. It is made up of Citizens Advice Scotland ("**CAS**"), which is a national umbrella body that provides essential services to Scottish citizens advice bureaus.

The CAS offers representation in the courts and tribunals and assists clients with drafting letters, bringing small claims and negotiating with creditors. Services are located throughout Scotland and the CAS provides both referral services as well as legal advice themselves. The CAB is funded and supported mainly by government grants (through SLAB), local authority grants and also by private companies, charitable trusts and the legal professional bodies.

LawWorks Scotland is a charity that aims to coordinate, develop and encourage the provision of free legal assistance to individuals and community groups who cannot afford legal assistance and who are ineligible for Legal Aid. Although the Scottish charity is independent, it acts with the support of LawWorks England and Wales.<sup>31</sup> Law firms register as members of LawWorks with LawWorks matching the firm with legal advice agencies or University law clinics.<sup>32</sup> Once a match is achieved, the member firm agrees with the advice agency to provide, on a rotating basis, volunteer solicitors to enable the agency to operate a regular advice clinic. In this way, volunteers are matched with the advice agencies that would otherwise be unable to provide relevant advice for their clients.

---

<sup>29</sup> See <http://www.scotsman.com/news/gillian-carty-this-week-is-dedicated-to-pro-bono-services-1-2614076> (last visited on September 4, 2015).

<sup>30</sup> See <http://www.cas.org.uk/> (last visited on September 4, 2015).

<sup>31</sup> See <http://lawworks.org.uk/clinics> (last visited on September 4, 2015).

<sup>32</sup> See <http://lawworksscotland.org.uk/legal-clinics-project/> (last visited on September 4, 2015).



Shelter Scotland is a charity that works to alleviate the distress caused by homelessness and bad housing by giving advice, information and advocacy to people in need of housing. Shelter Scotland also provides advice regarding Legal Aid and applying for Legal Aid.<sup>33</sup>

The Ethnic Minorities Law Centre is a charity that since 1991 has provided ethnic minorities with access to professional services to address their legal needs. The center provides legal advice on matters of asylum, human rights, immigration, discrimination, employment law and criminal injuries and compensation.<sup>34</sup>

The Scottish Child Law Centre is the only law center in Scotland that works exclusively for children and young people. Through its advice line, website and email communications, the Scottish Child Law Centre provides free legal advice and information to children and young people, their families and caregivers and professionals working for and with children.<sup>35</sup>

### Bar Association Pro Bono Programs

Pro bono initiatives have historically been driven by the Faculty and the Society. The Faculty established the Free Legal Services Unit (“**FLSU**”) to provide free legal advice and representation to those who cannot afford legal help and who cannot obtain assistance from any other source. Advice is provided by advocates who have volunteered to join the Free Legal Services Panel.<sup>36</sup> In 2012, the Free Representation Unit, which provided free legal advice by devils (trainee advocates), was merged into the FLSU.<sup>37</sup> Cases are referred to the FLSU through a number of agencies, including the CAB and the CAS, Shelter Scotland,<sup>38</sup> the Ethnic Minorities Law Centre,<sup>39</sup> the Scottish Child Law Centre<sup>40</sup> and several university law clinics.

The Scottish Legal Services Trust (the “**SLST**”) was established by the Society to provide financial assistance to Society members to meet any costs and expenses incurred for the provision of pro bono legal services. Assistance from the SLST is restricted to Society members providing legal services to individuals who are in need or who are suffering financial hardship, or to charitable institutions of limited means which support community organizations or activities.

### University Legal Clinics and Law Students

Several law schools and universities have established pro bono centers and clinics where students have the opportunity to participate directly in pro bono work. The Aberdeen Law Project is a law clinic and community outreach initiative that operates in partnership with the School of Law at the University of Aberdeen. Established in 2009, The Aberdeen Law Project (the “**ALP**”) was the first law clinic in Scotland to be founded, operated and led by students. In addition to clinical work, the ALP provides an extensive range of outreach programs in Scotland, including employability workshops, legal training and support, designed to empower members of the community by providing them with the skills and knowledge necessary to identify, avoid and/or address legal issues before a dispute occurs.

Two other notable student organisations are the Strathclyde University Law Clinic<sup>41</sup> and the University of Edinburgh Free Legal Advice Centre (the “**FLAC**”).<sup>42</sup> Both of these bodies are staffed by students and

---

<sup>33</sup> See [http://scotland.shelter.org.uk/about\\_us/who\\_we\\_are](http://scotland.shelter.org.uk/about_us/who_we_are) (last visited on September 4, 2015).

<sup>34</sup> See [http://emlce.org.uk/?page\\_id=15](http://emlce.org.uk/?page_id=15) (last visited on September 4, 2015).

<sup>35</sup> See <http://www.sclc.org.uk/> (last visited on September 4, 2015).

<sup>36</sup> See [http://www.advocates.org.uk/FLSUwebsite/index\\_flsu.html](http://www.advocates.org.uk/FLSUwebsite/index_flsu.html) (last visited on September 4, 2015).

<sup>37</sup> See <http://www.journalonline.co.uk/News/1011197.aspx#.VaZgmE10w5g> (last visited on September 4, 2015).

<sup>38</sup> See <http://scotland.shelter.org.uk/> (last visited on September 4, 2015).

<sup>39</sup> See <http://www.emlce.org.uk/> (last visited on September 4, 2015).

<sup>40</sup> See <http://www.sclc.org.uk/> (last visited on September 4, 2015).

<sup>41</sup> See <http://www.lawclinic.org.uk/> (last visited on September 4, 2015).



faculty and supported by law firms. The Strathclyde Law Clinic is one of the largest in Scotland with 195 student advisers, and has completed over 1,200 cases since its inception in 2003.<sup>43</sup> The clinic is intended to complement existing legal services such as the CAB and does not provide services to anyone who can afford professional legal services or who qualifies for Legal Aid, or in areas such as immigration and debt, where there are already adequate services in existence.

The FLAC was established in 2007 and delivers pro bono legal services to members of the public living in and around Edinburgh. The FLAC is run by University of Edinburgh law students, all of whom are either graduate lawyers completing their Diploma in Professional Legal Practice or Postgraduate Masters. While the students are supervised by qualified solicitors, it is the students that are responsible for dealing with clients and their cases.

## Others

The Government Legal Service for Scotland (the “GLSS”) is a professional community of government lawyers in Scotland. The GLSS Pro Bono Network is designed to encourage government lawyers, including those in the Scottish Government Legal Directorate, the Office of the Solicitor to the Advocate General and the Scottish Parliament to volunteer their legal services for the benefit of the wider community.<sup>44</sup> Through the GLSS Pro Bono Network, government lawyers can become involved in a number of pro bono activities, including providing advice at their local citizens advice bureau, raising funds, lobbying at local and national levels, negotiating agreements<sup>45</sup> and even establishing citizens advice bureaus.<sup>46</sup>

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

Scotland has had a tradition of civil pro bono since the establishment of the Poor’s Roll in 1424 and of criminal pro bono since an Act of the Scots Parliament of 1587. Prior to 1950, these matters were entirely staffed by solicitors and advocates on a voluntary basis.<sup>47</sup>

### Current State of Pro Bono including Barriers and Other Considerations

#### Laws and Regulations Impacting Pro Bono

##### “Loser Pays” Statute

The usual position in Scots law is that the loser pays the winner’s legal fees as assessed by an expert and approved by a judge.<sup>48</sup> However, litigants may seek to restrict their potential exposure by applying to the court for a protective expenses order (a “PEO”), which is a recent development in Scottish courts. The effect of a PEO is to limit a litigant’s liability for expenses to a particular sum. This ensures that the litigant’s liability to pay the expenses of an opponent or any third party will be capped, whatever the outcome of the case.

---

<sup>42</sup> See <http://www.law.ed.ac.uk/probono/> (last visited on September 4, 2015).

<sup>43</sup> See <http://www.lawclinic.org.uk/> (last visited on September 4, 2015).

<sup>44</sup> See <http://www.gov.scot/About/People/Directorates/LPS/glss/GLSSpb> (last visited on September 4, 2015).

<sup>45</sup> See <http://www.gov.scot/About/Directorates/LPS/glss/ACprobono> (last visited on September 4, 2015).

<sup>46</sup> See <http://www.gov.scot/About/People/Directorates/LPS/glss/CAB> (last visited on September 4, 2015).

<sup>47</sup> See <http://www.slab.org.uk/about-us/who-we-are/history/> (last visited on September 4, 2015).

<sup>48</sup> See <http://www.terrafirmachambers.com/articles/DevelopmentinScotlandofProtectiveExpensesOrders.pdf> (last visited on September 4, 2015).



### **Practice Restrictions on Foreign-Qualified Lawyers**

There is no bar to lawyers qualified in another jurisdiction working in Scotland provided they do not describe themselves as “solicitors” and do not undertake certain types of work reserved by statute for Scottish-qualified solicitors.<sup>49</sup>

### **Regulations Imposing Practice Limitations on In-House Counsel**

Lawyers working in-house may provide pro bono advice to clients, however, there are some barriers to the provision of this advice. Some types of work, such as conveyancing, court work (except tribunals) and probate work, are reserved so that in-house lawyers can only act for their employers on such matters. If an in-house lawyer wishes to perform these services on a pro bono basis, he or she is required to establish his or her own part-time private practice, which would require them to obtain compulsory insurance coverage under the Society’s Master Policy. In-house lawyers not covered under the Master Policy are able to provide other services outside of their in-house work provided that they do not do so as “solicitors.”

### **Availability of Professional Indemnity Legal Insurance Covering Pro Bono Activities by Attorneys**

Since 1978, all lawyers in Scotland have been required to have professional indemnity insurance as a condition of practice. Pursuant to Section 44(1) of the Solicitors (Scotland) Act 1980 and to the Solicitors (Scotland) Professional Indemnity Insurance Rules 1995, the Society is required to maintain professional indemnity insurance arrangements.<sup>50</sup> The Master Policy is the compulsory professional indemnity insurance arrangement which covers all Scottish solicitors working in private practice. This insurance means that where a valid claim for negligence against a practice is established, that claim will be paid even if the solicitor is no longer in practice, no longer solvent or cannot be traced.<sup>51</sup> The Society arranges the Master Policy and claims are handled by the Master Policy insurers. The insurance provides coverage of up to £2 million for any one claim.<sup>52</sup>

As well as holding professional indemnity insurance coverage in its work for his or her direct employer, a lawyer must have coverage if he or she acts for a client other than his or her employer, including a pro bono client. For further information refer to the Society’s website.<sup>53</sup>

### **Availability of Legal Insurance for Clients**

The legal expenses insurance market, including Before the Event (“BTE”) insurance and After the Event insurance, has grown substantially in the UK in recent years. On average, the legal expenses insurance sector has grown faster than the insurance market as a whole. While BTE insurance is relatively inexpensive, typically costing consumers around £20-30 per year, coverage is often limited to £50,000 (and sometimes less).

The SLAB recently reviewed legal expenses insurance products within the UK. It found that BTE insurance was offered as an optional extra in all of the home insurance products that it examined. Typically, coverage was provided for the pursuit of personal injury claims, breach of employment contracts, non-commercial disputes about faulty goods and services and actions arising from interference with the right to use, or damage to, the home. None covered family actions or judicial review. The Scottish Civil Courts Review considered that BTE insurance could contribute to improving

---

<sup>49</sup> See <http://www.lawscot.org.uk/rules-and-guidance/section-d-requirements-of-and-restrictions-on-practice/rule-d8-multi-national-practices/guidance/d7-d8-registration-of-foreign-lawyers-and-multi-national-practices/> (last visited on September 4, 2015).

<sup>50</sup> See <http://www.scottishlegalcomplaints.org.uk/media/7495/final%20report%20to%20slcc.pdf> (last visited on September 4, 2015).

<sup>51</sup> See <https://www.lawscot.org.uk/media/364020/Master-Policy-rule-change-background-paper-.pdf> (last visited on September 4, 2015).

<sup>52</sup> See <http://www.lawscot.org.uk/for-the-public/what-the-society-can-do-for-you/consumer-and-professional-protections/professional-indemnity/> (last visited on September 4, 2015).

<sup>53</sup> See <http://www.lawscot.org.uk/for-the-public/what-the-society-can-do-for-you/consumer-and-professional-protections/professional-indemnity/> (last visited on September 4, 2015).



access to justice, particularly for those not eligible for Legal Aid, and recommended that the Scottish Government explore with insurance providers the scope for improving public awareness and increasing voluntary uptake. It did not advocate that BTE insurance should be made compulsory.<sup>54</sup>

### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

Judicial inefficiency is considered a significant problem by some in Scotland. In 2012, a Scottish Government Social Research Group evaluated the impact of criminal summary justice reform. It found that “Among information, support and advice professionals, there was consensus that victims, and particularly witnesses, are still subject to inconvenience during their case due, primarily, to waiting times for trial to come to court, adjournments (colloquially known as ‘churn’) and waiting times in court. There was also consensus that the system was neither quick nor simple for victims or witnesses.”<sup>55</sup> Some argue that the same can be said of the civil justice system. Lord Gill stated in his Scottish Civil Courts Review that “Inefficiency in procedure comes at three main costs: the public cost in unnecessary and avoidable judicial and administrative procedures; the cost to the client or to the SLAB in payment for avoidable court appearances and for unnecessarily complex procedural steps; and the unquantifiable costs in stress and frustration to the litigant. All of these diminish public respect for the law and cause a loss of confidence in society’s ability to resolve disputes justly.”<sup>56</sup> These perceived inefficiencies could be argued to be a barrier to people participating in the judicial system or seeking pro bono legal assistance.

### Pro Bono Resources

The following is a list of agencies that provide pro bono resources and their websites:

- Citizens Advice Scotland - <http://www.cas.org.uk/> (last visited on September 4, 2015)
- LawWorks Scotland - <http://lawworks.org.uk/clinics> (last visited on September 4, 2015)
- Shelter Scotland - <http://scotland.shelter.org.uk/> (last visited on September 4, 2015)
- Scottish Child Law Centre - [www.sclc.org.uk/](http://www.sclc.org.uk/) (last visited on September 4, 2015)
- Free Legal Services Unit - [http://www.advocates.org.uk/FLSUwebsite/index\\_flsu.html](http://www.advocates.org.uk/FLSUwebsite/index_flsu.html) (last visited on September 4, 2015)
- Ethnic Minorities Law Centre - <http://emlce.org.uk/> (last visited on September 4, 2015)
- Scottish Legal Services Trust - <http://www.lawscot.org.uk/for-the-public/what-the-society-can-do-for-you/legal-fees/scottish-legal-services-trust/> (last visited on September 4, 2015)
- Aberdeen Law Project - <http://abdnlawproject.com/> (last visited on September 4, 2015)
- University of Edinburgh Free Legal Advice Centre - <http://www.freelegaladvice.ed.ac.uk/> (last visited on September 4, 2015)
- Strathclyde Law Clinic - <https://www.lawclinic.org.uk/> (last visited on September 4, 2015)
- Government Legal Service for Scotland Pro Bono Network - <http://www.gov.scot/About/People/Directorates/LPS/glss/GLSSpb> (last visited on September 4, 2015)

## CONCLUSION

The demand for pro bono legal advice in Scotland appears to have increased in recent years. This is in part due to the economic recovery following the financial crisis, which has led to an increase in the number individuals who do not meet the eligibility criteria for Legal Aid but are still unable to afford legal services. Fortunately, the growth of CSR and the increasing importance placed on pro bono services by corporate clients seems to be increasing the interest of law firms in the area, with some firms including pro bono hours as part of billable targets.

September 2015

---

<sup>54</sup> See <http://www.gov.scot/Publications/2013/10/8023/17> (last visited on September 4, 2015).

<sup>55</sup> See <http://www.lawscot.org.uk/media/409526/legal-assistance-in-scotland-discussion-paper.pdf> (last visited on September 4, 2015).

<sup>56</sup> See <http://www.lawscot.org.uk/media/409526/legal-assistance-in-scotland-discussion-paper.pdf> (last visited on September 4, 2015).



Pro Bono Practices and Opportunities in Scotland

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Serbia<sup>1</sup>

### INTRODUCTION

The Republic of Serbia (“**Serbia**”) is a nascent independent nation, surviving the violent splintering of Yugoslavia in the early 1990s and cutting ties with Montenegro to become an independent republic in June 2006.<sup>2</sup> As such, the fledgling parliamentary republic is still working to strike the ideal, functional balance – including with respect to the judiciary system, which has been fluid since its inception. With the legal system in flux, combined with the problems inherited from the previous regime and the complications inherent to a young country, pro bono legal assistance in the traditional sense has been sparse at best. Yet, spearheaded by NGOs, two of the most publicized groups needing service (refugees and victims of human trafficking) are actually receiving aid. Also, legislation for a comprehensive system of Free Legal Aid has been drafted, though has yet to be adopted and financed by the legislature. Furthermore, international law firms have been providing pro bono assistance, with a select number of local Serbian firms and individuals following suit.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

For the proper context of the legal landscape in Serbia, a brief summary of the last two decades of turmoil and the current political climate is beneficial. The system of public administration in Serbia was significantly eroded in the 1990s, the decade President Slobodan Milosevic was in power. Following the surrender of Milosevic in 2000 and the subsequent assassination of Prime Minister Djindjić in 2003, Serbia continued to experience many changes in its political system. A new Constitution was adopted in 2006<sup>3</sup> to replace the Constitution of 1990, and shortly thereafter, the Republic of Montenegro declared independence from Serbia. Additionally, in 2008, Kosovo declared its independence from Serbia, a declaration which Serbia initially rejected.

Today, Serbia’s keen focus on accession to the European Union (the “**EU**”) is the primary driving force behind economic, social and political reforms. In December 2009, Serbia formally applied for membership in the EU and received EU candidate status in October 2011. As Serbia shifted from a post-conflict environment to one increasingly focused upon EU integration, it became obvious that Serbia would need to build an efficient, transparent, and accountable public administration capable of governing in an impartial manner and delivering benefits to its citizens.

##### The Courts

Much like the rest of the country, the judiciary system in Serbia is ever-changing, propelled by the National Judicial Reform Strategy (enacted by the National Assembly in July 2013), which proposed a framework of judicial reform to arc from 2013-2018.<sup>4</sup> These changes have included the reinstatement of

---

<sup>1</sup> This chapter was drafted with the support of the Kinstellar law firm, particularly Srdjan Vlatkovic and Branislav Maric, managing partner of Kinstellar’s Belgrade office, and the support of the Janković Popović Mitić law firm, particularly Stefan Dobrić.

<sup>2</sup> See generally, CENTRAL INTELLIGENCE AGENCY (“**CIA**”), The World Factbook: Serbia (2012), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ri.html> (last visited on September 4, 2015).

<sup>3</sup> SERBIA CONST. (New Serbian Constitution of 2006), available at <http://www.wipo.int/wipolex/en/details.jsp?id=7378> (last visited on September 4, 2015).

<sup>4</sup> REPUBLIC OF SERBIA MINISTRY OF JUSTICE, Action Plan for the Implementation of the National Judicial Reform Strategy for the Period 2013-2018, accessible at <http://www.mpravde.gov.rs/en/vest/2906/action-plan-for-the->



several fired judges and prosecutors, new courts with jurisdiction in all case matters, a new system of appraisals for judges and prosecutors, and reforms to the nomination process of new judges.<sup>5</sup> Yet, significant problems continue to plague Serbia's court system, including chronic backlog, poor case management and lapses in due process and the right to a fair trial, judicial accountability, and the legitimacy and enforcement of court decisions.<sup>6</sup>

There are multiple layers of Serbia's current court system, arranged in 2008.<sup>7</sup> There are the Basic, High and Appellate Courts (in Belgrade, Novi Sad, Nis, and Kragujevac) for general jurisdiction, as well as specialized courts, such as Commercial Courts, Misdemeanour Courts, a High Misdemeanour Court and an Administrative Court (both of which have branches in Belgrade, Novi Sad and Nis). A Supreme Court of Cassation oversees all of those courts. A Constitutional Court lies separate from the rest of the legal system.<sup>8</sup>

The courts are staffed by approximately 3,000 elected judges with 2787 in office,<sup>9</sup> who, under the Constitution, "shall be independent and accountable only to the Constitution and the law," and cannot hold a political office, be a member of a political party, or even engage in any other form of compensated employment, including paid legal services.<sup>10</sup> But the reforms calling for "re-election and re-appointment" of the judiciary, designed in part to make the court system more efficient, cast doubt on the independence of the judiciary.<sup>11</sup> Many members of the judiciary are opposed to the current reforms based upon separation of powers grounds.<sup>12</sup>

---

[implementation-of-the-national-judicial-reform-strategy-for-the-period-2013-2018-.php](#) (last visited on September 4, 2015).

<sup>5</sup> See European Commission, Serbia Progress Report, ENLARGEMENT PACKAGE 2014: STRATEGY AND PROGRESS REPORTS, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20140108-serbia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf) (last visited on September 4, 2015).

<sup>6</sup> See European Commission for Democracy Through Law, Opinion on the Constitution of Serbia, at ¶ 106 NO. 405/2006, CDL-AD(2007)004, 70<sup>TH</sup> Session, Venice Commission, Strasbourg (March 19, 2007).

<sup>7</sup> See Organization for Security and Co-operation in Europe ("OSCE"), Judicial Institutions in Serbia: September 2011 Update, accessible at <http://www.osce.org/serbia/82759?download=true> (last visited on September 4, 2015).

<sup>8</sup> Id.

<sup>9</sup> Correspondence from Stefan Dobrić of Janković Popović Mitić (July 17, 2015).

<sup>10</sup> The European Commission for the Efficiency of Justice, *supra* note 9, at Table 7.1 ;European Commission for Democracy Through Law, Opinion on the Draft Laws on Judges and on the Organisation of Courts of the Republic of Serbia, no. 464/2007, CDL-AD (2008) 007, 74<sup>th</sup> Session, Venice Commission, Strasbourg (March 19, 2008).

<sup>11</sup> Id.

<sup>12</sup> United Nations Development Programme ("UNDP"), Serbia: Terminal Outcome Evaluation of the UNDP Serbia Country Programme Document (CPD) (2005-2009), p. 34, Final Report (February 1, 2010); Gordana Andric, Jury Out on Serbia's Botched 'Reform' of Judges, BALKAN TRANSITIONAL JUSTICE, Mar. 23, 2012, at <http://www.balkaninsight.com/en/article/jury-out-on-serbia-s-botched-reform-of-judges> (last visited on September 4, 2015). For an extensive critique of the current judiciary structure, authored by the Judges Association of Serbia itself, see, Ratko Markovic, Judiciary—The Achilles Heel of the State of Serbia, originally published in the PECAAT WEEKLY (Jul. 15, 2010), available at <http://www.sudije.rs/en/actuals/news-articles/judiciary-the-achilles-heel-of-the-state-of-serbia> (last visited on September 4, 2015).



## The Practice of Law

### Education, Licensure and Legal Regulation of Lawyers

The Legal Professional Act (the “**LRA**”) serves as the code of professional conduct for Serbian lawyers.<sup>13</sup> The LRA regulates the subject, conditions for the practice of law and forms of attorneys work, rights, duties and responsibilities of attorneys and law trainees and the organization and operation of bar associations. The right to practice law is acquired by registering in the directory of attorneys and by taking the oath. Prerequisites include familiar requirements, such as passing the Serbian bar exam, a legal diploma and establishment of good character, as well as some less traditional requirements, such as the provision of convenient workspace, three years of independence from public office, and good general health and full working capacity. A foreign national practicing law in his state of origin may be registered in the directory of attorneys; provided that he meets certain requirements, as discussed below.<sup>14</sup>

A Serbian attorney may practice law throughout all of Serbia and owes four basic duties: that he “(1) really and constantly practice law; (2) provides legal aid professionally and conscientiously in accordance with the law, the statute, and the code; (3) keeps a professional secret; and (4) in his professional work and private life that is available to the public[,] he will protect the reputation of the legal profession.”<sup>15</sup> An attorney is free to provide legal services in most situations, is obliged to refuse to provide legal services in some situations, must maintain client confidentiality, and is expected to continuously acquire and improve the knowledge and skills to effectively practice law – rules familiar to lawyers in most jurisdictions.<sup>16</sup>

An attorney may be held liable for breaching the basic duties of the profession. A serious breach includes “any violation of duty and honor of legal profession under law, statute and the Code, and particularly evident bad faith in the work within legal profession; providing legal aid in cases where attorney-at-law is obliged to refuse to provide legal aid; business activities that are contrary to the honor and independence of attorneys; injury of duty to keep a secret; lack of continuous professional education and training in accordance with the adopted program; and asking for compensation greater than the fees prescribed and refusing to issue a bill to the client for the amount received.”<sup>17</sup> Discipline for misconduct is initiated by the bar association, administered by the disciplinary prosecutor and disciplinary court, and can result in a warning, fine or removal from the list of attorneys-at-bar.<sup>18</sup>

### Demographics

There are approximately 8,500 lawyers in Serbia, which is roughly one lawyer for each 800 citizens.<sup>19</sup> Relative to other countries in Western Europe and worldwide, these figures represent a very low number of lawyers per capita. However, when compared to similarly situated Eastern European countries, the density of lawyers in Serbia is quite high.<sup>20</sup> The current view is that the legal market is saturated with

---

<sup>13</sup> Final Draft of the Legal Professional Act, accessible at [http://www.cbbe.eu/fileadmin/user\\_upload/NTCdocument/zakon\\_o\\_advokaturi\\_1\\_1302677159.pdf](http://www.cbbe.eu/fileadmin/user_upload/NTCdocument/zakon_o_advokaturi_1_1302677159.pdf) (last visited on September 4, 2015).

<sup>14</sup> Id. at art. 1, 5(1), 6, 14.

<sup>15</sup> Id. at art. 15, 16(1).

<sup>16</sup> Id. at arts. 17-20.

<sup>17</sup> Id. at art. 75(3).

<sup>18</sup> Id. at arts. 76-77.

<sup>19</sup> Dobrić, *supra* n. 11.

<sup>20</sup> The United States has roughly one licensed lawyer per 250 citizens. See Legal Profession Statistics – Total National Lawyer Counts 1878-2014, AMERICAN BAR ASSOCIATION (2015),” available at [http://www.americanbar.org/resources\\_for\\_lawyers/profession\\_statistics.html](http://www.americanbar.org/resources_for_lawyers/profession_statistics.html) (last visited on September 4, 2015). While Serbia’s ratio is on par with the overall statistics for lawyers per capita in Europe (approximately one lawyer per 833 citizens), the numbers are buoyed by a high density of lawyers in Western Europe, while Eastern European countries fall well below the average European ratio. See The European Commission for the



lawyers and that the majority of them cannot claim the appropriate business/client levels, as a consequence of the current economic climate.<sup>21</sup>

The vast majority of attorneys work out of Belgrade, the capital and most populous city in the country. A recent search revealed approximately 50 law firms operating in Serbia, with nearly all of those headquartered in Belgrade.<sup>22</sup> The Bar Association of Serbia, which sets and enforces the standards for professional conduct, is also headquartered in Belgrade.<sup>23</sup> Despite the number of law firms in Belgrade, the majority of lawyers in Serbia are sole practitioners.<sup>24</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The rules concerning the concept of state-sponsored legal aid are scattered throughout the Serbian legal system. The current lack of a single body of rules on the subject results in a legal aid mechanism lacking coherency. A draft Law on Free Legal Aid has been prepared by the Serbian Government and it is expected to be adopted by the Serbian Parliament, which should hopefully result in some progress in this area, though the adoption of the law is still delayed (despite originally being anticipated in 2012).<sup>25</sup> A 2012 Serbian Constitutional Court decision striking down a law requiring that only bar-certified attorneys may provide legal aid in Serbia has also encouraged reforms.<sup>26</sup>

### The Right to Legal Assistance

As a general matter, the right to legal aid is guaranteed by the Constitution, even without the proposed draft law on free legal aid.<sup>27</sup> Every natural person, regardless of need, is entitled to up to 30 minutes of primary legal aid (general legal information and initial legal advice) per matter.<sup>28</sup> The right to secondary legal aid (legal advice, drafting of documents, and representation before the courts) is realized by a gradual or partial exemption from payment of procedure-related expenses.<sup>29</sup> In practice, this concept of legal aid is achieved through the assistance of the legal profession (lawyers) and the network of local

---

Efficiency of Justice, Report on "European judicial systems-Edition 2014 (2012 data): efficiency and quality of justice" COUNCIL OF EUROPE at Table 12.1 and accompanying text, available at [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf) (last visited on September 4, 2015).

<sup>21</sup> Vlatkovic, supra n. 5.

<sup>22</sup> HG.ORG GLOBAL LEGAL RESOURCES, Serbia Lawyers, Law Firms, <http://www.hg.org/attorneys/Serbia.html> (last visited on September 4, 2015). The other law firms are located in Novi Sad (6) and Nis (2). Generally, the bulk of these firms focus on international business, finance, and intellectual property.

<sup>23</sup> HG.ORG GLOBAL LEGAL RESOURCES, Serbia Bar Associations, <http://www.hg.org/attorneys/Serbia.html> (last visited on September 4, 2015). The official website for the Serbian Bar Association is accessible at <http://www.advokatska-komora.co.rs/> (last visited on September 4, 2015), but the Serbian Bar Association of America, accessible at <http://www.serbbar.org/> (last visited on September 4, 2015), may prove to be a more helpful resource, particularly for non-native speakers.

<sup>24</sup> PILNET: THE GLOBAL NETWORK FOR PUBLIC INTEREST LAW, Against the Tide: Mira Vucetic Prsic Launches Pro Bono in Serbia, (May 20, 2009), <http://www.pilnet.org/project-updates/47-against-the-tide.html> (last visited on September 4, 2015). Ms. Prsic notes that these sole practitioners have little or no resources for pro bono work, placing the onus on firms and NGOs to provide free assistance.

<sup>25</sup> Vlatkovic supra n.5.; Country Report Serbia: Belgrade 2013, TRIPLE A FOR CITIZENS: ACCESS TO INFORMATION, ADVICE AND ACTIVE HELP, available at [http://triplecitizens.eu/app/uploads/publications/Country\\_report\\_Serbia.pdf](http://triplecitizens.eu/app/uploads/publications/Country_report_Serbia.pdf) (last visited on September 4, 2015).

<sup>26</sup> Id.

<sup>27</sup> Vlatkovic supra n.5.

<sup>28</sup> Status Analysis for the Purpose of Introduction of Legal Aid System in Montenegro, (Sep. 2008).

<sup>29</sup> Id.



bodies which specialize in the provision of legal aid.<sup>30</sup> Should the draft of the Law on Free Legal Aid become law, both primary and secondary legal aid would be provided free of charge to individuals and households receiving social benefits.<sup>31</sup>

### Civil Law Proceedings

The Serbian Civil Procedure Code (the “CPC”) contains provisions which allow for the exemption from payment of litigation costs under certain circumstances.<sup>32</sup> The party requesting the exemption must first submit a written motion to the acting judge that is accompanied by the relevant evidence of economic hardship. A party that has been granted an exemption is also entitled to request to be represented by a lawyer free of charge. If the court grants such a request, an attorney will be appointed from the list of attorneys who are members of the relevant local bar association and the costs of such attorney’s services and expenses will be advanced from the court budget.<sup>33</sup>

The above CPC rules are applicable also to a number of other proceedings, including enforcement proceedings and administrative disputes, which, although governed by separate codes, apply by reference the CPC rules on legal aid.

### Criminal Law Proceedings

The Serbian Criminal Procedure Code (the “CC”) provides for situations in which a defendant *must* have a defense lawyer (i.e., mandatory defense). This includes, among others, situations in which a defendant is mute, deaf, blind or incapable of successfully defending himself, or if the criminal proceeding is conducted in relation to a criminal offense which is punishable with a prison sentence of eight years or longer. If the defendant has no means of paying for a defense lawyer, one will be appointed and paid for by the court.<sup>34</sup>

Also, the CC provides that a court will appoint and bear the costs of a defense lawyer to a defendant who – although there are no grounds for mandatory defense – cannot pay his defense costs due to his overall financial position, *provided that* the defendant makes a written request and that the proceeding is for a criminal offense punishable with a prison sentence longer than three years or if the reasons of “righteousness” exist.<sup>35</sup>

Additionally, the CC provides for a possibility of the provision of legal aid to a *victim* of a criminal offense who is acting in the capacity of a private prosecutor within a criminal proceeding in which the offense is punishable with a prison sentence longer than five years. As in the case of the CPC, the decision of whether to grant legal aid must be based on a written motion that will provide sufficient proof of the overall inability to cover the costs of an attorney.<sup>36</sup>

---

<sup>30</sup> Vlatkovic supra n.5. Legal aid offices are established by the Ministry of Justice. Citizens’ associations and legal clinics can provide legal aid if they are entered in the register of the National Committee. Status Analysis for Montenegro.

<sup>31</sup> World Bank Multi-Donor Trust Fund for Justice Sector Support, SERBIAN FREE LEGAL AID FISCAL IMPACT ANALYSIS: VOLUME, COSTS AND ALTERNATIVES, (2013), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/25/000333037\\_20140325152745/Rendered/PDF/861870WP0P11020t0Free0Legal0Aid0Law.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/25/000333037_20140325152745/Rendered/PDF/861870WP0P11020t0Free0Legal0Aid0Law.pdf) (last visited on September 4, 2015).

<sup>32</sup> Vlatkovic supra n.5; Country Report Serbia: Belgrade 2013, supra n. 25.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id.



## Administrative Law Proceedings

The Law on General Administrative Procedure provides for an exemption (in whole or in part) from payment of the costs of an administrative proceeding for a party in such proceeding, *provided that* the relevant authority conducting the proceeding determines that the party in question cannot bear the cost of such proceeding without damage to his or her own essential support or that of his or her family.<sup>37</sup>

## State-Subsidized Legal Aid

A system of Free Legal Aid is a requirement for European Union Accession – providing further motivation for the implementation of such a system – and supports the attainment of international human rights standards in Serbia.<sup>38</sup> Third parties have encouraged the Ministry of Justice (the “**MoJ**”) to establish a working group to conduct ascertainment research and develop a strategy on free legal aid.<sup>39</sup> This has resulted in the development of a draft Strategy on free legal aid, a draft law on free legal aid, and has created a framework for the establishment of a national free legal aid system in Serbia. The draft strategy includes recommendations and financial forecasts for the eventual establishment of the system on FLA, and is even endorsed by the Council of Europe.<sup>40</sup>

The legal aid system proposed by the draft law on free legal aid, like the legal systems of most countries in the European Union, envisions two levels of legal aid.<sup>41</sup> The first is primary legal aid (general legal information, initial legal advice, and drafting of legal documents), which would be provided by lawyers, public notaries, mediators, law faculties (law schools), bar associations, legal aid services established by local governments and other public bodies. The second is secondary legal aid (legal representation, drafting of motions, defense and implementation of mediation procedures), which would be provided by legally registered and regulated providers.<sup>42</sup> The draft law on free legal aid proposes to pay the full cost of all those services related to Basic Court and Higher Court cases for households or individuals receiving social benefits.<sup>43</sup>

Yet, the fact remains that, as of yet, free legal aid is not yet established in Serbia, despite having a draft law which has been available since 2012.<sup>44</sup> Until the draft or a new law is finally passed by the Parliament and a framework for implementing the law is in place, with significant funding allocated by the Serbian government for this purpose, a truly comprehensive system of free legal aid cannot be achieved.

---

<sup>37</sup> Id.

<sup>38</sup> See, e.g., European Commission Proposal on Legal Aid, (May 16, 2006); EC progress reports citing lack of FLA in Serbia; European Human Rights directives; EU Treaty of Rome.

<sup>39</sup> UNDP, *supra* n.18, at 37. This project was considered groundbreaking, as it was the first time that NGOs had been represented at Working Group level for any strategy in Serbia.

<sup>40</sup> Id. The project is unique because different models of legal aid were actually tested on the ground via the establishment of a Legal Aid Fund that distributed 60 different “micro-grants” to CSOs to obtain data. The results of these pilots lead to a consensus among the Working Group as to the most appropriate model. Out of some 40+ strategies that have been drafted over the years for FLA in Serbia, this is the only one based upon consensus. Id. at n.75. 76.

<sup>41</sup> Dobrić, *supra* n. 15.

<sup>42</sup> Id.

<sup>43</sup> World Bank Multi-Donor Trust Fund for Justice Sector Support, *supra* n. 41.

<sup>44</sup> Vlatkovic, *supra* n.5.



## Assignments to Legal Aid Matters

The Constitution and Serbian law, in its current form, places the obligation of providing legal aid on local governments and bar associations, which have begun to establish such systems.<sup>45</sup> Those systems have not required lawyers to provide legal aid, but allow lawyers to register and offer their services for a fee, if the client meets the requirements created by the local government and the bar association.<sup>46</sup>

### Anti-Discrimination Law

Working with third parties, Serbia drafted and enacted a new Law on Prohibition of Discrimination (often referred to as the “**Anti-Discrimination Law**”).<sup>47</sup> This established the Commissioner for the Protection of Equality and created a new legislative vehicle for advancing anti-discrimination in Serbia and improving compliance with international Human Rights treaties, Serbian Constitutional Law and European norms. The Anti-Discrimination Law has also produced derivatives such as the Belgrade Law Faculty’s Anti-Discrimination Clinic.<sup>48</sup>

### War Crimes Trials

Additionally, the Special Chamber for War Crimes Prosecutions was formed in Serbia on July 1, 2003. The Special Chamber is now self-sustainable with very strong outreach.<sup>49</sup> In fact, with third party support and encouragement, the first case ever was transferred from the International Criminal Tribunal for the Former Yugoslavia (the “**ICTY**”) to Serbia domestic court in 2007.<sup>50</sup> According to the European Commission in a recent progress report on Serbia, cooperation with the ICTY has improved.<sup>51</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

The concept of pro bono is not explicitly regulated by any set of rules in Serbia, including the legislation governing advocacy and previously discussed code of conduct for lawyers. Similarly, the provision of pro bono services by Serbian lawyers is not very well developed. The Serbia Bar Association has discussed mandating 50 hours of pro bono work a year as one of the ways to ease the burden of Serbia’s attempt to provide legal representation to all who require it,<sup>52</sup> but has not acted on that discussion yet.

A select few firms are attempting to develop a pro bono culture in Serbia. Some international entities with strong pro bono backgrounds in other countries have a presence in Serbia, with some explicitly working on pro bono projects in the country.<sup>53</sup> The Kinstellar law firm, for example, has been involved in the “pro bono network for civil society organizations in Serbia.”<sup>54</sup> To the best of Kinstellar’s knowledge, this initiative was the first initiative in Serbia aimed at assembling large domestic and international law firms in

---

<sup>45</sup> Country Report Serbia: Belgrade 2013, supra n. 25.

<sup>46</sup> UNDP, supra n.18, at 98.

<sup>47</sup> Id. at 3.

<sup>48</sup> Id.

<sup>49</sup> Id. at 38-39 and accompanying footnotes.

<sup>50</sup> UNICTY, Status of Transferred Cases, ICTY, accessible at <http://www.icty.org/sid/8934> (last visited on September 4, 2015).

<sup>51</sup> Id.

<sup>52</sup> World Bank Multi-Donor Trust Fund for Justice Sector Support, supra n. 41.

<sup>53</sup> Additionally, DLA Piper, Wolf Theiss, and other international firms have branches in Serbia and a strong international dedication to pro bono work.

<sup>54</sup> Vlatkovic, supra n. 5.



the provision of pro bono legal services to civil organizations in selected cases. The process was organized by a local NGO and was initially relatively successful.<sup>55</sup> However, perhaps a by-product of the legal system in flux, a number of logistical issues arose and many of the participants are now contemplating continuing the provision of pro bono services independently.<sup>56</sup>

Law faculty legal clinics in Serbia have become a major source of pro bono work and opportunities.<sup>57</sup> Many of these clinics grew from an American Bar Association/Central East European Law Initiative Program in the early 2000's.<sup>58</sup> The programs first began as simulations, but many have since moved to providing pro bono services to indigent clients.<sup>59</sup> Some of the schools offer specialized clinics, in contract, family, and anti-discrimination law.<sup>60</sup>

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

As detailed above, the provision of pro bono services by Serbian lawyers is neither very developed nor regulated. Serbia lacks a clearinghouse, and as discussed in further detail below, local referral organizations often lack an understanding of legal rights and issues. With only a few law firms offering and driving pro bono practices, the need for pro bono assistance – whether from international law firms or NGOs – remains substantial, as do the opportunities.

While the proposed Free Legal Aid system and the current “boots on the ground” may be best equipped to handle the more routine smaller cases, some larger cases would benefit from greater contributions. Such opportunities are particularly prevalent in the area of human rights.

### Establishing Human Rights Institutions

Serbia acceded to the Council of Europe on April 3, 2003, and has ratified all major human rights instruments, including the European Convention on Human Rights.<sup>61</sup> There is a general consensus that with democratic reforms and Serbia's orientation towards EU accession, human rights are gaining a place on the policy agenda. Recent areas of improvement include: human rights training programs led by the Ministry for Minority and Human Rights, the introduction of a new strategy and action plan for the correctional system and the passage of three laws providing protections for the freedom of expression.<sup>62</sup>

Yet while awareness among judges of international human rights obligations is perceived to have recently improved, courts are still not adhering to those principles.<sup>63</sup> Furthermore, human rights abuses,

---

<sup>55</sup> Id.

<sup>56</sup> Id. In another example of an effort to stimulate the Serbian pro bono culture, Mira Vucetic Prsic pioneered a pro bono program at her firm after attending a European Pro Bono Forum. Prsic cited a long tradition of volunteer legal work—such as aid to family and friends – but had always seen formal pro bono as a concept that existed only in other countries, particularly the United States. Prsic now dedicates all of her working hours to pro bono work, and to date has taken on more than 50 pro bono cases. See *Against the Tide: Mira Vucetic Prsic Launches Pro Bono in Serbia*, supra n.34.

<sup>57</sup> Vlatkovic supra n.5.

<sup>58</sup> Emilija Stankovic Karajovic, *ABA/CEELI's clinical legal education programme in Serbia*, 4 *Int'l J. of Clinical Legal Educ.* 81 (2004).

<sup>59</sup> The Legal Clinic, FACULTY OF LAW UNIVERSITY OF NIS, [http://www.prafak.ni.ac.rs/index.php?option=com\\_content&view=article&id=166&Itemid=241&lang=en](http://www.prafak.ni.ac.rs/index.php?option=com_content&view=article&id=166&Itemid=241&lang=en) (last visited on September 4, 2015).

<sup>60</sup> Willem C. Vis International Commercial Arbitration Moot: Team, UNIVERZITET U BEOGRADU: PRAVNI FAKULTAT, <http://www.ius.bg.ac.rs/moot/VISteam.htm> (last visited on September 4, 2015).

<sup>61</sup> See European Convention on Human Rights, signed Apr. 3, 2003 (ratified Mar. 3, 2004).

<sup>62</sup> European Commission, supra note 10, at 40-41.

<sup>63</sup> Id. at 45-46.



discrimination against minorities, attacks on journalists, hate speech, attacks on foreigners and intimidation of sexual minorities by extremist groups continue in Serbia largely unabated, though publically condemned.<sup>64</sup> International nongovernmental organizations such as the European Commission, and Serbia's Office of the Ombudsman *all* report continuing human rights violations in Serbia.<sup>65</sup>

Citizens also lack awareness and information on their rights and remedies (basic legal forms, procedures, offices, legal aid). For example, nearly one-quarter of all complaints filed with the Ombudsman in 2014 related to activities of the ministries or concerned the Ministry of the Interior (and most of these involved the right to identity documents, including identification cards and passports).<sup>66</sup>

Among the general human rights abuses, certain groups are especially afflicted, particularly refugees and victims of human trafficking, and as such are in dire need of assistance.

### Refugees & Human Trafficking

Due to the wars in former Yugoslav republics, there has been an influx of large numbers of refugees and Internally Displaced Persons (“IDPs”) into Serbia. According to UNHCR statistics in 2015, Serbia had 223,139 IDPs and 43,751 refugees and individuals in refugee-like situations.<sup>67</sup> A handful of groups, particularly NGOs such as Fahamu and those listed later, have been working to assist the refugees, but ample opportunities for further pro bono assistance exist.

Human trafficking of all forms persists in Serbia – for men, women, and children. The trafficking concerns both victims trafficked into and others trafficked out of Serbia. While the police have made progress in deterring or intervening in such practices, the judiciary still remains a weak point in the implementation of anti-trafficking legislation.<sup>68</sup> Thus, help is needed in a number of areas, including assisting known victims of human trafficking, working to prevent trafficking at points of origin or destination outside the borders of Serbia, and raising awareness of the issue.

### Current State of Pro Bono Including Barriers To Pro Bono Work and Other Considerations

Many barriers to providing pro bono assistance exist in Serbia, from basic impediments to greater institutionalized obstacles. From a logistical standpoint, the lack of a clearinghouse hampers even the initial process of connecting client with counsel, while societal traditions and biases present more general roadblocks.<sup>69</sup>

### Laws and Regulations Impacting Pro Bono

Serbia has legal and regulatory barriers in its legal system to the provision of pro bono services. Serbia has a “loser pays” statute in the Code of Civil Litigation. If the court rules that the victory is only partial,

<sup>64</sup> See *Id.*; SERBIAN OMBUDSMAN REPORT 2014.

<sup>65</sup> *Id.*

<sup>66</sup> SERBIAN OMBUDSMAN REPORT 2014.

<sup>67</sup> UNHCR, Serbia: 2015 UNHCR subregional operations profile- South-Eastern Europe, <http://www.unhcr.org/pages/49e48d9f6.html> (last visited on September 4, 2015). Additionally, during the 1999-2006 time periods, around 226,000 Serbs and other non-Albanians were forced to leave Kosovo, almost all situated in Central Serbia. See *Project Fiche for Phare – Pre-accession Instrument [IPA] 2005*, “IPA Support to IDPs and Refugee,” [http://ec.europa.eu/enlargement/pdf/serbia/ipa/support\\_to\\_refugees\\_and\\_idps\\_en.pdf](http://ec.europa.eu/enlargement/pdf/serbia/ipa/support_to_refugees_and_idps_en.pdf) (last visited on September 4, 2015). The declaration of Kosovo independence in February 2008, marked a new wave of uncertainty for these IDPs, especially with Serbia failing to acknowledge Kosovo's independence. Even though “new displacement was avoided, the rate of return decreased significantly in 2008 from an already low level, as most IDPs waited to evaluate the approach of Kosovo authorities towards Kosovo Serbs and other non-Albanian communities.” INTERNAL DISPLACEMENT MONITORING CENTRE, Serbia: Final Status for Kosovo – Towards Durable Solutions and New Displacement.

<sup>68</sup> CENTRE FOR PROTECTION OF WOMEN AND CHILDREN AND LAWYERS COMMITTEE FOR HUMAN RIGHTS (“YUCOM”), Report on Serbia, at 189-192, ARIADNET, available at [www.ariadnet.net/pdfs/10.Serbia.pdf](http://www.ariadnet.net/pdfs/10.Serbia.pdf) (last visited on September 4, 2015).

<sup>69</sup> As a plus, however, a VAT or a tariff is not imposed on services offered free of charge.



then the victors shall only receive the allocable portion.<sup>70</sup> Additionally, Serbian law allows the Serbia Bar Association to enact a fixed-fee schedule, which they have done.<sup>71</sup> The Serbia Bar Association bans advertising or self-promotion by Serbian attorneys via its bylaws, as required by Serbian law, though that does not include electronic communication, basic contact information, or printed material provided to clients.<sup>72</sup> Foreign attorneys seeking to practice in Serbia must register, and are restricted in their practices. To register, they must show that they are a member of the bar in their state of origin and meet the other applicable bar requirements.<sup>73</sup> If the lawyer does not take Serbia's bar exam and attorney-at-law exam, they are placed in Register A, where they can only provide oral and written advice on international law and the laws of their state of origin. If the lawyer did take the bar exam and the attorney-at-law exam in Serbia, they may practice law in Serbia, but for three years must act in conjunction with local counsel.<sup>74</sup>

### Lack of a Clearinghouse

Without a clearinghouse or centralized national call center, it is difficult for those interested in offering pro bono services to receive requests from citizens in need in an efficient manner.<sup>75</sup> Further, without a clearinghouse, legal clinics send private practitioners clients with no prior screening. Since the clinics are not familiar with legal terminology, they often cannot explain the issue over the phone. Counsel must therefore screen every potential client through an in-person meeting.<sup>76</sup> NGOs have started to help with this effort by acting as impromptu clearinghouses.<sup>77</sup>

### Socio-Cultural Barriers to Pro Bono and Institutional Mistrust

At a more abstract level, there is a fundamental public mistrust of the judiciary and government in Serbia. Lengthy civil and criminal proceedings and difficulties in enforcing final judgments continue to erode the public's trust in the judiciary. The legal profession in Serbia is not well regulated; there exists no mandatory CLE requirement (including basic ethics training) for lawyers, and senior judges complain that lawyers and the judiciary lack knowledge of new laws.<sup>78</sup>

Furthermore, the rulings and decisions of courts are often ignored by the administration – especially in the most relevant cases of public interest – and the cooperation of state institutions is extremely limited.<sup>79</sup> Additionally, there is no mechanism to enforce the decisions of the Commissioner for Free Access to Information of Public Importance or to sanction violations of the Law on Free Access to Information of

---

<sup>70</sup> Civil Procedure Code, Official Gazette RS no. 72/2011, (Sept. 28, 2011), Article 153, available at <http://www.migliorisiabogados.com/wp-content/uploads/2014/07/Codigo-procesal-civil.pdf> (last visited on September 4, 2015).

<sup>71</sup> The Legal Profession Act, May 5, 2011, First Regular Session. Article 23, available at [http://www.advokatska-komora.rs/propisi\\_lat/LEGAL\\_PROFESSION\\_ACT.pdf](http://www.advokatska-komora.rs/propisi_lat/LEGAL_PROFESSION_ACT.pdf) (last visited on September 4, 2015). The law also permits the Serbia Bar Association to develop rules for providing free legal aid.

<sup>72</sup> Id., Article 24; Mrakovic & Partners, Advertising Law in Serbia, HG.ORG LEGAL RESOURCES, available at <http://www.hg.org/article.asp?id=31383> (last visited on September 4, 2015).

<sup>73</sup> The Legal Profession Act, supra note 92, at Articles 13-14 ;PECO Committee, Comments on the Final Draft of "The Legal Profession Act"- Serbia, CONSEIL DES BARREAUX EUROPEENS (CCBE) available at [http://www.ccbe.eu/fileadmin/user\\_upload/document/PECO\\_Portal/PECO\\_Com\\_comments\\_Serbian\\_draft\\_law\\_02032011.pdf](http://www.ccbe.eu/fileadmin/user_upload/document/PECO_Portal/PECO_Com_comments_Serbian_draft_law_02032011.pdf) (last visited on September 4, 2015).

<sup>74</sup> Id.

<sup>75</sup> See generally, Against the Tide, supra n.34. It has fallen upon NGOs to try to act as a clearinghouse, to varying levels of effectiveness.

<sup>76</sup> Id. Prsic even reports that some individuals who are turned down (for one reason or another) nevertheless persist in coming by the office, even becoming violent after her firm refuses to take their case.

<sup>77</sup> Pilnet, Where We Work: Europe, PILNET, accessible at <http://www.pilnet.org/public-interest-lawyers/europe.html> (last visited on September 4, 2015).

<sup>78</sup> Evaluation Team interview with the Vice President of the Belgrade Bar Association.

<sup>79</sup> Evaluation Team interview with Director of the Belgrade Law Faculty Anti-Discrimination Law Clinic.



Public Importance by government bodies.<sup>80</sup> Accordingly, though such laws may be adopted on paper the state does not have the teeth to enforce them. State administration institutions in Serbia lack adequate dispute resolution mechanisms and courts still fall short of guaranteeing citizens their right to a fair trial.<sup>81</sup>

### Lack of Pro Bono Culture

Traditionally, many lawyers in Serbia have had a somewhat rigid view of the practice of law and have not been willing to introduce any changes.<sup>82</sup> The Bar Association does not impose any pro bono requirement. In fact, some lawyers offering pro bono services are resented by other lawyers, who perceive providing legal services free of charge as unfair competition.<sup>83</sup> Plus, as referenced throughout, many lawyers – particularly sole practitioners – are struggling for paid work, leaving little capacity to offer their services at no charge.

### Pro Bono Resources

With no national clearinghouse, pro bono opportunities are limited in Serbia. Thus, contacting either the Kinstellar law firm or one of the following NGOs (most of which specialize in refugee work), would be the best avenue to pursue further information about pro bono opportunities in Serbia.

- ASTRA: Website: [www.astra.org.rs](http://www.astra.org.rs)
- Asylum Protection Center/Center for Protection and Asylum: Website: <http://www.apc-cza.org/sr-YU/>
- Autonomous Women's Center: Website: <http://www.womenngo.org.rs/english/>
- Belgrade Center for Human Rights: Website: <http://www.bgcentar.org.rs/bgcentar/eng-lat/>
- Child's Rights Center: Website: <http://www.cpd.org.rs/en/home.html>
- Civic Initiatives: Website: [www.gradjanske.org/page/about/en.html](http://www.gradjanske.org/page/about/en.html)
- Group 484: Website: [www.grupa484.org.rs](http://www.grupa484.org.rs)
- Initiative for Development and Cooperation (IDC) Serbia Website: [www.idcserbia.org](http://www.idcserbia.org)
- International Aid Network: Website: [www.ian.org.rs](http://www.ian.org.rs)
- MPDL SE EUROPE: Website: [www.mpdl.org/serbia](http://www.mpdl.org/serbia)
- Novi Sad Humanitarian Centre Website: [www.nshc.org.rs](http://www.nshc.org.rs)
- Praxis: Website: [www.praxis.org.rs](http://www.praxis.org.rs)

## CONCLUSION

While Serbia does not have a legacy of pro bono culture in the traditional sense, Serbs do have a tradition of helping friends, family, and neighbors in need. Combined with a few pioneer law firms and the assistance of NGOs, the prospect for a legal community that accepts pro bono as part of a lawyer's role could develop. The government is also taking new steps to carry some responsibility, commissioning the draft law on Free Legal Aid. Adoption and funding of this legislation would serve as a major boon to

---

<sup>80</sup> EC Comm HR (Mar. 11, 2008). For a more in-depth look at the problems enforcing the rights to access information, see AMERICAN BAR ASSOCIATION, Serbia Programs: Rule of Law Initiative, Anti-Corruption and Public Integrity, available at [http://www.americanbar.org/advocacy/rule\\_of\\_law/where\\_we\\_work/europe\\_eurasia/serbia/programs.html](http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia/programs.html) (last visited on September 4, 2015).

<sup>81</sup> SERBIAN OMBUDSMAN REPORT 2014. The Serbian Constitution provides for the right to a fair trial within a reasonable time (art. 32) and the 2005 Civil Procedure Act prescribes that a court should decide on claims and motions of the parties within a reasonable time (art. 10). Yet, of complaints filed with the Serbian Ombudsman in 2008, 4% involved violation of the right to a fair trial, while 1.5% involved rights of persons deprived of liberty and 4% involved complains of violation of the right on legal protection before administrative authorities.

<sup>82</sup> See generally, Against the Tide supra n.34. The Belgrade Bar Association led a nation-wide legal strike from 2014 through early 2015 to oppose new laws and regulations imposed by the Justice Ministry on the legal community. See Tanjug, Lawyers continue strike, demand Selakovic to resign, B92, [http://www.b92.net/eng/news/politics.php?yyyy=2014&mm=09&dd=26&nav\\_id=91719](http://www.b92.net/eng/news/politics.php?yyyy=2014&mm=09&dd=26&nav_id=91719) (last visited on September 4, 2015).

<sup>83</sup> Against the Tide supra n.34.



support citizens unable to otherwise afford legal assistance. There is still much work to be accomplished in terms of developing the legal infrastructure in Serbia – particularly restoring faith in the judiciary and continuing the stalled efforts to establish a Free Legal Aid program– and transforming how the local legal community thinks about pro bono. Nonetheless, there is a growing number of pro bono opportunities in various disciplines available in Serbia. Critical, however, will be the establishment of a pro bono clearinghouse to screen potential clients and, even more importantly, connect those in need of pro bono assistance with the appropriate person or entity to provide such aid. Nevertheless, for a country still enjoying its first decade of independence, Serbia is headed in the right direction. With time and effort, as well as support from the government and civilians alike, a robust pro bono culture can be in Serbia's future.

September 2015

Pro Bono Practices and Opportunities in Serbia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Singapore

### INTRODUCTION

The Singapore legal community has an important tradition of rendering pro bono work and has made a number of efforts to encourage participation in pro bono legal services. In 2006, the Law Society recommended that every Singapore qualified lawyer commit to at least 25 hours of pro bono work per year. More recently, since 2012, there has been a push to make pro bono work mandatory for lawyers who hold a practising certificate. The following sections describe in more detail the Singapore legal system, and the growing emphasis on pro bono engagement.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Constitution of the Republic of Singapore is accorded legal supremacy under Singapore law. It is specifically provided in the Singapore Constitution that any law enacted by Parliament which is inconsistent with the Singapore Constitution shall be void to the extent of the inconsistency. With certain limited exceptions, an amendment to the Singapore Constitution may be effected by the vote of two-thirds of the total number of elected Members of the Singapore Parliament.<sup>1</sup>

The Singapore legal system is primarily based on the English legal system. Singapore legislation provides that the common law and rules of equity of England, to the extent it was part of Singapore law immediately before November 12, 1993, shall continue to be part of Singapore law (subject to its applicability to the circumstances of Singapore and subject to modification as those circumstances require), and various English statutes (relating primarily to maritime, corporate, commercial and contract matters) have been received or incorporated into Singapore law, subject to various exceptions and limitations.<sup>2</sup>

The doctrine of judicial precedent applies in Singapore, such that the operative reasons (the *ratio decidendi*) for the judgment of a court are binding on courts which are lower in the judicial hierarchy. The decisions of the courts of other jurisdictions are not binding in Singapore, though those of various leading jurisdictions (especially in the English common law tradition) such as England and Australia can potentially carry persuasive value, in particular in commercial cases.

##### The Courts

##### Court System

The Singapore judicial system is comprised of two tiers: the Supreme Court and the State Courts. The Supreme Court is constituted by the Court of Appeal and the High Court. The Court of Appeal is the highest appellate court in Singapore. The High Court exercises original and appellate jurisdiction in civil and criminal cases, hearing both cases in the first instance, as well as cases on appeal from the State Courts. The State Courts consist of the District Courts and Magistrates' Courts as well as specialized courts such as the Juvenile Court, the Family Court, the Traffic Court, the Night Courts, the Coroner's Courts and the Small Claims Tribunal.

---

<sup>1</sup> See SINGAPORE CONST. art. 4 and 5, 1963. The text of the Constitution of Singapore is available at the Attorney-General's Chambers – Singapore, homepage, <http://statutes.agc.gov.sg> (last visited on September 4, 2015).

<sup>2</sup> See sections 3 and 4, Application of English Law Act (Chapter 7A of the Laws of Singapore).



In 2013, the Supreme Court heard a total of 15,249 civil and criminal matters, whereas the State Courts heard a total of 342,246 civil and criminal matters<sup>3</sup>. As these statistics reveal, the bulk of civil and criminal cases originate in the State Courts. While the High Court has original jurisdiction in all cases, it generally only deals with civil matters where the value of the subject matter of the claim exceeds S\$250,000 (the general pecuniary jurisdictional limit for State Courts) and criminal matters where the punishment involves the death penalty or more than ten years of imprisonment. Consequently, the greatest need for pro bono assistance arises at the level of the State Courts.

### Appointment of Judges

Judges of the Singapore courts are appointed and not elected to the Bench.

Supreme Court judges are appointed by the President on the advice of the Prime Minister, who is required to consult the Chief Justice before tendering his advice on the appointment of any such judge.<sup>4</sup> The only formal qualification requirement for such an appointment is that the prospective appointee must essentially have been, for an aggregate period of not less than ten years, qualified to practice law or been a member of the Singapore Legal Service, or both.<sup>5</sup> In practice, appointments to the Supreme Court Bench have tended towards senior and established lawyers in private practice, academia and the Singapore Legal Service.

State Court judges (comprising District Judges and Magistrates) are appointed by the President on the recommendation of the Chief Justice.<sup>6</sup> The formal qualification for such appointment is that the prospective appointee must essentially have been, for an aggregate period of not less than five years for a District Judge and one year for a Magistrate, qualified to practice law or been a member of the Singapore Legal Service, or both.<sup>7</sup>

### The Practice of Law

#### Education

Singapore has two law schools that offer a law degree that is recognized under the Legal Profession Act for legal practice in Singapore.<sup>8</sup> Prior to the establishment of law schools in Singapore, lawyers in Singapore were typically educated in the United Kingdom.<sup>9</sup> There were 19 institutions in the United Kingdom that confer degrees on their graduates that were officially recognized under the Legal Profession Act, thus enabling their graduates to meet the academic requirements necessary to sit the Singapore Bar examinations. In addition, there are currently another ten institutions in Australia, two institutions in New Zealand and four institutions in the United States that may similarly confer qualifications meeting these academic requirements. With effect from the 2016/2017 academic year, degrees conferred by eight of the aforementioned institutions in the United Kingdom will no longer be regarded as satisfying such academic requirements, subject to various transitional arrangements for Singapore citizens and permanent residents who may have already secured places to read law in these eight institutions.<sup>10</sup>

---

<sup>3</sup> Figures are subject to revision.

<sup>4</sup> See Singapore Const. art. 95, 1963.

<sup>5</sup> See Singapore Const. art. 96, 1963.

<sup>6</sup> See sections 9 and 10, State Courts Act (Chapter 321 of the Laws of Singapore).

<sup>7</sup> See sections 9 and 10, State Courts Act (Chapter 321 of the Laws of Singapore).

<sup>8</sup> See MINISTRY OF LAW – RELEVANT LEGISLATION, Legal Profession Act, Legal Profession (Qualified Persons) Rules, available at [https://www.mlaw.gov.sg/content/dam/minlaw/corp/Practising%20as%20a%20Lawyer/Legal%20Profession\\_Qualified%20Persons%20Rules\\_June2014.pdf](https://www.mlaw.gov.sg/content/dam/minlaw/corp/Practising%20as%20a%20Lawyer/Legal%20Profession_Qualified%20Persons%20Rules_June2014.pdf) (last visited on September 4, 2015).

<sup>9</sup> See Tan Cheng Han, Legal Education in ASEAN, available at [http://aseanlawassociation.org/9GAdocs/w2\\_Singapore.pdf](http://aseanlawassociation.org/9GAdocs/w2_Singapore.pdf) (last visited on September 4, 2015).

<sup>10</sup> See MINISTRY OF LAW – RELEVANT LEGISLATION, *supra* n.8.



### Licensure

Lawyers in private practice in Singapore are required to hold a practicing certificate. Singapore operates a fused legal profession similar to the United States, with Singapore-qualified lawyers in private practice being licensed as both advocates and solicitors.

Any person seeking admission to the Singapore Bar would need to obtain a law degree from one of the approved universities in Singapore, the United Kingdom, Australia, New Zealand or the United States<sup>11</sup>. Individuals who are not Singapore citizens or permanent residents and who do not hold a law degree from the National University of Singapore or the Singapore Management University are generally not eligible for admission to the Singapore Bar<sup>12</sup>. Having obtained a law degree from an approved university, overseas graduates will have to complete Parts A and B of the bar examinations while both local graduates will only have to complete Part B of the bar examinations. Part A is a Singapore law focused conversion examination course, and Part B is a five-month long practical law course which focuses on procedural law and practice in Singapore relevant to civil and criminal litigation. In addition to the Part A and Part B courses, all individuals must go through a compulsory training period of not less than six months within a continuous period of eight months with a Singapore law practice in order to be admitted to the Singapore bar<sup>13</sup>.

Foreign qualified lawyers can practice in permitted areas of Singapore law by applying for a Foreign Practitioner Certificate (“FPC”) from the Attorney-General. In order to apply for the FPC, applicants must pass the Foreign Practitioner Examinations (“FPE”)<sup>14</sup>. Generally, foreign qualified lawyers must have at least three years of relevant legal practice or work which may be gained in Singapore or overseas before they can apply to sit for the FPE. Permitted areas of practice for holders of the FPC include areas such as banking and finance, mergers and acquisitions and intellectual property law.

### Demographics

There were, as of August 31, 2014, approximately 4,400 Singapore law qualified lawyers with a practicing certificate in Singapore. This figure does not include local lawyers without a current practicing certificate or foreign qualified lawyers (whether working in private practice, in-house or non-legal roles) for which data is not available. According to statistics provided by The Law Society of Singapore, as of August 31, 2014, there were over 800 law practices in Singapore, more than 700 of which comprised between one to five lawyers. As of August 31, 2014, there were 18 law practices in Singapore that comprised more than 31 lawyers.<sup>15</sup>

### Legal Regulation of Lawyers

Lawyers in Singapore are regulated under the Legal Profession Act.<sup>16</sup> Among other things, this Act constitutes the Law Society of Singapore<sup>17</sup> (the “**Law Society**”) and amends and consolidates the law

---

<sup>11</sup> See <https://www.mlaw.gov.sg/content/minlaw/en/practising-as-a-lawyer/approved-universities.html> for a list of approved universities (last visited on September 4, 2015).

<sup>12</sup> See Part II and III of the Legal Profession (Qualified Persons) Rules available at <https://www.mlaw.gov.sg/content/dam/minlaw/corp/assets/documents/linkclick0667.pdf> (last visited on September 4, 2015).

<sup>13</sup> Ibid at Section 6.

<sup>14</sup> See Section 4 of the Legal Profession (Foreign Practitioner Examinations) Rules 2011 available at <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=Compld%3A1eb8e2b2-be97-426b-9ab0-bd24de489291%20ValidTime%3A20140919000000%20TransactionTime%3A20140919000000;rec=0;resUrl=http%3A%2F%2Fstatutes.agc.gov.sg%2Faol%2Fbrowse%2FtitleResults.w3p%3Bletter%3DL%3Btype%3DactsAll#pr6-he-> (last visited on September 4, 2015) for specific requirements to sit for the FPE.

<sup>15</sup> See The Law Society of Singapore, General Statistics, available at <http://www.lawsociety.org.sg/about/genStatistic.aspx> (last visited on September 4, 2015).

<sup>16</sup> See the Legal Professional Act, available at <http://statutes.agc.gov.sg/aol/home.w3p> (last visited on September 4, 2015).



relating to the legal profession. There is no mandatory obligation under Singapore legal professional rules or legislation to provide pro bono services in Singapore. In addition, there are no specific professional conduct laws and rules applicable to pro bono representation. The general Legal Profession (Professional Conduct) Rules under the Legal Profession Act, Chapter 161 of Singapore (the “PCR”), remain applicable to lawyers undertaking pro bono representation.<sup>18</sup>

Currently, only lawyers practicing Singapore law are subject to the PCR. Foreign lawyers are subject to limited regulation by the Attorney-General of Singapore. However, following a review of the legal regulatory framework in Singapore, proposals have been made, and are anticipated to be accepted, for a revision of that regulatory framework which will, among other things, revise the PCR and make foreign lawyers subject to the provisions of the revised PCR.<sup>19</sup>

In-house counsel in Singapore are not regulated, and there is no requirement for in-house counsel to be admitted to a bar association, either in Singapore or elsewhere, or to hold a practicing certificate before they may be employed in such capacity. In-house counsel do however remain subject to any relevant disciplinary rules which may be applicable to them in any jurisdiction in which they have been admitted.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The Constitution of Singapore provides Singapore citizens and non-Singapore citizens the right “to consult and be defended by” counsel of their choice upon their arrest. While such right to counsel is entrenched in the Singapore Constitution, the application of this constitutional right has been limited by legislation and judicial decisions. For instance, the Criminal Procedure Code provides that the protection applies only when an accused person has been brought before a court (not prior to the accused person’s appearance at court). In addition, the High Court has held that there is no right to be informed of the right to legal counsel. Without any obligation on the arresting authority to inform an accused person of their right to legal counsel, a person in Singapore may be questioned, interrogated and held in (pre-trial) custody prior to having knowledge of the right to legal counsel in Singapore.

#### In Civil Proceedings

Various legal aid schemes are available in Singapore. The government funded Legal Aid Bureau (the “LAB”) is the agency of the Ministry of Law responsible for administering legal aid for civil matters in Singapore.

#### In Criminal Proceedings

The criminal legal aid schemes are comprised primarily of The Supreme Court Legal Assistance Scheme for Capital Offences (the “LASCO”), a scheme administered by the Supreme Court, and the enhanced Criminal Legal Aid Scheme (the “CLAS”), a scheme administered by the Pro Bono Services Office of the

---

<sup>17</sup> The Law Society of Singapore was established in 1967 and is a not-for-profit corporate established under the Legal Profession Act. The Pro Bono Services Office is the administrative arm of the Law Society of Singapore’s charity, the Law Society of Singapore, Pro Bono, Learning and Support Services. See Law Society of Singapore Annual Report 2011, available at [http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-\(V6111027\).pdf](http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-(V6111027).pdf) versionv3.pdf (last visited on September 4, 2015).

<sup>18</sup> See the Legal Profession (Professional Conduct) Rules under the Legal Profession Act, ch. 161 of Singapore, available at <http://www.lawsociety.org.sg/forPublic/YoutheLawyer/CodeofConductforLawyers.aspx> (last visited on September 4, 2015) which state that the rules are generally applicable to “every advocate and solicitor who has in force a practicing certificate,” and would therefore be applicable in the context of a pro bono representation.

<sup>19</sup> See the Final Report of the Committee to Review the Regulatory Framework of the Singapore Legal Services Sector, available at <https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Final%20Report%20of%20the%20Committee%20to%20Review%20the%20Reg%20Framework%20of%20the%20Spore%20Legal%20Sector.pdf> (last visited on September 4, 2015).



Law Society. The LASCO seeks to provide legal representation to defendants facing capital charges in the High Court.

## State-Subsidized Legal Aid

### The Legal Aid Bureau (LAB)

In general, volunteer opportunities with the LAB are open only to Singapore qualified practising lawyers. However, non-practising lawyers and non-Singapore qualified lawyers may volunteer with the LAB by assisting with certain out of court tasks, such as interviewing applicants, drafting legal opinions and court documents and conducting legal research.

### Eligibility

The LAB provides legal aid to Singapore citizens and permanent residents in civil proceedings where legal representation is allowed, including proceedings in the High Court, Court of Appeal, District Courts and Magistrates' Courts, Syariah Court<sup>20</sup> and Syariah Court Appeal Board, and under the Women's Charter<sup>21</sup>.

The LAB does not provide legal aid for certain criminal proceedings and civil proceedings including, among others, proceedings in respect of defamation, breach of promise of marriage or the inducement of one spouse to leave or remain apart from the other, proceedings before the Small Claims Tribunal and the Tribunal for the Maintenance of Parents, proceedings in the Family Court for maintenance and personal protection orders and any application under the Parliamentary Elections Act (Cap. 218) or the Presidential Elections Act (Cap. 240A)<sup>22</sup>.

To be eligible for legal aid, an applicant must (i) be a Singapore citizen or permanent resident in Singapore, (ii) satisfy a means test,<sup>23</sup> and (iii) satisfy a merits test.<sup>24</sup> Approved cases are handled by LAB in-house lawyers, as well as volunteer private lawyers. The legal aid provided by the LAB is not free, and a recipient of legal aid may be required to pay a contribution towards the costs of work done on their case. The total contribution usually does not exceed S\$1,000, but it may be more in some cases.<sup>25</sup> This required contribution will be determined by considering the financial means of the recipient, the nature of the case, the amount of work done and the amount of money recovered for the recipient.

---

<sup>20</sup> The Syariah court has jurisdiction to hear and continues to exist as a court of competent jurisdiction with power and jurisdiction to hear and determine disputes defined by the Administration of Muslim Law Act 1968.

<sup>21</sup> The Women's Charter is a legislative act that was passed in 1961 to protect and advance the rights of women and girls in Singapore. It provides protection against family violence and penalty for offences against women and girls. <http://www.scwo.org.sg/index.php/resources/womens-charter> (last visited on September 4, 2015).

<sup>22</sup> This acts set out the rules governing elections in Singapore.

<sup>23</sup> The Means Test is determined by § 8(2)(b) of the Legal Aid and Advice Act. An applicant must have a disposable income not in excess of S\$10,000 per annum (with some allowable deductions) and disposable capital not in excess of S\$10,000. In addition, the disposable income of the applicant together with the income (if any) of the applicant's spouse during the period of 12 months immediately preceding the date of the application must not exceed S\$10,000 per annum. See The Legal Aid Bureau's Assigned Solicitor's guide, available at, <https://www.mlaw.gov.sg/content/dam/minlaw/lab/Assigned%20Solicitors/LAB%20AS%20Guide.pdf> (last visited on September 4, 2015).

<sup>24</sup> The Merits Test is determined pursuant to § 8(2)(a) of the Legal Aid and Advice Act. An applicant must have reasonable grounds for taking, defending, continuing or being a party to the proceedings for which they are seeking legal aid. See The Legal Aid Bureau's Assigned Solicitor's guide, available at, <https://www.mlaw.gov.sg/content/dam/minlaw/lab/Assigned%20Solicitors/LAB%20AS%20Guide.pdf> (last visited on September 4, 2015). The Legal Aid Bureau reserves the right to extend legal aid, at the Director of Legal Aid's absolute discretion, to an applicant who fails the Means Test but is facing "hardship" and passes the Merits Test. See The Legal Aid and Advice Act Second Schedule ¶¶ 5 and 7.

<sup>25</sup> See <https://www.mlaw.gov.sg/content/lab/en/what-we-do/is-legal-aid-free.html> (last visited on September 4, 2015).



### Scope of Legal Aid Provided to Eligible Persons

The legal assistance provided by the LAB extends to legal advice, legal documentation drafting and representation in court proceedings.

### Assistance Scheme for Capital Offences (LASCO)

Approximately 90% of all capital cases before the High Court are defended by LASCO counsel and the remaining cases are defended either by paid counsel or by counsel from other pro bono schemes (e.g., the CLAS). Any lawyer seeking to participate in the LASCO must be on the Supreme Court's Register of Counsel and qualified to practice in Singapore. In addition, to apply to the Supreme Court's Register of Counsel, a lawyer must be in good standing and reputation and have a certain level of experience in criminal trials.

### Eligibility

Any defendant who is charged with a capital offense is eligible for legal assistance under the scheme. There is no means or merit test to satisfy.

### The Enhanced Criminal Legal Aid Scheme (CLAS)

An enhanced CLAS was launched in May 2015 which seeks to improve upon the existing CLAS scheme. The Pro Bono Services Office will continue to run CLAS and the legal services will still be provided by volunteer lawyers. However, the Government will now provide the bulk of funding, comprising S\$800,000 for start-up costs and an annual commitment of S\$3.5 million to cover operational costs, honoraria and disbursements. The State Courts estimate that there are about 12,000 litigants-in-person per year, of which half could benefit from some form of legal representation. Enhanced CLAS aims to help up to 6,000 accused persons per year, a tenfold increase from the number previously helped.

### Eligibility

The enhanced CLAS does not limit its representation on the basis of citizenship or residency, but does require that potential clients satisfy a means test. To qualify for aid, applicants' disposable income may not exceed S\$10,000 per annum.

### Provision of Services Under the Enhanced CLAS

If an application for legal aid is granted, the applicant will be assigned a Singapore law qualified volunteer lawyer (usually a criminal lawyer in private practice who is volunteering their services) to handle their case. To increase the pool of lawyers available, law firms will second or sponsor lawyers to work full-time at the Pro Bono Services Office.

### Unmet Needs and Access Analysis

In 2010, it was reported that a significant proportion of litigants in the State Courts did not have legal representation; one-third of litigants in criminal cases and over 90% of litigants in maintenance and family violence cases were unrepresented. Although the Government is expanding the coverage of legal aid, pro bono representation remains necessary to plug the gap in providing legal representation to the community.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Lawyers

There is currently no mandatory obligation under Singapore's legal professional rules or legislation to provide pro bono services in Singapore. However since 2012, there has been a push to make pro bono



mandatory for lawyers who hold a practicing certificate. A committee to study community legal services initiatives (the “**Committee**”) was set up in 2012. The Committee, comprising members from the judiciary and practicing lawyers, had proposed the concept of Community Legal Services (“**CLS**”) in their first consultation paper (circulated on October 31, 2012). The objective of CLS was to encourage lawyers of the Singapore Bar to provide legal assistance to low-income Singaporeans who might not be able to gain access to legal services. It was proposed that lawyers who hold a practicing certificate should fall within the remit of CLS and be required to fulfil at least 16 hours of pro bono work each year. It was also considered that lawyers could choose to give contributions-in-lieu if they could not fulfil their CLS requirements, at rates that would be calculated according to pre-determined hourly rates. The revenue from these contributions would then be channeled back into the operational costs of CLS.

Following feedback received from the first consultation paper, the Committee had recommended that mandatory pro bono be implemented in two stages: (i) an aspirational target of pro bono hours and mandatory reporting of the number of pro bono hours completed each year; and (ii) a mandatory minimum number of pro bono hours to be completed each year. The requirement of mandatory reporting has already taken effect as of 2015. The second stage of implementing mandatory pro bono hours will have to undergo further consultation before a decision can be made regarding its implementation.

### Law Firm Pro Bono Programs

Law firms are free to initiate their own pro bono initiatives. As a matter of practice, most firms would liaise with various legal aid organizations such as the Community Legal Clinics (discussed below) as a platform to fulfill their pro bono targets. While there are no mandatory regulations or framework governing a firm’s pro bono initiatives, the Law Society does offer a number of schemes to help law firms optimize their pro bono services.

An example of such a scheme is the Ad Hoc Pro Bono Assessment Scheme (“**APA Scheme**”). Under the APA Scheme, the Law Society assists practitioners who are planning to do pro bono work for needy persons by conducting an assessment of the prospective client’s suitability for pro bono assistance. The aim of the assistance is to determine whether the prospective client would benefit from any social service agency referral and at the same time, provide the practitioner with a case synopsis and background on the client’s legal issues. The practitioner can then make an informed decision on whether to take on the case on a pro bono basis.

Another scheme offered by the Law Society is the Volunteer Initiative Support Scheme. The scheme seeks to assist practitioners with administrative support and volunteer coordination or mobilization. An example of the support provided by the scheme is the knowledge management database relating to the pro bono initiatives by capturing and synthesizing practice information, legal issues and client profile which may then be used as precedent for new pro bono cases.

### Non-Governmental Organizations (“NGOs”)

In addition to the LASCO, the CLAS and the LAB, the Law Society, as well as a variety of NGOs, administers a host of pro bono programs in Singapore. The Law Society runs community legal clinics (the “**Legal Clinics**”) at two locations, four nights per week (other than on public holidays and the eve of public holidays). The Legal Clinics provide free legal advice to Singaporean citizens and permanent residents on individual non-business matters. Pursuant to a Project Law Help scheme, the Law Society coordinates the provision of free non-litigation commercial legal advice to qualifying NGOs. To qualify for Project Law Help, an NGO must be present in Singapore, seek to address a community need and have limited financial resources. The Law Society pairs qualifying organizations with participating law firms. To participate in the Project Law Help scheme, law firms must have a Singapore law corporate practice.

A variety of NGOs also administer pro bono programs in Singapore. The Association of Criminal Lawyers of Singapore has a pro bono scheme that offers representation to defendants in certain cases before the Community Court. Volunteering for this scheme is not limited to members of the Singapore bar but is open to all individuals who are law graduates from recognized universities. Many NGOs, such as the Association of Women for Action and Research, the Catholic Lawyers Guild, Jamiyah (Muslim Missionary Society of Singapore), Lawyers’ Christian Fellowship, the Singapore Association of Women Lawyers, the



Singapore Council of Women's Organizations, the Special Needs Trust Company and the Humanitarian Organization for Migration Economics, run legal clinics on a regular basis or legal helpdesks. To participate in these legal clinics, a lawyer must be a member of the organization hosting the clinic, which may limit the pool of volunteers on religious or gender grounds. In addition, as many of the clinics seek to address local law issues, most require volunteer lawyers to be qualified to practice in Singapore.

The Kind Exchange is a platform that matches professionals (including, but not limited to, legal professionals) with community organizations seeking assistance with project based tasks. Participating groups post tasks they need on The Kind Exchange and interested volunteers may respond to the posting and execute the posted task for free. There are often pro bono opportunities for attorneys on The Kind Exchange. The Joint International Pro Bono Committee (the "JIPBC") seeks to provide international and local law firms with pro bono projects that facilitate the economic or social development of emerging markets. JIPBC is an initiative among a group of international and local law firms and the Law Society. For The Kind Exchange and JIPBC, lawyers do not need to be Singapore qualified to volunteer. However, given that the tasks are non-litigation based tasks, participating attorneys ideally should have familiarity with transactional or corporate legal work.

### Law Society Pro Bono Programs

On September 10, 2007, the Law Society established the Pro Bono Services Office ("PBSO"). The aim of the PBSO was to manage all of the Law Society's pro bono initiatives as well as to bolster volunteerism in pro bono. The PBSO currently runs three categories of programs, namely, those for (1) individuals; (2) community-serving organizations; and (3) the community at large.

PBSO initiatives include the CLAS and APA Scheme (discussed above). In addition, the PBSO also operates Community Legal Clinics ("CLCs"). The purpose of the CLCs is to offer free basic legal advice to Singaporeans and Permanent Residents on personal legal matters. Currently, there are four CLCs operating island wide, each located at key public housing townships in Singapore. Each CLC was intended to operate four nights a week and as such, each CLC required volunteer practitioners on a large scale. This provided an opportunity for law firms to engage in a large scale and longer term pro bono initiative by encouraging their lawyers to participate in CLC sessions. From October 1, 2010 to March 31, 2011, 1444 persons have sought the help of the CLCs, of which 1053 received free legal advice from volunteer practitioners.

### University Legal Clinics and Law Students

The drive to expand awareness of pro bono services has not been confined to practitioners. In January 2012, the Chief Justice of Singapore, Chan Sek Keong, announced that Singapore law schools will pilot mandatory pro bono programs for undergraduate law students in collaboration with Singapore's two law schools, the National University of Singapore and the Singapore Management University, together with the Singapore Institute of Legal Education, the body which oversees professional legal training before and after qualification. While the detailed requirements for such programs are still being developed (both as to the scope and hours requirements), trial programs have already commenced.

## Historic Development and the Current State of Pro Bono

### Historic Development of Pro Bono

The Singapore legal community has an important tradition of rendering pro bono work. Singapore's commitment to pro bono was affirmed as early as 1956 when the Parliament recognized the need for an improved legal aid scheme. While there have been no proposed increases or decreases in legal aid funding by the Singapore government, efforts are being made to increase participation in pro bono legal services by the legal community in Singapore. In 2006, the Law Society recommended that every Singapore qualified lawyer commit at least 25 hours of their time to pro bono work each year. Certain Singapore law firms have entered into agreements with the PBSO to commit to such a target. A Law Society generated survey indicates that the total number of pro bono hours declared by Singapore



qualified lawyers increased by 25% from 2009 to 2010<sup>26</sup>. The PBSO is also actively encouraging participation by non-Singapore qualified lawyers by meeting with international firms and reaching out to in-house counsel, retired lawyers and legally qualified persons not working in the legal industry to promote the pro bono volunteer opportunities available in Singapore.

### Current State of Pro Bono including Barriers and other Considerations

The roll-out of mandatory pro bono representation reporting is hoped to facilitate data collection to determine the number of pro bono hours required to meet the unmet need for legal assistance.<sup>27</sup>

In an effort to expand the supply of pro bono services, the Ministry of Law, on November 1, 2013, allowed solicitors who do not hold a current practicing certificate to provide certain “permitted pro bono legal services”. Solicitors who fall under this category would typically include in-house counsel. The “permitted pro bono legal services” essentially excludes (i) appearing in any Singapore court, or (ii) appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Singapore.

While there is a great need for pro bono services in Singapore, admission to practice law in Singapore is often a requirement to volunteer in the various initiatives providing such legal aid to individuals in Singapore. As previously mentioned, the vast majority of the pro bono schemes administered by the government of Singapore, the Law Society and NGOs in Singapore require volunteers to be qualified to practice in Singapore.

In addition, many volunteer lawyers have indicated that a language barrier often impedes their provision of legal aid. While English is the most widely spoken language in Singapore, many Singaporeans do not speak English fluently. Besides English, the languages commonly spoken in Singapore include Mandarin, Hokkien, Malay, and Tamil.

There is no mandatory minimum legal fee regulation in Singapore and Lawyers in Singapore are not required to charge VAT on services that they provide for free and local regulations do not require lawyers to charge minimum tariffs.

### Pro Bono Resources

As described above, there are many organizations and agencies in Singapore actively working to provide or coordinate the provision of pro bono legal services. The web addresses for several of such agencies or organizations in Singapore are listed below:

- The LAB: <https://www.mlaw.gov.sg/content/lab/en.html> (last visited on September 4, 2015)
- The LASCO: <http://app.supremecourt.gov.sg/default.aspx?pgID=84> (last visited on September 4, 2015)
- The Law Society: <http://www.lawsociety.org.sg/> (last visited on September 4, 2015)
- The Association of Women for Action and Research: <http://www.aware.org.sg/> (last visited on September 4, 2015)
- The Singapore Council of Women’s Organisations: <http://www.scwo.org.sg/> (last visited on September 4, 2015)
- The Special Needs Trust Company: <http://www.sntc.org.sg/> (last visited on September 4, 2015)
- The Pro Bono Research Initiative: <http://probono.lawsociety.org.sg/> (last visited on September 4, 2015)
- List of free legal clinics in Singapore: <http://legalclinics.sg/index.php?showall=1> (last visited on September 4, 2015)

---

<sup>26</sup> The total number of declared pro bono hours was 45,094 hours compared to 35,634 in 2009. See The Law Society of Singapore Annual Report 2011 101, available at [http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-\(V6111027\)pdf\\_versionv3.pdf](http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-(V6111027)pdf_versionv3.pdf) (last visited on September 4, 2015).

<sup>27</sup> Second Consultation Paper on Community Legal Services, prepared by the Committee to Study Community Legal Services Initiatives (Annex A).



## CONCLUSION

While the need for pro bono was recognized as early as 1956 when the Legal Aid and Advice Bill was introduced to parliament on April 4, 1956, it was only in the early 2000s that the local legal community began to place emphasis on the importance of pro bono work. As a result, the pro bono opportunities available to lawyers in Singapore have been growing steadily ever since. The pro bono initiatives in Singapore are a combination of efforts by the government and local NGOs working hand in hand. Where there are gaps left by the government funded legal aid schemes, these are being filled by the local NGOs with ad hoc support from the government. While there is no lack of pro bono opportunities and resources in Singapore, the push by the Committee to make pro bono mandatory suggests that there is certainly room to cultivate a culture of pro bono volunteerism.

September 2015

Pro Bono Practices and Opportunities in Singapore

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



# Pro Bono Practices and Opportunities in Slovakia<sup>1</sup>

## INTRODUCTION

The growing involvement of the Legal Aid Centre, a governmental platform for legal aid, along with other initiatives, have created many pro bono opportunities in Slovakia, resulting in more established mechanisms for diverse participation, especially in the governmental sphere. Private initiatives such as the Pro Bono Advocacy have also been launched, creating a platform to allow for voluntary pro bono by law firms. Both state-run legal aid and privately run pro bono continue to undergo significant changes with an outlook for further growth in the future.

## OVERVIEW OF THE LEGAL SYSTEM

### The Justice System

#### The Constitution and Governing Laws

The Slovak legal system is a civil law system based on the Austro-Hungarian codes. Since its separation from the Czech Republic in 1993, Slovakia has undergone major changes as a consequence of its transition from a totalitarian government to a parliamentary democracy and its accession to the European Union. Slovakia's legal code (primarily statutory and supplemented with case law) has been modified over the years to comply with obligations of the Organization for Security and Co-operation in Europe. The National Council of the Slovak Republic is responsible for enacting the appropriate legislations; meanwhile, executive powers are exercised by its president, prime minister and ministers.

#### The Courts

The Slovak Ministry of Justice is the central government body responsible for administration of the courts. The court system consists of courts with general jurisdiction and the Constitutional Court of the Slovak Republic.<sup>2</sup> The courts with general jurisdiction consist of District and Regional courts, the Supreme Court and the Special Criminal Court. District courts decide in the first instance civil, commercial, criminal and administrative cases. The Regional courts act as courts of second instance in civil and criminal cases heard by district courts at first instance and decide in the first instance administrative cases.<sup>3</sup> The courts of special jurisdiction have authority to review matters specified by statute. For example, the Specialized Criminal (Penal) Court hears certain grave criminal offenses. Moreover, the Supreme Court has appellate jurisdiction over questions of law in respect of allegations brought by parties or the General Prosecutor and otherwise over matters designated to it through statute. On the other hand, the Constitutional Court has special jurisdiction to review the constitutionality of legislation, international treaties and fundamental rights issues relating to natural and legal persons.<sup>4</sup> Judges of the Constitutional Court are appointed by the President on the recommendation of the National Council (the parliament of Slovakia). Meanwhile, judges of the Supreme Court are appointed by the President on the recommendation by the Judicial Council (body of judicial legitimacy).

---

<sup>1</sup> This chapter was drafted with the support of Kinstellar.

<sup>2</sup> See EUROPEAN E-JUSTICE, Judicial Systems in Member States – Slovakia, available at [https://e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states-16-sk-en.do?member=1](https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-sk-en.do?member=1) (last visited on September 4, 2015).

<sup>3</sup> See ORDINARY COURTS, available at [https://e-justice.europa.eu/content\\_ordinary\\_courts-18-sk-en.do?member=1](https://e-justice.europa.eu/content_ordinary_courts-18-sk-en.do?member=1) (last visited on September 4, 2015).

<sup>4</sup> See EUROPEAN E-JUSTICE, Judicial Systems in Member States – Slovakia, available at [https://e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states-16-sk-en.do?member=1](https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-sk-en.do?member=1) (last visited on September 4, 2015).



## The Practice of Law

The Slovak Bar Association is a self-regulated independent organization, representing approximately 5,600 lawyers and 2,500 trainee lawyers.<sup>5</sup> To practice as a lawyer, a person must meet all legal requirements set forth under Act No. 586/2003 Coll. dated December 4, 2003 on the Legal Profession, as amended, and must also be admitted to the Slovak Bar Association.<sup>6</sup> Generally, for registration as a lawyer with the Slovak Bar, a person must hold “a university degree in law, have acquired at least five years’ experience as an articulated clerk, have passed a bar examination, be of good character.”<sup>7</sup> Lawyers’ fees are governed by an implementing decree of the Ministry of Justice.<sup>8</sup>

Moreover, Slovak legislation allows “Euroadvocates” to practice law in the Slovak Republic on a guest or established basis.<sup>9</sup> Foreign-registered lawyers and international legal practitioners may also practice or provide legal services in Slovakia in accordance with provisions of the Act on the Legal Profession. Such foreign-registered lawyers and international practitioners are registered in the register of the Bar Association and must comply with all legislative requirements of that required of a domestic attorney and also observe legislation in his or her state of registration. Foreign-registered lawyers and international legal practitioners may not represent a party to proceedings before a court or other public authority, act as a defense attorney in criminal proceedings or administer client’s property.<sup>10</sup> A number of international law firms operate in Slovakia as well.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The legal basis for the provision of legal aid arises out of the Constitution, under which everyone has the right to legal aid in proceedings before courts and state agencies, subject to limitations laid down by law. The system for granting legal aid for indigent natural persons in civil, commercial, administrative and asylum matters is comprehensively regulated by the Act no. 327/2005 on Provision of Legal Aid for People in Material Need, as amended (the “**Legal Aid Act**”).

Under the Legal Aid Act, “legal aid means the granting of legal services to persons entitled under the Legal Aid Act in connection with the exercise of their rights, principally in the form of legal advice, assistance in out-of-court proceedings (including, without limitation, assistance in resolving the matter through mediation), the drawing up of submissions for courts, representation in court and the

---

<sup>5</sup> See SLOVAK BAR ASSOCIATION, Profile, available at <https://www.sak.sk/blox/cms/sk/sak/sak/about> (last visited on September 4, 2015).

<sup>6</sup> Id.

<sup>7</sup> See LEGAL PROFESSIONS - SLOVAKIA, [http://ec.europa.eu/civiljustice/legal\\_prof/legal\\_prof\\_svk\\_en.htm](http://ec.europa.eu/civiljustice/legal_prof/legal_prof_svk_en.htm) (last visited on September 4, 2015).

<sup>8</sup> See EUROPEAN E-JUSTICE, Costs of proceedings – Slovakia, available at [https://e-justice.europa.eu/content\\_costs\\_of\\_proceedings-37-en.do](https://e-justice.europa.eu/content_costs_of_proceedings-37-en.do) (last visited on September 4, 2015).

<sup>9</sup> A “guest euroadvocate” is an attorney practicing on a temporary or occasional basis. A guest euroadvocate may not execute instruments on the transfer of immovable property, and must cooperate with a locally registered lawyer when representing a party to proceedings before a court or other public authority and when acting as the defense attorney in criminal proceedings. On the other hand, an “established euroadvocate” is one who provides systematic and continuous legal services in the Slovak Republic and who is registered in the register of euroadvocates of the Bar Association. Such established euroadvocate must comply with all legislative requirements of that required of a domestic attorney and to observe legislation in his state of registration. See LEGAL PROFESSIONS - SLOVAKIA, supra n.7.

<sup>10</sup> Part 3 of the Act on Legal Profession.



performance of acts in connection therewith, as well as the full or partial coverage of the associated costs.”<sup>11</sup>

In internal disputes (i.e., disputes involving parties exclusively from Slovakia), legal aid may be granted to any natural person. In cross-border disputes, legal aid may only be granted to natural persons domiciled or resident in a Member State of the European Union.<sup>12</sup> With respect to internal disputes, legal aid may be granted in civil, commercial, labor, asylum and family law cases, matters of court revision of administrative decisions and in proceedings before the Constitutional Court. Cross-border legal aid may be granted in civil, labor, family and commercial law cases.<sup>13</sup> In addition, legal aid in asylum matters covers matters of administrative expulsion, the court review of such decisions and proceedings before the Constitutional Court.

The Centre for Legal Aid (the “Centre”) was created pursuant to the Legal Aid Act as a state budgetary organization under the Slovak Ministry of Justice. The objective of the Centre is to provide quality and complex legal aid through lawyers of the Centre, advocates registered within the Bar Association or mediators to persons who, due to a lack of means, are unable to use legal services. The Centre provides legal aid via its offices located in 14 Slovak cities. The Centre is often the first stop for obtaining legal aid services and consultation for people in material need.

The Legal Aid Centre may approach any lawyer registered with the Slovak Bar Association to provide free legal assistance at the Centre.<sup>14</sup> In 2011, the Slovak Bar Association adopted a resolution imposing an obligation on lawyers to accept legal aid representation up to four times per year.<sup>15</sup>

### State-Subsidized Legal Aid

In order to qualify for legal aid, one must apply to the Centre;<sup>16</sup> however, interim legal aid can be granted in emergencies before a decision has been made on an application.<sup>17</sup> The provision of legal aid is conditional upon the declaration of income. In addition, the dispute must not lack a legal basis (in particular, if the claim is barred by statute or if the party cannot muster any evidence) and the value of the dispute (if a valuation is possible) must exceed the amount of the minimum wage.<sup>18</sup>

### Alternative Dispute Resolution

Alternative forms of dispute resolution are available in Slovakia. Parties may mediate civil, family, commercial and labor law matters.<sup>19</sup> With respect to mediation, an entitled party may seek judicial enforcement, provided that such decision (i) is in the form of a “notarial act;” and (ii) is endorsed as conciliation in court by an arbitration body.<sup>20</sup> Meanwhile, arbitration is available for property disputes (both domestic and international commercial law) excluding real estate, as well civil law disputes.

---

<sup>11</sup> Section 4 of the Legal Aid Act; see also EUROPEAN JUDICIAL NETWORK, Legal aid – Slovakia, available at [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_svk\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_svk_en.htm) (last visited on September 4, 2015).

<sup>12</sup> Section 3 of the Legal Aid Act.

<sup>13</sup> See generally *id.*; see also EUROPEAN JUDICIAL NETWORK, Legal aid – Slovakia, *supra* n.11.

<sup>14</sup> *Id.*; ADVOKÁT SLOVENSKÁ KOMORA, Lukratívni právnicki budú tiež pro bono (31.10.2011), available at <https://www.sak.sk/blox/cms/dispatch/news/71> (last visited on September 4, 2015).

<sup>15</sup> See SLOVAK BAR ASSOCIATION, *supra* n.5; see also Resolution no. 26/10/2011 of 10 Nov. 10, 2011.

<sup>16</sup> See EUROPEAN JUDICIAL NETWORK, Costs of proceedings – Slovakia, *supra* n.8.

<sup>17</sup> See *id.*

<sup>18</sup> As of Jan. 1, 2015, the minimum wage is set at EUR 380.00.

<sup>19</sup> Governed by the Mediation Act no. 420/2004.

<sup>20</sup> GAR, Commercial Arbitration, Slovakia, available at <http://globalarbitrationreview.com/know-how/topics/61/jurisdictions/75/slovakia/> (last visited on September 4, 2015).



Arbitration decisions are enforceable through the courts.<sup>21</sup> As of January 1, 2015, a substantial amendment of the Arbitration Act has been adopted; it seeks to introduce more protection to consumers in arbitration cases and it increased the requirements for the establishment and operation of arbitration courts aiming to improve the quality of commercial arbitration. Persons entitled under the Legal Aid Act may also apply for legal aid in respect of assistance in resolving their matter through mediation via the Centre. The applicant must meet the same requirements as when applying for any other form of legal aid at the Centre. Upon acceptance of an application, the Centre assigns an applicant to a mediator registered with the Register of Mediators (kept by the Slovak Ministry of Justice). The Centre has successfully mediated disputes concerning ownership rights and family law.

## Unmet Needs Analysis

The Legal Aid Act distinguishes between two types of legal aid, fully covered and partially covered. A person is entitled to fully covered legal aid in the event his or her income is less than 1.4 times the minimum living standard<sup>22</sup> and he or she cannot finance the legal aid from its assets. Partially covered legal aid applies to persons with income between 1.4 and 1.6 times the minimum living standard. Partially covered legal aid recipients are responsible for 20% of the statutory remuneration set forth in the Decree no. 655/2004 Coll. on the Remuneration of Lawyers, as amended. The Centre received a total of 5,655 new applications for the provision of legal aid.<sup>23</sup> In 2014, the Centre provided legal aid in 454 cases through lawyers of the Centre and in 3,002 cases through advocates registered with the Bar Association; however, only nine cases through mediators.<sup>24</sup> With respect to clearinghouses, only one, the Pro Bono Advocacy program, currently operates to connect attorneys with NGOs for the provision of pro bono services. Accordingly, pro bono initiatives for assisting persons not qualified under the Legal Aid Act, who are in need of subsidized representation and legal advice, as well as programs for connecting private attorneys to existing initiatives, along with any other private alliances and programs, especially with respect to mediation, are likely to be most responsive to unmet legal needs in Slovakia.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

In May 2011, the Pro Bono Advocacy program was launched, a broker for non-profit organizations, which connects lawyers to non-profit organizations in Slovakia and provides pro bono advice to the non-profit sector. This program is sponsored by The Global Network for Public Interest Law, a global pro bono clearinghouse, and administered by the Pontis Foundation.<sup>25</sup> The program was developed by The Global Network for Public Interest Law in conjunction with Slovak law firms.<sup>26</sup> This program has been endorsed by the Slovak Bar Association and the Slovak Minister of Justice.<sup>27</sup>

In 2010, the number of operating non-profit organizations were 64,460. In the area of asylum law, *Liga za ľudské práva* (the “**Human Rights League**”) provides free legal advice for asylum seekers. The Human

<sup>21</sup> Arbitration is principally governed by the Act No. 244/2002 Coll., as amended.

<sup>22</sup> The minimum cost of living standard as of 2015 is EUR 198.08 per month.

<sup>23</sup> CENTRE FOR LEGAL AID, Annual Report of the Centre for Legal Aid in 2014, available at [http://www.centrumpravnejpomoci.sk/doc/vyrocnna\\_sprava\\_2014.pdf](http://www.centrumpravnejpomoci.sk/doc/vyrocnna_sprava_2014.pdf) (last visited on September 4, 2015).

<sup>24</sup> CENTRE FOR LEGAL AID, Annual Report of the Centre for Legal Aid in 2014, available at [http://www.centrumpravnejpomoci.sk/doc/vyrocnna\\_sprava\\_2014.pdf](http://www.centrumpravnejpomoci.sk/doc/vyrocnna_sprava_2014.pdf) (last visited on September 4, 2015).

<sup>25</sup> Kinstellar, Pro Bono Advocacy programme launched in Slovakia, available at <http://www.kinstellar.com/expertise/news-and-insights/detail/energy/37/pro-bono-advocacy-programme-launched-in-slovakia> (last visited on September 4, 2015).

<sup>26</sup> Id.

<sup>27</sup> Id.



Rights League not only provides legal advice, but also helps write appeals, monitors the immigration points at Bratislava Airport and accompanies asylum seekers to interviews at the Migration Office. Furthermore, the Human Rights League educates law students in the Asylum Clinic at the Faculty of Law Trnava University.<sup>28</sup> The United Nations Refugee Agency for Central Europe has also worked with the Legal Aid Centre in training lawyers with respect to asylum law.<sup>29</sup>

In addition to the above, there are a few more renowned non-profit organizations engaged in pro bono work, such as Via Iuris, which represents citizens before courts and agencies,<sup>30</sup> Nadácia Charty 77 (the “**Charter 77 Foundation**”), involved in the protection of human rights,<sup>31</sup> and Centrum Nádej (the “**Centre of Hope**”) an organization that deals with domestic violence.<sup>32</sup>

In the past, the provision of legal aid was decided upon by courts, and prior to January 1, 2012, whenever a party to a proceeding requested that a court appointed him or her a lawyer (other than in criminal matters), it was at the court’s discretion to either appoint a lawyer itself or refer the matter to the Centre. Since January 1, 2012, the court must refer such party to the Centre, and accordingly, the Centre has significantly increased in importance.

### Historic Development and Current State of Pro Bono

Slovak legislation provides for no express limitations on pro bono services by law firms. There are, however, some practical aspects that may affect the provision of pro bono services. For example, under the applicable VAT legislation, even if a pro bono service is provided for no consideration, the provider should charge VAT on it. In practice, providers sometimes evade this by charging a symbolic sum of €1 for the service. On the other hand, no legislation requires that lawyers charge minimum fees for pro bono services. Some limitations may arise in respect of particular projects. For example, the Pro Bono Advocacy platform is limited to the participation of certain lawyers (e.g., in-house lawyers are not involved in the initiative). Also, commercial and criminal matters may not be referred within the Pro Bono Advocacy platform. In addition, in-house lawyers may not provide legal aid through the Centre.

As the largest and most complex private initiative, the Pro Bono Advocacy program appears to have been received positively among practitioners, although there was slight skepticism over the initiative initially.<sup>33</sup>

However, it should also be noted that many of these organizations do not provide genuine pro bono work, as the lawyers are mostly paid through their respective organizations’ budgets. Other than the Centre, which is an agency established by law, the Pro Bono Advocacy project is the only unofficial platform for the provision of genuine pro bono work by law firms. The Pontis Foundation, which operates the initiative, is the only actual clearinghouse of pro bono services in Slovakia. Since there is no centralized platform for pro bono services, many law firms provide pro bono services through their own initiative without appointment by a court, and some firms have long-standing partners (e.g., local non-profit organizations) to whom they provide pro bono services.

---

<sup>28</sup> See FAHAMU REFUGEE LEGAL AID, Pro Bono Legal Aid, available at <http://www.frlan.org/node/587> (last visited on September 4, 2015).

<sup>29</sup> See UNHCR, Operations in Slovakia, available at <http://www.unhcr.org/pages/49c3646c206.html> (last visited on September 4, 2015).

<sup>30</sup> See <http://www.viaiuris.sk/index.html> (last visited on September 4, 2015).

<sup>31</sup> See <http://www.charta77.sk/> (last visited on September 4, 2015).

<sup>32</sup> See <http://www.centrumnadej.sk/> (last visited on September 4, 2015).

<sup>33</sup> SLOVENSKÁ ADVOKÁT KOMORA, BSA (Aug. 2011).



## Pro Bono Resources

For lawyers interested in pro bono work in Slovakia, the first place to look is the Pro Bono Advocacy program which is generally the most comprehensive resource to link lawyers in Slovakia with non-profit organizations in need of pro bono work.<sup>34</sup>

As outlined above, there are a few additional NGOs that are involved in pro bono legal aid on a private basis:

- Via Iuris: <http://www.viaiuris.sk/index.html> (last visited on September 4, 2015)
- Nadácia Charty 77: <http://www.charta77.sk/> (last visited on September 4, 2015)
- Centrum Nádej: <http://www.centrumnadej.sk/> (last visited on September 4, 2015)
- Liga za ľudské práva (Human Rights League): <http://www.hrl.sk> (last visited on September 4, 2015)
- Slovak Humanitarian Council: <http://www.shr.sk> (last visited on September 4, 2015) or <http://www.nasiutecenci.sk> (last visited on September 4, 2015)
- Nadácia Pontis (the Pontis Foundation): <http://www.pontisfoundation.sk> (last visited on September 4, 2015)

## CONCLUSION

In Slovakia, the culture of pro bono continues to grow through facilitators such as pro bono clearinghouses. The Pro Bono Advocacy program provides many opportunities for lawyers interested in providing pro bono services to the non-profit sector. This initiative has united international law firms, as well as local law firms and individual practitioners. Lawyers interested in providing pro bono services can either enroll with the Pro Bono Advocacy Project or contact one of the local NGOs specializing in specific areas of law.

September 2015

Pro Bono Practices and Opportunities in Slovakia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>34</sup> See PONTIS FOUNDATION: ABOUT THE PRO BONO ADVOCACY PROGRAM, available at <http://www.nadaciapontis.sk/O-programe> (last visited on September 4, 2015).



## Pro Bono Practices and Opportunities in Slovenia<sup>1</sup>

### INTRODUCTION

The provision of pro bono legal services in the Republic of Slovenia (“**Slovenia**”) is less common than in the United States. However, Slovenia does provide robust free legal aid services. This chapter provides a general overview of pro bono practices and opportunities in Slovenia, and briefly discusses the legal aid system in Slovenia.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

Slovenia is a parliamentary democratic republic that became independent after the disintegration of Yugoslavia in 1991.<sup>2</sup> The Slovenian judiciary is one of three branches of government, and is independent from the National Assembly (the legislative branch) and the President (the executive branch).<sup>3</sup> The Constitution of Slovenia, adopted by the National Assembly in 1991, is the highest law of the land. The Slovenian judicial system is a “unified” judicial system, consisting of courts with general and specialized jurisdiction.<sup>4</sup> There are 60 courts with general jurisdiction, including 44 district courts, 11 regional courts, four higher courts and the Supreme Court.<sup>5</sup> There are five specialized courts, including four labor courts, which rule on labor-related and social insurance disputes, and one Administrative Court, which provides legal protection in administrative affairs.<sup>6</sup> The Administrative Court has the status of a higher court.<sup>7</sup>

Judges are elected by the National Assembly on the proposal of the Judicial Council, a special nominating body independent from the judicial branch.<sup>8</sup> Among other conditions, the candidates must be at least 30 years old and have worked as a lawyer for at least three years.<sup>9</sup> Once appointed to the bench, their offices are permanent.<sup>10</sup> The Constitution gives judges immunity for any opinions expressed during decision-making in court.<sup>11</sup>

---

<sup>1</sup> This chapter was drafted with the support of Dr. Neža Kogovšek Šalamon.

<sup>2</sup> SLOVENIA GOVERNMENT COMMUNICATION OFFICE, State, <http://www.slovenia.si/en/slovenia/state> (last visited on September 4, 2015).

<sup>3</sup> See SLOVENIA GOVERNMENT COMMUNICATION OFFICE, The Judicial System, <http://www.slovenia.si/en/slovenia/state/the-judicial-system/> (last visited on September 4, 2015).

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Maja Čarni & Špela Košak, A Guide to the Republic of Slovenia Legal System and Legal Research, NYU LAW GLOBAL (2013) available at <http://www.nyulawglobal.org/globalex/slovenia.htm> (last visited on September 4, 2015).

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.



## The Practice of Law

The legal system in Slovenia is part of the continental legal systems strongly influenced by German law.<sup>12</sup> The impact of the German institutions of socialized property, socialistic self-management, protection of workers and lower social classes can still be found in the legal system today through the social security system and special arrangements of the labor and social courts.<sup>13</sup> In 2015, Slovenia had a population of just over two million, of which approximately 1,600 individuals were practicing attorneys.<sup>14</sup> In order to become a lawyer in Slovenia, an individual must obtain a law degree from one of the three law faculties in Slovenia or abroad (recognized in line with the laws that regulate recognition of diplomas).<sup>15</sup> However, in order to practice some specific legal professions (such as judge, attorney-at-law, state prosecutor, notary) or to represent clients in front of most courts, an individual must work for two years following a special program at the court, three years in some legal professions or four years in the public or private service as a lawyer, in addition to passing Slovenia's bar examination.<sup>16</sup> To become an attorney-at-law, it takes another year of work as an "attorney-at-law candidate" in a legal office after passing the bar exam. Foreign attorneys that wish to practice in Slovenia must be citizens of a European Union member state, actively speak Slovene and pass an exam.<sup>17</sup> Most attorneys in Slovenia work in private practice or for the State Attorney's Office, which represents the interests of Slovenia before courts of justice, administrative authorities and before foreign and international courts.<sup>18</sup> Further, in order to become a judge, state prosecutor or notary, an individual must be appointed by the powers provided by law.<sup>19</sup>

The legal profession in Slovenia is governed by Article 137 of the Constitution, the Bar Act, and the Code of Conduct for Lawyers, the Lawyers' Tariff and by internal acts of the Slovenian Bar Association.<sup>20</sup> All practicing attorneys in Slovenia are required to join the Slovene Bar Association, which consists of 11 regional assemblies where membership is based on territorial and functional principles, largely coinciding with the territories of the district courts.<sup>21</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Constitution of Slovenia specifically provides that everyone has the "right to personal liberty," and that no individual may be "deprived of his liberty except in such cases and pursuant to such procedures as are provided by law."<sup>22</sup> (Translation.) This includes the right for the individual to have "immediate

---

<sup>12</sup> Čarni & Košak, supra n.9.

<sup>13</sup> Id.

<sup>14</sup> ODVETNIŠKA ZBORNICA SLOVENIJE (SLOVENIAN BAR ASSOCIATION), Lawyer Register, <http://www.odv-zb.si/en/directory/lawyer-register> (last visited on September 4, 2015) (follow "Export All" hyperlink) [hereinafter Lawyer Register].

<sup>15</sup> Čarni & Košak, supra n.9; Article 25 of the Attorneys Act. Official gazette of the Republic of Slovenia, 18/93, as amended.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> REPUBLIC OF SLOVENIA STATE ATTORNEY'S OFFICE, About the State Attorney's Office, [http://www.dp-rs.si/en/about\\_the\\_state\\_attorneys\\_office/](http://www.dp-rs.si/en/about_the_state_attorneys_office/) (last visited on September 4, 2015).

<sup>19</sup> Čarni & Košak, supra n.9.

<sup>20</sup> Lawyer Register, supra n.8; STATUT ODVETNIŠKE ZBORNICE SLOVENIJE (Slovenia/Bar Act) 24-1455/2001 (Apr. 5, 2001), available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/en\\_slovenia\\_bar\\_act1\\_1188889740.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_slovenia_bar_act1_1188889740.pdf) (last visited on September 4, 2015).

<sup>21</sup> Id.

<sup>22</sup> USTAV REPUBLIKE SRPSKE (CONSTITUTION SERBIAN REPUBLIC) ("SLOVENIA CONST.") 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (Dec. 26, 1991), art. 19.



legal representation of his own free choice.”<sup>23</sup> (Translation.) Thus, it is a constitutional guarantee that individuals in Slovenia have access to counsel in criminal cases.<sup>24</sup> Beyond criminal cases, the Slovenian courts have stressed that it would be “incompatible with the constitutional guarantee of efficient access to justice” if access to justice was “dependent on [an individual’s] economic situation.”<sup>25</sup> Thus, the Civil Procedure Act and the Free Legal Aid Act contain provisions assuring access to justice for the impoverished in civil cases.<sup>26</sup>

## The Right to Legal Assistance in Civil Cases

Litigants in civil cases in Slovenia do not have to be represented by attorneys.<sup>27</sup> Indeed, Article 12 of the Civil Procedure Act 1999 (amended in 2004) provides that a “party who is not represented by an attorney and who by reasons of ignorance fails to exercise their procedural rights *shall be advised by the court of the acts of procedure which they are entitled to execute.*”<sup>28</sup> (emphasis added.) Thus, it is possible for a party to represent himself, and, at times, the court will advise the party of its procedural rights. While a party may represent himself in litigation, the costs associated with litigation may still be cumbersome to many litigants, and many litigants may not be able to adequately enforce their rights without the assistance of an attorney. Thus, there are mechanisms to prevent this hardship under the Civil Procedure Act and the Free Legal Aid Act.

### The Civil Procedure Act

Under the Civil Procedure Act, litigants are expected to advance the payment for costs incurred by procedural acts, such as filing fees and fees associated with discovery.<sup>29</sup> However, the court “shall exempt from payment of the costs of proceedings a party who is not able, with respect to their pecuniary circumstances, to cover these costs without detriment to the maintenance of themselves and their family” by a “considerable” amount.<sup>30</sup> If the court determines that a party is exempt from payment of the costs of proceedings, then the court will pay for the “costs of witnesses, expert examinations, interpreters, inspections and announcements.”<sup>31</sup> A party exempt from payment may also move to be represented by an attorney “when such representation is necessary for protection of their rights.”<sup>32</sup> (Translation.) If the court appoints an attorney, the party is exempt from refunding all effective costs to pay the attorney, but the attorney may request to be relieved from duty for “justified reasons.”<sup>33</sup> (Translation.) Where the costs associated with litigation would be difficult for a party to pay, but are not necessarily a “detriment to the maintenance” of the party and his or her family, the court may permit the party to pay the fees in installments or postpone the fees until the decision has passed.<sup>34</sup> (Translation.)

---

<sup>23</sup> Id.

<sup>24</sup> See id.

<sup>25</sup> EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, Slovenia, <http://fra.europa.eu/fraWebsite/attachments/access-to-justice-2011-country-SI.pdf> (last visited on September 4, 2015) (citing Ustavnem sodišču Republike (Slovenia Constitutional Court) 376/02, Jul. 8, 2004 (Slovenia)) (hereinafter EUROPEAN UNION AGENCY).

<sup>26</sup> Id.

<sup>27</sup> See ZAKON O PRAVDNEM POSTOPKU (Civil Procedure Act) 73/07, 13.8, 19/15, art. 12.

<sup>28</sup> Id.

<sup>29</sup> European Union Agency, supra n.30 (citing ZAKON O PRAVDNEM POSTOPKU 73/07, 13.8, art. 477/4).

<sup>30</sup> Id. at art. 168.

<sup>31</sup> Id. at art. 171.

<sup>32</sup> ZAKON O PRAVDNEM POSTOPKU, supra n. 20 at art. 170 (Slovenia).

<sup>33</sup> Id.

<sup>34</sup> Id. at art. 168.



## The Free Legal Aid Act

Under the Free Legal Aid Act, eligible individuals are entitled to the total or partial provision of funds necessary to cover the costs of legal assistance and are entitled to an exemption from paying the costs of judicial proceedings.<sup>35</sup> Legal aid is available to be used in all courts of general and specialized jurisdiction in Slovenia, before the Constitutional Court of Slovenia, before all authorities, institutions or persons in Slovenia authorized for out-of-court settlements and, in certain cases, for proceedings conducted before international courts or arbitration panels.<sup>36</sup> Further, free legal aid may be granted for “legal advice, legal representation and other legal services” and for “all forms of judicial protection.”<sup>37</sup> (Translation.)

To be eligible to receive legal aid, an individual must be a citizen of Slovenia or must meet certain other citizenship or resident requirements, such as holding a permit for permanent residence in Slovenia or being an alien subject to reciprocity based upon international treaties.<sup>38</sup> Further, nongovernmental and non-profit organizations may be eligible for legal aid if the dispute involves the “performance of activities in the public interest or activities for the purpose of which they were founded.”<sup>39</sup> (Translation.) Legal aid will be granted to persons who, “given their financial position and the financial position of their families, are not able to meet the costs of the judicial proceeding or the costs of legal aid without jeopardizing their social situation and the social situation of their families.”<sup>40</sup> (Translation.) The term “jeopardizing their social situation” is modified to only include individuals whose monthly income does not exceed “twice the base amount of the minimum income laid down in legislation governing social aid services.”<sup>41</sup> (Translation.) The financial position of the applicant is determined by taking into account the applicant’s income and receipts, the income and receipts of the applicant’s family and the property owned by the applicant and the applicant’s family.<sup>42</sup>

If an applicant is approved to receive legal advice, legal advice will be provided by attorneys who are entered into a “Directory of Attorneys,” by law firms “founded on the basis of the act governing attorneyship,” and by notaries, and may also be offered by “persons who perform not-for-profit services of free legal aid with the approval of the minister responsible for justice.”<sup>43</sup> (Translation.)

---

<sup>35</sup> ZAKON O BREZPLAČNI PRAVNI POMOČI (Free Legal Aid Act) 96/04, 30/08, 19/15 art. 1.

<sup>36</sup> Id. Legal aid is available for international proceedings and arbitrations where the international jurisdiction does not provide legal aid or where the individual does not qualify for the international legal aid.

<sup>37</sup> Id. Legal aid is not permitted in the following matters: (1) criminal offenses involving insulting behavior, libel, defamation or slander, unless the injured party proves the probability that he or she has suffered legally recognized damage due to these offenses; (2) disputes involving a reduction in maintenance when the person obliged to pay maintenance has failed to settle the due liabilities arising from maintenance, unless he or she has failed to settle these liabilities for reasons beyond his or her control; or (3) in damage disputes involving compensation for non-property and property damage caused by defamation or libel, unless the injured party provides credible evidence that this has affected his or her material, financial or social position. Id. at art. 8.

<sup>38</sup> Id. at art. 10.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id. at art. 13.

<sup>42</sup> Id.

<sup>43</sup> Id. at art. 29. In order to obtain approval by the minister to administer legal aid, the person performing the services must: (1) be registered in the Republic of Slovenia; (2) perform the activities of providing legal advice pursuant to the regulations on the basis of which they were founded; (3) have concluded an employment contract with a university graduate lawyer who has passed the national bar examination, or the person who is in possession of such qualifications; (4) have appropriate premises and the equipment required for providing legal advice; (5) ensure adequate supervision of the provision of legal aid pursuant to this Act; and (6) carry a liability insurance contract for the possible eventuality of damage caused by their advice for at least the minimum insurance amount.



Applications for legal aid have been on the rise.<sup>44</sup> However, many indigent individuals, part of the most vulnerable social strata, are not properly informed of free legal aid possibilities.<sup>45</sup> In fact, some studies indicate that certain public institution employees fail to carry out their work to inform individuals about free legal advice, and are not properly sanctioned when failing to do so.<sup>46</sup>

## The Right to Legal Assistance in Criminal Proceedings

Slovenia guarantees legal aid, including legal representation, in criminal cases.<sup>47</sup> In certain situations, representation by an attorney is mandatory and if an individual does not have his or her own counsel, the court will appoint counsel on its own motion.<sup>48</sup> These situations arise where the defendant is: (1) mute, deaf or incapacitated; (2) charged with a crime punishable by imprisonment of 30 years or more; or (3) brought before an investigating judge for questioning after being detained by police.<sup>49</sup> The court-appointed counsel is chosen from the court's list of eligible lawyers and the representation persists until there is a final judgment.<sup>50</sup> If the individual is convicted, the court will order the individual to repay the costs of the counsel to the court; however, the court can exempt an individual from repaying these costs if the repayment would impoverish the individual.<sup>51</sup>

Where a defendant is not obliged to have counsel, the defendant can nevertheless apply for free legal assistance.<sup>52</sup> In the application, the defendant must indicate that he or she has insufficient income or assets to pay for legal counsel.<sup>53</sup> If the court grants the application, then the court will select a lawyer from an eligible lawyer's list, and the appointed lawyer will defend the individual throughout the criminal proceedings.<sup>54</sup> The appointed lawyer's fees will be paid from the state budget, and the defendant does not have the obligation to repay the fees, even if convicted.<sup>55</sup> Further, a court can assign counsel to an individual served with a charge sheet, even if the individual does not otherwise meet the requirements for free legal assistance, if doing so is in the interest of fairness.<sup>56</sup>

---

<sup>44</sup> REPUBLIC OF SLOVENIA, First Annual Report On The Implementation Of The National Action Plan On Social Inclusion NAP/inclusion 2004-2006, 20 (2005), available at [http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti\\_pdf/nap\\_inclusion04\\_06\\_report1.pdf](http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/nap_inclusion04_06_report1.pdf) (last visited on September 4, 2015).

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> See SLOVENIA CONST. *supra* n.15.

<sup>48</sup> EUROPEAN E-JUSTICE, Slovenia: Getting Legal Advice, available at [https://e-justice.europa.eu/content\\_rights\\_of\\_defendants\\_in\\_criminal\\_proceedings\\_-169-SI-en.do?clang=en&idSubpage=1](https://e-justice.europa.eu/content_rights_of_defendants_in_criminal_proceedings_-169-SI-en.do?clang=en&idSubpage=1) (last visited on September 4, 2015).

<sup>49</sup> Id. Further, where an individual is served with a charge sheet accusing him or her of a criminal offense punishable by a jail sentence of eight years or more, the court will also appoint counsel if the individual does not have his or her own counsel. Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> Id.

<sup>56</sup> Id.



## Alternative Dispute Resolution

Instead of the courts, individuals can refer their disputes to non-judicial bodies through mediation or arbitration. Cases of discrimination, for example, can be brought to the Advocate of Principle of Equality (the Advocate) through the Slovenian equality body or the Ombudsman.<sup>57</sup> Both of these institutions, however, have only persuasive authority and lack formal investigative power.<sup>58</sup> The Advocate mainly reviews cases of alleged discrimination in accordance with the Principle of Equal Treatment Act.<sup>59</sup> The Ombudsman's mandate is defined more broadly as encompassing the protection of all human rights and basic freedoms in all matters involving state and local authorities.<sup>60</sup>

## PRO BONO ASSISTANCE

### Pro bono Opportunities

Pro bono is an increasingly important part of the practice of law in Slovenia, and many attorneys accept pro bono cases. Attorneys are under no obligations to take or report any pro bono legal work.<sup>61</sup> Pro bono services in Slovenia had been increasing for several years, due both to the creation of the Free Legal Aid Act and the creation of the Slovenian Clearinghouse (which previously worked with NGOs to match attorneys with referred individuals in need of pro bono services). The recent closing of the Clearinghouse has negatively impacted the availability of pro bono services in Slovenia.<sup>62</sup> Pro bono services are most likely to be administered by "candidate" attorneys, and many attorneys will agree to take on pro bono services several times per year.<sup>63</sup> Once a year on December 19, the Slovenian Bar Association holds a pro bono day when many attorneys provide pro bono legal services to anyone in need of legal advice.

### Historic Development and Current State of Pro bono

The provision of pro bono services by NGOs and foreign entities can be quite difficult due to the requirement that legal services be provided by attorneys who have undergone training and passed Slovenia's law exam.<sup>64</sup> While foreign attorneys seeking involvement in Slovenia can advise NGOs about pro bono services and can assist Slovenian attorneys in the administering of legal services by providing additional legal advice, many challenges remain. In particular, many lawyers in Slovenia rarely take on some of the most challenging cases pro bono (such as providing services to individuals in rural areas). As such, it can be very difficult for a foreign attorney to provide pro bono services in those situations if the foreign attorney cannot find a Slovenian practicing attorney to help advise the pro bono client. Further, many NGOs do not employ attorneys, and, as such, NGO involvement in the administering of pro bono services is "very marginal."<sup>65</sup> While the Clearinghouse had significant potential in assisting NGOs, it found it challenging to communicate to NGOs what pro bono services are and to understand the needs of

---

<sup>57</sup> European Union Agency, *supra* n.30.

<sup>58</sup> *Id.*

<sup>59</sup> European Union Agency, *supra* n.30 (citing SLOVENIA/IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT ACT 93/07 (27.9.2007), ART. 11/1).

<sup>60</sup> European Union Agency, *supra* n.30 (citing SLOVENIA/CONSTITUTION 33/91, 42/97, 66/00, 24/03, 69/04, 68/06, AS AMENDED (26.12.1991) ART. 159.1).

<sup>61</sup> Čarni & Košak, *supra* n.9.

<sup>62</sup> *Id.*

<sup>63</sup> Šalomon, Milohnič & Vučko, *supra* n.3.

<sup>64</sup> EUROPEAN UNION AGENCY, *supra* n.18.

<sup>65</sup> *Id.*



the NGOs, one of many factors leading to its closing.<sup>66</sup> Lastly, many attorneys engaged in pro bono services in Slovenia express frustration with administering pro bono services due to difficulties in communicating with clients, particularly because many pro bono clients lack access to telephones and internet and are poorly educated.<sup>67</sup>

Attorneys in Slovenia are required to charge a minimum tariff under the Lawyers' Tariff Act of 2003, but may provide free legal services to socially disadvantaged and impoverished individuals.<sup>68</sup> Still, attorneys are required to charge VAT on services that they provide for free, although attorneys who provide free services to defendants in criminal cases may not have to charge VAT on their services.<sup>69</sup>

More information about pro bono opportunities in Slovenia is available at [www.pilnet.org](http://www.pilnet.org) (last visited on September 4, 2015).

## CONCLUSION

Slovenia's Constitution, the Civil Procedure Act and the Free Legal Aid Act provide significant services for individuals in need of legal aid. However, these services are insufficient to help all individuals requiring legal services and, in fact, there are indications that many of the most vulnerable individuals in Slovenia are not aware of these free services. Thus, there remains a need for pro bono services. The recent closure of the Clearinghouse has hindered the provision of additional pro bono services, and there is an even greater need for international attorneys to assist local attorneys and other NGOs in an advisory role.

September 2015

Pro Bono Practices and Opportunities in Slovenia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>66</sup> Need for Pro Bono, supra n.52.

<sup>67</sup> Šalamon, Milohnič & Katarina Vučko, supra n.50.

<sup>68</sup> SLOVENIAN BAR ASSOCIATION, Interpreting Lawyers' Fees, <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5198> (last visited on September 4, 2015).

<sup>69</sup> Id.



## Pro Bono Practices and Opportunities in South Africa

### INTRODUCTION

The South African government and legal community have made significant strides towards improving access to justice for all in the Republic of South Africa (“**South Africa**”). The government operates, and continues to expand, a legal aid system that uses public funds to assist those in need of legal services. Likewise, law firms and law societies throughout the country have adopted mandatory pro bono requirements for attorneys. Nevertheless, it is widely recognized that the legal aid system falls short of meeting the needs of the poorest South Africans, particularly in view of the social and economic challenges the country has experienced since the end of the apartheid era. There has been significant growth in the number of legal NGOs offering services, though efforts by private law firms, the country's law societies and these NGOs only go part of the way to improving access to pro bono services.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

South African law is a ‘hybrid’ legal system, with its origins derived from both continental Europe and England. As a general rule, South Africa follows English law in both criminal and civil procedure as well as in company law and the law of evidence. On the other hand, Roman-Dutch common law is followed in contract law, law of tort, law of persons, law of things, family law, etc.<sup>1</sup> In the post-apartheid era room has also been made for the recognition of traditional African customary law.<sup>2</sup> International law is incorporated into domestic law and becomes binding via adoption in the country's parliament. International law must be considered when interpreting the Bill of Rights and thus foreign law may frequently be referred to in this context.

Overarching the above legal framework is the Constitution of South Africa, which was approved on December 4, 1996 and which took effect on February 4, 1997. The Constitution is the supreme law of the land in South Africa and no other law or government action can supersede the provisions of the Constitution. Chapter 2 of the Constitution sets out the Bill of Rights, which enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom.<sup>3</sup> No law can limit any right entrenched in the Bill of Rights except for laws of general application, to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors.

##### The Courts

The South African judiciary is an independent branch of the government and consists of the Constitutional Court (the final court of appeal for all matters), the Supreme Court of Appeal (the second highest court for all matters except for certain labor and competition matters), the provincial divisions of the High Court, and the district and magistrate courts. There are also specialty courts established to oversee various matters, such as land claims, labor disputes, and tax matters.

Judicial officers in South Africa are not publically elected but rather appointed via various commissions pursuant to processes set forth in the Constitution. Judicial appointment is not for life, though security of tenure is established through prescribed terms of service. Judges of the Constitutional Court, including The Chief Justice and Deputy Chief Justice, are appointed by the President of South Africa on the advice of the Judicial Service Commission. The appointment of High Court Judges is conducted by the Judicial

<sup>1</sup> See <http://www.justice.gov.za/sca/historysca.htm> (last visited on September 4, 2015).

<sup>2</sup> Section 39(3) Constitution of the Republic of South Africa, 1996.

<sup>3</sup> See <http://www.gov.za/documents/constitution/chapter-2-bill-rights> (last visited on September 4, 2015).



Service Commission, and the appointment of (lower court) magistrates falls under the separate Magistrates' Commission.

### The Practice of Law

The legal profession in South Africa is comprised of two types of lawyers: attorneys and advocates. In general, attorneys provide advice on matters ranging from commercial transactions to the drafting of wills while advocates represent clients in major court proceedings and arbitrations, and also provide written or oral opinions on matters involving South African law. The Qualification of Legal Practitioners Amendment Act of 1997 dictates that an LLB degree is required to practice law in South Africa. The degree should be obtained from a South African law school. If a law degree is obtained outside South Africa, independent verification is required to establish that the degree is equivalent to an LLB in South Africa. If equivalency is verified, candidates must satisfy certain other requirements to become either an attorney or advocate. These include being at least 21 years old, a South African citizen or permanent resident.

Historically, advocates could only work on matters that were referred to them by attorneys and only advocates (as opposed to attorneys) were permitted to argue matters in court. However, the recent Legal Practice Act 28 of 2014 has led to the blurring of the distinction between advocates and attorneys. The Legal Practice Act provides that an advocate may render legal services upon receipt of a request *directly* from a member of the public, provided that the advocate is in possession of a fidelity fund certificate and a trust account. Also fairly recently, attorneys who have obtained the requisite certification have been allowed to appear and argue cases at the High Court level.<sup>4</sup> The Legal Practice Act has as its stated purpose the creation of a single regulatory body for advocates and attorneys to ensure that legal services are accessible to the public and entry into the profession is unrestricted. It remains to be seen what impact these statutory changes will have on the profession and access to justice. To date very few attorneys have entered into the sphere of practice historically served by advocates.<sup>5</sup>

The Legal Practice Act envisages that all legal practitioners will be subject to the jurisdiction of the South African Legal Practice Council (the “**Council**”), which will, *inter alia*, regulate the conduct and affairs of all practitioners (attorneys and advocates), develop norms and standards and develop programs to empower the previously disadvantaged.<sup>6</sup>

Currently, attorneys in South Africa are regulated by regional law societies – the Black Lawyers Association, the Law Society of the Northern Provinces, the Cape Law Society, the Kwa Zulu Law Society, the Law Society of the Free State and the National Association of Democratic Lawyers, all of which fall under the umbrella body of the Law Society of South Africa (the “**LSSA**”).<sup>7</sup> According to the LSSA, as of May 2015, there were 23,217 attorneys practicing in South Africa.<sup>8</sup> While some of those attorneys practice at large-to medium-sized firms (firms with ten or more legal professionals), as of December 2014, approximately 17.4% of South African law firms consisted of between two and nine attorneys and approximately 81.7% consisted of sole practitioners.

Currently, advocates are represented by the General Council of the Bar (the “**GCB**”), a national body comprised of ten societies of practicing advocates. Societies are located at the seat of every provincial and local division of the High Court of South Africa.<sup>9</sup> At a more micro level individual advocates organize around ‘Chambers’ or ‘Groups’, some of which have made express commitments to improve access to

---

<sup>4</sup> See Right of Appearance in Courts Act 62 of 1995.

<sup>5</sup> While the Legal Practice Act has been signed into law it is not (as of the date of this report) in effect.

<sup>6</sup> See Preamble to the Legal Aid South Africa Act 39 of 2014.

<sup>7</sup> See <http://www.lssa.org.za> (last visited on September 4, 2015).

<sup>8</sup> See [http://www.lssa.org.za/?q=con\\_147](http://www.lssa.org.za/?q=con_147) (last visited on September 4, 2015), About the attorneys' profession.

<sup>9</sup> See <http://www.sabar.co.za> (last visited on September 4, 2015).



justice through pro bono services and other initiatives.<sup>10</sup> There are currently over 2,000 advocates practicing in South Africa.<sup>11</sup>

Attorneys and advocates both have a long history of pursuing equal access to justice in South Africa, dating back to the apartheid era. The legal profession has heeded calls to increase its pro bono efforts as part of a new spirit of volunteerism in the country by introducing a mandatory pro bono initiative for attorneys and advocates. Legal professionals are required to provide at least 24 hours of pro bono services per year.<sup>12</sup> A number of South Africa's leading law firms have gone further and made significant efforts to develop and increase their pro bono activities, including the creation of the ProBono.org website<sup>13</sup>, seeking to match lawyers with individuals in need of legal services. It is expected that pro bono work will continue to grow in importance for the South African legal profession over the next several years as legal professionals are encouraged to establish their social responsibility credentials consistent with principles embedded in the Constitution and with the coming into force (and anticipated full effectiveness) of the Legal Practice Act.<sup>14</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Whether a matter is criminal or civil in nature impacts the right to legal assistance in South Africa. Other than for children, there is no constitutional or common law right to legal counsel in civil proceedings. For a child to qualify for assistance in a civil matter he/she must be under 18 years of age and, furthermore, substantial injustice must otherwise result if no counsel were to be appointed. Notwithstanding the lack of an express right, the constitutional entitlement to a "fair public hearing" may give rise to a claim for legal assistance in civil matters and such assistance is in fact made available for civil matters under the Legal Aid South Africa Act 39 of 2014 (the "**Act**"). In the criminal law context, detained and accused persons have a constitutional right to legal counsel and to provision of a legal practitioner at state expense if substantial injustice would otherwise result.<sup>15</sup> The Criminal Procedure Act reiterates this right.<sup>16</sup>

### State-Subsidized Legal Aid

South Africa has a system of legal aid that uses public funds to assist those unable to afford legal services. Effective March 1, 2015 state-funded legal aid came to be governed by the Act, which replaced the Legal Aid Act 22 of 1969. The Act established Legal Aid South Africa ("**LASA**") as the national public entity responsible for rendering and providing access to legal aid, advice and representation. LASA's purpose is "to ensure access to justice and the realization of the right of a person to have legal representation as envisaged in the Constitution and to render or make legal aid and legal advice available."<sup>17</sup> The functions of LASA are carried out by a board, (the "**Legal Aid Board**") in consultation with the Minister of Justice and Correctional Services.<sup>18</sup> The Legal Aid Board's work covers both civil and

---

<sup>10</sup> See Thulamela Chamber's constitution: <http://www.thulamela.com/wp-content/uploads/2014/04/Thulamela-Constitution-14-November-2013.pdf> (last visited on September 4, 2015).

<sup>11</sup> See <http://www.advocatesa.co.za/> (last visited on September 4, 2015).

<sup>12</sup> See [http://www.lssa.org.za/index.php?q=con,89,Pro\\_bono\\_services\\_by\\_attorneys](http://www.lssa.org.za/index.php?q=con,89,Pro_bono_services_by_attorneys) (last visited on September 4, 2015).

<sup>13</sup> See <http://www.probono.org.za/> (last visited on September 4, 2015).

<sup>14</sup> See <http://www.justice.gov.za/legislation/acts/2014-028.pdf> (last visited on September 4, 2015).

<sup>15</sup> Section 35 Constitution of the Republic of South Africa.

<sup>16</sup> Section 73 of the Criminal Procedure Act 51 of 1977 (as amended).

<sup>17</sup> See Preamble to the Legal Aid South Africa Act 39 of 2014.

<sup>18</sup> Legal Aid South Africa Act 39 of 2014.



criminal cases, although criminal matters comprise a larger percentage of its services and budget. In its civil work, the Legal Aid Board is particularly focused on providing legal advice and protecting and defending the rights of vulnerable groups such as women, children and the homeless.

The forthcoming Regulations to be promulgated under the Act will lay out the eligibility criteria for state-funded legal assistance. The extant 2014 Legal Aid Guide published by LASA details the existing criteria as follows:

- **Criminal Law Matters** - Children and recipients of State grants and old age pensions from the South African Social Security Agency are automatically eligible. Others must meet a means test (the applicant must earn less than ZAR5,500.00 (approximately US\$ 450.00) per month after tax and not own personal property in excess of ZAR100,000 (approximately US\$ 8,250.00). Where the applicant is a homeowner, the value of the home together with any personal property must not exceed ZAR500,000 (approximately US\$ 41,000.00) in the aggregate; other than cases where an applicant's Constitutional right to representation is implicated, if the individual applicant is part of a household then the household income is tested and must not exceed ZAR6,000.00 (approximately US\$ 500.00) per month after tax). There is no citizenship requirement.
- **Civil Law Matters** - Recipients of State grants and old age pensions from the South African Social Security Agency are automatically eligible. All other applicants must meet the means test noted above.<sup>19</sup> For a child applicant the child's household must meet the means test, and where the proceedings are between spouses there is no aggregation of household assets for the purposes of the test. Non-citizens are not eligible for legal assistance in civil matters unless the matter (i) involves a child or (ii) the individual is an asylum seeker.
- **Alternative Dispute Resolution** - Mediation and arbitration assistance is offered as part of LASA's non-litigious civil proceeding services. The eligibility criteria noted above are applicable.

Distinct from the legal aid system are various ombuds (and other similarly functioning organs) which may take on and investigate complaints on behalf of complainants in certain sectors or on specific topics. Typically, these ombuds are mandated by statute or by an industry association to hold industry or government officers accountable and a complainant's legal representation is less relevant. Depending on the empowering statute or founding document, ombuds may also have more limited power to secure specific relief for a complainant and are typically limited to issuing non-binding findings or recommendations.<sup>20</sup>

According to its 2014 Annual Report,<sup>21</sup> the Legal Aid Board provided:

- Legal services through a national footprint of 64 justice centers and 64 satellite offices;
- Delivery of legal services in 447,301 new legal matters - an increase of 7% from the 2009-2010 reporting period. Of these matters over 85% were criminal cases, with the balance civil in nature; and
- Legal assistance in 16,858 matters involving children

---

<sup>19</sup> See <http://www.legal-aid.co.za/?p=929> (last visited on September 4, 2015) for the Legal Aid Board's Impact Litigation Program, which recognizes that the Legal Aid Board may have opportunities to assist or fund litigation with the potential to positively affect the lives of a large number of indigent persons. The Legal Aid Board looks at whether an opportunity exists to establish legal precedent either by class action or strategic intervention and rendering of non-litigious services. Rather than evaluate each client individually, special litigation matters are submitted to the Legal Aid Board through written proposals and approved on a case-by-case basis.

<sup>20</sup> In the context of maladministration in the performance of public functions see the Public Protector Act 23 of 1994, see also the Consumer Protection Act 68 of 2008 and <http://ombudsman.ombudsmen.co.za/find-an-ombudsman/> (last visited on September 4, 2015).

<sup>21</sup> See <http://www.legal-aid.co.za/wp-content/uploads/2012/12/2014-Legal-Aid-REPORT.pdf> (last visited on September 4, 2015).



The Legal Aid Board uses justice centers, cooperation agreements with university law clinics, contracted private attorneys, and special impact litigation to fulfill its mandate of providing legal aid.

- **Justice Centers.** The justice centers operate in a similar fashion to private practice firms and are the primary source for applicants seeking legal aid in South Africa. Each justice center is headed by a principal attorney, with assistance from professional assistants, candidate attorneys and paralegals. Justice centers offer legal assistance for certain defined criminal and civil matters and the services offered include advice, referrals and litigation.<sup>22</sup> Through its justice centers, the Legal Aid Board provided general legal advice to 424,679 clients in South Africa between 2013 and 2014, accounting for 95% of all its work flow, the balance was handled through the appointment of private legal counsel in Judicare matters (as detailed below), and through cooperation agreements.<sup>23</sup>
- **Cooperation Agreements.** The Legal Aid Board enters into cooperation agreements with certain university law clinics and NGOs to provide additional legal assistance to the local communities. As of 2014, cooperation agreements were in place with law clinics at the following universities:
  - **Eastern Cape Province:** Rhodes University, University of Fort Hare, Walter Sisulu University, Nelson Mandela Metropolitan University
  - **Free State Province:** University of the Free State
  - **Gauteng Province:** University of Pretoria, University of South Africa, University of Johannesburg, University of the Witwatersrand
  - **KwaZulu-Natal Province:** University of KwaZulu-Natal, University of Zululand,
  - **Limpopo Province:** University of Limpopo, University of Venda
  - **North West Province:** North West University
  - **Western Cape Province:** University of Cape Town, University of the Western Cape, Stellenbosch University
- **Private Counsel.** The Legal Aid Board may appoint and pay private legal counsel (known as the "Judicare" system). Such appointments are voluntary and rates are agreed by contract. There is no provision in South African law for mandatory assignment of matters to private attorneys.
- **Special Litigation.** Special litigation involves cases which, if successful, would have a major impact on South African law. These types of cases primarily involve class actions suits as a means to challenge constitutional violations and require special teams of legal representatives to assist in litigating them. The legal representatives may be chosen from the justice centers or they may be private practice attorneys. The Legal Aid Board considers special litigation on a case-by-case basis, and the cost is covered through a dedicated fund.

The Legal Aid Board also continues to explore other access-to-justice models to complement the outlets outlined above pursuing and evaluating various pilot projects.

---

<sup>22</sup> Matters eligible for legal aid are outlined in Chapter 4 of the Legal Aid Guide 2014. Criminal and civil matters eligible for representation are offense and jurisdiction specific. For example, legal aid may be granted in matters where District Courts have increased penal jurisdiction, such as theft, dealing in drugs and drunk driving. Legal aid is available for many common law offenses such as arson, assault, bribery, fraud, rape, murder, kidnapping, and robbery but is not generally available for criminal defamation, public indecency and contempt of court. Covered statutory offenses include those relating to children, mental disability, corruption and vehicle theft. Legal aid is also available for miscellaneous matters such as bail reviews, extradition and involuntary HIV testing (in the case of sexual offenders). In addition, legal aid is available for certain High Court appeals if the client qualifies under the means test. On the civil side, legal aid is available for family law issues including divorce, maintenance matters, child custody and domestic violence, as well as in a range of other civil matters such as housing law, asylum and certain labor disputes. There are many limitations placed on the scope of civil legal aid, such as no representation for certain personal torts (infringement of privacy and adultery); for cases in small claims court; and in the administration of estates.

<sup>23</sup> 2014 Legal Aid Report.



## Unmet Needs Analysis

While the efforts described above go some way to improving access to justice, significant hurdles remain. A prominent legal services NGO, the Legal Resources Center, points to a lack of state infrastructure, scarcity of legal skills in poor areas, illiteracy and low levels of education about legal rights and entitlements as some of the barriers to access to justice.<sup>24</sup> Notably, a high percentage of legal aid (approximately 85%) goes toward criminal law proceedings.<sup>25</sup> Given the socio-economic challenges evident in the country, there is a strong need also for civil proceeding representation (including administrative law matters touching on access to grants and social assistance programs). The Legal Aid Board acknowledges this imbalance and attributes it to funding shortages.<sup>26</sup> The private sector is slowly beginning to supplement the services provided by the Legal Aid Board, though funding and capacity remains strained in both spheres.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Although pro bono work had been carried out by legal practitioners on an informal basis for many years, no formal initiative in respect of pro bono practice developed in South Africa until 2003, when one of the regional law societies regulating attorneys, the Cape Law Society, instituted a mandatory pro bono rule for its members. The Society's initiative was prompted by the recognition that the government's legal aid system was not adequate to address the South African public's legal needs— particularly those of the poorest members of South African society. Since then, each of the regional law societies has required their members to perform pro bono services; today the Law Society of South Africa mandates attorneys to provide 24 hours per year of free legal advice to members of the public who qualify for this service in terms of a means test. In most cases, refusing to perform pro bono services without good cause amounts to unprofessional conduct. Some law societies publish a list of services that, when performed by attorneys at no charge for those who cannot afford to pay, are recognized as pro bono services capable of being delivered in compliance with the provisions of the societies' pro bono rules.<sup>27</sup> Regional law societies typically have rules governing the reporting and recording of pro bono services, including matters addressed and hours of service rendered. The intention is to ensure the accountability of society members, and the Societies reserve the right to publish members' pro bono track records on their websites.<sup>28</sup>

In addition to the efforts of the law societies, individual legal practitioners and firms in South Africa are continuing to provide pro bono services on a voluntary and informal basis. Some of the country's large commercial law firms have adopted innovative policies towards pro bono; however the strategic approach and emphasis among firms varies. For example, ENSafrica (Edward Nathan Sonnenbergs) has established two dedicated offices located within underserved and poor communities (Mitchells Plain, in Cape Town and Alexandra Township in Johannesburg) where legal advice as well as rights education programs are provided. These offices are served by some permanent staff together with attorneys from the firm's other offices. The law firm Webber Wentzel (in alliance with Linklaters) has a permanent pro bono partner to coordinate that firm's pro bono practice. According to the firm's 2012 pro bono report, Webber Wentzel attorneys provided 10,596 hours of pro bono services—valued at over ZAR10 million—

---

<sup>24</sup> See <http://www.lrc.org.za/focus-areas/access-to-justice> (last visited on September 4, 2015).

<sup>25</sup> 2014 Legal Aid Report, page 21.

<sup>26</sup> 2014 Legal Aid Report, Foreword of the Board Chairperson, page 13.

<sup>27</sup> Rule 21.4 of the Cape Rules.

<sup>28</sup> See for example Rule 24.11 of the Free State Law Society available at: [http://www.justice.gov.za/legislation/notices/2008/20080530-gg31083\\_a\\_pg68-80.pdf](http://www.justice.gov.za/legislation/notices/2008/20080530-gg31083_a_pg68-80.pdf) (last visited on September 4, 2015).



on a wide range of cases and issues including HIV/AIDS discrimination, land reform and housing and violence against women.<sup>29</sup> Bowman Gilfillan, another prominent South African law firm, reported that in 2014 their lawyers contributed 8,609 hours of pro bono work, with a value of over ZAR15.5 million. Bowman Gilfillan also places attorneys on six-month assignments with the State's Public Defenders' office and provides weekly staffing for the Domestic Violence Help Desk at the Randburg Magistrates Court. Other law firms, like Norton Rose, have focused their pro bono efforts on specific challenges facing the country, such as the xenophobic violence in 2015.<sup>30</sup>

At the University of Cape Town, and an increasing number of other law schools across the country, it is a compulsory graduation requirement for law students to complete a total of 60 hours of community service. The service need not be legally oriented but must provide a direct service or benefit to an underprivileged or vulnerable group or to a social or economic upliftment organization. The primary purpose of this compulsory requirement is to instill a sense of public service in each new lawyer joining the profession.

In addition to these opportunities, legal professionals may also provide pro bono services through legal NGOs. South Africa has a vibrant legal NGO community which is an important aspect of the access to justice landscape in the country.<sup>31</sup> Lawyers seeking opportunities for pro bono service may also contact the state's legal aid provider - LASA.

## Historic Development and Current State of Pro Bono

While the developing culture (and pride) in the delivery of pro bono legal services is encouraging, a number of factors hamper the roll-out of wide-spread pro bono legal services in South Africa.

Case-processing and organizational capacity for handling pro bono intake is constrained. According to the LASA's annual report, South African regional law societies received a total of 7,863 pro bono applications in 2014. However, only 3,701 (less than half) of these were approved and referred to attorneys. It is not clear whether this discrepancy is due to a lack of capacity on the part of the attorneys, a high number of inadequate applications or some other factor. Even when attorneys are willing to provide pro bono services they are not always able to reach people living in the rural parts of the country who need access to these services.

The supply of qualified legal practitioners also poses a barrier to greater levels of pro bono work. Several academics suggest that a lack of capable lawyers (South Africa has approximately one lawyer for every 2,273 people (well below the internationally recommended ratio of one lawyer to 600 people) is hampering access to justice,<sup>32</sup> and even economic growth.<sup>33</sup>

---

<sup>29</sup> See <http://www.webberwentzel.com/wwb/content/en/ww/ww-pro-bono-report-new> (last visited on September 4, 2015).

<sup>30</sup> See <http://www.nortonrosefulbright.com/za/corporate-responsibility/xenophobia-has-no-place-in-africa/> (last visited on September 4, 2015).

<sup>31</sup> ProBono.Org (<http://www.probono.org.za/> (last visited on September 4, 2015)), for example, focuses specifically on connecting individuals seeking pro bono representation with attorneys. The Legal Resources Center ([www.lrc.org.za/](http://www.lrc.org.za/) (last visited on September 4, 2015)), Lawyers for Human Rights ([www.lhr.org.za/](http://www.lhr.org.za/) (last visited on September 4, 2015)), Center for Applied Legal Studies (<http://www.wits.ac.za/law/cals> (last visited on September 4, 2015)), Center for Child Law (<http://www.centreforchildlaw.co.za/> (last visited on September 4, 2015)), Socio Economic Rights Institute of South Africa (<http://www.seri-sa.org/> (last visited on September 4, 2015)), the Southern Africa Litigation Center (<http://www.southernafricalitigationcentre.org/> (last visited on September 4, 2015)), and Section 27 (<http://section27.org.za/> (last visited on September 4, 2015)) are all examples of NGOs offering pro bono representation or litigating social justice issues.

<sup>32</sup> See McQuoid-Mason, D., 2013. Access to Justice in South Africa: Are there Enough Lawyers? *Oñati Socio-legal Series*, 3 (3), 561-579. Available from: <http://ssrn.com/abstract=2272640> (last visited on September 4, 2015).

<sup>33</sup> See The Optimum Number of Lawyers: A Reply to Epp Stephen P. Magee, *Law & Social Inquiry* Volume 17, Issue 4, pages 667-693, October 1992 available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-4469.1992.tb00635.x/abstract> (last visited on September 4, 2015).



Substantive aspects of the legal system may also be deterring the bringing of pro bono matters, at least in the litigious context. As a general rule, the costs of legal proceedings follow the outcome. A pro bono (or state-funded) applicant is not shielded from an adverse costs order if his/her claim is unsuccessful. While this phenomenon may reduce the demand on an already over-burdened court system, its implications for access to justice are of concern. In addition, the class-action mechanism is fairly new and undeveloped in South Africa; the ability to litigate on this basis was introduced in 1996 for constitutional rights, and extended in 2013 to a broader array of matters.<sup>34</sup>

## Pro Bono Resources

ProBono.org, the Legal Aid Board<sup>35</sup> (<http://www.legal-aid.co.za/> (last visited on September 4, 2015)) and the law societies throughout the country offer the best resources for lawyers interested in providing pro bono representation. These organizations play a central role in providing and coordinating the provision of legal services to those who need it the most.

## CONCLUSION

Access to justice for the poorest in society is crucial to South Africa's ongoing development. South Africa has made significant strides towards developing a pro bono and state legal aid policy that encourages its legal professionals to engage in a new spirit of volunteerism. Mandatory pro bono initiatives have been introduced, a number of South African law firms have developed more structured pro bono practices independently and legal professionals can now engage in pro bono beyond their law firm in efforts like ProBono.org. The trend illustrates a renewed commitment to pro bono among formalized South African legal organizations. Nevertheless, access to justice, particularly for the poorest communities, continues to be a significant problem in South Africa. In light of numerous pressures on State funding, it is likely that the legal profession will increasingly be looked to, to develop and broaden voluntary pro bono practices in an effort to address the problem. In a country where the gap between the wealthy and the poor is vast, the need for pro bono legal services for South Africa's most underserved populations continues.

September 2015

Pro Bono Practices and Opportunities in South Africa

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>34</sup> See Trustees for the time being of the Children (050/2012) [2012] ZASCA 182.

<sup>35</sup> See(<http://www.legal-aid.co.za/> (last visited on September 4, 2015)



## Pro Bono Practices and Opportunities in South Korea

### INTRODUCTION

Society's attitude toward pro bono work in South Korea has evolved significantly in recent decades. This transformation was primarily driven by the country's transition to democracy in the late 20th century along with the 2009 reform in the legal education system which led to further changes in the general legal system. The biggest change to the pro bono culture in South Korea is undoubtedly the mandatory 30-hour per year pro bono requirement that the Attorney-at-Law Act<sup>1</sup> and the regulations of the Korean Bar Association ("KBA") introduced in 2000. However, in practice, legal aid has been and remains the primary means of providing legal services to the indigent population in South Korea. In addition to legal aid and the pro bono work contributed by individual attorneys, a growing number of large law firms and international firms are increasingly engaging in pro bono work.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The South Korean legal system is a fairly new development of the civil law system which effectively dates from the introduction of the Constitution of the Republic of Korea (the "**Constitution**") following South Korea's independence after World War II.

##### The Courts

###### Court system

The three-tiered South Korean judicial system was created through the Court Organisation Act of 1949. The 1987 Constitution provides that judges will not be removed from office<sup>2</sup> and also guarantees judicial independence<sup>3</sup>. The court hierarchy comprises specialised courts (e.g. Family Court and Administrative Court), District Courts, High Courts, the Constitutional Court, and the Supreme Court. The 13 District Courts have original jurisdiction over most civil and criminal cases, and they may also have appellate jurisdiction in cases where the District Court decision was made by a single judge. The six High Courts have appellate jurisdiction over cases decided by the lower courts. The Constitutional Court, established in 1988 under the revised Constitution is committed to protecting the constitutional rights of the people and decides on cases of constitutional importance.

###### Appointment of Judges

In the past, in order to become a judge in South Korea, the candidate had to pass the national judicial examination and also complete a two-year training program at the Judicial Research and Training Institute ("JRTI").<sup>4</sup> The vast majority of judges in South Korea were selected from those who had most recently completed the JRTI training program, but some were also selected from practicing attorneys (who had previously completed the JRTI program). As of 2009, however, there was a reform of the legal education system, and law students are now required to attend a U.S style three-year law school program instead of the JRTI and the national judicial examination. Those selected to be judges following this reform must also have practised law for several years. The selection process works such that the candidates must be nominated for their position by the Chief Justice, but their nominations have to be

---

<sup>1</sup> English version of Attorney-at-Law Act, Act No. 8321 of March 29, 2007, available at <http://www.moleg.go.kr/english/korLawEng?pstSeq=52643> (last visited on September 4, 2015).

<sup>2</sup> Other than for impeachment, criminal acts or incapacity (Article 106).

<sup>3</sup> Article 103 provides that "judges shall rule independently according to their conscience and in conformity with the Constitution and laws."

<sup>4</sup> Article 42-2 of the Court Organization Act, but repealed in 2007.



pre-confirmed by the Supreme Court Justices Council. After a term of ten years, a judge may be re-appointed (with the exception of Supreme Court judges, whose term is limited to six years, although they can also be re-appointed).

## The Practice of Law

### Education

Becoming a prosecutor or choosing to practice law as a private attorney involves the same education and training process as becoming a judge in South Korea. Prior to the legal education reform in 2009, the study of law was offered to students at an undergraduate level. Applicants then had to take the national judicial examination. Those who passed the examination then had to complete a two-year training program at the JRTI to receive their licences. Once they had passed this stage, they could choose a career as a judge, prosecutor or lawyer. Before 1981, JRTI graduates generally chose to become judges or prosecutors<sup>5</sup>.

The new changes, however, introduced a U.S. style law school program and applicants are now required to have a bachelor's degree, foreign language proficiency and a satisfactory score on the Legal Education Eligibility Test (which is different from the national judicial examination under the previous system). Only 25 universities have been approved for the new law schools, and there is a limited number of places at each of those universities (with the aggregate number of spaces among the 25 law schools per year capped at 2,000), making qualification quite competitive.

Once a Korean lawyer has qualified and has acquired a number of years of domestic legal practice, it is quite common for them to pursue an LLM overseas (mainly in the US or the UK) and to be dual-qualified.

### Licensure

If a lawyer wishes to practice law in South Korea after receiving their licence<sup>6</sup>, they must register with the KBA<sup>7</sup>.

For those attorneys entering the South Korean legal market from abroad, there is a requirement to register as Foreign Legal Consultants ("FLC").

Since September 2009, the Foreign Legal Consultant Act has allowed foreign legal consultant offices ("FLCO")<sup>8</sup> to establish and operate representative offices in Korea<sup>9</sup>.

### Demographics

In 2015, the total number of lawyers (including judges, prosecutors, and private practitioners) was only 16,340<sup>10</sup> out of a population of 50 million. By comparison, the US has 24 times as many lawyers per capita as South Korea<sup>11</sup>.

As of December 2009, there were 2,468 judges, 1,699 prosecutors and 11,016 registered private attorneys in South Korea.<sup>12</sup> The legal market in South Korea has traditionally been a male-dominated

---

<sup>5</sup> Yoon Dae-Kyu, The Paralysis of Legal Education in Korea, in LEGAL REFORM IN KOREA 36, at 174.

<sup>6</sup> Until 2017, both systems of qualification operate concurrently until 2017, but after that point, the traditional qualification system is expected to be phased out. There are ongoing discussions, however, about whether to revive or maintain whole or part of the traditional judicial examination system.

<sup>7</sup> See [http://www.koreanbar.or.kr/eng/sub/sub03\\_01.asp](http://www.koreanbar.or.kr/eng/sub/sub03_01.asp) (last visited on September 4, 2015).

<sup>8</sup> Only those law firms whose headquarters are located in a country which has signed and ratified a Free Trade Agreement (FTA) with South Korea are eligible ([http://www.koreanbar.or.kr/eng/sub/sub04\\_02.asp](http://www.koreanbar.or.kr/eng/sub/sub04_02.asp)) (last visited on September 4, 2015).

<sup>9</sup> As of June 2015, there are 23 international law firms in South Korea.

<sup>10</sup> See [http://weekly.donga.com/docs/magazine/weekly/2015/07/10/201507100500012/201507100500012\\_1.html](http://weekly.donga.com/docs/magazine/weekly/2015/07/10/201507100500012/201507100500012_1.html) (last visited on September 4, 2015).

<sup>11</sup> Kim, Eun. THE YIN & YANG OF AMERICAN CULTURE: A PARADOX. Nicholas Brealey Publishing. (2001). p. 150.



field, and although it is gradually changing, in 2015, only about 22.3% of all successful bar applicants were female<sup>13</sup>.

### Legal Regulation of Lawyers

The KBA is the main regulatory body for lawyers in Korea, with about 15,000 members. Membership of the KBA is compulsory for all practicing lawyers and has been growing in recent years, especially since the reforms.

In addition to presenting its opinions and research results on the development of policies, legislation and law amendments, the KBA holds annual conferences and provides training for its members to better cope with the changing dynamics of the legal sector in South Korea.

With an increasing number of FLCs and FLCOs in the country, the KBA is also responsible for strengthening the competitiveness of South Korean lawyers and law firms, as well as for improving the relationships with foreign legal organizations.

South Korea's Ministry of Justice is a cabinet-level ministry overseeing justice affairs. Its international affairs department is primarily responsible for the liberalisation of the legal market and the negotiation of free trade agreements ("**FTAs**"). Since the FTAs with the EU and the US have come into effect, the Ministry of Justice has also been responsible for implementing the stages of market liberalisation under the FTAs, and its role includes administering the FLC application process and the licensing process for FLCOs.

## LEGAL RESOURCES FOR THE INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

#### In Civil Proceedings

The Korean Civil Procedure Act (the "**KCPA**")<sup>14</sup> outlines the conditions under which the court hearing a case may grant legal aid. It may do so either *ex officio* or upon the request of a person who is unable to pay for the costs of the lawsuit, and it must not be a lawsuit that will obviously fail. The aid can be granted in varying forms, extending to payment of litigation costs, deferral of a fee payment or a substitute payment for a lawyer or execution officer, exemption from the security for the costs of the lawsuit, and deferral or exemption of other expenses (as prescribed by the Supreme Court Regulations). The aid shall extend only to the person to whom it was granted, and not to successors to the litigation. The court may also overturn its decision granting the aid, if it finds that the person concerned had or has acquired the solvency needed to be able to pay for the costs themselves.

#### In Criminal Proceedings

With respect to criminal legal aid, Article 12(4) of the Constitution provides for a state-appointed counsel system. Pursuant to Article 33 of the Criminal Procedural Act (the "**CPA**"), a court will *ex officio* appoint a defence counsel, regardless of whether it is requested by the defendant, when the defendant is placed under arrest, a minor, 70 years of age or older, deaf and dumb, suspected of having a mental and physical disorder, or indicted for a case carrying a potential sentence of the death penalty or life imprisonment.

---

<sup>12</sup> See [http://www.moj.go.kr/HP/ENG/eng\\_02/eng\\_2040.jsp](http://www.moj.go.kr/HP/ENG/eng_02/eng_2040.jsp) (last visited on September 4, 2015).

<sup>13</sup> See <http://biz.heraldcorp.com/view.php?ud=20150805000475> (last visited on September 4, 2015).

<sup>14</sup> In Section 3 of the KCPA's third Chapter (Articles 128-133), where it lays out the rules regarding litigation aid in the context of repartition of costs for lawsuits.

## State-Subsidized Legal Aid

The Korea Legal Aid Act (the “KLA”) <sup>15</sup> was enacted and proclaimed on December 23, 1986, leading to the creation of the **Korea Legal Aid Corporation** (the “KLAC”) <sup>16</sup> on September 1, 1987. The KLAC was established to protect human rights and to provide necessary legal aid services to those in economic difficulty or not adequately protected by South Korean law. <sup>17</sup> The scope of the KLAC’s services include minor legal assistance with legal forms and documents, legal representation in, amongst others, civil and family law cases, free criminal defence service, and legal education programs /campaigns. <sup>18</sup> When represented by a KLAC lawyer or a public service advocate, the service recipient must, at conclusion of the case, pay basic legal expenses such as stamp tax, service of process, and the attorney’s fee (all of which are considerably lower than those demanded by a private lawyer). In addition, the KLAC offers free legal aid to those who are in need of particular protection, for example, farmers, fishermen, disabled people and veterans. <sup>19</sup> The number of legal aid cases and the amount of free legal advice provided by the KLAC have been steadily increasing over the years. Between 1987 and 2013, the KLAC assisted on 1.3 million legal aid cases – of which 1,198,245 were civil cases and family disputes, and 249,645 were criminal matters – and 67 million provisions of free legal advice. <sup>20</sup> The KLAC is guided and supervised by the Ministry of Justice. <sup>21</sup>

The Legal Aid Foundation of the KBA also provides legal aid, in particular to North Korean refugees and to the elderly, minors and the disabled. <sup>22</sup>

The Korea Legal Aid Center for Family Relations was established in 1956 and was registered with the Ministry of Justice as a legal aid corporation under the Legal Aid Act in 1988. They provide a variety of legal aid services, including legal counselling on family affairs and mediation to legal aid in litigation. <sup>23</sup>

## Mandatory assignments to Legal Aid Matters

### Unmet Needs and Access Analysis

Although the KLAC has its headquarters in Seoul, there are more than 120 branches and local offices of the KLAC throughout South Korea. Consequently, citizens from all around the country are able to access legal aid and seek help, which range from the preparation of legal forms and documents to representation for civil, family, and criminal cases.

In parallel to the existing comprehensive legal aid services, South Korea is expanding the scope of pro bono services provided by private practices and NGOs.

<sup>15</sup> English version of Legal Aid Act, Act No. 11041 of September 15, 2011, available at <http://law.go.kr/engLsSc.do?menuId=0&subMenu=5&query=%EB%B2%95%EB%A5%A0%EA%B5%AC%EC%A1%B0%EB%B2%95#iBgcolor0> (last visited on September 4, 2015).

<sup>16</sup> See English website of Korea Legal Aid Corporation, <http://eng.klac.or.kr/english/intro/01.php> (last visited on September 4, 2015).

<sup>17</sup> Article 1 in conjunction with Article 8 of Legal Aid Act.

<sup>18</sup> See <http://eng.klac.or.kr/english/infor/02.php> (last visited on September 4, 2015) and <http://eng.klac.or.kr/english/infor/04.php> (last visited on September 4, 2015).

<sup>19</sup> Article 7(2) of Legal Aid Act. See also <http://eng.klac.or.kr/english/infor/06.php> (last visited on September 4, 2015).

<sup>20</sup> See <http://eng.klac.or.kr/english/news/01.php> (last visited on September 4, 2015).

<sup>21</sup> Article 35(1) of Legal Aid Act.

<sup>22</sup> See English website of Korean Bar Association, <http://www.koreanbar.or.kr/eng/default.asp> (last visited on September 4, 2015).

<sup>23</sup> See English website of Korea Legal Aid Center for Family Relations, <http://lawhome.or.kr/law1/eng/sub01/body01.asp> (last visited on September 4, 2015).



## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

Public service has not been the norm for non-public sector lawyers in South Korea historically. This began to change when the 2000 Attorney-at-Law Act came into force, requiring 30 hours of pro bono work per lawyer.<sup>24</sup> In practice, however, this requirement may be surpassed by paying certain amounts into the pro bono fund instead of working the specified hours. Those who have been practicing for less than two years or those who are older than 60 years are also exempt from the requirement.

#### Law Firm Pro Bono Programs

A further change in the pro bono sector has come with the introduction of the FLCOs in South Korea. In December 2012, the first Pro Bono Symposium was held in Seoul, and this was an opportunity for over 100 law firms to discuss the role of pro bono in the South Korean legal sector. This symposium was mainly led by foreign law firms who wanted to inspire Korean law firms to think of pro bono as an integral part of the culture of legal service.

As pro bono becomes more recognised in the South Korean legal sector, Korean law firms have increasingly been taking the initiative to provide pro bono services. One of Korea's biggest law firms, Bae, Kim and Lee, started the Dongcheon Public Interest Foundation<sup>25</sup> in 2009 which offers free legal consultations, defense and legal aid activities and direct support for disadvantaged social groups.<sup>26</sup> Given the political situation with North Korea, the Dongcheon Foundation also focuses on providing pro bono services to North Korean refugees.

However, what is considered to be "pro bono" in South Korea seems to be relatively broad. Kim & Chang, another leading law firm in South Korea, launched the Kim & Chang Committee for Social Contribution in 2013 to help encourage participation in the firm's pro bono activities. While the committee does also provide legal services under its pro bono program, a lot of the committee's activities seem to be focused on increasing donations and volunteer activities such as hosting mock trial competitions for students. In this sense, "pro bono" seems to include what would otherwise be considered "community service" in the U.S.<sup>27</sup>

#### Non-Governmental Organisations

There are also a number of NGOs like *Gong-Gam*<sup>28</sup> which advises on, and provides representation in, strategic litigation on behalf of minorities and the underprivileged. For example, in 2007 *Gong-Gam* successfully obtained recognition of the refugee status of a Chinese asylum seeker when the Seoul Administrative Court accepted his claim of fear of persecution should he be forcibly returned to China. This was the first time such a decision was made by the Administrative Court in South Korea.

---

<sup>24</sup> Attorney-at-Law Act, Law No. 1154 (September 24, 1962), amended by Law No. 6207, article 27 (January 28, 2000). The details as to how many hours are actually required will be separately regulated by the KBA regulations, however.

<sup>25</sup> See <http://www.bkl.co.kr/front/law/about/society.do?lang=eng#Ve7UA0377cs> (last visited on September 4, 2015)

<sup>26</sup> See <http://www.bkl.co.kr/front/law/about/society.do?lang=eng#VZwur010yUk> (last visited on September 4, 2015).

<sup>27</sup> See [http://webcache.googleusercontent.com/search?q=cache:i\\_XwOwMXVgJ:thebeye.probonoinst.org/wp-content/uploads/2013/01/12.21.12-The-Current-Status-and-Prospects-of-Pro-Bono-Work-in-Korean-Law-Firms.docx+&cd=2&hl=en&ct=clnk&gl=uk](http://webcache.googleusercontent.com/search?q=cache:i_XwOwMXVgJ:thebeye.probonoinst.org/wp-content/uploads/2013/01/12.21.12-The-Current-Status-and-Prospects-of-Pro-Bono-Work-in-Korean-Law-Firms.docx+&cd=2&hl=en&ct=clnk&gl=uk) (last visited on September 4, 2015).

<sup>28</sup> See <http://www.kpil.org/eng/index.php> (last visited on September 4, 2015).



In August 2014, the Public Interest Litigation Centre<sup>29</sup> was established to provide legal services with minimum legal charges to help socio-economically underprivileged applicants to file cases.

The Sarangsaem Foundation,<sup>30</sup> which was established under the KBA, also provides financial support to pro bono activities conducted by law firms.

### University Legal Clinics and Law Students

Pro bono is not a mandatory requirement for students pursuing a law degree, but there are a number of organisations and societies through which students can participate.<sup>31</sup>

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

Although the concept of pro bono is a relatively new one in South Korea, there have always been a large number of public interest lawyers in the country. Particularly under the military and authoritarian rules in the 1960s to 1980s, groups of human rights lawyers defended the rights of political prisoners and dissidents. A professional affiliation called *Minbyun* was formed and civic-minded lawyers supported specific causes such as women's rights, workers' rights, and economic justice.

On the whole, the *Minbyun* lawyers were regarded as an anomaly within the legal profession. As they represented political prisoners and protesting laborers, the *Minbyun* lawyers were stigmatised as troublemakers. In some cases, they were even regarded as pro-communist by the state, which, given the political situation in South Korea, was a way to label these lawyers as political dissidents themselves. This label lingered into the early 1990s, when the Ministry of Justice would describe the *Minbyun* lawyers as "unsuccessful applicants for jobs as judges or public prosecutors"<sup>32</sup>.

However, since the advent of a liberal-democratic administration, society's perception of the role of *Minbyun* lawyers has undergone a drastic change. Public interest lawyers today no longer have to fight against an authoritarian regime, and as a result have different opportunities, priorities and status. In 2002, Roh Moo-hyun, a former *Minbyun* lawyer, was elected President. A *Minbyun* lawyer founded a citizens' group called People's Solidarity for Participatory Democracy which, according to the public polls of 2002 to 2005, was regarded as the most influential NGO in South Korea<sup>33</sup>. In this sense, the development of South Korea is a prime example of how democratic change can shape the nature and importance of public interest law.

### Current State of Pro Bono

The main struggle for South Korean attorneys seems to be that there is no clear system in place for law firms to assist NGOs with their work.<sup>34</sup> Further, some firms have been informed that NGOs prefer to receive financial donations over pro bono services. While U.S. law firms have strived to treat for-profit clients and pro bono clients equally, this has been more difficult in South Korea where the pro bono culture is still in its early stages.

---

<sup>29</sup> See <http://www.publicinterest.co.kr> (last visited on September 4, 2015).

<sup>30</sup> See <http://kba-sarangsaeam.or.kr> (last visited on September 4, 2015).

<sup>31</sup> Although in the traditional system, the Public Services Advocates Act, Law No. 4836 of 1994 required male JRTI graduates who have not fulfilled their mandatory military service to work at legal aid agencies.

<sup>32</sup> Ahn, Kyong Whan, The Growth of the Bar and the Changes in the Lawyer's Role: Korea's Dilemma. LAW AND TECHNOLOGY IN THE PACIFIC COMMUNITY. 119, 123 (Philip S.c. Lewis ed., 1994).

<sup>33</sup> 2005 Hanguk, nuga umjigi-neun-ga [Who's Moving in Korea 2005?], SISA JOURNAL, October 25, 2005, at 60.

<sup>34</sup> See [http://webcache.googleusercontent.com/search?q=cache:i\\_XwOwvMXVgJ:thebeye.probonoinst.org/wp-content/uploads/2013/01/12.21.12-The-Current-Status-and-Prospect-Prospects-of-Pro-Bono-Work-in-Korean-Law-Firms.docx+&cd=2&hl=en&ct=clnk&gl=uk](http://webcache.googleusercontent.com/search?q=cache:i_XwOwvMXVgJ:thebeye.probonoinst.org/wp-content/uploads/2013/01/12.21.12-The-Current-Status-and-Prospect-Prospects-of-Pro-Bono-Work-in-Korean-Law-Firms.docx+&cd=2&hl=en&ct=clnk&gl=uk) (last visited on September 4, 2015).



## Socio-Cultural Barriers to Pro Bono

As mentioned elsewhere, the legal profession in modern day South Korea is a prestigious one, especially given its competitiveness. Further, despite recent developments, the legal sector is still male-dominated, with the number of female lawyers lagging far behind male lawyers. In addition, although law schools and bar exams are merit-based (in that anyone can take the exam), alumni relations at both the law schools and JRTI levels create a special club of legal members. This is particularly true given that most JRTI candidates will have graduated from the same universities. When looking at the set-up and make-up of the South Korean legal profession, it still remains an “old boy’s network”<sup>35</sup>.

Those factors all raise the issue of whether the legal elite can serve the interests of the public adequately and represent the underprivileged. However, there are increasing efforts on the part of the government, law firms and private attorneys to be more pro-active in providing pro bono services. Especially with the arrival of FLCOs, there is still a lot of hope when it comes to pro bono in South Korea.

## Pro Bono Resources

### Legal Aid Resources:

- Korea Legal Aid Corporation:  
Address: Korea Legal Aid Corporation Bldg, 1703-10, Seocho 3-dong, Seocho-gu, Seoul, South Korea  
Phone: +82 2 532 0132  
Website: [http://eng.klac.or.kr/english/intro/09\\_2.php](http://eng.klac.or.kr/english/intro/09_2.php) (last visited on September 4, 2015)
- Legal Aid Foundation of the KBA:  
Address: Korean Bar Association, 5th Floor, 1718-1, Seocho-dong, Seocho-gu, Seoul, South Korea  
Phone: +82 2 3476 6515  
Website: <http://www.koreanbar.or.kr/eng/> (last visited on September 4, 2015)
- Korea Legal Aid Center for Family Relations:  
Address: 11-13 Yeouido-dong, Youngdeungpo-gu, Seoul 150-868, South Korea  
Phone: +82 2 780 5688 / +82 2 1644 7077  
Website: <http://lawhome.or.kr/law1/eng/sub01/body01.asp> (last visited on September 4, 2015)

### Pro Bono Assistance

- Korean Bar Association:  
Address: 5th Floor, Korean Bar Association, 1718-1, Seocho-dong, Seocho-gu, Seoul, South Korea  
Phone: +82 2 3476 4000  
Website: <http://www.koreanbar.or.kr/eng/> (last visited on September 4, 2015)
- Seoul Bar Association:  
Address: 3rd Floor, Lawyer’s Hall, 1718-1, Seocho 3-dong, Seocho-gu, Seoul, South Korea 173-885  
Phone: +82 2 3476 6000  
Website: <https://www.seoulbar.or.kr/EgovPageLink.do?link=/en/EnglishHistory> (last visited on September 4, 2015)

<sup>35</sup> Goedde, Patricia. From Dissidents to Institution-Builders: The Transformation of Public Interest Lawyers in South Korea. EAST ASIA LAW REVIEW. Vol. 4:63 (2009) at 72.



## CONCLUSION

While it is certainly true that much is being done in South Korea to engage more lawyers in pro bono activities, the scope of what the law recognises as a public interest appears to be quite broad. While various “pro bono” departments or organisations have been set up within many law firms, the activities they engage in may not necessarily align with what is recognised as pro bono elsewhere. Similarly, while the Attorney-at-Law Act has introduced a mandatory requirement for lawyers to devote a specified number of hours to pro bono services, there are ways for lawyers to sidestep this requirement. Importantly, however, the South Korean legal sector is still developing and is making a concerted effort to improve its pro bono involvement.

September 2015

Pro Bono Practices and Opportunities in South Korea

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Spain

### INTRODUCTION

Pro bono is a relatively new concept in Spain. The American term pro bono does not exist as such in the Spanish jurisprudential lexicon as currently defined by the Spanish Constitution of 1978 (the “**Constitution**”). Instead, following the tradition of other European jurisdictions, the Spanish legal system refers to the provision of free legal aid to indigent clients (*Asistencia Jurídica Gratuita*). However, Spain has strengthened its commitment to expanding the role of pro bono. An example of this commitment is Spain’s hosting of the 2012 European Pro Bono Forum, which offered an unprecedented focus on pro bono in Spain and the broader Spanish-speaking world.<sup>1</sup> This commitment, combined with the growing number of recent pro bono initiatives, has gradually helped pro bono to become part of the legal landscape in Spain. This report provides an overview of the Spanish legal system, State-sponsored legal aid (*Asistencia Jurídica Gratuita*) available for low income individuals, and the recent growth of the pro bono movement.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Constitution states that Spain is a social and democratic state subject to the rule of law, which advocates liberty, justice, equality and political pluralism as the overriding values of its legal system.<sup>2</sup> In terms of contemporary legal systems, the Spanish system follows what is known as the continental model. The basic features of this model are: (i) a separation between the public and private sectors of the legal system, which is divided into sections covering constitutional, criminal, administrative, tax, civil, commercial, labor and procedural matters; (ii) primacy of statute law and written law, within the system of sources as defined in the Civil Code, namely statute, custom and the general principles of law; and (iii) a hierarchical organization of the judiciary power with a system of judicial appeals.<sup>3</sup>

##### The Courts

##### Levels, Relevant Types and Locations

In accordance with the explanatory memorandum to the Organic Law 6/1985, of July 1, 1985, on the Judiciary Power (*Ley Orgánica del Poder Judicial* (the “**LOPJ**”), the State is divided territorially, for judicial purposes, into municipalities, districts (*partidos*), provinces and autonomous communities. Various courts exercise jurisdiction over these territories including Justice of the Peace Courts (*Juzgados de Paz*), Courts of First Instance and Preliminary Investigations (*Juzgados de Primera Instancia e Instrucción*), Administrative Courts (*Juzgados de lo Contencioso-Administrativo*), Labor Tribunals (*Juzgado de lo Social*), Courts responsible for the welfare and supervision of prisoners (*Juzgados de Vigilancia Penitenciaria*), Juvenile Courts (*Juzgados de Menores*), Provincial Courts (*Audiencias Provinciales*) and the autonomous communities’ High Courts (*Tribunales Superiores de Justicia*). The National Criminal and Administrative Court (*Audiencia Nacional*), the Supreme Court (*Tribunal Supremo*), the Central Courts of Preliminary Investigations (*Juzgados Centrales de Instrucción*) and the Central Administrative Courts (*Juzgados Centrales de lo Contencioso-administrativo*) have nation-wide jurisdiction.

---

<sup>1</sup> Further information available at <http://www.pilnet.org/events/168-pilnet-forum-highlights-advent-of-pro-bono-in-spain.html> (last visited on September 4, 2015).

<sup>2</sup> Spanish Constitution, Article 1.

<sup>3</sup> Further information available at [https://e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states-16-es-en.do?member=1](https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-es-en.do?member=1) (last visited on September 4, 2015).



### Appointed vs. Elected Judges

The Spanish Judiciary is a professional judiciary whose members are public servants divided into the three categories: Judge (*Juez*), Higher Court Judge (*Magistrado*), and Judge of the Supreme Court (*Magistrado del Tribunal Supremo*).<sup>4</sup> Justice emanates from the people and is administered on behalf of the monarch by the judges constituting the judicial power. Judges are independent of the other powers of the State and are subject only to the Constitution and the law.

Access to careers in the judiciary is based on the principles of merit and ability. Under the LOPJ, in order to become a Judge, law graduates must pass a competitive State exam (*oposiciones a judicatura*) and take a course at the Judicial School (*Escuela Judicial*).<sup>5</sup> Judges of the Supreme Court (*Magistrados del Tribunal Supremo*) are appointed by the General Council of the Judiciary (*Consejo General del Poder Judicial*) from Higher Court Judges (*Magistrados*) with at least 15 years of professional experience, including ten years as a Higher Court Judge (*Magistrado*).<sup>6</sup> One in every five Judges of the Supreme Court is appointed from lawyers of recognized ability, with at least 15 years of experience.<sup>7</sup> Justices of the Peace (*Jueces de Paz*) do not belong to the Judiciary and are local people elected by the town council of the city where they were appointed.

## The Practice of Law

### Education

Until recently, in order to practice in Spain as an '*abogado*' it was necessary to hold a Spanish degree in law or an equivalent foreign degree and to be a member of the Bar Association (*Colegio de Abogados*) for the district in which the sole or main professional domicile is located. However, the enactment of a new law – Law 34/2006 and the Royal Decree 775/2011 – introduced dramatic changes to the legal profession in Spain, aiming to bring legal training in Spain in line with the rest of Europe.<sup>8</sup> The new law requires aspiring lawyers to complete a specific LLM (*Máster de Acceso a la Abogacía*), which encompasses a period of compulsory work experience (an internship lasting four to six months), and to pass a Bar Exam in order to become fully qualified lawyers. The LLM program was first instituted in the 2012/13 academic year with the first Bar Exam taking place on June 28, 2014, with an 80% pass rate.<sup>9</sup> The majority of Spain's premier law schools offer the new master's program and big law firms are broadly in favor of the new path into the profession given its compulsory internship requirement.

### Licensure

Lawyers provide legal advice and legal representation and also settle disputes through the alternative systems in place. The rules and organization of lawyers are stated in the Lawyers' Statute (*Estatuto General de la Abogacía Española*, Royal Decree 658/2001, June 22, 2001).<sup>10</sup> In addition to lawyers, the Spanish legal system also includes other legal professions, such as Public Prosecutors (*Fiscales*), Judges and High Court Judges (*Jueces* and *Magistrados*), Notaries, Court clerks, land and business Registrars and Legal Representatives (*Procuradores*).

The Establishment Directive 98/5/EC transposed to Spanish domestic law by virtue of Royal decree RD 936/2001, of August 3, 2001, permits EU, EEA and Swiss nationals who are qualified in those countries, under their home title to give advice in international law, the law of their home country as well as Spanish law. EU and EEA nationals who wish to practice the profession of lawyer on a permanent basis in Spain must be registered with a Spanish Bar Association that corresponds to the area in which they establish

---

<sup>4</sup> LOPJ, Article 299(1).

<sup>5</sup> LOPJ, Article 301.

<sup>6</sup> LOPJ, Article 345.

<sup>7</sup> LOPJ, Article 343.

<sup>8</sup> Real Decreto 775/2011, de 3 de junio, por el que se aprueba el Reglamento de la Ley 34/2006, de 30 de octubre, sobre el acceso a las profesiones de Abogado y Procurador de los Tribunales.

<sup>9</sup> See [http://lawyerpress.com/news/2014\\_12/0312\\_14\\_001.html](http://lawyerpress.com/news/2014_12/0312_14_001.html) (last visited on September 4, 2015).

<sup>10</sup> Available at <http://www.cgae.es/estatuto/220601.htm> (last visited on September 4, 2015).



their only or principal professional domicile. After three years of practice in Spain, they are eligible to qualify as a Spanish *abogado*.<sup>11</sup>

#### Demographics: Number of Lawyers Per Capita; Number of Legal Aid Lawyers Per Capita

According to the General Council of Spanish Advocacy (*Consejo General de la Abogacía Española*, (the “CGAE”)), as of December 31, 2014 there were 250,865 registered *abogados* in Spain,<sup>12</sup> distributed among 83 Spanish Bars. However, only approximately 150,000 of registered *abogados* are practicing attorneys. Currently, there are around 42,500 lawyers providing legal aid services in Spain.<sup>13</sup>

#### Legal Regulation of Lawyers

Lawyers (*Abogados*) are independent members of a liberal profession who provide a service to society. According to Article one of the Lawyer’s Statute, *abogados* are not civil servants and practice on the basis of free and fair competition. The CGAE represents the profession of *abogado* at a national level in Spain. The structure of the Spanish legal profession is decentralized, with 83 local Bar Associations (*Colegios de Abogados*) holding most of the regulatory power. The 83 local Bar Associations are grouped regionally into ten Regional Bar Councils (*Consejos Autonómicos de Colegios de Abogados*) which act as an intermediate body to represent the local Bars in the region.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The Spanish system of legal aid (*Asistencia Jurídica Gratuita*) is determined by law, financed by the State, organized and managed by the Spanish Bar and supervised by the CGAE. Additionally, the CGAE and the Bar of each territory or province have gradually developed additional services that are financed by the Bars themselves, in conjunction with specific aid from regional or local administrations. These additional services are known as Specialized Legal Guidance Services (*Servicios de Orientación Jurídica Especializados*).

The Constitutional Right to legal aid (*Asistencia Jurídica Gratuita*) is set out in Article 119 of the Spanish Constitution and is expanded by Law 1/1996, of January 10, 1996, of *Asistencia Jurídica Gratuita*.<sup>14</sup> Broadly speaking, the right to legal aid includes the following benefits: (i) free advice and guidance prior to the start of the legal proceedings; (ii) access to a lawyer by the person under arrest or the prisoner; (iii) free defense and representation by a lawyer during the legal proceedings (the so-called *turno de oficio*); and (iv) other free services such as access to public registries and documents.<sup>15</sup>

Legal aid can be requested by citizens who are involved in or about to initiate any kind of legal proceedings and who lack sufficient financial means to carry out the litigation. Therefore, all citizens, including foreigners, who can demonstrate insufficient means for litigation, even where they do not legally reside in Spain, are entitled to legal aid and representation free of charge in any of the following four areas of law: civil, criminal, administrative or labor proceedings. Specifically, the following are entitled to legal aid: (i) Spanish citizens, nationals of other Member States of the European Union and any foreigners residing in Spain, where they can demonstrate insufficient means for litigation; (ii) managing

<sup>11</sup> Further information available at <http://www.mjusticia.gob.es/cs/Satellite/Portal/en/servicios-ciudadano/tramites-gestiones-personales/dispensa-legal-nacionalidad> (last visited on September 4, 2015).

<sup>12</sup> See <http://www.abogacia.es/2013/04/16/censo-numerico-de-abogados/> (last visited on September 4, 2015).

<sup>13</sup> VIII Informe del Observatorio de Justicia Gratuita. Available at [http://www.abogacia.es/repositorio/viii\\_observatorio\\_justicia\\_gratuita/offline/download.pdf](http://www.abogacia.es/repositorio/viii_observatorio_justicia_gratuita/offline/download.pdf) (last visited on September 4, 2015).

<sup>14</sup> Legal Aid Law 1/1996, of January 10, implements Article 119 of the Spanish Constitution and further develops the system as initially set out in Articles 20(2) and 440(2) of Law 6/1985. Law 1/1996 was developed by Royal Decree 2103/1996, of September 20, as modified by Royal Decree 1455/2005, of December 2.

<sup>15</sup> Legal Aid Law 1/1996, Article 6.



bodies and common services of the social security system; and (iii) non-profit organizations and foundations registered in the corresponding administrative register, where they can demonstrate insufficient means for litigation.

## State-Subsidized Legal Aid

### Eligibility Criteria

The essential criterion for receiving legal aid is financial need.<sup>16</sup> Any individual has the right to legal aid in Spain when he or she meets the threshold set out by law. Legal aid will be granted when the individual can show that the income of the family unit does not exceed double the Public Index of Income (IPREM) applicable at the time of application, annually established by the State. In 2010, the threshold was frozen and set at €532.51 per month.<sup>17</sup> Exceptionally, the law also allows for legal aid to be granted to individuals who may not meet the financial threshold, but still may qualify given their low income and economic circumstances (disabilities and/or other family circumstances).<sup>18</sup>

The system of *asistencia jurídica gratuita* is organized and monitored by the Bar of each province. Each Bar has a Committee in charge of managing the legal aid system within its territory (*Comisiones de Asistencia Jurídica Gratuita*).<sup>19</sup> In order to receive aid, a petitioner must complete a request for legal aid before the Bar of the province where they reside or where the legal proceedings are due to take place, and provide proof of income. The *Comisiones de Asistencia Jurídica Gratuita* will assess whether or not the criteria are met and whether they will assign a legal aid lawyer. Legal aid applicants may waive their right to a lawyer during the legal proceedings and appoint a lawyer of their choice without losing the other legal aid benefits. However, this will only be permitted if the lawyer chosen by the applicant does not request payment for the legal services offered.<sup>20</sup>

### Mandatory Assignments to Legal Aid Matters

The attorney undertaking a legal aid matter is appointed by the court which granted the aid at the aided person's request on the basis of lists of attorneys compiled and kept by local Bar Associations. The attorneys are included in these lists on a voluntary basis and, if chosen, are obliged to provide their legal services. Legal aid lawyers receive payment in exchange for the services provided, according to a fees schedule set by the State. This payment, however, is lower than the fees typically received by Spanish lawyers, in particular compared to the fees of large firms.

### Unmet Needs and Access Analysis

In 2013, there were 1,770,000 cases of free legal aid in Spain. There are approximately 42,500 registered lawyers that provide free legal assistance (around 31.5% of practicing lawyers registered). However, while the number of legal aid lawyers increases every year, the expenditure on legal aid steadily diminishes. In 2013 legal aid expenditures totaled around €223.5 million, a 16% decrease from 2009. This reduction comes mainly from cuts in the payments received by legal aid lawyers (*turno de oficio*). According to the results provided for 2013, 57.6% of the cases under the *turno de oficio* concerned

---

<sup>16</sup> Law 1/1996, Article 3.

<sup>17</sup> The IPREM has been frozen since 2010. It remains the same for 2015. See at <http://www.iprem.com.es/> (last visited on September 4, 2015).

<sup>18</sup> Law 1/1996, Article 5.

<sup>19</sup> Created by Law 1/1996.

<sup>20</sup> Law 1/1996, Articles 27 and 28. However, Observatorio de la Justicia Gratuita, a monitoring center of free legal aid, proposed in June 2007 to allow free legal assistance by the lawyer of the applicant's choice. This proposal has not yet been implemented.



criminal proceedings, 32.6% civil proceedings, 5% administrative proceedings, and 4.8% social and other proceedings.<sup>21</sup>

In addition to the right to legal aid developed by Law 1/1996, the CGAE, Bars, and regional and local administrations have created several services that complement legal aid services. These services are funded by the Bars and regional and local administrations. Services created include the *Servicio de Asistencia a las Víctimas del Delito* (assistance to the victims of crime); *Servicio de Asistencia a las Mujeres Maltratadas* (assistance to victims of gender-based violence); *Servicio de Extranjería* (assistance to immigration), *Servicios de Asistencia Jurídica a los mayores* (legal aid to the elderly); and *Servicio de Orientación y Asistencia Jurídica Penitenciaria* (legal guidance and assistance in prison).<sup>22</sup>

A draft bill on legal aid (*Proyecto de Ley de Asistencia Jurídica Gratuita*)<sup>23</sup> was approved by the Spanish Government in February 2014. Once the draft bill is approved by Parliament,<sup>24</sup> it will replace the existing law on legal aid which dates from 1996. The draft bill extends free legal aid to more vulnerable groups including victims of gender violence, terrorism and human trafficking and people with disabilities. Additionally, the financial resources threshold will also be slightly extended.<sup>25</sup>

### Alternative Dispute Resolution

There has been an increase in litigation, which is having an impact on the smooth operation of the justice system. For this reason, alternative ways of resolving conflicts are being sought which are more efficient than those offered by the current model. Arbitration is one such way, together with mediation and conciliation.<sup>26</sup>

Since the enactment of the Spanish Arbitration Law in 1988, and particularly the more modern Spanish Arbitration Law 60/2003, of December 23, 2003, the arbitration culture has been embraced by practitioners and companies. There are two main arbitration institutions in Spain, the Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid (*Corte de Arbitraje de Madrid*, CAM) and the Civil and Commercial Arbitration Court of Madrid (*Corte Civil y Mercantil de Arbitraje*, CIMA), both of which have modern and flexible rules, making them very successful.<sup>27</sup>

Unlike the embedded tradition of common law countries towards mediation, in Spain there is barely any tradition to attempt mediation either prior to judicial or arbitral proceedings. The Spanish Civil and Commercial Mediation Law (*Ley de mediación en asuntos civiles y mercantiles*, CCML) was enacted on July 7, 2012. The CCML is mostly based on the UNCITRAL Mediation Model and was carefully drafted so

---

<sup>21</sup> VIII Informe del Observatorio de Justicia Gratuita. Available at [http://www.abogacia.es/repositorio/viii\\_observatorio\\_justicia\\_gratuita/offline/download.pdf](http://www.abogacia.es/repositorio/viii_observatorio_justicia_gratuita/offline/download.pdf) (last visited on September 4, 2015).

<sup>22</sup> Informe del Observatorio de la Justicia Gratuita (2006), p. 13. Available at <http://www.abogacia.es/wp-content/uploads/2012/07/I-Informe-del-Observatorio-de-Justicia-Gratuita.pdf> (last visited on September 4, 2015).

<sup>23</sup> Available at [http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427033388?blobheader=application%2Fpdf&blobheadernam e1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DPL\\_ASISTENCIA\\_JUR%C3%8DDICA\\_GRATUITA\\_-\\_CM\\_21-02-14\\_%28WEB%29.PDF.PDF](http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427033388?blobheader=application%2Fpdf&blobheadernam e1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DPL_ASISTENCIA_JUR%C3%8DDICA_GRATUITA_-_CM_21-02-14_%28WEB%29.PDF.PDF) (last visited on September 4, 2015).

<sup>24</sup> As of the date of publication, it has not been yet approved.

<sup>25</sup> The 1996 income threshold was twice the inter-professional minimum wage at 14,910 euros per year. The threshold will change to 2.5 times the Multiple Effects Income Indicator (known as the Indicador Público de Renta de Efectos Múltiples or IPREM) of 6,390.13 euros per year, equal to 15,975 euros. For a family of four the IPREM will be multiplied by three to give a total threshold of 19,170 euros.

<sup>26</sup> Further information available at [https://e-justice.europa.eu/content\\_mediation\\_in\\_member\\_states-64-es-en.do?member=1](https://e-justice.europa.eu/content_mediation_in_member_states-64-es-en.do?member=1) (last visited on September 4, 2015).

<sup>27</sup> Further information available at [http://www.uria.com/documentos/publicaciones/3410/colaboraciones/1089/documento/GLI-DR\\_1st-Ed\\_Spain.pdf?id=3956](http://www.uria.com/documentos/publicaciones/3410/colaboraciones/1089/documento/GLI-DR_1st-Ed_Spain.pdf?id=3956) (last visited on September 4, 2015).



as to avoid creating a conflict with other mediation laws enacted by other autonomous regions, such as Catalonia.<sup>28</sup> Mediation proceedings that are connected with the court are free of charge. Outside of mediation connected with the court, the parties are free to use a mediator and to pay freely agreed fees. CCML expressly provides that whether or not mediation has ended in an agreement, the cost will be divided equally between the parties unless otherwise agreed.<sup>29</sup>

Conciliation is a voluntary process where the parties seek to reach an amicable dispute settlement with the assistance of the conciliator, who acts as a neutral third party. The main difference between conciliation and mediation proceedings is that the conciliator will provide a non-binding settlement proposal, while a mediator, by contrast, will in most cases refrain from making such a proposal. Conciliation usually takes place in labor and civil proceedings.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Spain does not have a well-established pro bono culture. Rather, pro bono is a new concept in Spain and many lawyers and NGOs are not aware of its existence. The main reason for the lack of pro bono work in Spain is that the Spanish legal system already has a very strong legal aid system in place, which has proven to be effective for more than 200 years. The main difference between pro bono work and legal aid in Spain is that the former is mainly targeted charities and NGOs (not at individuals) whereas legal aid is directed mainly at individuals (although as discussed above NGO's and foundations can also apply for and benefit from legal aid). Therefore the real challenge is to make society aware that there is room for the coexistence of both legal aid and pro bono. Recently, Spain has strengthened its commitment to expanding the pro bono movement. As explained above, an example of this commitment is Spain's hosting of the 2012 European Pro Bono Forum, which offered an unprecedented focus on pro bono in Spain and the broader Spanish-speaking community.<sup>30</sup>

#### Private Attorneys

Private attorneys can undertake pro bono matters on their own initiative and there are no mandatory assignments. Besides the pro bono programs within law firms, private attorneys who wish to work on pro bono cases can reach local Bar Associations in order to get involved. Once the attorney has expressed his or her area of interest, the Bar matches a pro bono case with a volunteer attorney. Bar Associations and clearinghouses seem to suggest an expansion of the pro bono movement in Spain.

#### Law Firms Pro Bono Programs

There are some opportunities for new forms of pro bono work in the Spanish landscape. Many law firms, including the largest Spanish law firms as well as international law firms with a presence in Spain, have ongoing pro bono projects. Some large law firms have created pro bono committees to offer legal know-how and resources to the community, as well as being actively involved in pro bono projects also known as Social Responsibility programs (*Responsabilidad Social*).

Garrigues is the Iberian Peninsula's leading law firm and it also has a very active role in pro bono among Spanish law firms. Garrigues' pro bono program sets out the procedures for the acceptance and performance of projects and is designed to offer a framework for the firm's lawyers to be able to provide services free of charge to non-profit entities for charitable, welfare, cultural or educational purposes. The firm has a Pro Bono Committee made up of partners and associates in order to ensure that pro bono

---

<sup>28</sup> Further information available at <http://www.globallegalinsights.com/practice-areas/litigation-and-dispute-resolution/global-legal-insights-litigation-and-dispute-resolution-3rd-ed/spain> (last visited on September 4, 2015).

<sup>29</sup> Further information available at [https://e-justice.europa.eu/content\\_mediation\\_in\\_member\\_states-64-es-en.do?member=1](https://e-justice.europa.eu/content_mediation_in_member_states-64-es-en.do?member=1) (last visited on September 4, 2015).

<sup>30</sup> Further information available at <http://www.pilnet.org/events/168-pilnet-forum-highlights-advent-of-pro-bono-in-spain.htm> (last visited on September 4, 2015).



work is properly organized. While participation in pro bono activities is entirely voluntary, the firm encourages it and values it highly.<sup>31</sup> Garrigues also set up Garrigues Foundation (*Fundación Garrigues*), which aims to serve the general interests of civil society through three core mainstays consisting of applied legal research, a program of awards and scholarships, and community outreach initiatives.<sup>32</sup>

### Bar Association Pro Bono Programs

The Center for Lawyer's Social Responsibility (*Centro de Responsabilidad Social de la Abogacía*)<sup>33</sup> was founded in 2008 within the Madrid Bar (*Colegio de Abogados de Madrid*). The Center promotes individual and corporate pro bono work, as well as other social programs. It has an annual call for grants, with a budget of 200,000 euros for financing projects. These grants are for supporting initiatives that serve to fulfill the Center's mission. The Center serves as a clearinghouse, working as an intermediary between Bar members and the legal needs of NGOs (never to individuals or in competition or replacement of legal aid services). In addition, many of the regional Bars have created working groups in support of human rights, as well as working groups for social action and cooperation programs.

### Non-Governmental Organizations (NGOs)

The non-profit organization *Fundación Hazlo posible* recently launched [www.probonos.net](http://www.probonos.net)<sup>34</sup> (last visited on September 4, 2015), the first online clearinghouse in Spain. It serves as a platform to channel legal affairs towards NGOs and its beneficiaries, responding to the real need of coordinating pro bono activities in Spain. Through the platform, any NGO interested in receiving legal assistance can request it via the website, free of charge. To date, a total of 38 NGOs have relied on this platform to solve legal questions.

### University Legal Clinics and Law Students

Even though there is widespread recognition of the importance and benefits of pro bono work in legal education, most Spanish law schools do not offer pro bono activities within their university programs. However, some universities have opted for voluntary programs and seem to administer them with success. This is the case for two very recent initiatives proposed by the Fernando Pombo Foundation (*Fundación Fernando Pombo*). The Fernando Pombo Foundation and the International University of la Rioja, with the aim of promoting social responsibility in the legal profession among young lawyers, have created an online Legal Clinic, and the Fernando Pombo Foundation jointly with the University Carlos III of Madrid have created a University Legal Clinic in order to provide free legal assistance to the association of people affected by Chronic Fatigue Syndrome and Multiple Chemical Sensitivities (SFC-SQM Madrid).<sup>35</sup> Law schools are uniquely well-positioned to introduce aspiring lawyers to the importance of pro bono work, and to foster a sense of commitment to it. Although these are only initial steps made by some universities, they may gradually become part of the legal education system in Spain.

## Historic Development and Current State of Pro Bono

The historic development of pro bono is inevitably linked to the well-established system of legal aid sponsored by the Spanish Government. There is still a widespread belief among the legal profession that in order to do meaningful pro bono work, lawyers who wish to represent indigent clients must offer their services as part of the social legal aid system. This inaccurate belief is a key systemic barrier to pro bono. Indeed, numerous opportunities for expanding the scope of pro bono practice in Spain do exist and the

---

<sup>31</sup> See <http://www.garrigues.com/en/ResponsabilidadSocial/Paginas/ProBono.aspx> (last visited on September 4, 2015).

<sup>32</sup> See <http://www.garrigues.com/en/ResponsabilidadSocial/Fundacion/Paginas/Inicio.aspx> (last visited on September 4, 2015).

<sup>33</sup> See [http://crsa.icam.es/web3/cache/CRSA\\_index.html](http://crsa.icam.es/web3/cache/CRSA_index.html) (last visited on September 4, 2015).

<sup>34</sup> See [www.probonos.net](http://www.probonos.net) (last visited on September 4, 2015).

<sup>35</sup> See <http://www.fundacionpombo.org/en/what-we-do/training-on-social-responsibility-in-the-legal-profession/legal-clinics/> (last visited on September 4, 2015).



majority of the larger law firms already have pro bono practices that go beyond the institutionalized system of legal aid. Other barriers to pro bono work include onerous litigation, delays, difficulty accessing the pro bono system and insufficiency of resources. Despite these barriers, the current state of pro bono is gradually developing, with many advocacy efforts currently underway from different institutions, local Bar Associations, NGOs, as well as from the private legal sector.

### Pro Bono Resources

- The foundation for Spanish lawyers that develops and promotes the protection of human rights in Spain: [www.fundacionabogacia.org](http://www.fundacionabogacia.org) (last visited on September 4, 2015)
- The General Council for Spanish Advocacy: <http://www.cgae.es> (last visited on September 4, 2015)
- Lawyers in Spain: <http://www.abogados.es/> (last visited on September 4, 2015)
- Free Legal aid website: <http://www.justiciagratis.es/publico> (last visited on September 4, 2015)
- The Center for Lawyer's Social Responsibility (Centro de Responsabilidad Social de la Abogacía) within the Madrid Bar (Colegio de Abogados de Madrid): [http://crsa.icam.es/web3/cache/CRSA\\_index.html](http://crsa.icam.es/web3/cache/CRSA_index.html) (last visited on September 4, 2015).
- Garrigues Foundation (Fundación Garrigues): <http://www.garrigues.com/en/ResponsabilidadSocial/Fundacion/Paginas/Inicio.aspx> (last visited on September 4, 2015).
- Fernando Pombo Foundation (Fundación Fernando Pombo): <http://www.fundacionpombo.org/en/> (last visited on September 4, 2015).

## CONCLUSION

Pro bono as a concept is still young in Spain, but the idea of the legal community's social responsibility has been present for centuries. This long-standing tradition of lawyers helping the less fortunate creates a fertile ground for the rise of pro bono. Despite the fact that the Spanish legal landscape remains rooted to the legal aid system, numerous opportunities for expanding the scope of pro bono practice in Spain exist and some of the largest law firms already have pro bono programs in place. In addition, various pro bono initiatives are proliferating, such as university legal clinics and online clearinghouses, which seem to indicate an expansion of the pro bono movement in Spain.

September 2015

### Pro Bono Practices and Opportunities in Spain

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Sweden

### INTRODUCTION

The legal systems in Sweden and other Nordic countries are very similar, providing a comprehensive system of subsidized legal services. As a result, there has historically been little need for lawyers to provide free legal services in Sweden. However, funding cuts within the state welfare system in recent years have created greater need for legal services among the poor, leading to the emergence of new bar- and ngo-sponsored pro bono programs and the slow development of pro bono legal culture in Sweden.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### The Constitution and Governing Laws

The Swedish Constitution is comprised of four fundamental laws: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law of Freedom of Expression.<sup>1</sup> Judicial review is guaranteed by a constitutional provision under Article 11 of the Swedish Constitution.

In Sweden, the most important sources of law are statutes, which are divided into acts, ordinances and regulations. Case law also plays an important role in the application of Swedish law throughout the court system.<sup>2</sup> The Ministry of Justice is primarily concerned with legislation concerning the judiciary, whereas the National Courts Administration (*Domstolsverket*) is responsible for the actual day-to-day administration of the courts.<sup>3</sup>

Under the Swedish Code of Judicial Procedure (*Rättegångsbalken*), a lawyer is required to perform any assignment with professionalism and due care and in general to act honestly and in accordance with the rules governing good professional conduct (*Vägledande regler om god advokatsed*; hereinafter the “**Rules of Professional Conduct**” or the “**Rules**”). The Rules of Professional Conduct are a codification of the practices established by the Board of the Swedish Bar Association (*Sveriges Advokatsamfund*) and the precedents of the Bar Association’s disciplinary committees (*Advokatsamfundets disciplinnämnd*). The goal of the Rules is to promote a “free and independent legal profession” as part of a “society governed by the rule of law . . . for the protection of individual freedoms and rights.”<sup>4</sup> Although the Rules were originally intended to protect the public from unqualified and dishonest attorneys, over time they have become very important guides for practicing attorneys. Compensation to attorneys in Sweden is regulated by law and by the Rules of Professional Conduct. Under Section 4 of the Rules, the fee charged by an attorney “must be reasonable” for the work performed.<sup>5</sup> The reasonableness of the fee is determined by the amount and quality of the work required and the attorney’s expertise, as well as the difficulty of the assignment and the type of claim involved. The main purpose of Section 4 is to avoid overcharging a client, not to prevent attorneys from working for free by providing pro bono services.

---

<sup>1</sup> The Swedish System of Government, available at <https://sweden.se/society/the-swedish-system-of-government/> (last visited on September 4, 2015).

<sup>2</sup> European Judicial Network, “Legal order – Sweden”, available at [http://ec.europa.eu/civiljustice/legal\\_order/legal\\_order\\_swe\\_en.htm](http://ec.europa.eu/civiljustice/legal_order/legal_order_swe_en.htm) (last visited on September 4, 2015).

<sup>3</sup> Government Offices of Sweden, “Ministry of Justice”, available at <http://www.government.se/government-of-sweden/ministry-of-justice/> (last visited on September 4, 2015).

<sup>4</sup> Code of Professional Conduct for Members of the Swedish Bar Association, § 1 (2008), available at [http://www.advokatsamfundet.se/Documents/Advokatsamfundet\\_eng/Code\\_of\\_Professional\\_Conduct\\_with\\_Commentary.pdf](http://www.advokatsamfundet.se/Documents/Advokatsamfundet_eng/Code_of_Professional_Conduct_with_Commentary.pdf) (last visited on September 4, 2015).

<sup>5</sup> Id. at § 4.



The Swedish Bar Association (together with all of the national Bars and law societies of the European Union (the “EU”) and the European Economic Area) is also a member of the Council of Bars and Law Societies of Europe (the “CCBE”). The CCBE adopted the European Code of Conduct in 1988, which was last amended in 2006 and is applicable to all cross-border activities of lawyers in the EU and European Economic Area.<sup>6</sup> According to the European Code of Conduct, a lawyer shall not enter into a *pactum de quota litis*, an arrangement in which the lawyer’s fee is a share of whatever is to be recovered.<sup>7</sup> Consequently, payments for legal services rendered pursuant to *de quota litis* and “no cure no pay” or contingency fee arrangements are prohibited in the cross-border activities of Swedish attorneys, except for special cause.<sup>8</sup>

## The Courts

Sweden has a dual court system, comprised of the general courts and administrative courts. The general courts are courts of general jurisdiction that preside over civil and criminal disputes between private parties. They are composed of three tiers: 48 district courts (*tingsrätt*), six courts of appeal (*hovrätt*), and the Supreme Court (*Högsta Domstolen*).<sup>9</sup> The general administrative courts preside over issues between individuals and the State. This administrative system also has three levels: 12 administrative courts, four administrative courts of appeal, and the Supreme Administrative Court (*Högsta förvaltningsdomstolen*).<sup>10</sup> In addition, there are several specialized tribunals in Sweden, such as the Market Court, Labor Court and Court of Patent Appeals.<sup>11</sup>

Under Chapter 11 of the Swedish Constitution, members of the Supreme Court or Supreme Administrative Court must be appointed only if that person has been appointed as a permanent justice of that court.<sup>12</sup> In addition, only a Swedish citizen may hold or exercise the functions of a judicial office.

## The Practice of Law

Any person may practice law in Sweden, but only members of the Swedish Bar Association (the “Bar”) are entitled to use the professional title of advocate (*advokat*). There are approximately 5,000 advocates registered with the Bar Association as of December, 2011,<sup>13</sup> which is roughly 50 advocates per 100,000

---

<sup>6</sup> SWEDISH BAR ASSOCIATION, available at <http://www.advokatsamfundet.se/Advokatsamfundet-engelska/Rules-and-regulations/Code-of-Conduct/> (last visited on September 4, 2015) see also Code of Conduct for Lawyers in the European Union, Introduction, available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/EN\\_Code\\_of\\_conductp1\\_1306748215.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Code_of_conductp1_1306748215.pdf) (last visited on September 4, 2015).

<sup>7</sup> Code of Conduct for Lawyers in the European Union, § 3.3.

<sup>8</sup> See, e.g., *id.*; Rules of Professional Conduct, § 4.2. Special cause includes situations where an advocate represents the interests of a collective action, is engaged in a cross-border mandate that requires handling outside of Sweden, or when a client without a quota agreement finds it difficult to get access to justice. See commentary to Rule 4.2.

<sup>9</sup> See SVERIGES DOMSTOLAR, Courts of Sweden (Feb. 18, 2014), available at <http://www.domstol.se/Om-Sveriges-Domstolar/Domstolarna/> (last visited on September 4, 2015); Court Statistics 2014: Official Statistics of Sweden, Domstolsverket (2014), available at [http://www.domstol.se/Publikationer/Statistik/domstolsstatistik\\_2014.pdf](http://www.domstol.se/Publikationer/Statistik/domstolsstatistik_2014.pdf) (last visited on September 4, 2015).

<sup>10</sup> *Id.* at 19.

<sup>11</sup> SVERIGES DOMSTOLAR, *supra* n.9.

<sup>12</sup> Sweden – Constitution, available at [http://www.servat.unibe.ch/icl/sw00000\\_.html](http://www.servat.unibe.ch/icl/sw00000_.html) (last visited on September 4, 2015).

<sup>13</sup> Available at <http://www.advokatsamfundet.se/Pressrum/Fakta-om-Advokatsamfundet/> (last visited on September 4, 2015); see also CCBE, CCBE Lawyers’ Statistics (2010), available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/2010\\_table\\_of\\_lawyer1\\_1337839511.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2010_table_of_lawyer1_1337839511.pdf) (last visited on September 4, 2015).



residents of Sweden.<sup>14</sup> In order to ensure the professional independence of Swedish lawyers, in-house counsel are not permitted to join the Bar, nor may members of the Bar be employed by someone outside the Bar or form a company with a non-member. More than half of Bar members are engaged in business law as a main practice area, less than 40% are engaged in criminal law practice, and the number specializing in family law is increasingly sparse.<sup>15</sup> Approximately 25% of Bar members are women.<sup>16</sup> In addition, approximately 1,900 associates not yet members of the Bar are employed in law firms.<sup>17</sup> The two largest law firms in Sweden employ over 300 lawyers each.<sup>18</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

It is a fundamental right in Sweden to have one's case heard by a legal representative, either in or outside of court.<sup>19</sup> Legal aid is a type of social legislation that aims to help those who cannot afford legal support through other avenues.<sup>20</sup> For civil matters in Sweden, there are two types of legal assistance available: legal advice and legal aid. Both types of assistance are provided by the State and are regulated by the Legal Aid Authority (*Rättshjälpsmyndigheten*) under the Legal Aid Act of 1996 (*Rättshjälpslagen*; hereinafter, the "**Act**").<sup>21</sup>

Up to two hours of legal advice is available to everyone in all legal matters and is subject to a set hourly fee.<sup>22</sup> The fee may be reduced if the person seeking the advice has insufficient resources or is a minor. In such cases, the State funds the balance of the advocate's fee. Advice is typically sought regarding the rules applicable to marriage or other forms of cohabitation; statutory rules in connection with divorce; inheritance and testamentary issues; and tenancy issues. While such advice is usually provided by lawyers at firms, the Act does not require such advocates to provide these services nor does it limit which advocates may provide these services.

### State-Subsidized Legal Aid

#### Eligibility Criteria

Legal aid is available only to natural persons or the estates of deceased individuals and can be granted in most legal matters, except where a Public Defense Counsel, Public Counsel, or Counsel for injured

---

<sup>14</sup> Available at [http://www.advokatsamfundet.se/Documents/Advokaten/Advokaten\\_9\\_08\\_lag.pdf](http://www.advokatsamfundet.se/Documents/Advokaten/Advokaten_9_08_lag.pdf) (last visited on September 4, 2015).

<sup>15</sup> STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, The Swedish Bar Association, 326 (2004), available at <http://www.scandinavianlaw.se/> (last visited on September 4, 2015).

<sup>16</sup> Available at <http://www.advokatsamfundet.se/Pressrum/Fakta-om-Advokatsamfundet/> (last visited on September 4, 2015).

<sup>17</sup> Id.

<sup>18</sup> STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *supra* n.15.

<sup>19</sup> SVERIGES DOMSTOLAR, Legal Aid in Sweden, available at [http://www.domstol.se/publikationer/informationsmaterial/legal\\_aid\\_in\\_sweden.pdf](http://www.domstol.se/publikationer/informationsmaterial/legal_aid_in_sweden.pdf) (last visited on September 4, 2015).

<sup>20</sup> See id.

<sup>21</sup> The Swedish Constitution provides that foreign nationals sojourning in Sweden have the same rights as Swedish nationals to obtain legal aid. See Instrument of Government, ch. 2, art. 22.

<sup>22</sup> EUROPEAN JUDICIAL NETWORK, Legal aid – Sweden, available at [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_swe\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_swe_en.htm) (last visited on September 4, 2015).

parties may be appointed.<sup>23</sup> In these latter cases, the legal representation is free to eligible individuals and therefore, the recipient is not entitled to legal aid.

In order for legal aid to be granted, the Legal Aid Authority, or the court hearing the dispute, must find it reasonable for the State to contribute towards the cost of legal representation. Eligibility requirements state that an applicant may not have an income exceeding approximately €29,000 per year, may not be covered by an insurance policy that covers legal representation, must have received at least one hour of legal advice from an attorney or trained lawyer, and the amount in controversy must be more than a threshold amount.<sup>24</sup> In general, the recipient is expected to contribute to the cost of his or her legal representation to the extent he or she can afford to pay, and legal aid is only available for the cost of representation up to 100 hours, except in special cases.<sup>25</sup> Once it grants an applicant's request for aid, the Legal Aid Authority has no control over subsequent proceedings, and it cannot recover any money from property retrieved in those proceedings, even where the victorious party was the recipient of legal aid funds.

### Other Forms of Legal Aid

In addition to the assistance available for civil matters, other sources of legal assistance available from the State include public defense counsel, public counsel, special representatives for children and assistance for victims of crime. As in most EU member states, Public Defense Counsel is appointed by a court and must be made available at no charge if a person is suspected of committing a serious criminal offense. Conversely, Public Defense Counsel is not typically provided for less serious offenses. If the accused is acquitted of such crimes, he or she need not repay the State for the Public Defense Counsel's services but, if sentenced for the offense, may be responsible to pay all or part of the State's costs as determined by a court.<sup>26</sup>

Assistance by Public Counsel is a factor in cases involving administrative courts or authorities. Under the Act Regarding Public Counsel (*Lag om offentligt biträde*), these attorneys are appointed by the agency administering the matter and paid for by the State.<sup>27</sup>

The Aggrieved Party Counsel (*Målsägandebitråde*) protects the interests of victims of crime. Its task is to provide support and assistance, which may include help in establishing the victim's claim for damages related to a criminal case.<sup>28</sup> According to the Act on Aggrieved Party Counsel (*Lag om Målsägandebitråde*), these state-funded legal services are provided for victims of sexual offenses; assault; unlawful deprivation of liberty; robbery; or other offenses under the Penal Code (*Brottsbalken*) for which imprisonment may be imposed.

The Swedish Crime Victim Compensation and Support Authority (*Brottsoffermyndigheten*) has an overall goal of looking after the rights of all victims of crime and drawing public attention to their needs and interests. The authority is nationally responsible for three areas of activities: dealing with matters

---

<sup>23</sup> See id.

<sup>24</sup> LEGAL AID IN SWEDEN, available at [http://www.domstol.se/Publikationer/Informationsmaterial/Legal\\_aid\\_in\\_Sweden.pdf](http://www.domstol.se/Publikationer/Informationsmaterial/Legal_aid_in_Sweden.pdf) (last visited on September 4, 2015). This amount was roughly €2,665 in 2015.

<sup>25</sup> SVERIGES DOMSTOLAR, Legal aid, available at <http://www.domstol.se/Funktioner/English/Legal-assistance/Legal-aid/> (last visited on September 4, 2015).

<sup>26</sup> SVERIGES DOMSTOLAR, Defence advokat, available at <http://www.domstol.se/Funktioner/English/Legal-assistance/If-you-need-advice/> (last visited on September 4, 2015).

<sup>27</sup> SVERIGES DOMSTOLAR, Myndighetsbeslut, available at <http://www.domstol.se/Myndighetsbeslut/Sa-avgors-mal-i-forvaltningsratten/Offentligt-bitrade/> (last visited on September 4, 2015).

<sup>28</sup> SVERIGES DOMSTOLAR, To the aggrieved party (victim of crime), available at <http://www.domstol.se/Funktioner/English/Legal-proceedings/To-the-victim-of-crime/> (last visited on September 4, 2015).



concerning criminal injuries compensation, administering the Crime Victims Fund and serving as a Centre of Competence for matters regarding victims of crime issues.<sup>29</sup>

In cases where a guardian, or someone with whom the guardian has a close relationship, is suspected of an offense against a child, a Guardian ad Litem may be appointed by the court to protect the child's interests during the preliminary investigation and court proceedings.<sup>30</sup> In accordance with the Act Regarding a Guardian ad Litem for a Child (*Lag om särskild företrädare för barn*) an attorney acting as *Guardian ad Litem* is paid by the State, and the protected child does not bear any of the costs associated with the attorney's assistance.

### Alternative Dispute Resolution

The Swedish government has established various Ombudsman offices where individuals can bring complaints against both private companies and state agencies. As with other government agencies, each Ombudsman office is independent and usually established to ensure compliance with specific laws or a general legal practice area.<sup>31</sup> For example, the Equal Opportunities Ombudsman (*Jämställdhetsombudsmannen*) was established to ensure compliance with the Equal Opportunities Act (*Jämställdhetslagen*). In January 2009 the Equality Ombudsman (*Diskrimineringsombudsmannen*) was formed by four previously separate ombudsmen: the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination on grounds of Sexual Orientation and the Disability Ombudsman. The Children's Ombudsman (*Barnombudsmannen*) was established to monitor Sweden's implementation of the United Nations Convention on the Rights of the Child and to protect children's rights in general. The Ombudsman institution has also been adopted by some nongovernmental organizations such as the Tenants' Association, where an aggrieved party may resolve its complaint against a landlord.

In addition to the various Ombudsman offices, the Swedish government has also established the National Board for Consumer Disputes (*Allmänna reklamationsnämnden*), which is empowered to settle disputes between consumers and vendors free of charge.<sup>32</sup> This agency is divided into 13 different departments that hear disputes, including those arising from travel, purchases of household appliances and services provided by banks and financial institutions, where the dispute exceeds certain value thresholds.<sup>33</sup> The agency does not have the authority of a court, but its nonbinding recommendations are usually followed. This dispute remedy is an inexpensive option for aggrieved consumers. The agency's recommendations are considered important guidelines for vendors in their business conduct, and the agency also provides guidance to the courts as they interpret consumer protection laws.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

Lawyers in Sweden are not required by law to perform pro bono work and there are no explicit legal restrictions of a lawyer's practice of pro bono work. In 1998, a group of Swedish lawyers founded the non-profit organization Lawyers Without Borders (*Advokater utan Gränser*), which administers several human

---

<sup>29</sup> BROTTSOFFERMYNDIGHETEN, Crime Victim Compensation and Support Authority, About us, available at <http://www.brottsoffermyndigheten.se/eng/about-us> (last visited on September 4, 2015).

<sup>30</sup> SVERIGES DOMSTOLAR, *supra* n.29.

<sup>31</sup> RIKSDAGENS OMBUDSMAN, The Ombudsmen, available at <http://www.jo.se/en/About-JO/The-Ombudsmen/> (last visited on September 4, 2015).

<sup>32</sup> THE NATIONAL BOARD FOR CONSUMER DISPUTES, (ARN) available at <http://www.arn.se/other-languages/english-what-is-arn/> (last visited on September 4, 2015).

<sup>33</sup> See *id.*



rights projects all around the world. The organization is composed of over 300 lawyers with different backgrounds, but many are from large law firms.

### Law Firm Pro Bono Programs

Recently, certain commercial law firms have begun to provide pro bono legal aid. This kind of pro bono work is influenced by the practice in the United States and is typically comprised of advice relating to corporate law, intellectual property, contracts or tax law.

For example, some large firms support charitable organizations, such as Doctors Without Borders (*Médecins Sans Frontières*), UNICEF, MinaStoraDag and SOS Children's Villages, by providing free legal services and legal counseling directly to the organizations. By providing free legal services, Swedish attorneys enable charitable organizations to utilize their donations more efficiently for humanitarian efforts. In the same manner, law firms have acted as sponsors for national sports committees or for cultural events. Large law firms have also provided pro bono services directly to individuals by partnering with organizations like the Center for Justice (*Centrum för Rättvisa*), a nonprofit organization whose purpose is to protect individuals' human rights in Sweden, or the United Nations to further efforts related to international human rights.

Recent developments with respect to pro bono in Sweden might also have been encouraged as a result of the engagement of lawyers in Sweden's largest pro bono project: a cooperation of lawyers offering legal aid for the victims of the Tsunami catastrophe in 2004 in Southeast Asia that affected Sweden very strongly. Immediately after the alarming dimensions of the catastrophe became publicly known (543 Swedish citizens died or were missing), the Swedish Bar Association decided to start a legal aid project to help the disaster victims and their families. Law firms of all sizes participated in the project and spent over 22,400 hours free of charge working on cases from various fields of law, such as foundation law; corporate law; family and estate law; and, to a great extent, insurance law. The massive pro bono effort received much attention from the Swedish media and public and showed that despite a limited history of pro bono service, lawyers in Sweden are willing to provide their legal expertise free of charge.

## Historic Development and Current State of Pro Bono

### Historic Development

With a comprehensive system of subsidized legal services in place, there has historically been little need for lawyers to provide free legal services in Sweden. Consequently, there is no long standing tradition of pro bono services provided by commercial law firms and no legal restrictions on a lawyer's ability to provide such services.

In 1998, in response to sweeping reforms, including cutbacks to the State's legal aid system, the Swedish Bar Association initiated the so-called "lawyers jour" or Advokatjouren program, in which a person is afforded a 15 minute meeting with a local lawyer. In this meeting, the lawyer identifies the legal issue and provides guidance on how to proceed.<sup>34</sup> This service is free of charge and is intended to provide those who are ineligible for legal aid with an opportunity to discuss his or her matter with a lawyer. While the individual is able to discuss his or her matter, no legal advice is given during these meetings – only guidance on whether a legal issue exists and how the person should proceed. The program makes free advice available to individuals who otherwise would not seek help, but it also gives attorneys an opportunity to offer their services. The participation in Advokatjouren is voluntary for the lawyers. Although many practicing attorneys greeted the program with enthusiasm, participating lawyers were primarily from smaller law firms specializing in family law or related fields. Large commercial law firms have rarely made their attorneys available to this program.<sup>35</sup>

---

<sup>34</sup> SWEDISH BAR ASSOCIATION, available at <https://www.advokatsamfundet.se/Behover-du-advokat/Advokatjouren/> (last visited on September 4, 2015).

<sup>35</sup> See Advokaten 2012-3, Advokater i det godas tjänst, available at <https://www.advokatsamfundet.se/Advokaten/Tidningsnummer/2012/Nr-3-2012-Argang-78/Advokater-i-det->



## Current State

Pro bono work is gaining ground in Sweden though, even among the larger commercial law firms. However, in Sweden, pro bono work is more of a matter of socio-political commitment and image building than benevolence in the form of legal aid. Hence, it is more common for Swedish law firms to provide services to the community in other ways. For example, some law firms help children with reading and studying, and some provide scholarships for talented students from immigrant families in order to promote more diversity in the field of law. Others provide education and training sessions or allow non-profit organizations to borrow office space free of charge for holding meetings, classes or conferences.<sup>36</sup>

### Laws and Regulations Impacting Pro Bono

In general, there are no obstacles to foreign-qualified lawyers practicing in Sweden without being established as an advocate under the Swedish system. Foreign-qualified lawyers are, however, prohibited from representing a party in a Swedish court until he or she passes an examination in order to demonstrate sufficient knowledge of the legal system.<sup>37</sup> As such, foreign-qualified lawyers may be limited in their provision of legal aid and pro bono services until such qualification is met.

### Barriers To Pro Bono Work And Other Considerations

Due to Sweden's well-developed, broad system of public welfare services, including State-funded legal advice and representation, Ombudsman offices and other services, organized pro bono activities by private legal professionals in the past have been limited. However, there is an ongoing internationalization of the legal culture in Europe, and American culture with a long tradition of pro bono activities is a strong influence in this development. The EU institutions also contribute to the development, especially in matters relating to human rights. Philanthropy and charity are being re-established in Sweden, and the need for and interest in pro bono services by Swedish advocates has increased and the availability of organized pro bono opportunities is slowly growing.<sup>38</sup>

A major impediment to the growth of pro bono services is the lack of a systematized pro bono clearinghouse in Sweden to facilitate pro bono relationships. Instead, advocates and law firms engage in pro bono activities on a case-by-case basis, typically either when contacted directly by individuals needing assistance or by partnering with a non-profit organization for discrete or long-term projects.

In addition, although large law firms are increasingly more supportive of pro bono activity by their attorneys, an attorney engaged in providing pro bono legal services is generally not credited for such an engagement because the billing demands for that individual are not reduced. Thus, advocates who desire to offer pro bono services must take on these opportunities in addition to their typical workload.

### Pro Bono Resources

- Advokatjouren program. Further details on the program are available at the Bar Association's website: <http://www.advokatsamfundet.se/Behover-du-advokat/Advokatjouren/> (last visited on September 4, 2015)
- Lawyers Without Borders: Advokater utan Gränser. Further information, including reports on current projects, is available on the organization's website: <http://www.advokaterutangranser.se/> (last visited on September 4, 2015).
- Center for Justice: Centrum for rattvisa. Additional information is available on the organization's website: <http://www.centrumforrattvisa.se/> (last visited on September 4, 2015).

---

[godas-tjanst/](http://www.godas-tjanst.se/) (last visited on September 4, 2015); InfoTorg Juridik, Mitt i juridiken (February 24, 2014) available at <http://www.infotorgjuridik.se/premium/mittijuridiken/article201971.ece> (last visited on September 4, 2015).

<sup>36</sup> MANNHEIMER SWARTLING, Pro Bono, available at <http://www.mannheimer.eu/en/expertise/mannheimer-swartling-and-sustainability/pro-bono/> (last visited on September 4, 2015).

<sup>37</sup> European Judicial Network, "European Judicial Network", available at [http://ec.europa.eu/civiljustice/legal\\_prof/legal\\_prof\\_swe\\_en.htm](http://ec.europa.eu/civiljustice/legal_prof/legal_prof_swe_en.htm) (last visited on September 4, 2015).

<sup>38</sup> See Advokaten 2012-3: Fokus Pro Bono på svenska, 26, available at <http://www.advokatsamfundet.se/Advokaten/Tidningsnummer/2012/Nr-3-2012-Argang-78/Juridifiering-och-filantropi-starker-svag-pro-bono> (last visited on September 4, 2015).



## CONCLUSION

In Sweden, legal advice and legal aid are largely provided by the State to its citizens as part of Sweden's entrenched and comprehensive social welfare system. However, funding cuts to the welfare system over the last two decades suggest a gap between the supply and demand for pro bono legal services that programs such as Advokatjouren, Advokater utan Gränser and the Centrum för Rättvisa have attempted to fill this gap. While attorneys at large firms have generally provided outreach and assistance to the community through non-legal avenues, there is evidence that a pro bono legal service culture in Sweden is slowly developing.

Contributing to this trend is a phenomenon wherein more Swedish law firms are discovering that pro bono services are not only matters of humanity and responsibility but might also have positive effects on their public reputation. Some law firms have already established ongoing relationships with pro bono or non-profit organizations for the purpose of providing legal services in underserved areas.

September 2015

Pro Bono Practices and Opportunities in Sweden

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Switzerland<sup>1</sup>

### INTRODUCTION

The Swiss judiciary has undergone many changes in the past decade, including comprehensive civil and criminal procedure reform and the establishment of new federal courts. Government-sponsored legal aid has supplied legal services to the needy since the Swiss Federal Supreme Court found an implicit constitutional right to legal representation in 1937. This well-established system, codified in federal (and for administrative proceedings, cantonal) statutes and administered at the cantonal level, has effectively supplanted traditional pro bono activity in Switzerland. This system waives court costs and may provide legal representation for those unable to pay, but it is conditioned in part upon the merits of the case at hand, and the party receiving aid is required to repay if possible within ten years after the close of the proceeding. Owing to the low hourly rate paid to legal aid attorneys, this work may be considered equivalent to pro bono by some. However, in practice and in large part due to this comprehensive state system, pro bono work is not otherwise part of the legal culture in Switzerland.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Switzerland is a confederation of 26 cantons and half-cantons, and has a three-tiered federal structure: the Confederation (or federal state), the Cantons (or states), and the Municipalities (or local authorities).<sup>2</sup> The Federal Constitution is the legal foundation of the Swiss Confederation. The Swiss legal system is based on civil law, which as in other jurisdictions is divided into public law (governing the organization of the state, as well as the interaction between the state and private individuals or entities) and private law (governing interactions between private individuals or entities).

##### The Courts

##### Federal Judiciary

The Swiss federal judiciary consists of the Federal Supreme Court (sometimes called the Swiss Federal Tribunal), the Federal Criminal Court, the Federal Administrative Court, and the Federal Patent Court. Swiss federal judges are appointed to six-year terms by parliament.

The Federal Supreme Court (which sits in Lausanne and Lucerne) is the highest judicial authority of Switzerland.<sup>3</sup> It is the court of appeal for all decisions of the cantonal courts of last instance (including cantonal supreme courts), and for most decisions of the three federal courts of first instance. The court generally sits in panels of three judges. (Five-judge panels sit to decide legal issues of basic significance, or at a judge's request). Final rulings in matters dealing with alleged violations of human rights may be referred to the European Court of Human Rights. The Federal Supreme Court lacks the authority to strike down unconstitutional laws at the federal level, although it has the power to review the constitutionality of cantonal laws.

---

<sup>1</sup> This chapter was drafted with the support of Dr. Ernst Staehelin (of Staehelin Olano Advokatur und Notariat, in Basel), and Birgit Sambeth Glasner and David F. Braun (both of Altenburger, in Geneva).

<sup>2</sup> For this and other general reference information, see THE SWISS CONFEDERATION: A BRIEF GUIDE 2015, available at <https://www.bk.admin.ch/dokumentation/02070/index.html?lang=en> (last visited on September 4, 2015).

<sup>3</sup> See FEDERAL SUPREME COURT, Jurisprudence, <http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht.htm> (last visited on September 4, 2015). Note that decisions are not published in English, although English-language press releases concerning major decisions may appear at the Federal Office of Justice website. Available at <https://www.bj.admin.ch/bj/en/home/aktuell/news.html> (last visited on September 4, 2015).



The Federal Criminal Court (located in Bellinzona) tries those criminal cases subject to federal criminal jurisdiction (a small number, such as those involving terrorism, organized crime, and crimes against federal institutions).<sup>4</sup> Since January 1, 2012, it also has an appeals chamber.<sup>5</sup>

The Federal Administrative Court (located in St. Gallen) reviews decisions applying federal administrative law.<sup>6</sup>

The Federal Patent Court (also located in St. Gallen) began operations on January 1, 2012, and is the court of first instance for all civil law disputes concerning patents, including litigation over patent validity and infringement and the granting of licenses. Its decisions can be appealed to the Federal Supreme Court.<sup>7</sup>

### Cantonal Judiciaries

Each of the 26 cantons also has its own constitution, parliament, and courts. The cantons exercise all sovereign rights not explicitly or implicitly assigned to the Confederation. Cantonal judiciaries are generally organized in two levels: courts of first instance, in many cases with a single judge presiding, and courts of appeals, normally with three sitting judges (though cantonal procedures vary). There may be separate courts for criminal, civil, and administrative proceedings at each level. Decisions of last instance of cantonal courts can be appealed to the Federal Supreme Court.

## The Practice of Law

### Education

Switzerland has nine law faculties affiliated with cantonal universities. Legal training commences following high school with the three-year bachelor's degree. Admission to the bar requires a master's degree, which takes two years after obtaining the bachelor's degree; additionally, the graduate must apprentice in a canton, which consists of articling under the supervision of a qualified lawyer or at a cantonal court (for between 12 and 24 months).<sup>8</sup> The graduate may then sit for that canton's bar exam. It is also possible, though not required, to complete a Ph.D. in law (*Doktor der Rechtswissenschaft* or *Doctorat en droit*), the highest academic qualification in the legal field. Although Swiss lawyers have a general duty to maintain current legal knowledge, there is no formal education certification, or mandatory continuing education hours requirement.

### Licensure

Each canton has its own bar association,<sup>9</sup> though the rules of professional conduct were harmonized in 2002, and further in 2005 as comprehensive "Swiss Ethical Rules."<sup>10</sup> Swiss lawyers are not required to join either the Swiss Bar Association<sup>11</sup> or the relevant cantonal bar association, although most do so.<sup>12</sup>

---

<sup>4</sup> See BUNDESSTRAFGERICHT (FEDERAL CRIMINAL COURT), <http://www.bstger.ch/> (last visited on September 4, 2015).

<sup>5</sup> See, e.g., supra n.2.

<sup>6</sup> See BUNDESVERWALTUNGSGERICHT (FEDERAL ADMINISTRATIVE COURT), <http://www.bvger.ch/index.html?lang=en> (last visited on September 4, 2015).

<sup>7</sup> Like its companion federal courts, it offers free access to recent decisions. See FEDERAL PATENT COURT, Case Law, <http://www.patentgericht.ch/en/rechtsprechung/case-law/> (last visited on September 4, 2015).

<sup>8</sup> See Free Movement of Lawyers Act of June 23, 2000, SR 935.61, available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/en\\_switzerland\\_feder1\\_1188890158.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_switzerland_feder1_1188890158.pdf) (last visited on September 4, 2015) (hereinafter FMLA) at art. 7(b). Part of this apprenticeship (usually six months) can be performed in a local judicial authority, a public administration, or even abroad. Some streamlined options also exist. For instance, in January 2011 the Geneva canton established a six-month intensive course for all graduates wishing to obtain admission to the Bar. This practice-oriented school teaches procedural aspects of civil, administrative and criminal issues, courtroom practice, negotiation and ADR.

<sup>9</sup> In two cantons, the bar associations are public law entities; in the remaining cantons, they are private associations.



## Demographics

As of 2015, the Swiss Bar Association had 9,741 members,<sup>13</sup> up 25% in a decade and almost double that of 20 years prior.<sup>14</sup> A 2012 CCBE survey found Switzerland had 9,210 total lawyers, of whom 8,864 were active and 2,324 were women.<sup>15</sup> Given that the Swiss population stands around eight million as of 2015, there are roughly 1.2 attorneys per 1,000 people in Switzerland. This sharp growth has led to increased competition in the legal market and an increased emphasis on advertising. In 2002, regulations were amended to provide lawyers in Switzerland with more freedom to advertise than lawyers in many other Western European nations.<sup>16</sup>

Typical Swiss law firms are small: the largest generally employ in the order of 100 lawyers.<sup>17</sup> The Swiss Bar Association reports that as of January 2012, a dozen firms had more than 50 attorneys, together employing roughly 10% of bar members; by contrast, roughly 8% of bar members are in solo practice.<sup>18</sup>

The Swiss legal landscape includes Swiss offices of several large global firms.<sup>19</sup> However, on May 6, 2010, the Canton of Zurich rejected the application of a foreign incorporated law firm to open a Swiss subsidiary.<sup>20</sup> Because a third of all Swiss lawyers practice in Zurich, this decision may effectively discourage (and if these views persist, effectively bar) large international law firms from opening Swiss subsidiaries.<sup>21</sup>

- 
- <sup>10</sup> See Ernst Staehelin, *Le projet de loi sur la profession d'avocat (Bill on the Legal Profession) SWISS BAR ASSOCIATION PUBLICATION* (Apr. 12, 2012), available at [http://www.sav-fsa.ch/en/documents/dynamiccontent/128\\_le-projet-de-loi-sur-la-profession-davocat-1\).pdf](http://www.sav-fsa.ch/en/documents/dynamiccontent/128_le-projet-de-loi-sur-la-profession-davocat-1).pdf) (last visited on September 4, 2015); see also FMLA supra n.8. The FMLA came into effect on Jun. 1, 2002.
- <sup>11</sup> See Swiss Bar Association, *Federal Laws*, <http://www.sav-fsa.ch/en/anwaltsrecht/gesetze-bund.html> (last visited on September 4, 2015). Every member of a cantonal bar association is also a member of the Swiss Bar Association.
- <sup>12</sup> It is estimated that approximately 90-95% of lawyers in Switzerland are members of a bar association. Most cantonal bar associations are private professional associations (see supra n.9).
- <sup>13</sup> Swiss Bar Association, *Who We Are*, <https://www.sav-fsa.ch/en/portrait/wer-wir-sind.html> (last visited on September 4, 2015).
- <sup>14</sup> See Michael Hueppi, *Anwaltsberuf: Lagebeurteilung (Legal Profession: Assessment) SWISS BAR ASSOCIATION PUBLICATION*, (Apr. 12, 2012), available at [http://www.sav-fsa.ch/de/anwaltsrecht/literatur/allgemeines.html#titel\\_anwaltsberuf-lagebeurteilung](http://www.sav-fsa.ch/de/anwaltsrecht/literatur/allgemeines.html#titel_anwaltsberuf-lagebeurteilung) (last visited on September 4, 2015).
- <sup>15</sup> Council of Bars and Law Societies of Europe, *CCBE Lawyers' Statistics 2012*, available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/2012\\_table\\_of\\_lawyer1\\_1356088494.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2012_table_of_lawyer1_1356088494.pdf) (last visited on September 4, 2015).
- <sup>16</sup> See Hueppi, supra n.14, at nn. 16-18; see also Staehelin, supra n.10 (discussion of advertising limitations being entirely removed); see also FMLA, supra n.10 at art. 12(d).
- <sup>17</sup> Lenz & Staehelin advertises over 200 attorneys as “the biggest legal team in Switzerland.” See Lenz & Staehelin Firm, available at <http://www.lenzstaehelin.com/en.html> (last visited on September 4, 2015); see also Hueppi, supra n.14 (identifying Lenz & Staehelin as the largest Swiss law firm in 2012).
- <sup>18</sup> See Hueppi, supra n.14.
- <sup>19</sup> For example, Baker & McKenzie has had offices in Zurich since 1958, and in Geneva since 1968. See <http://www.bakermckenzie.com/firmfacts/firmhistory/> (last visited on September 4, 2015); and <http://www.bakermckenzie.com/Switzerland/Geneva/> (last visited on September 4, 2015).
- <sup>20</sup> See Matthias Kilian, *New Threads, Shrinking Lawyers and More: Correspondent's Report from Europe*, 14(1) *LEGAL ETHICS* 129 (Jun. 2011) at 130-31.
- <sup>21</sup> *Id.* In general, a foreign law firm can only incorporate in Switzerland if a two-thirds majority (and in some cantons, all) of its lawyers are registered to practice, and if majority shareholders are Swiss-registered attorneys. Accordingly, a lawyers' corporation in Switzerland cannot have a majority of foreign lawyers. International firms with Swiss offices (such as Baker & McKenzie) are not incorporated in Switzerland.



## Types of Proceedings

In January 2011, new, unified federal codes of civil and criminal procedure replaced earlier, varied cantonal regulations.<sup>22</sup>

The revised Swiss Civil Procedure Code (the “CPC”) provides for three main types of proceedings: ordinary, simplified, and summary proceedings. Ordinary proceedings<sup>23</sup> apply in disputes where the value in dispute exceeds 30,000 francs. Simplified proceedings,<sup>24</sup> which are streamlined and less formal, apply where the value in dispute does not exceed 30,000 francs, as well as in certain matters in which a party requires special protection (e.g., tenancy disputes). Summary proceedings<sup>25</sup> apply to court injunctions, interim measures, and non-contentious matters, among other things.<sup>26</sup>

## Fee Arrangements

In 2004, the Federal Supreme Court held that the fundamental right of economic freedom protects litigation funding (as opposed to legal costs insurance).<sup>27</sup> It is therefore permissible for an independent third party to offer funding for litigation proceedings *provided that* the lawyer representing the funded party acts independently of the funder.

While in the past fee arrangements were more restrictive,<sup>28</sup> Swiss legal fees today are almost exclusively organized as hourly rates freely agreed upon between lawyer and client; no fee schedule binds or limits attorneys in this regard.<sup>29</sup> Some forms of fee arrangements, notably true contingent fees (where the attorney waives compensation in the event of a loss), are prohibited in litigation proceedings.<sup>30</sup> However, it is possible, though unusual, to agree on reduced fees (covering the effective costs) with a premium paid for a successful outcome. From the would-be litigant’s perspective, legal aid has been described as a substitute for the contingency fee system in Switzerland.<sup>31</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Unlike the constitutions of some other Western European nations (e.g., Italy, Portugal, the Netherlands), the Swiss Constitution does not expressly provide for the right to the assistance of counsel in legal proceedings.<sup>32</sup> But in 1937 the Federal Supreme Court held that indigent Swiss citizens implicitly have

---

<sup>22</sup> See Swiss Civil Procedure Code, SR 272 (Dec. 19, 2008). For non-binding English translation, see <http://www.admin.ch/ch/e/rs/c272.html> (last visited on September 4, 2015). See also Staehelin, *supra* n.10 (referencing codes’ adoption).

<sup>23</sup> See *id.* at tit. 3, arts. 219-242.

<sup>24</sup> See *id.* at tit. 4, arts. 243-247.

<sup>25</sup> See *id.* at tit. 5, arts. 248-270.

<sup>26</sup> See Richard Clark (ed.), *THE DISPUTE RESOLUTION REVIEW* 769 (4th ed. 2012).

<sup>27</sup> See Decision of the Federal Supreme Court, Dec. 10, 2004, FTD 131 I 223 (Switz.) (interpreting art. 27 of the Federal Constitution of the Swiss Confederation of 18 Apr. 1999, SR 101).

<sup>28</sup> See Peter Eggenberger, License to Bill = License to Kill? Ethical Considerations on Lawyers’ Fees (With a View to Switzerland), 20 PENN ST. INT’L L. REV. 505, 511-12 (2002).

<sup>29</sup> See *THE DISPUTE RESOLUTION REVIEW*, *supra* n.26, at 773.

<sup>30</sup> See FMLA, *supra* n.10 at art. 12(e).

<sup>31</sup> See Eggenberger, *supra* n.28, at 527.

<sup>32</sup> See Lua Kamal Yuille, Note, No One’s Perfect (Not Even Close): Reevaluating Access to Justice in the United States and Western Europe, 42 J. COLUM. TRANSNAT’L L. 863, 880 (2003-2004); see also Earl Johnson, Jr., Equal



this right and that cantonal governments were required to provide lawyers to all civil litigants unable to afford them.<sup>33</sup> Moreover, the Swiss Constitution does expressly provide the right to legal representation where necessary to safeguard basic rights, e.g., in guardianship proceedings.<sup>34</sup> Switzerland, as a member nation of the Council of Europe, also falls under the 1979 mandate to provide free legal services to indigents.<sup>35</sup>

### State-Subsidized Legal Aid

From the lawyer's perspective, participation in legal aid work in Switzerland is mandated by Article 12(g) of the Free Movement of Lawyers Act (the "FMLA").<sup>36</sup> Under this section, lawyers "are obliged to accept court-assigned defence and gratuitous mandates of judiciary assistance in the canton in which they are registered."<sup>37</sup> Lawyers receive reduced fees for such court-mandated representation. FMLA Article 25 of the FMLA states that, for lawyers from EU / EFTA member states (other than Switzerland) practicing law in Switzerland, "[t]he rules of professional conduct according to Article 12 are applicable to Lawyers providing services *with the exception of those relating to court-assigned defence and mandates of judiciary assistance.*"<sup>38</sup> In other words, foreign lawyers practicing in Switzerland are not required to accept these legal aid postings.<sup>39</sup>

From the litigant's perspective, the CPC provides that a "person is entitled to legal aid if (a) he or she does not have sufficient financial resources; and (b) his or her case does not seem devoid of any chances of success."<sup>40</sup> If awarded, legal aid may include both an exemption from court costs and court appointment of a legal agent.<sup>41</sup> Legal aid may be granted for all or part of a case, but does not relieve the receiving party from paying costs to the opposing party.<sup>42</sup> A party in need may apply for legal aid before or during an action, but must disclose relevant financial circumstances, the party's position on the merits of the case, and any evidence to be produced.<sup>43</sup> The party may also name a preferred legal representative.

---

Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies, 24 FORDHAM INT'L L.J. S83, S89 (2000).

<sup>33</sup> See Yuille, *supra* n.32, at 880; see also Decision of the Federal Supreme Court, Oct. 8, 1937, BGE 63 I 209 (Switz.); SR 101 Federal Constitution of the Swiss Confederation, art. 8.

<sup>34</sup> See Federal Constitution of the Swiss Confederation of 18 Apr. 1999 art. 29 § 3 available at (SR 101 - <http://www.admin.ch/ch/e/rs/c101.html>) (last visited on September 4, 2015).

<sup>35</sup> See Yuille, *supra* n.32, at 882 (discussing the 1979 European Court of Human Rights decision finding Ireland in breach of its obligations relating to the right to a fair trial).

<sup>36</sup> FMLA, *supra* n.10 at art. 12(g).

<sup>37</sup> *Id.* This rule applies to those lawyers registered in a cantonal attorneys' register (i.e., all attorneys willing to represent parties in court). Independent lawyers who will not represent parties in court need not register and therefore are not subject to this duty.

<sup>38</sup> *Id.* at art. 25 (emphasis added).

<sup>39</sup> See Staehelin, *supra* n.10 ("des avocats étrangers qui exercent la profession d'avocat à titre permanent en Suisse . . . ne soient pas soumis à l'obligation d'accepter des défenses d'office ou des mandats de l'assistance judiciaire . . .") ("foreign lawyers working as attorneys on a permanent basis in Switzerland. . . are not obligated to accept legal aid postings").

<sup>40</sup> Swiss Civil Procedure Code, SR 272 tit. 8, ch. 4, art. 117.

<sup>41</sup> *Id.* at tit. 8, ch. 4, art. 118. Such appointment occurs if "necessary to protect the rights of the party concerned, and in particular if the opposing party is represented by a legal agent."

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at tit. 8, ch. 4, art. 119.



According to the CPC, the court decides the application for legal aid in a summary proceeding at which the opposing party may be heard.<sup>44</sup> These types of proceedings themselves incur no court costs (except in cases of bad faith). Any application for legal aid must be made anew for appellate proceedings. A court's refusal to allocate legal aid in a particular instance also can be appealed.<sup>45</sup>

Switzerland is similar to other Western European nations in that the losing party generally pays legal fees. Where a legal aid recipient loses an action, the legal agent is paid by the canton, and the aid recipient must pay party costs to the prevailing party.<sup>46</sup> (If the losing legal aid recipient lacks the funds to pay costs, as with any debt, the claimant can institute debt collection proceedings). If a legal aid recipient prevails, the legal agent is paid by the canton only "where compensation from the opposing party is irrecoverable or likely to be irrecoverable," and by paying the agent the canton becomes entitled to enforce the claim for costs.<sup>47</sup> If able, a legal aid recipient must repay the legal aid within ten years after the close of the proceedings.<sup>48</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

As is the case elsewhere in Europe, government compensation of lawyers who take on work for those who qualify for legal aid has largely replaced pre-existing pro bono activities by members of the bar.<sup>49</sup> The Swiss Bar Association does not have a recognized definition of pro bono work, though law firms and corporations may maintain their own internal guidelines.

#### Private Attorneys

Swiss lawyers may serve on the boards of non-profit organizations without compensation, but other than this there is not a prevalent culture of free or reduced-fee legal work outside the established legal aid system.<sup>50</sup>

#### Law Firm Pro Bono Programs

Although several international law firms maintain offices in Switzerland, their websites do not advertise any local pro bono activities; the Swiss firms surveyed similarly lack such content. (This may also have to do with the mentality of Swiss attorneys, who generally do not advertise their legal aid and pro bono work.)

### Current State of Pro Bono Work

#### Socio-Cultural Barriers to Pro Bono

Although it appears that no regulatory barrier exists to limit lawyer flexibility with respect to fees charged, certain practical barriers to Swiss pro bono work exist. Chief among these is a perceived lack of need for

---

<sup>44</sup> Id.

<sup>45</sup> Id. at tit. 8, ch. 4, art. 121.

<sup>46</sup> Id. at tit. 8, ch. 4, art. 122.

<sup>47</sup> Id.; see also Federal Act on the Federal Patent Court, SR 173.41 ch. 4, art. 34. For the legal aid scheme for administrative law appeals, see Federal Act on Administrative Procedure, SR 172.021 § 3 art. 65.

<sup>48</sup> Swiss Civil Procedure Code, SR 272 tit. 8, ch. 4, art. 123.

<sup>49</sup> See Yuille, *supra* n.32, at 908.

<sup>50</sup> Some commenters additionally have noted that the Swiss civil law inquisitorial system generally requires less participation by lawyers than the adversarial common law system. See Eggenberger, *supra* n.28 at 510 (citing HEINRICH GATTIKER, DAS ERFOLGSHONORAR DES ANWALTS: CHANCENGLEICHHEIT IM RECHTLICHEN KONFLIKT? 134 (1975)).



pro bono representation due to the comprehensive and federally sponsored legal aid system. A related issue is the lack of pro bono clearinghouses or other centralized organizations. Additionally, the fact that lawyers may be called upon by their canton to undertake reduced-fee legal aid representation—and indeed that the aid recipient has some say in suggesting a lawyer to be appointed—may quench volunteerism in the legal field.

### Pro Bono Resources

Switzerland does have a number of organizations that provide free legal services, although it is not clear whether all accept volunteer contributions or donations of time by lawyers:

- Swiss Refugee Council: Asylum seekers' queries are answered directly by the experts at the Swiss Refugee Council or forwarded to the appropriate authorities. This service is free. The Swiss Refugee Council also organizes training courses for lawyers and for the professional staff of legal advice centers. See <http://www.fluechtlingshilfe.ch> (last visited on September 4, 2015).
- ACOR (*L'Association Romande Contre Le Racisme*) in Lausanne provides legal aid services to victims of racism in Switzerland. See <http://www.prevention.ch/associationracisme.html> (last visited on September 4, 2015).
- International Bridges to Justice, located in Geneva, is an independent, non-profit and nongovernmental organization founded in 2000 that strives to protect due process and achieve fair trials for the accused throughout the world. See <http://www.ibj.org/> (last visited on September 4, 2015).
- *Juris Conseil Junior* (JCJ), located in Geneva, is an independent, non-profit association created in October 1995 where minors and young adults—as well as their families and the professionals who work with them—can seek free legal advice from attorneys on a pro bono basis. Services are free and confidential. See <http://www.jcj.ch/www/index.php> (last visited on September 4, 2015).
- Additionally, LexMundi lists several Swiss-based partner organizations, including the Schwab Foundation for Social Entrepreneurship (Geneva; see <http://www.schwabfound.org> (last visited on September 4, 2015)) and WomenChangeMakers (Geneva; see <http://www.womenchangemakers.org> (last visited on September 4, 2015)).

## CONCLUSION

While no regulatory barriers exist to providing pro bono legal services in Switzerland, as a practical matter, the U.S. notion of pro bono legal services does not exist. Swiss-based lawyers interested in pro bono work are most likely to find it through the state-sponsored legal aid system, and many Swiss attorneys do provide a fair amount of *de facto* pro bono legal services through these programs.

September 2015

Pro Bono Practices and Opportunities in Switzerland

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Taiwan, R.O.C.<sup>1</sup>

### INTRODUCTION

In the past decade, the Taiwanese legal community has recognized the need to develop and broaden access to legal aid for the underprivileged. In 2004, legislative reform efforts resulted in the passage of the Legal Aid Act, which sought to provide legal assistance to the indigent. Although the pro bono culture in Taiwan is not yet pervasive, the Legal Aid Act, along with other regulations and trends, demonstrates an emerging pro bono culture in Taiwan that bodes well for the development of a positive environment for pro bono legal services.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Taiwan's Constitution first went into effect on December 25, 1947, and has since been amended seven times with the latest revision made on August 23, 2004.<sup>2</sup> As Taiwan has a civil law system, the courts will first resort to the text of the Constitution and then to codes, statutes and ordinances.<sup>3</sup> Aside from the Constitution, the major codes of Taiwanese law include the Civil Code, Code of Civil Procedure, Criminal Law, Code of Criminal Procedure and the Administrative Laws.<sup>4</sup>

##### The Courts

###### Levels

The Judicial Yuan, one of the five main branches of the Taiwanese government, is a civil administrative body that governs the judiciary.<sup>5</sup> The objective of administrative supervision is to establish a sound judicial system, improve the system's performance, improve the working conditions in the judiciary and enhance the quality of trials.<sup>6</sup>

Taiwan has a three tiered court system: the District Courts, the High Courts and the Supreme Court.<sup>7</sup> The District Courts are the lowest courts located in Taiwan's various counties and cities, and are generally presided over by one judge. The High Courts are established in provinces or special regions, and have several tribunals for civil and criminal trials which are presided over by three judges. The Supreme Court is Taiwan's highest court, and consists of five civil tribunals and five criminal tribunals.<sup>8</sup>

---

<sup>1</sup> This chapter was drafted with the support of Lee, Tsai & Partners Attorneys-at-Law.

<sup>2</sup> See OFFICE OF THE PRESIDENT, REPUBLIC OF CHINA (TAIWAN), Constitution of the Republic of China (Taiwan), <http://english.president.gov.tw/Default.aspx?tabid=1033#09> (last visited on September 4, 2015).

<sup>3</sup> THE CATHOLIC UNIVERSITY OF AMERICA – COLUMBUS SCHOOL OF LAW, The Legal System in Taiwan, <http://www.law.edu/ComparativeLaw/Taiwan/> (last visited on September 4, 2015).

<sup>4</sup> See Peggy Wen, Overview of Legal Systems in the Asia-Pacific Region: Republic of China, Taiwan (4)(2004), available at [http://scholarship.law.cornell.edu/lps\\_lsapr/8/](http://scholarship.law.cornell.edu/lps_lsapr/8/) (last visited on September 4, 2015).

<sup>5</sup> The other four branches of the Taiwanese Government are the Executive Yuan, the Legislative Yuan, the Examination Yuan and the Control Yuan. See REPUBLIC OF CHINA (TAIWAN): Government, <http://www.taiwan.gov.tw/ct.asp?xItem=21507&ctNode=1920&mp=1001> (last visited on September 4, 2015).

<sup>6</sup> See Directory of the Judicial Branch, The JUDICIAL YUAN (Republic of China), <http://www.judicial.gov.tw/en> (last visited on September 4, 2015).

<sup>7</sup> See The Legal System in Taiwan, *supra* n.3.

<sup>8</sup> *Id.*



### Judges

The Judicial Officer Exam is the national exam for the selection of judges and public prosecutors, and is separate from the exam for licensing lawyers. Those who pass the judicial exam enter the Judges and Prosecutors Training Institute for legal training, at the end of which they will qualify to become judges or prosecutors.<sup>9</sup> Although the Judicial Yuan and the Ministry of Justice have the ultimate discretion in deciding how many judges or prosecutors are appointed, all trainees normally qualify due to demand for qualified judges and prosecutors.<sup>10</sup>

Aside from the traditional route of appointing judges through the Judicial Officer Exam, there are other ways in which a practicing lawyer may become a judge, namely by way of (i) a recommendation from the Taiwan Bar Association, (ii) an annual examination administered by the Judicial Yuan, or (iii) an invitation from the Judicial Yuan task force.<sup>11</sup>

### The Practice of Law

#### Education

Legal education in Taiwan is provided at both the undergraduate and graduate levels.<sup>12</sup> The undergraduate degree generally takes 4-5 years to complete and each student is awarded a bachelor's of law degree at the end of the program.<sup>13</sup> Graduate degrees range from 2-4 years, and the degrees awarded include LL.Ms, J.Ds and J.S.Ds.<sup>14</sup> Since 1990, the total number of institutions providing legal education programs increased from eight to 37.<sup>15</sup> Attorneys are required to complete at least six hours of continuing legal education courses each year.

#### Licensure

After acquiring a law degree at either the undergraduate or graduate level, students are qualified to take the bar exam.<sup>16</sup> The bar exam for lawyers is held once a year and is administered by the government branch known as the Examination Yuan.<sup>17</sup> There is no distinction between barristers and solicitors in Taiwan.<sup>18</sup>

Those who pass the bar exam enter the Lawyers Training Institute for training, which lasts for a month but offers no on-site practice. Following the training, prospective lawyers must secure a five-month apprenticeship under the supervision of a senior attorney who has practiced for more than five years. Upon completion of the apprenticeship, he or she may join a local bar.<sup>19</sup>

A lawyer with foreign qualifications may not practice in Taiwan unless he or she is given permission by the Ministry of Justice under the Attorney Regulation Act and becomes a member of a local bar association.<sup>20</sup> A foreign lawyer granted approval by the Ministry of Justice is known as a "Foreign Legal

---

<sup>9</sup> See Thomas Chih-hsiung Chen, Legal Education Reform in Taiwan: Are Japan and Korea the Models? *JOURNAL OF LEGAL EDUCATION*, Volume 62, No. 1 at 37 (2012).

<sup>10</sup> *Id.* at 39.

<sup>11</sup> *Id.* at 62.

<sup>12</sup> See Overview of Legal Systems in the Asia-Pacific Region, *supra* n.4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See Legal Education Reform in Taiwan, *supra* n.9 at 52-53.

<sup>16</sup> *Id.* at 35.

<sup>17</sup> *Id.* at 44.

<sup>18</sup> See INTERNATIONAL BAR ASSOCIATION, How to qualify as a lawyer in Taiwan, available at [http://www.ibanet.org/PPID/Constituent/Student\\_Committee/qualify\\_lawyer\\_Taiwan.aspx](http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Taiwan.aspx) (last visited on September 4, 2015).

<sup>19</sup> Legal Education Reform in Taiwan, *supra* n.9 at 39.

<sup>20</sup> See How to qualify as a lawyer in Taiwan, *supra* n.18.



Affairs Attorney.” Such foreign attorneys are only permitted to practice the laws of his or her home jurisdiction.

### Demographics

Over the last two decades, the Taiwanese legal profession has undergone profound transformation. Between 1986 and 1996, the number of attorneys admitted to private practice in Taiwan roughly doubled,<sup>21</sup> and in 2014 there were about 8,110 admitted lawyers out of a population of approximately 23 million.<sup>22</sup> The small number of lawyers in Taiwan means that most Taiwanese lawyers engage in general law services, and specialized legal practice is not yet commonplace.<sup>23</sup>

### Legal Regulation of Lawyers

Taiwanese lawyers are governed by the Taiwan Bar Association as well as various local bar associations.<sup>24</sup> Among these associations, the most prominent is the Taipei Bar Association, which had a membership base of more than 4,500 attorneys as of the end of 2010, accounting for approximately 70% of all lawyers in Taiwan at the time.<sup>25</sup>

Bar associations have adopted self-regulating ethics rules that encourage attorneys to participate in legal aid work and accept pro bono assignments from courts. Article 22 of the Attorney Regulation Act requires attorneys to “fulfil and complete all lawful court assignments” unless excused by good cause.<sup>26</sup> In addition, Article 9 of the Code of Ethics of the Taipei Bar Association states that attorneys shall participate in legal aid, provide services to the people, or engage in other public interest activities, so as to make legal services widely available.<sup>27</sup> Attorneys violating Article 22 of the Attorney Regulation Act, or seriously violating the codes of ethics of their respective Bar Associations, may be subject to disciplinary action, including reprimand, suspension or disbarment.<sup>28</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Before the passage of the Legal Aid Act, disadvantaged litigants in need of legal services had to seek assistance directly from volunteer attorneys and charitable organizations. The lack of organization, financing, and government sponsorship meant that in reality the majority of disadvantaged litigants remained unrepresented. In 1999, in only 4.6% of all civil lawsuits were both parties represented by

---

<sup>21</sup> See Jane Kaufman Winn, *The Role of Lawyers in Taiwan’s Emerging Democracy*, in *RAISING THE BAR: THE EMERGING LEGAL PROFESSION OF EAST ASIA* (William Alford ed., 2004), available at [http://www.law.washington.edu/Directory/docs/Winn/lawyers\\_taiwan.pdf](http://www.law.washington.edu/Directory/docs/Winn/lawyers_taiwan.pdf) (last visited on September 4, 2015).

<sup>22</sup> WINKLER PARTNERS, *Number of Taiwanese Lawyers Increases*, <http://www.winklerpartners.com/?p=2397> (last visited on September 4, 2015); see TAIWAN BAR ASSOCIATION, *Country Report*, available at <http://www.twba.org.tw/en/Report.htm>, (last visited on September 4, 2015); THE WORLD FACTBOOK, *Taiwan*, <https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html> (last visited on September 4, 2015).

<sup>23</sup> See *Number of Taiwanese Lawyers Increases*, supra n.22.

<sup>24</sup> See TAIPEI BAR ASSOCIATION, *Code of Ethics art. 9*, available at <http://www.tba.org.tw/about.asp?id=67&class=39&classname=公會規章> (last visited on September 4, 2015).

<sup>25</sup> See TAIPEI BAR ASSOCIATION, *Team – Organization*, <http://www.tba.org.tw/english/ch2.asp> (last visited on September 4, 2015).

<sup>26</sup> See *Attorney Regulation Act*, art. 22, available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?Pcode=I0020006> (last visited on September 4, 2015).

<sup>27</sup> See *Code of Ethics*, supra n.24.

<sup>28</sup> See *Attorney Regulation Act*, arts. 39, 44.



counsel. In criminal cases, only 12.5% of defendants were represented at the district court level, and less than one-third were represented at or above the High Court level.<sup>29</sup>

In response to the clear need for legal aid, three private groups — the Judicial Reform Foundation, the Taipei Bar Association and the Taiwan Association for Human Rights — began to draft the Legal Aid Act in the late 1990s.<sup>30</sup> Promulgated in 2004, the purpose of the Act is “[to provide] necessary legal aids to people who are indigent or are unable to receive proper legal protections for other reasons.”<sup>31</sup>

To that end, the Legal Aid Act provides for the establishment of the Legal Aid Foundation (the “LAF”) to achieve the purposes of the Legal Aid Act.<sup>32</sup> Funded by the Judicial Yuan, the LAF commenced operations in July 2004. In the first few years of its existence the LAF mainly focused on providing legal representation in civil, criminal and administrative proceedings, and these services were provided through LAF branch offices.<sup>33</sup> In 2007, the LAF began to offer specialist legal advice in areas such as immigration, occupational injuries and welfare benefits in collaboration with social welfare agencies, and arranged certain volunteer lawyers to provide outreach services directly at such agencies on a regular basis.<sup>34</sup> In 2009, the LAF further expanded to provide legal advice services at courts, city councils, household registration offices, prisons, NGOs and universities.<sup>35</sup> These expansion efforts resulted in significant increases in the number of applications for legal aid.<sup>36</sup> For instance, in 2009, the LAF received 83,373 applications, and in the subsequent year the LAF received 107,761 applications.<sup>37</sup> In 2013 (the year for which the latest available annual report is available), the LAF received a total of 136,065 applications, of which the LAF provided legal aid in 36,225 cases and legal consultation in 62,479 cases.<sup>38</sup>

The scope of legal aid coverage under the Legal Aid Act is very broad and extends to both litigation and non-litigation matters. Except for certain legal aid cases handled by LAF staff attorneys, all legal aid cases are handled by licensed attorneys registered with the LAF. All attorneys who have practiced law for two years are eligible to voluntarily apply to the LAF as a legal aid attorney, and at the end of 2013, there were a total of 2,805 attorneys registered with the LAF.<sup>39</sup> Litigation matters include civil, criminal, family and administrative cases, and non-litigation matters encompass negotiations, settlements, and “any other services that the LAF has resolved to provide.”<sup>40</sup> The scope of “legal aid” includes (1) representation, advocacy or assistance in litigation, arbitration or other matters, (2) representation in mediation and

---

<sup>29</sup> See Tsung-fu Chen, *The Rule of Law in Taiwan: Culture, Ideology, and Social Change*, in UNDERSTANDING CHINA’S LEGAL SYSTEM: ESSAYS IN HONOR OF JEROME A. COHEN (C. Stephen Hsu ed., 2003).

<sup>30</sup> See LEGAL AID FOUNDATION, *Who We Are*, available at [http://www.laf.org.tw/en/a1\\_1.php](http://www.laf.org.tw/en/a1_1.php) (last visited on September 4, 2015).

<sup>31</sup> See Legal Aid Act, art. 1, available at <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0030157> (last visited on September 4, 2015).

<sup>32</sup> *Id.* at art. 3.

<sup>33</sup> Yu-Shan Chang, *The Development of Legal Aid Foundation (LAF) and its Social Impacts in Taiwan*, JUSTICE – ILAG LEGAL AID NEWSLETTER, NO. 18 (2011), available at <http://www.ilagnet.org/images/newsletters/18.pdf> (last visited on September 4, 2015).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> 2010 Annual Report, LEGAL AID FOUNDATION, available at [http://www.laf.org.tw/en/c3\\_1.php](http://www.laf.org.tw/en/c3_1.php) (last visited on September 4, 2015).

<sup>38</sup> 2013 Annual Report, LEGAL AID FOUNDATION, available at [http://www.laf.org.tw/en/c3\\_1.php](http://www.laf.org.tw/en/c3_1.php) (last visited on September 4, 2015).

<sup>39</sup> *Id.* at 22.

<sup>40</sup> See Legal Aid Act, art. 4., *supra* n.31.



reconciliation, (3) drafting of legal documents, (4) legal consultation, (5) assistance in providing other necessary legal services and expenses, and (6) any other services that the LAF has resolved to provide.

## State-Subsidized Legal Aid

### Eligibility Criteria

The LAF provides assistance to applicants “regardless of any special status they may have,” including but not limited to gender, age, and the presence of mental or physical disabilities.<sup>41</sup> In addition, non-Taiwanese nationals legally residing in Taiwan may also receive legal aid.<sup>42</sup>

Applicants lawfully residing in Taiwan may be eligible for legal aid if they pass the merit test and the means test. The merit test is satisfied if the applicant’s case is not “clearly unreasonable.”<sup>43</sup> To pass the means test, the applicant must have disposable monthly income and disposable assets below a specific threshold.<sup>44</sup> Alternatively, applicants who qualify as “low-income” or “mid-low-income” under the Public Assistance Act may also be eligible under the means test.<sup>45</sup> An applicant is exempt from the means test where (1) the minimum punishment of the criminal offense is no less than three years of imprisonment, (2) a high court has jurisdiction over the first instance, and the accused has not retained defense counsel, or (3) the accused is unable to make a complete statement due to unsound mind and has not retained defense counsel, and the presiding judge finds that a defense attorney or representative is required.<sup>46</sup>

### Types of Cases

In 2013, the five major types of civil cases which the LAF accepted were cases related to general tort claims, consumption loans, salary disputes, illegal profits and ownership disputes.<sup>47</sup> The “win rate” (which includes partial victories) of closed civil cases was 73%.<sup>48</sup> Further, the five major types of criminal cases accepted by the LAF were cases related to narcotic drugs, assault, sexual offenses, homicide and larceny.<sup>49</sup> The “win rate” (i.e. the rate of achieving favourable outcomes) of closed criminal litigation cases was approximately 57%.<sup>50</sup>

## Mandatory Assignments to Legal Aid Matters

Unless an exemption is approved by the LAF, lawyers registered with the LAF are obliged to provide legal aid when requested to do so by the LAF under the Legal Aid Act.<sup>51</sup> In particular, attorneys chosen to provide services may not decline to do so without providing good cause.<sup>52</sup>

---

<sup>41</sup> See LEGAL AID FOUNDATION, Get Legal Help, available at [http://www.laf.org.tw/en/a2\\_1.php](http://www.laf.org.tw/en/a2_1.php) (last visited on September 4, 2015).

<sup>42</sup> Id.

<sup>43</sup> See LEGAL AID FOUNDATION, Can I Get Legal Aid?, available at [http://www.laf.org.tw/en/a2\\_2\\_1.php?PHPSESSID=kbqe4a0he8v45513q81oikb0f7](http://www.laf.org.tw/en/a2_2_1.php?PHPSESSID=kbqe4a0he8v45513q81oikb0f7) (last visited on September 4, 2015).

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> See 2013 Annual Report, *supra* n.38.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> See Legal Aid Act, art. 23 and 24.

<sup>52</sup> Id. at art. 26.



In 2013, the budgeted remuneration for attorneys was NT\$542,449,573, and the average remuneration for attorneys in each legal case was NT\$20,655.<sup>53</sup> Half of the remuneration was paid when an attorney accepted a case, and the balance was paid upon closing.<sup>54</sup> The LAF has established a staff attorney system since 2006, and while most of the lawyers work on cases from the LAF on a project-to-project basis, there were a total of 14 staff attorneys working in various LAF branches by the end of 2013.<sup>55</sup>

## Mediation Committees

In Taiwan, each town and county-administered city is required to establish a mediation committee, which accepts mediation requests or cases transferred from the courts. The mediation committee consists of seven to 15 members who have legal knowledge or other expertise and good reputation. If the mediation is successful, the township or county-administered city will submit the mediation agreement to the court with jurisdiction for further review. If the court approves the civil mediation result, it shall have the same effect as a final court decision. For mediation results approved by the courts in a criminal matter, if the object of the criminal matter is a monetary payment or other substitutes (e.g., a certain quantity of securities), the mediation agreement serves as the basis for enforcement. The expenses for the mediation committee are included as part of the town/city/county administration's budget and the party applying for mediation will not be charged any fees except for actual expenses for conducting inspection.<sup>56</sup>

## Unmet Needs and Access

Despite the broad coverage under the Legal Aid Act, the LAF limits the scope of legal aid and excludes certain criminal and civil matters unless given approval from the director of the relevant LAF branch office.<sup>57</sup> Excluded criminal matters include, but are not limited to, representation during criminal trials, filing criminal charges in court, reviewing prosecutors' decisions and providing relevant trial representation.<sup>58</sup> Excluded civil matters include, but are not limited to, election litigation, small claims, matters concerning investment activities, and matters for retrial.<sup>59</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

Aside from the obligations of attorneys registered with the LAF to provide legal aid when so requested as discussed above, attorneys in Taiwan are not required to perform pro bono work.<sup>60</sup> Nonetheless, there

---

<sup>53</sup> See 2013 Annual Report, *supra* n.38.

<sup>54</sup> *Id.*

<sup>55</sup> See 2013 Annual Report, *supra* n.38.

<sup>56</sup> See The Township and County-Administered City Mediation Act, art. 1, 2, 3, 23, 26, 27, 34, available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=I0020003> (last visited on September 4, 2015).

<sup>57</sup> See Can I get legal aid?, LEGAL AID FOUNDATION, available at [http://www.laf.org.tw/en/a2\\_2\\_1.php](http://www.laf.org.tw/en/a2_2_1.php) (last visited on September 4, 2015).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See, e.g., Mo Yan-chih, Taipei offers free legal services across the city, *TAIPEI TIMES* <http://www.taipetimes.com/News/taiwan/archives/2006/08/04/2003321712> (last visited on September 4, 2015) (Aug. 4, 2006) (reporting that while lawyers in Taiwan are not required to do pro bono, some voluntarily provide free legal services to residents).



are still a variety of pro bono opportunities in Taiwan organized by law firms and other private organizations.

### Law Firm Pro Bono Programs

Various local and international law firms have committed their services to the community on a pro bono basis.<sup>61</sup> The types of pro bono projects undertaken by law firms include participating in legal services offered by bar associations and the LAF, serving on the boards of local non-profit organizations, contributing to law and policy reform proposals as well as providing sponsorships and endowments to various legal education programs.

### Non-Governmental Organizations

Among NGOs, the Taiwan Association for Human Rights (the “TAHR”) is at the forefront of promoting judicial reform and legal assistance in Taiwan.<sup>62</sup> Though the TAHR’s focus is not limited to performing pro bono work, it has worked with other judicial reform associations to promote legal aid systems.<sup>63</sup> The TAHR also has been working on exonerating several death row inmates, lobbying to bring the International Bill of Human Rights into legal force in to Taiwan and hosting training camps to educate young people on human rights concepts.<sup>64</sup>

### Bar Association Pro Bono Programs

Bar associations often take on general and specific types of pro bono representations. The Taipei Bar Association, for example, holds regular office hours to provide general legal counselling and is also particularly committed to representing defendants facing the death penalty who cannot afford legal representation.<sup>65</sup> Moreover, the Taipei Bar Association’s website contains a number of different pro bono opportunities in which Taiwanese lawyers can participate. Ranging from judicial reform, human rights protection and labor rights to environmental protection, there is a wide selection of opportunities for lawyers who would like to perform community services.<sup>66</sup>

### University Legal Clinics and Law Students

Law clinics are not yet prevalent in the Taiwan legal education system, and therefore are not yet a major source for pro bono representation.<sup>67</sup> However, there is increased discussion and movement towards developing and offering clinical education and opportunities to students in Taiwan.<sup>68</sup>

---

<sup>61</sup> See, e.g., Jones Day, <http://www.jonesday.com/taipei> (last visited on September 4, 2015); PEPPER HAMILTON LLP, Pro Bono News (Spring 2008), available at <http://www.pepperlaw.com/pdfs/ProBonoNews0308.pdf> (last visited on September 4, 2015); LEE AND LI ATTORNEYS AT LAW, Commitments towards Pro Bono, available at <http://www.leeandli.com/EN/00000095.htm> (last visited on September 4, 2015); TSAR & TSAI LAW FIRM, Pro Bono, available at <http://www.tsartsai.com.tw/eng/ProBono.html> (last visited on September 4, 2015).

<sup>62</sup> See generally, TAHR Recent Major Campaigns and Projects, available at <http://www.tahr.org.tw/taxonomy/term/44> (last visited on September 4, 2015).

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> See generally TAIPEI BAR ASSOCIATION, available at <http://www.tba.org.tw/english/ch4.asp> (last visited on September 4, 2015).

<sup>66</sup> Id.

<sup>67</sup> See Serge A. Martinez, Law Clinics in Taiwan: Can Clinical Legal Education Succeed in This Civil Law Jurisdiction Education System, 7 NTU L. Rev. 343 (2012) available at [http://scholarlycommons.law.hofstra.edu/faculty\\_scholarship/287/](http://scholarlycommons.law.hofstra.edu/faculty_scholarship/287/) (last visited on September 4, 2015).

<sup>68</sup> See, e.g., Lo Bing-Cheng et. al, Starting the First Law School Clinic in Taiwan <http://journal.fulbright.org.tw/index.php/browse-topics/education-management-for-the-future/itemlist/tag/Lo%20Bing%20Cheng> (last visited on September 4, 2015). (highlighting that National Taiwan University College of Law offered a new law clinic course to students and give them the opportunity to represent real clients under the supervision of attorneys).



## Barriers to Pro Bono or Participation in the Formal Legal System

Restrictions on advertising legal services may hinder the growth of the pro bono culture in Taiwan. For example, under the model rules on promotion of attorney services, attorneys are prohibited from advertising through mass media such as radio broadcasting, television, film, newspaper, billboards and balloons.<sup>69</sup> Because of the restrictions on attorney advertising, it could be difficult to make potential clients aware of pro bono legal services offered by law firms or legal professionals.

In addition, foreign lawyers who wish to represent pro bono clients should be aware of various limitations on their practice. Foreign lawyers must receive special approval from the Judicial Yuan and join the local bar association in order to practice in Taiwan, and may not engage in courtroom representation without court approval.<sup>70</sup> Such restrictions may in turn impose limitations on their ability to participate in certain forms of pro bono representation. Language barriers may also present a real challenge. Under the Attorney Regulation Act, foreign attorneys providing legal services in Taiwan are “required to use [the] Chinese (Mandarin dialect) language.”<sup>71</sup>

## Legal Aid and Pro Bono Resources

### Entities Engaged in Legal Aid or Pro Bono

The LAF and various bar associations have served to facilitate the provision of legal aid and other community services in Taiwan. Attorneys interested in providing legal aid and/or pro bono services can register with the LAF or local bar associations. These organizations provide avenues for both representing and counselling individuals in need of legal aid or representation.<sup>72</sup>

Listed below is contact information for the LAF, the Taipei Bar Association and certain other leading organizations involved in legal aid and pro bono work in Taiwan:

- Legal Aid Foundation  
Phone: +886.2.2322.5255  
Website: <http://www.laf.org.tw> (last visited on September 4, 2015)
- Taipei Bar Association  
Phone: +886.2.2351.5071  
Website: <http://www.tba.org.tw> (last visited on September 4, 2015)
- Taiwan Association for Human Rights  
Phone: +886.2.2596.9525  
Website: <http://www.tahr.org.tw/> (last visited on September 4, 2015)
- Consumers' Foundation, Chinese Taipei  
Phone: +886.2.2700.1234  
Website: <http://www.consumers.org.tw/> (last visited on September 4, 2015)
- Taipei Women's Rescue Foundation  
Phone: +886.2.2555.8595  
Website: <http://www.twrf.org.tw/eng/index.php> (last visited on September 4, 2015)
- Taipei City Government – Civil Affairs  
Website: <http://english.gov.taipei/> (last visited on September 4, 2015)

<sup>69</sup> See Attorney Business Development Rules art. 4, TAIPEI BAR ASSOCIATION, available at <http://www.tba.org.tw/about.asp?id=80&class=39&classname=公會規章> (last visited on September 4, 2015).

<sup>70</sup> See Attorney Regulation Act, supra n.26, arts. 47-1 to 47-7.

<sup>71</sup> See Attorney Regulation Act, supra n.26, art. 47.

<sup>72</sup> See Recruitment of Lawyers, LEGAL AID FOUNDATION, available at [http://www.laf.org.tw/tw/c1\\_2.php](http://www.laf.org.tw/tw/c1_2.php) (last visited on September 4, 2015) (available in Chinese).



## CONCLUSION

The Legal Aid Foundation, the Taipei Bar Association's involvement in community service and the generally increasing awareness of the need for legal aid are all promising signs that Taiwan continues to develop and improve its own unique pro bono culture. There are meaningful opportunities for legal aid, pro bono legal representation, counselling, and cooperative work with NGOs, and the opportunities for both local and foreign attorneys may be on the rise. As the legal profession in Taiwan and its sense of responsibility to the community are growing conspicuously, it appears that pro bono practices will continue to thrive in Taiwan.

September 2015

Pro Bono Practices and Opportunities in Taiwan

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



# Pro Bono Practices and Opportunities in Thailand<sup>1</sup>

## INTRODUCTION

Despite a strong culture of community service and volunteerism, Thailand's pro bono culture is still in the early stages of development, as the level of pro bono activity in Thailand remains low overall. Support for pro bono work in the private sector is particularly lacking, with only a small number of lawyers at private law firms volunteering their time on pro bono projects. Nonetheless, there are limited pockets of pro bono opportunities in Thailand, mainly offered or referred by non-profit organizations. Foreigners wishing to engage in pro bono work in Thailand face additional obstacles, including language and cultural barriers as well as barriers to practicing law in the country.

## OVERVIEW OF THE LEGAL SYSTEM

### The Justice System

#### Constitution and Governing Laws

Thailand is a constitutional monarchy with the King as the official head of the State with limited formal powers and the Prime Minister as the head of the government. Although it has a civil law system, the codes are modeled on the codes of several legal systems around the world. The country has a long history of political instability, which has escalated since the violent ousting of former Prime Minister Thaksin Shinawatra in 2006 and its aftermath.

On May 22, 2014, Thailand's military announced a *coup d'état* and established a military dictatorship called the National Council for Peace and Order (the "NCPO").<sup>2</sup> Following the *coup d'état*, the NCPO dissolved the government and the Senate, and repealed the 2007 constitution (the "2007 Constitution"). An interim constitution was enacted in July 2014<sup>3</sup> (the "Interim Constitution"), and in May 2015 the NCPO approved holding a referendum on the draft of the new constitution (the "New Constitution").<sup>4</sup>

#### The Courts

##### Court System

Section 27 of the Interim Constitution allows for a National Reform Council to make proposals in various fields including law and justice<sup>5</sup>, and therefore it remains to be seen what changes will be made to the judicial system in Thailand. Nevertheless, the draft of the New Constitution awaiting referendum continues to uphold the overall structure established in the 2007 Constitution, maintaining four types of courts and their subsequent hierarchy levels.<sup>6</sup> Chapter X of the 2007 Constitution governed the judiciary

<sup>1</sup> This chapter was drafted with the support of the Bangkok office of Weerawong, Chinnavat & Peangpanor Ltd.

<sup>2</sup> BBC, Thailand military seizes power in coup (May 22, 2014), available at <http://www.bbc.com/news/world-asia-27517591> (last visited on September 4, 2015).

<sup>3</sup> For an unofficial English translation of the Interim Constitution, see Constitution of the Kingdom of Thailand (Interim), Buddhist Era 2557 (2014) available at [http://asean-law.senate.go.th/files/Thailand\\_2014.pdf](http://asean-law.senate.go.th/files/Thailand_2014.pdf) (last visited on September 4, 2015).

<sup>4</sup> See REUTERS, Thai cabinet agrees to hold referendum on new constitution (May 19, 2015), available at <http://uk.reuters.com/article/2015/05/19/uk-thailand-politics-referendum-idUKKBN0040MU20150519> (last visited on September 4, 2015).

<sup>5</sup> See Constitution of the Kingdom of Thailand (Interim), supra n.3.

<sup>6</sup> For an unofficial English translation of the draft constitution, see Draft Constitution of the Kingdom of Thailand Buddhist Era (2015) available at [http://www.academia.edu/12017762/Draft\\_Constitution\\_2015\\_English\\_translation\\_2015\\_Pakorn\\_Nilprapunt\\_Chintapun\\_Dungsubutra\\_Vareerat\\_Ratanaviboonsom\\_and\\_Natthanicha\\_Aneksomboonphol\\_Office\\_of\\_the\\_Council\\_of\\_State\\_of\\_Thailand](http://www.academia.edu/12017762/Draft_Constitution_2015_English_translation_2015_Pakorn_Nilprapunt_Chintapun_Dungsubutra_Vareerat_Ratanaviboonsom_and_Natthanicha_Aneksomboonphol_Office_of_the_Council_of_State_of_Thailand) (last visited on September 4, 2015).



and specified four types of courts: the Constitutional Court, the Courts of Justice, the Administrative Courts and the Military Courts.<sup>7</sup> While the Constitutional Court, the Administrative Courts and the Military Courts are specialized courts, the Courts of Justice have general jurisdiction with “the power to try and adjudicate all cases except those specified by this Constitution or the law to be within the jurisdiction of other Courts”.<sup>8</sup>

The Courts of Justice consist of three levels: (i) the Courts of First Instance, which include trial courts of general jurisdiction, family and juvenile courts, and a host of specialized courts such as tax, labor, intellectual property and international trade, and bankruptcy; (ii) the Courts of Appeals; and (iii) the Supreme Court. The Supreme Court is the country’s highest court and has jurisdictional power over all of the provinces in Thailand.

For the time being, Section five of the Interim Constitution suggests that the system of courts established in the 2007 Constitution will remain intact, as it states that “whenever no provision under this Constitution is applicable to any case, it shall be carried out or decided in accordance with Thailand’s administrative conventions of the democratic regime of government.”<sup>9</sup>

### Appointment of Judges

In order to become a judge, applicants must first satisfy general qualification requirements (such as holding a law degree and having at least two years of legal experience)<sup>10</sup> and pass the examination given by the Thai Bar Association.<sup>11</sup> After passing the exam, candidates have to undergo a one-year traineeship.<sup>12</sup> After the training requirements are satisfied, trainees will be approved by the Judicial Service Commission and thereafter formally appointed by the King.<sup>13</sup> Section 26 of the Interim Constitution and Section 219 of the New Constitution both provide that judges shall generally exercise independence in addressing lawsuits.<sup>14</sup>

### The Practice of Law

#### Education

Currently, there are more than 50 universities and colleges offering legal education in Thailand. The study of law in Thailand is generally a four-year undergraduate level study, where students earn their Bachelor of Laws (LLB) degrees.<sup>15</sup> Students who wish to continue their legal studies may pursue a Master of Laws (LLM) degree, which may vary in length.<sup>16</sup> Due to the increased demand for lawyers adept in specialized fields, the current trend among Thai legal education institutions is to offer focused programs in areas such as business law, public law, international law, civil law and criminal law.<sup>17</sup>

<sup>7</sup> See ASIAN LEGAL INFORMATION INSTITUTE, Constitution of the Kingdom of Thailand 2007, available at <http://www.asianlii.org/th/legis/const/2007/1.html> (last visited on September 4, 2015).

<sup>8</sup> Id.

<sup>9</sup> See Constitution of the Kingdom of Thailand (Interim), supra n.3.

<sup>10</sup> See CENTRAL INTELLECTUAL PROPERTY AND INTERNATIONAL TRADE COURT, ET. AL., Judicial System in Thailand: An Outlook for a New Century 48, available at [http://www.aseanlawassociation.org/docs/Judicial\\_System\\_in\\_Thailand.pdf](http://www.aseanlawassociation.org/docs/Judicial_System_in_Thailand.pdf) (last visited on September 4, 2015).

<sup>11</sup> Id at 48-50.

<sup>12</sup> Id. at 50.

<sup>13</sup> Id.

<sup>14</sup> See Constitution of the Kingdom of Thailand (Interim), supra n.3; see Draft Constitution of the Kingdom of Thailand Buddhist Era (2015), supra n.6.

<sup>15</sup> See Sakda Thanitchul, ASEAN Charter and Legal Education in Thailand (2)(2009), ASEAN LAW ASSOCIATION, 10<sup>TH</sup> GENERAL ASSEMBLY (2009), available at <http://www.aseanlawassociation.org/10GAdocs/Thailand1.pdf> (last visited on September 4, 2015).

<sup>16</sup> Id.

<sup>17</sup> Id.



### Licensure

In Thailand's legal profession, there is no distinction between barristers and solicitors.<sup>18</sup> To obtain a lawyer's license, a candidate must graduate with either a bachelor's degree or an associate degree in law or an equivalent certificate in law from an institution accredited by the Lawyers Council of Thailand.<sup>19</sup> The training course, run by the Institute of Law Practice Training of the Lawyers Council of Thailand, is divided into two terms.<sup>20</sup> In the first term, the candidate is required to complete coursework in the theory of case conduct and professional ethics and pass a written examination. In the second term, he or she must practice working in a qualified law office for seven months. After completion of the training course, a candidate may apply for membership of the Lawyers Council. The number of newly admitted lawyers vary from year to year, averaging around 2000+ per year.<sup>21</sup>

Foreigners are not permitted to formally practice law in Thailand, as only Thai nationals can become licensed lawyers.<sup>22</sup> Instead, they may obtain work permits as "business consultants," typically working on corporate transactions or as legal advisors in arbitration proceedings.<sup>23</sup> As a result, Thailand has relatively few foreign lawyers.

### Demographics

The legal profession in Thailand is divided into three main categories, namely: (i) judges, (ii) public prosecutors and (iii) lawyers.<sup>24</sup> As of June 15, 2015, there were 79,401 licensed lawyers in Thailand,<sup>25</sup> compared to the country's total population of 67 million. The majority of lawyers practice in the capital city of Bangkok and its surrounding areas.<sup>26</sup>

Law firms range in size from sole practitioners and small practices to large firms that are part of a global network. While the majority are domestic firms, several international law firms have opened offices in Bangkok, beginning as early as in the late 1970s. However, Bangkok still lags far behind other Asian cities such as Hong Kong, Singapore, Beijing and Shanghai with respect to the presence of foreign law firms. Notably, a handful of major international law firms have downsized or even pulled out of Bangkok entirely following the political and economic instability arising from the 1997 Asian financial crisis and the 2006 military coup that ousted then Prime Minister Thaksin Shinawatra.<sup>27</sup>

---

<sup>18</sup> See Judicial System in Thailand: An Outlook for a New Century 59, *supra* n.10.

<sup>19</sup> See INTERNATIONAL BAR ASSOCIATION, Thailand International Trade in Legal Services, available at [http://www.ibanet.org/PPID/Constituent/Bar\\_Issues\\_Commission/ITILS\\_Thailand.aspx](http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Thailand.aspx) (last visited on September 4, 2015).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See Suchint Chaimungkalanont, Cross Border Legal Services in ASEAN under WTO: A Thai Perspective, available at [http://www.aseanlawassociation.org/docs/w2\\_thai.pdf](http://www.aseanlawassociation.org/docs/w2_thai.pdf) (last visited on September 4, 2015); see also Thailand International Trade in Legal Services, *supra* n.19.

<sup>24</sup> For a brief overview of the legal profession in Thailand, see Ngamnet Triamanuruck, et al., Overview of Legal Systems in the Asia Pacific Region: Thailand (2004).

<sup>25</sup> Telephone Interview with a representative from the Lawyers' Council of Thailand, in Bangkok, Thailand (Ju1. 6, 2015).

<sup>26</sup> Triamanuruck, et al., *supra* n.24 at 7.

<sup>27</sup> See, e.g., THE LAWYER, White & Case Axes Bangkok Office, available at <http://www.thelawyer.com/white-and-case-axes-bangkok-office/135675.article> (last visited on September 4, 2015) (2008); LEGAL WEEK, Coudert takes on Freshfields Bangkok Branch, available at <http://www.legalweek.com/legal-week/news/1146597/coudert-takes-freshfields-bangkok-branch> (last visited on September 4, 2015) (2004).



## Legal Regulation of Lawyers

The Lawyers Council of Thailand and the Thai Bar Association are the main regulatory bodies governing the conduct of lawyers. The main duties of the Lawyers Council are to register and issue licenses to applicant lawyers.<sup>28</sup> The Lawyers Council also espouses rules on legal ethics and oversees the general conduct of attorneys.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Although the Interim Constitution does not include any provisions on legal aid, the 2007 Constitution contained a limited number of general legal aid provisions, including an explicit guarantee of a right to legal aid in certain instances. Similarly, the draft of the New Constitution currently awaiting referendum has legal aid provisions that largely parallel those in the 2007 Constitution.

Notably, Section 40(7) of the 2007 Constitution stated that each citizen has a right to “legal assistance from an attorney” in criminal cases, and “appropriate legal aid from the State” in civil cases. Section 81 further provided that “the State shall provide legal aid service to the public and support the operation of private organizations rendering legal assistance to the public,” and singled out domestic abuse victims as a particular class to be protected.

In comparison, Section 44(5) of the draft of the New Constitution provides that “an injured person, alleged offender, the accused and witness to a criminal case shall have the right to necessary and appropriate protection and assistance from the State and shall be investigated correctly, expediently and fairly” and that “the alleged offender and the accused shall have the right to legal assistance from [an] experienced legal practitioner,” which is similar to Section 40(7) of the 2007 Constitution. However, while Section 44(6) of the New Constitution addresses the right to obtain legal remedies for the “violation of rights or liberties recognized by the Constitution,” the New Constitution does not explicitly state the right to legal assistance for civil cases as was provided in Section 40 of the 2007 Constitution.

### State-Subsidized Legal Aid

#### Eligibility Criteria and Legal Aid Providers

State-funded legal aid in Thailand primarily consists of legal aid provided by the Office of the Attorney General, the Court of Justice and the Lawyers Council of Thailand. Much of the state-sponsored legal aid is provided by the Office of the Attorney General on a voluntary basis. In addition to its role as the principal agency responsible for criminal prosecution and the provision of legal advice to the government and state agencies, the Office of the Attorney General is also responsible for protecting civil rights and providing legal aid to the needy.<sup>29</sup> Legal aid recipients are determined on a case by case basis, and the types of legal aid includes assistance in transactional matters, court proceedings and dispute resolution.<sup>30</sup> Those who are providing such voluntary legal aid under the Office of the Attorney General may not demand fees from the legal aid recipients, but may request reimbursements for expenses incurred while performing such services.<sup>31</sup>

---

<sup>28</sup> See generally, Thailand International Trade in Legal Services, *supra* n.19.

<sup>29</sup> See Thailand – Office of the Attorney General. HUMANTRAFFICKING.ORG, available at <http://www.humantrafficking.org/organizations/217> (last visited on September 4, 2015).

<sup>30</sup> Judicial System in Thailand: An Outlook for a New Century, *supra* n. 10 at 57-58; see also OFFICE OF LAW REFORM COMMISSION OF THAILAND, Thailand National Report on Legal Aids (2014), available at [http://www.laf.org.tw/ifla2014/en/download/Report\\_Thailand.pdf](http://www.laf.org.tw/ifla2014/en/download/Report_Thailand.pdf) (last visited on September 4, 2015).

<sup>31</sup> See Thailand National Report on Legal Aids, *supra* n.30.



The Court of Justice runs a legal aid scheme to provide legal services to low income individuals and disadvantaged communities.<sup>32</sup> Under the scheme, legal officers at courts provide advice on legal issues, assist clients with legal forms and file lawsuits for minor cases.<sup>33</sup> The Court of Justice also partners with lawyers and non-profit organizations to provide volunteer lawyer services.<sup>34</sup> Such appointed attorneys are compensated in accordance with regulations prescribed by the Court of Justice's administration committee.<sup>35</sup>

Legal aid is also offered by the Lawyers Council of Thailand. The scope of such legal aid includes representing disadvantaged individuals in litigation or assisting them in obtaining pro bono or minimal-fee representation elsewhere by means of a volunteer litigator system.<sup>36</sup> Generally, an applicant wishing to obtain legal aid must establish that he or she is of low income and cannot afford a lawyer, and that he or she has suffered an alleged injustice. Lawyers providing legal aid through the Lawyers Council may receive reimbursements for expenses which will be reviewed by the Legal Aid Committee or a regional Lawyers Council Executive Board, as the case may be.<sup>37</sup>

### Unmet Needs and Access Analysis

Notwithstanding the existence of both state-sponsored and private legal aid opportunities, the legal aid system in Thailand is still lacking a number of legal aid mechanisms present in certain other jurisdictions. A U.S. State Department report states that legal aid in Thailand has often been carried out on "an intermittent, voluntary, public-service basis and was of low standard," with some NGOs reporting that some legal aid lawyers pressured their clients into paying additional fees directly to them.<sup>38</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Law Firm Pro Bono Programs

Several law firms in Thailand have been engaged in various pro bono programs.<sup>39</sup> For instance, some Thai branches of international law firms engage in pro bono projects in Thailand when local pro bono clients are referred from the firm's headquarters to its local branches. Also, some local Thai firms have pro bono programs and invite their lawyers to participate on a voluntary basis. Many of the law firm pro bono programs in Thailand involve providing legal assistance to charitable organizations, non-profit organizations as well as to individuals, with a focus on human rights issues.

---

<sup>32</sup> See Surin Cholpattana, et. al, Current Judicial Reforms in Thailand: Lessons and Experience, ASEAN LAW ASSOCIATION, 10<sup>TH</sup> GENERAL ASSEMBLY (2009), available at <http://www.aseanlawassociation.org/10GAdocs/Thailand5.pdf> (last visited on September 4, 2015).

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> See Thailand National Report on Legal Aids, supra n.30.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> See BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, Country Report on Human Rights Practices for 2014 (Thailand), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236480> (last visited on September 4, 2015).

<sup>39</sup> See, e.g., TILLEKE & GIBBINS - PRO BONO, available at <http://www.tilleke.com/firm/community/probono> (last visited on September 4, 2015), and SIAM PREMIER INTERNATIONAL LAW OFFICE LIMITED - PRO BONO SERVICES, available at <http://siampremier.com/about-the-firm/pro-bono/> (last visited on September 4, 2015).



## Non-Governmental Organizations

Despite the generally low level of pro bono opportunities in Thailand, there are some pro bono services offered by non-profit organizations. For example, the Thai Volunteer Service Foundation (<http://thaivolunteer.org> (last visited on September 4, 2015)) maintains a website providing a list of volunteer opportunities for lawyers. Many of the local non-profit websites are only available in the Thai language.

A few NGOs are also developing pro bono aid clinics. For instance, Bridges Across Borders Southeast Asia Community Legal Education Initiative (“**BABSEA CLE**”) has been working in collaboration with universities, law students, law faculties, lawyers and other members of the legal community, and NGO partners to develop clinical programs throughout Southeast Asia.<sup>40</sup> The BABSEA CLE Foundation in Thailand is an independently registered local non-profit, and works to develop clinical legal education programs and other community initiatives through partnerships with various universities in Thailand.<sup>41</sup> Projects undertaken by Thailand’s BABSEA CLE Foundation include the Legal Clinicians in Residence project, the Legal Ethics, Pro Bono, Access to Justice and Professional Responsibility Curriculum Development project, and the Community Teaching project.<sup>42</sup>

In addition, refugee rights advocacy groups in Thailand have begun to develop pro bono programs to help asylum seekers obtain legal assistance, as Thailand has a particularly large refugee population.<sup>43</sup> According to a 2013 report published by the Asia Pacific Refugee Rights Network, an estimated 120,000 refugees reside in camps along the Thai-Myanmar borders.<sup>44</sup>

## Bar Association Pro Bono Programs

As Thai bar associations are active in providing pro bono services, those seeking legal assistance may visit or contact local offices of bar associations for preliminary queries and consultations. Various forms of pro bono legal assistance, including representation in litigation, is provided free of charge (but excluding any court fees or government services fee). Applicants wishing to obtain pro bono services must establish that the applicant is of low income and that the applicant cannot afford a lawyer by his or her own means, and that he or she has suffered an alleged injustice. Furthermore, the applicant must not have any concurrent representation provided by another attorney at the time the pro bono services are requested, and the case being dealt with must not be barred by prescription.<sup>45</sup>

## University Legal Clinics and Law Students

Pro bono legal assistance is also provided in certain universities, such as the Faculty of Law Center at Thammasat University, the Legal Consultation Center at Chiang Mai University, Law Student Volunteers Training Center at Khon Kaen University, and the Legal Aid for People Project at Thaksin University.<sup>46</sup> Most pro bono services provided by universities focus on counselling services and do not include the representation of clients in litigation.<sup>47</sup> At present, many universities further strive to promote pro bono practices and community awareness through courses targeted at strengthening the students’ sense of

---

<sup>40</sup> See generally, BABSEA-CLE, available at <https://www.babseacle.org/> (last visited on September 4, 2015).

<sup>41</sup> See THAILAND – BABSEA-CLE, available at <https://www.babseacle.org/thailand/> (last visited on September 4, 2015).

<sup>42</sup> Id.

<sup>43</sup> See, e.g., ASIA PACIFIC REFUGEE RIGHTS NETWORK, 2013 Annual Report, available at [http://www.aprrn.info/1/images/PDF/Annual\\_Report\\_2013.pdf](http://www.aprrn.info/1/images/PDF/Annual_Report_2013.pdf) (last visited on September 4, 2015).

<sup>44</sup> Id.

<sup>45</sup> See, e.g., THE THAI BAR UNDER THE ROYAL PATRONAGE, <http://www.thethaibar.or.th/thaibarweb/index.php?id=254&L=1> (last visited on September 4, 2015) (only available in the Thai language).

<sup>46</sup> See Thailand National Report on Legal Aids, supra n.30.

<sup>47</sup> Id.



ethics in the legal profession. In some of these courses, students are given opportunities to visit local communities in need of legal assistance and to utilize their knowledge and training to address the various legal issues of the villagers in need.

## Historic Development and Current State of Pro Bono

There are several limitations impeding the development of a mature pro bono practice in Thailand. First, apart from a few volunteer organizations, there is a lack of pro bono referral organizations in Thailand. Referrals are mostly done on an *ad hoc* basis and in an uncoordinated manner, primarily through NGO networks.

Second, there are still only a small number of law firms in Thailand that have developed regular pro bono initiatives. While some law firms organize occasional community outreach activities and donate time and money to charitable causes, few encourage their lawyers to provide pro bono legal services on a consistent basis. In addition, there appears to be a lack of incentives for associates to engage in pro bono work, since they are not normally given any billing credit nor are they counted towards annual billable requirements.

Third, foreign lawyers in Thailand face a host of obstacles which prevent them from being active participants in the legal community. These include not only language and cultural barriers, but also legal barriers and restrictions against foreign practitioners, such as the Thailand Lawyers Act 1985, which requires Thai citizenship for an applicant to receive a law license.<sup>48</sup>

Lastly, given that the professional legal community is concentrated mainly in Bangkok, there is a shortage of legal services catering to those living in poor rural areas, who may be among those most in need of legal assistance.

## Pro Bono Resources

### Entities Engaged in Pro Bono

Below is a non-exhaustive list of organizations offering pro bono opportunities in Thailand that lawyers and nonlawyers seeking to become involved in pro bono work in Thailand may contact.

#### State-sponsored Legal Aid:

- Office of the Attorney General: <http://www.ago.go.th> (last visited on September 4, 2015)
- Lawyers Council of Thailand: <http://www.lawyerscouncil.or.th/> (last visited on September 4, 2015)
- Thai Bar Association: [www.thethaibar.org](http://www.thethaibar.org) (last visited on September 4, 2015)

#### Human Rights and Justice-related Issues:

- Thai Volunteer Service Foundation: <http://thaivolunteer.org/eng/> (last visited on September 4, 2015)
- Human Rights Lawyers Association: <http://humanrightsinasean.info/content/human-rights-lawyers-association.html> (last visited on September 4, 2015)
- BABSEA CLE: <http://www.babseacle.org> (last visited on September 4, 2015)
- Human Security Alliance: <http://www.hsa-int.net> (last visited on September 4, 2015)
- Asian Forum for Human Rights and Development: <http://www.forum-asia.org> (last visited on September 4, 2015)
- New Tactics: <http://www.newtactics.org> (last visited on September 4, 2015)
- People's Empowerment Foundation: <http://www.peoplesempowerment.org> (last visited on September 4, 2015)
- HDF Mercy Centre: <http://www.mercycentre.org> (last visited on September 4, 2015)
- Internet Law Reform Dialogue: <http://www.ilaw.or.th> (last visited on September 4, 2015)

---

<sup>48</sup> See generally, Thailand International Trade in Legal Services, *supra* n.19.



Asylum and Refugee Assistance:

- Asia Pacific Refugee Rights Network: <http://www.aprrn.info/1/> (last visited on September 4, 2015)
- Thai Committee for Refugee Foundation: <http://www.thaiforrefugees.org> (last visited on September 4, 2015)
- International Rescue Committee: [www.theirc.org/where/thailand](http://www.theirc.org/where/thailand) (last visited on September 4, 2015)
- Asylum Access: [www.asylumaccess.org](http://www.asylumaccess.org) (last visited on September 4, 2015)
- Human Security Alliance: [www.hsa-int.net](http://www.hsa-int.net) (last visited on September 4, 2015)
- Jesuit Refugee Service: [www.jrsap.org](http://www.jrsap.org) (last visited on September 4, 2015)
- People's Empowerment Foundation: [www.peoplesempowerment.org](http://www.peoplesempowerment.org) (last visited on September 4, 2015)
- Thai Committee for Refugees Foundation: [www.thaiforrefugees.org](http://www.thaiforrefugees.org) (last visited on September 4, 2015)

Women's Issues:

- Women Lawyers Association: <http://www.globalfundforchildren.org/partners/women-lawyers-association-of-thailand/> (last visited on September 4, 2015)
- Foundation for Women: <http://www.womenthai.org/eng/> (last visited on September 4, 2015)

## CONCLUSION

Overall, the pro bono culture in Thailand is still in the early stages of development. Apart from intermittent and ad hoc referrals by state agencies, law firm initiatives and the activities of a limited number of non-profit organizations, pro bono opportunities in Thailand remain scarce and disproportionate to the size of the overall legal community. Furthermore, foreign-qualified lawyers wishing to engage in pro bono work face a number of significant obstacles, including regulations prohibiting the practice of law in Thailand. The growth of pro bono services in Thailand depends on the ability to lift the barriers to pro bono work. Efforts are needed to build a supportive pro bono culture and infrastructure, including a coordinated referral system among government agencies, law firms and NGOs to connect ready and willing lawyers with those in need of legal assistance.

September 2015

### Pro Bono Practices and Opportunities in Thailand

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

## Pro Bono Practices and Opportunities in Turkey<sup>1</sup>

### INTRODUCTION

As stipulated by Articles 5<sup>2</sup> and 36<sup>3</sup> of the Turkish Constitution<sup>4</sup>, the State of the Republic of Turkey (“**Turkey**”) has a constitutional duty to establish an effective and accessible judicial system. In order to fulfil this duty, state-funded legal aid has been established, providing the highest proportion of assistance in legal matters and disputes compared to other means of aid such as voluntary pro bono work by attorneys. However, as underlined in the European Commission Turkey Progress Report (October 2014) “the scope and quality of legal aid is inadequate and there is no effective monitoring that it would help to remedy long-standing problems.”<sup>5</sup>

In addition to the state-funded legal aid provided to indigent persons and entities, independent lawyers, law firms and law schools have recently become active in increasing judicial accessibility by establishing pro bono institutions and practices. As explained in more detail below, although there have been positive steps towards this practice, many social and legal barriers remain preventing an effective increase in pro bono efforts in Turkey.

### OVERVIEW OF THE LEGAL SYSTEM AND THE LEGAL PROFESSION

#### Constitution and Governing Laws

Pursuant to Article two of the Turkish Constitution (the “**Constitution**”), Turkey is a democratic, secular and social State governed by the rule of law. Article 36 of the Constitution and Article 6(1) of the European Convention on Human Rights (the “**ECHR**”)<sup>6</sup> together guarantee the right of every individual to fair trial and the right to legal remedy either as a plaintiff or defendant. Also, Article 40(1) of the Constitution along with Article 13 of the ECHR provide the right to an effective remedy.

As part of its efforts to harmonize Turkish legislation with the laws of the European Union, in August 2009, Turkey adopted a “judicial reform strategy” that, among other things, covers issues related to the efficiency and effectiveness of the judiciary and the facilitation of access to justice.<sup>7</sup> In order to facilitate access to justice, the reform strategy focuses on, among other things: (i) reviewing the legal aid system to

<sup>1</sup> This chapter was drafted with the support of Pekin & Pekin.

<sup>2</sup> Article 5- The fundamental aims and duties of the State are to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy, to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law; and to provide the conditions required for the development of the individual’s material and spiritual existence.

<sup>3</sup> Article 36- (As amended on October 3, 2001; with Law No. 4709) Everyone has the right to litigate either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures. No court shall refuse to hear a case within its jurisdiction.

<sup>4</sup> Published in the Official Gazette dated November 9, 1982 and numbered 17863(bis).

<sup>5</sup> The European Commission Turkey Progress Report (October 2014) available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-turkey-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf) (last visited on September 4, 2015).

<sup>6</sup> Turkey ratified the ECHR on May 18, 1954. Pursuant to article 90 of the Turkish Constitution, international agreements duly ratified by Turkey bear the force of law. In case of conflict between domestic laws and international agreements concerning fundamental rights and freedoms such as the ECHR, the terms of the relevant international agreement shall prevail.

<sup>7</sup> Judicial Reform Strategy by the Ministry of Justice of the Republic of Turkey, available at <http://www.sgb.adalet.gov.tr/Yargi-Reformu-Stratejisi.pdf> (last visited on September 4, 2015).



enable effective access to justice; (ii) setting up standardized websites for courts; and (iii) standardizing interpretation services for people speaking local languages.

In April 2015, it was announced that the Judicial Reform Strategy was to be extended to include pro bono practice and legal clinics.<sup>8</sup> This could indicate that the legal barriers towards pro bono may be lessened allowing lawyers and law students to provide free legal assistance to the public on a both voluntary and institutional basis. However, as of June 2015, no steps have yet been taken towards establishing the extended Judicial Reform Strategy.

## The Courts

The Turkish judicial system is primarily composed of two courts of law: (i) the judicial courts, which have responsibility for civil and criminal matters; and (ii) the administrative courts. The civil courts are comprised of a number of different courts, each having authority over specific civil litigation matters, including the peace courts, commercial courts, labor courts, enforcement courts, family courts and cadastral courts. All other civil matters are litigated before the civil courts of first instance. The criminal courts consist of justices of peace<sup>9</sup>, juvenile courts, criminal courts of first instance (the primary courts), and high criminal courts, each with specific authority over certain criminal matters, depending on the crime. The highest court for both civil matters and criminal matters is the Court of Appeal.

The administrative courts include tax courts and administrative courts, which exist at the provincial level, with authority over tax and other administrative litigation matters. The highest administrative court in Turkey is the Turkish Council of State, equivalent to a supreme administrative court such as the *Conseil d'Etat* in France. The other supreme court is the Constitutional Court.

## The Practice of Law

The Turkish Attorney's Act<sup>10</sup> asserts the requirements of practicing law (including the provision of free legal assistance) as: (i) holding a Turkish citizenship; (ii) finishing a four year Turkish Law School or holding an equivalent degree from a foreign law school; (iii) completing the Attorneys' Internship; and (iv) having been registered to a local Bar (a "Bar").

Due to these requirements, the practice of law (including the provision of free legal assistance) by foreign lawyers is problematic. There is, however, no barrier preventing foreign law firms from advising on matters of foreign law or representing Turkish clients (including in pro bono cases) before international courts or taking on cases, for example, before the European Court of Justice, the European Court of Human Rights or the International Court of Justice.

As of December 31, 2014<sup>11</sup>, there were 86,981 lawyers – including approximately 35,000 female attorneys – registered with the Turkish Union of Bars; representing an increase of 12,489 from December 31, 2011 and an increase of 26,271 or approximately 43% from December 31, 2007. Almost half of this increase is attributable to new qualifications with the Istanbul Bar, which had 33,349 members as of December 31, 2014. Eleven other cities in Turkey have over 1,000 practicing lawyers, but the number of lawyers practicing in the more rural areas of Turkey is significantly lower, down to 40 - 60 in some of the eastern and south-eastern cities of Turkey. Istanbul, Ankara (the capital of Turkey) and a few other big cities have attorneys practicing in relatively large or medium-scale law firms, solo practice is by far the preferred choice for lawyers across Turkey.

---

<sup>8</sup> Judicial Reform Strategy by the Ministry of Justice of the Republic of Turkey, available at <http://www.sgb.adalet.gov.tr/yargi-reformu-stratejisi-sunum.pdf> (last visited on September 4, 2015).

<sup>9</sup> Peace Courts were reorganized in 2014 as Justices of Peace with Law No. 6545 published in the Official Gazette dated June 28, 2014 and numbered 29044.

<sup>10</sup> Law No. 1136 published in the Official Gazette dated March 19, 1969 and numbered 13168.

<sup>11</sup> As published on the Turkish Union of Bars (TBB)'s website available at <http://www.barobirlik.org.tr/Detay.aspx?ID=39218> (last visited on September 4, 2015).



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

State-funded legal aid in Turkey is regulated by the Code of Criminal Procedure, the Code of Civil Procedure and the Legal Aid Regulation which has been prepared by the Turkish Union of Bars<sup>12</sup>. In 2015, approximately TL 60 million (approximately US\$22.22 million based on June 2015 exchange rates) was transferred to the Bars from the central government budget for legal aid<sup>13</sup>. This is an increase from approximately TL 30 million in 2011, when merely 30 million TL (approximately \$11.11 million based on June 2015 exchange rates) of the budget was actually spent.<sup>14</sup> Bars provide free legal representation both in criminal and in civil matters, but the scope of representation, as well as the application and implementation procedures in respect of each type of legal aid, are governed by different sets of rules.

### The Right to Legal Assistance

#### In Civil Proceedings

In Turkey, legal aid to plaintiffs and defendants in disputes of a civil or administrative nature is governed jointly by the Code of Civil Procedure (the “**Civil Procedure Code**”),<sup>15</sup> the Attorney’s Act<sup>16</sup> and the Legal Aid Regulation<sup>17</sup> issued by the Union of Turkish Bar Associations.

The scope of civil legal aid covers all civil, administrative and commercial disputes, temporary protection requests, as well as execution proceedings and interim measures. Unlike criminal legal aid, the provision of civil legal aid is subject to two qualifications: (i) the applicant should have limited financial means; and (ii) the applicant should appear likely to succeed on the merits of the dispute, i.e., his or her case or claim is not frivolous. Under Turkish laws and regulations, foreigners can only benefit from civil legal aid services on the basis of reciprocity. In this respect, Turkey is party to the Hague Convention Regarding Civil Procedure dated March 1, 2004, under which Turkey is bound to provide legal aid to citizens of the countries which have ratified this convention.

The Civil Procedure Code extends legal aid to associations and foundations with public benefit status if such organizations have limited financial means. Pursuant to Article 176 of the Code of Lawyers, legal aid covers: (i) exemption from court fees; and (ii) free legal representation by an attorney appointed by the Bar. Under Articles 334-340 of the Civil Procedure Code, a request for exemption from court fees can be filed with the competent court verbally or in writing at any stage of the proceedings by the applicant in person or by his attorney. It is not compulsory for the court to respond to the applicant in writing. Accordingly, any applicant who requests such an exemption needs to follow up on the outcome of their request. If the request is rejected by the court, the Bar providing free legal representation services can still pay the court fees on behalf of the applicant through the funds allocated to it, if it so decides, by virtue of a board resolution. Article 45(2) of the Regulation relating to the Civil Procedure Code<sup>18</sup> provides that in matters where a civil legal aid application has been made, no court fees or similar fees shall be payable until a decision has been made on whether or not the exemption is granted.

---

<sup>12</sup> Published in the Official Gazette dated March 30, 2004 and numbered 25481.

<sup>13</sup> Turkish Union of Bars (TBB) Announcement 31.3.2015, Number: 2015/31 available at <http://www.barobirlik.org.tr/Detay.aspx?ID=51230> (last visited on September 4, 2015).

<sup>14</sup> Turkish Union of Bars (TBB) Announcement 31.3.2011, Number: 2011/31 available at <http://www.barobirlik.org.tr/Print-7425&lightbox> (last visited on September 4, 2015). See Also H. A. Acikgul, Legal Aid System in Turkey in respect of the European Union Requirements and the Decisions of the ECHR 6 (unpublished, presented at the International Symposium on Judicial Reform on Apr. 3, 2012).

<sup>15</sup> Published in the Official Gazette dated February 4, 2011 and numbered 27836.

<sup>16</sup> Published in the Official Gazette dated April 7, 1969 and numbered 13168.

<sup>17</sup> Published in the Official Gazette dated March 30, 2004 and numbered 25418.

<sup>18</sup> Published in the Official Gazette dated April 3, 2012 and numbered 28253.



Requests for free legal representation, on the other hand, are made directly to the relevant legal aid bureaus that are established within the organization of the Bars (the “**Legal Aid Bureaus**”). The applicant must submit the documents proving his/her identity, cause and lack of financial means. If the request is rejected, the applicant can appeal verbally or in writing to the president of the relevant Bar, whose decision shall be final. The attorneys appointed by the Legal Aid Bureaus are paid on the basis of the fees set forth in the Lawyers’ Minimum Tariffs.<sup>19</sup>

More recently, some Bars have adopted policies to facilitate the provision of legal aid to women who have been victims of violence. Two of the biggest Bars in Turkey (the Istanbul and the Izmir Bars) are collaborating with the Women’s Rights Centers with a view to establishing centers providing legal aid services to women. These organizations work in conjunction with the Legal Aid Bureaus and provide legal aid through lawyers appointed from a list of lawyers specialized, and volunteered to assist, in cases focused on women rights’ issues.

### In Criminal Proceedings

Criminal legal aid was introduced to Turkey in 1992 through amendments to the Code of Criminal Procedure.<sup>20</sup> In 2004, Turkey adopted a new Code of Criminal Procedure (as amended from time to time, the “**Criminal Procedure Code**”).<sup>21</sup> Pursuant to Article 150 and onwards of the Criminal Procedure Code, any suspect or defendant who wishes to benefit from criminal legal aid qualifies for criminal legal aid, regardless of his or her financial status or the seriousness of the crime in question. Having Turkish nationality is not a requirement to receive criminal legal aid.<sup>22</sup> Furthermore, mandatory criminal legal aid is in place for those suspects, defendants and victims of crimes who are mentally disabled, deaf mute, minor or, in the case of a suspect or a defendant, charged with a crime that may be punished with five years of imprisonment or more.<sup>23</sup>

Bars have been entrusted with the task of providing criminal legal aid, and many Bars in Turkey have established Code of Criminal Procedure Practice Units (the “**CCPP Units**”) that are funded by the Turkish government. In addition, pursuant to Articles 234 and 239 of the Criminal Procedure Code, victims of crimes are also entitled to apply to the CCPP Units and request that the relevant Bar appoint a lawyer to represent them as an intervening party if the crime is a sexual offense or is punishable with five years of imprisonment or more. Furthermore, within the framework of the National Judiciary Network Project (“**UYAP**”), there is a public and free-of-charge specific information system called the “Citizen Portal” set up in Turkey to inform and help victims of crimes, and efforts are underway to ensure that citizens may examine their files in a comprehensive manner and be informed via mobile text messages (“**SMS**”) of any updates.<sup>24</sup>

Despite the increase in funds allocated to services of CCPP Units, preliminary research<sup>25</sup> suggests that, in certain parts of Turkey, approximately nine out of ten defendants are not represented by a lawyer at any stage of the criminal justice process and that overall the CCPP representation rate is a mere 2.8%, meaning that only one in every 35 offenders benefits from CCPP services at any stage of the criminal

---

<sup>19</sup> Published in the Official Gazette dated December 31, 2014 and numbered 29222.

<sup>20</sup> I. Elveris, G. Jahic and S. Kalem, Alone in Court-Room, Accessibility and Impact of the Criminal Legal Aid Before Istanbul Courts, Istanbul Bilgi University, Human Rights Law Research Center 1 (June 2007) (unpublished).

<sup>21</sup> Published in the Official Gazette dated December 17, 2004 and numbered 25673.

<sup>22</sup> U. Karan, Impact of Financial Obligations on Access to Justice In Turkey, Legal Aid and Pro Bono (January 2005) (unpublished).

<sup>23</sup> Criminal Procedure Code Articles 150, 234, 239.

<sup>24</sup> Scheme for Evaluating Judicial Systems 2007, European Commission for the Efficiency of Justice (CEPEJ), Turkey’s Responses, available at [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/2010\\_Turquie.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/2010_Turquie.pdf) (last visited on September 4, 2015).

<sup>25</sup> Such research has been conducted by Idil Elveris, Seda Kalem and Galma Jahic from Bilgi University Faculty of Law and the results were also published in several bulletins (e.g. available at [http://www.aksiyon.com.tr/dosyalar/ben-masumum-hakim-bey\\_516324](http://www.aksiyon.com.tr/dosyalar/ben-masumum-hakim-bey_516324)) (last visited on September 4, 2015).



justice process. However, given that routine data on the provision and cost of legal aid is not kept, any finding based on this preliminary data is of questionable value. The key finding of this research is the strikingly low accessibility rate of Turkish people to the CCPP Units' services. Ironically, however, the results of the study also suggested worse final outcomes (in terms of conviction rates or duration of trial, for example) for defendants represented by a CCPP Unit lawyer compared to defendants who were represented by private lawyers, or even those who had no legal representation during trial.

## Mandatory Assignments to Legal Aid Matters

Under the existing regime, neither the defendant himself nor his family can approach the Bar with a request for a lawyer. Only the police, the prosecutor or the court can ask the Bar to send a lawyer to assist the defendant. The majority of the Bars have a list of attorneys who have volunteered to assist defendants, but in more rural areas of Turkey where there are only a few attorneys registered with the Bar Turkish regulations require such attorneys to assume the task of participating in criminal legal aid schemes.

Pursuant to the Regulation Concerning the Principles and Procedure Regarding the Funds Payable to Attorneys under the Criminal Procedure Code,<sup>26</sup> the government funding process functions as follows: (i) the Ministry of Finance provides the funds to the Bars; (ii) the Bars process the required paperwork and submit the same to the relevant prosecutor's office for review; and (iii) upon approval of the latter, the Bars process the payments on the basis of a tariff jointly issued by the Ministry of Finance and the Ministry of Justice, which sets forth the amount of fees payable per case and per task. The tariff is revised on a yearly basis to be effective as of January 1st of each year.

The CCPP system adopted by the Istanbul Bar Association is said to be the most advanced in Turkey. Where a CCPP Unit is not established, Bars have instead set up commissions to provide legal aid services. These commissions differ from the CCPP Units in that the commissions often do not have their own independent budget or do not employ representatives on a full-time basis; instead, they have an on-call attorney appointed.

## Unmet Needs and Access Analysis

The existing criminal and civil legal aid structure has been criticized for a number of important reasons.

*Firstly*, while some progress has been made in recent years to improve citizens' awareness of their rights to access to justice as a result of increased efforts by the Bars, public awareness of legal aid is still limited and problems still persist in rural areas for disadvantaged groups. A large proportion of prison inmates, including women and juveniles, have only limited access to legal aid.<sup>27</sup> Courts do not provide the relevant parties with forms or models of petitions, have no information desks, and in domestic violence cases, the documentation required in order to benefit from legal aid has, in practice, delayed protection of victims.<sup>28</sup> Financial resources allocated to legal aid are inadequate and lawyers' fees are very low,<sup>29</sup> which discourages lawyers from taking a larger role in legal aid cases.

*Secondly*, with respect to civil legal aid, attorneys appointed by the Legal Aid Bureaus to provide civil legal aid services are not subject to an exam, interview process or prior training on providing legal aid services. Attorneys working for the CCPP Units are required to undertake only a very short training program. The distribution of work among attorneys appointed by the Legal Aid Bureaus and CCPP Units

---

<sup>26</sup> Published in the Official Gazette dated March 02, 2007 and numbered 26450.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.



is made irrespective of the attorney's performance.<sup>30</sup> Other than quarterly reporting requirements to the Union of Turkish Bars concerning the cases, there are no auditing or disciplinary procedures to control case development.<sup>31</sup>

*Thirdly*, although the CCPP Units and the Legal Aid Bureaus function side by side under the umbrella of the Bars, they do not have a coordinated approach, nor do they coordinate their work with the social services, the police or the NGOs.<sup>32</sup>

*Fourthly*, Legal Aid Bureaus established with different Bars apply different criteria for providing civil legal aid, as there is no coordinating and supervisory body that standardizes the implementation process for all of the bureaus.<sup>33</sup> Furthermore, as discussed under "Barriers to Pro Bono Practice," the scope of civil legal aid is vaguely defined in Turkey and calls into question whether the lawmakers' intention was to limit the Bars' authority in this area to legal representation before the courts and other authorities or to entrust them with the task of providing free legal advice in Turkey.<sup>34</sup> As it is unfortunately the case for most other jurisdictions too, this is problematic because, under Turkish law, Bars have exclusive jurisdiction over provision of legal services which by law are entrusted in them. This exclusivity, if considered broadly, would effectively prevent persons other than licensed attorneys, such as legal clinic programs or NGOs, from giving legal advice, even pro bono (see below "Barriers to Pro Bono Practice").

## Alternative Dispute Resolution

Pro bono services are not only possible in a court setting. It is also possible for licensed attorneys to represent their clients in mediation, which is a quite new dispute resolution method in Turkey.

The provisions of the Law on Mediation in Civil Disputes (Law No. 6325) ("**LMCD**")<sup>35</sup> entered into force one year following its publication in the Official Gazette, on June 22, 2013. The Regulation on the LMCD ("**Regulation**") was also published in the Official Gazette dated January 26, 2013 and numbered 28540 and has entered into force on the same date as the LMCD.

The LMCD regulates mediation in Turkish civil law for the first time. In that regard, Article one of the LMCD stipulates that mediation can be applied only in the resolution of private law conflicts, including those having a foreign element, arising from acts or transactions of interested parties who have the capacity to settle such conflicts.

According to the LMCD, a "mediator" must fulfil the following conditions: (a) be a Turkish citizen; (b) have graduated from a law faculty with at least five years of professional experience; (c) be fully capable; (d) have no criminal record; and (e) have completed a mediation training course and passed the written and practical exam administered by the Ministry of Justice. Anybody fulfilling these conditions may act as mediators by registering with the Mediators' Registry and may commence their services from the date of such registration.

---

<sup>30</sup> Roundtable Discussion On Legal Aid In Turkey: Policy Issues and Comparative Perspective, Report and Selected Papers and Report Delivered at a Roundtable Held in Istanbul, Turkey, on April 16, 2004, including The Agenda and List of Participants, Istanbul Bilgi University in Cooperation with Open Society Justice Institute, 2. See also Corey Stoughton, A Comparative Analysis of the Turkish and American Criminal Legal Aid Systems Vol. 6, No. 1, 1-16 ANKARA L. REV.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> I. Elveris, IR 708, Social Policy Final Paper: Access to Justice For the Poor in Turkey: Can legal clinics empower? 7 (unpublished).

<sup>34</sup> Id.

<sup>35</sup> Published in the Official Gazette dated June 22, 2012 and numbered 28331.



## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

##### Law Firm Pro Bono Programs

Although some law firms in Turkey offer pro bono practice opportunities, there is no tradition of institutional pro bono practice among the firms and opportunities vary depending on the firm and eligibility. Persons requiring legal assistance should firstly check whether the firm has pro bono practice and whether they are eligible. The difficulty of obtaining such assistance drives the public to seek State-funded legal aid that is widely available as opposed to pro bono work by law firms. Some law firms may prefer to participate into the networking scheme arranged by the Bilgi University Human Rights Law Center (“**Bilgi**”) whereas other law firms may wish to work independently and create their own pro bono chain.

##### Legal Department Pro Bono Programs

We are not aware of any established pro bono programs among in-house legal departments in Turkey. In-house lawyers in Turkey tend to work for a single client which is the corporation that employs them and do not take on pro bono clients independently.

##### Non-Governmental Organizations

Some NGOs employ lawyers to provide legal advice to the target audience of the NGO. For instance, the Association for Solidarity with Asylum Seekers and Migrants and the United Nations High Commissioner for Refugees (the “**UNHCR**”) organize educational meetings concerning refugees, migration, law on foreigners and international protection and publish articles on their website explaining the relevant legislation, in order to safeguard the rights and well-being of refugees.

##### Bar Association

Apart from State-funded legal aid, the Bar Association does not offer any separate voluntary pro bono programs.

##### University Legal Clinics and Law Students

Bilgi is the first university in Turkey to set up legal clinics based on the models used in law schools in the United States. Currently, Bilgi has two legal clinics, namely the daily life clinic and the private law clinic. In the private law clinic, they provide legal information rather than legal representation before courts because, legal complications aside, as a practical matter, litigation takes too long in Turkey.<sup>36</sup> In addition, more recently Anatolia University has set up legal clinics in Turkey focusing on different subject matters.<sup>37</sup>

### Historic Developments and Current State of Pro Bono

Institutional pro bono as a concept has not been a part of Turkish legal history unlike state-funded legal aid. Pro bono is an emerging field among Turkish attorneys and law firms. With the recent establishment of legal clinics by Turkish universities and the network established by Bilgi, pro bono practice has developed further in Turkey; however, both legal and social barriers are still a factor preventing further development in pro bono practice.

##### Social Barriers – Bilgi’s Experience

Bilgi’s experience with legal clinics and its pro bono initiative highlights some of the practical and social barriers to providing pro bono services in Turkey. For example, Idil Elveris, coordinator and lecturer at

---

<sup>36</sup> I. Elveris, *Educating and Supporting A Commitment To Public Service Lawyering*, (unpublished), Fourth International GAJE Conference, Cordoba-Argentina, November 2006, Promotion of Pro Bono Initiatives, Presentation Notes.

<sup>37</sup> A.T.Yuruk, *Law Clinics 8* (unpublished, presented at the International Symposium on Judicial Reform on April 3, 2012).



Bilgi, states that the NGOs were sceptical at first, almost suspicious, of their initiative to try to assist them. The initial scepticism of the NGOs vis-à-vis the intentions of Bilgi, as well as the law firms, pinpoints the lack of a strong cultural background and tradition of community work, volunteering and social trust among Turkish citizens.<sup>38</sup> The lack of public trust in the judicial system and the nature of loser pays regulations whether the case is pro bono or not are among other social barriers that affect pro bono in Turkey.

### Legal Barriers – Monopoly of Bars

Generally speaking, the legal profession is subject to rigid regulation in Turkey. The scope of legal services, the provision of which requires an attorney's license, is defined rather broadly. Under Article 35 of the Code of Lawyers, *only* attorneys registered with a local Bar are entitled to “render legal opinions, appear before courts, arbitrators and other judiciary bodies, pursue matters before courts and to prepare all documents in relation thereto.” In addition, any task that is set forth in the Lawyers' Minimum Tariff can only be undertaken by attorneys and at the fees set forth in the Lawyers' Minimum Tariff. The tariff includes various tasks that not only relate to representation of clients before courts, arbitrators, execution officers or other judiciary bodies but also to the provision of “verbal or written legal advice,” as well as the drafting of certain agreements such as lease agreements, wills and some corporate documents.

Article 35 of the Code of Lawyers, together with the Lawyers' Minimum Tariff, delineates the scope of licensed services so broadly that many (including Bars) argue that the provision of any type of legal advice, whether or not it pertains to representation before judicial bodies, is under the exclusive competence of attorneys registered with the Bars. However, others argue that restricting the provision of legal advice to attorneys, and attorneys only, is not compatible with the freedom of thought and expression guaranteed under the Constitution.<sup>39</sup>

### Legal Barriers – Minimum Tariffs

Pursuant to Article 1 of the Lawyers' Minimum Tariff, attorneys cannot agree on fees lower than those set forth in the Minimum Tariff. However, Article 164 of the Code of Lawyers states that when a lawyer takes on a case pro bono (without any consideration), he needs to notify the board of directors of the relevant Bar accordingly. In addition, pursuant to an opinion rendered by the Disciplinary Committee of the Union of Turkish Bars dated September 23, 2000, numbered E. 2000/72, 2000/128, “accepting a case pro bono is different than accepting a case in exchange for a fee which is lower than those set forth in the Lawyers' Minimum Tariff. If the parliament's intention was to ban pro bono work, it would explicitly do so by inserting a provision in the law to that effect.” Accordingly, we believe that there is no legal barrier to attorneys providing pro bono assistance, including taking on a case pro bono, to the extent that they notify the Bars with which they are registered accordingly.

### Legal Barriers – Ban On Advertising

Pursuant to Article 8 of the Regulation Regarding Ban On Advertising,<sup>40</sup> law firms, attorneys and trainees cannot carry out any advertising activities. In connection with their professional activities, they cannot make public statements as spokesmen for their client before the media, or on the Internet, about a case they have pursued or are pursuing unless the circumstances require otherwise. Moreover, they cannot make any statements before the media that can be construed as an advertisement. This ban on advertising makes it impossible for law firms to advertise their pro bono credentials.

## Pro Bono Resources

Bilgi is the only institution to set up a pro bono network in Turkey which pairs up NGOs with law firms in Istanbul. The network makes a needs assessment of the NGOs to determine if the NGOs (or their constituents) need legal drafting, representation or pure legal advice. Bilgi's findings are then sent to the law firms in Istanbul. The law firms, in turn, choose the NGO they want to work with, as well as the type of legal assistance they wish to provide. The law firms are then introduced to the NGOs.

---

<sup>38</sup> I. Elveris, Brief Statement of Pro Bono Work in Turkey 2 (unpublished).

<sup>39</sup> I. Elveris, Current Provisions of Legal Profession and Associated Access to Justice Problems 7 (unpublished).

<sup>40</sup> Published in the Official Gazette dated November 21, 2003 and numbered 25296.



## CONCLUSION

In conclusion, as also underlined within the European Commission Turkey Progress Report (October 2014), the scope and quality of legal aid remain inadequate and pro bono opportunities in Turkey are limited. Under applicable Turkish regulations, if a Turkish qualified attorney or a domestic law firm wishes to take on a case pro bono, a notification to the Bar to that effect is required. Otherwise, the relevant attorney or the domestic law firm, as the case may be, is deemed to have breached the requirement to provide licensed services based on the mandatory minimum tariffs. The ban on advertising further discourages attorneys from advertising their pro bono credentials. Persons who are not attorneys (such as NGOs and university legal clinics) are hesitant to give pro bono legal advice because Bars in Turkey have a legal monopoly over the provision of a wide range of legal services. Accordingly, pro bono work that can be undertaken by foreign law firms and NGOs is limited to taking on cases before international bodies, or otherwise liaising with domestic law firms and university legal clinics to assist them in their efforts to promote pro bono representation in Turkey.

September 2015

Pro Bono Practices and Opportunities in Turkey

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Uganda<sup>1</sup>

### INTRODUCTION

Although there is an acute unmet need for legal aid and free legal services for the indigent in Uganda, the country lacks the resources to implement a comprehensive national legal aid system. This leaves a significant number of Ugandans without government-provided legal aid or resources to afford hired counsel. Women in particular experience the greatest barriers due to their higher illiteracy levels, social factors and a lack of information.<sup>2</sup> As a result, pro bono services, while not widely available, are greatly needed. A majority of pro bono services that are provided come from NGOs which are mainly located in urban areas.

### LEGAL SERVICES AND THE LEGAL PROFESSION

#### The Justice System<sup>3</sup>

Uganda is a former British protectorate with a legal system modeled on the English common law legal system. The supreme law in Uganda is the Constitution, the latest being enacted on October 8, 1995.<sup>4</sup> Uganda has had an unstable political and constitutional order with several previous constitutions having been enacted between 1962 and 1995.

The Ugandan Judicature Act<sup>5</sup> established that Ugandan legal authority can be based on statutory law, common law and doctrines of equity and customary law. However, the law is fundamentally statutory, comprised of Acts of Parliament and Statutory Instruments, with some common law and doctrines of equity and customs applying as well. Statutes take precedence over doctrines of equity and customs. Customary law must not be repugnant to good conscience, equity and natural justice and can be applied before any court.

Uganda's legal system's hierarchy includes (i) tribunals, (ii) magistrate courts, which handle the majority of criminal and civil cases, (iii) a High Court that hears appeals from the tribunals and magistrate courts and can assume original jurisdiction in any matter of its choosing, (iv) a Court of Appeals that takes appeals from the High Court and has original jurisdiction over constitutional cases, and (v) a Supreme Court that sits as the final court of appeal and exercises original jurisdiction over presidential election petitions. The President appoints all judges to the High Court, the Court of Appeals and the Supreme

---

<sup>1</sup> This chapter was drafted with the support of Phillip Karugaba, partner at the law firm of MMAKS Advocates.

<sup>2</sup> Government of Uganda, The Justice, Law, and Order Sector Program: Study on Gender and Access to Justice, THE REPUBLIC OF UGANDA MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS, JUSTICE, LAW AND ORDER SECTOR (2002), available at <http://www.gsdr.org/docs/open/SSAJ85.pdf> (last visited on September 4, 2015).

<sup>3</sup> Lydia Matte, Uganda's Legal System and Legal Sector, HAUSER GLOBAL LAW SCHOOL PROGRAM (Mar. 2013) <http://www.nyulawglobal.org/globalex/uganda.htm> (last visited on September 4, 2015); [AUTHOR], The Legal and Institutional Context of the 2006 Elections in Uganda, CHR. MICHELSEN INSTITUTE & MAKERERE, available at <http://www.cmi.no/uganda/docs/project-presentation.pdf> (last visited on September 4, 2015). UNIVERSITY <http://www.cmi.no/pdf/?file=/uganda/doc/court-administration-uganda-october-05.pdf> (last visited on September 4, 2015).

<sup>4</sup> CONSTITUTION OF THE REPUBLIC OF UGANDA (1995) available at [http://www.statehouse.go.ug/sites/default/files/attachments/Constitution\\_1995.pdf](http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf) (last visited on September 4, 2015).

<sup>5</sup> THE JUDICATURE ACT, Ch. 13 (2000) <http://www.ulii.org/ug/legislation/consolidated-act/13> (last visited on September 4, 2015).



Court upon the recommendation of the Judicial Services Commission and the approval of Parliament. The Judicial Services Commission appoints judges to the magistrate courts.<sup>6</sup>

## The Practice of Law

Attorneys in Uganda are referred to as Advocates once they are certified to appear before a court.<sup>7</sup> An Advocate is an attorney who is enrolled to the bar and has a right to an audience before the court; an attorney who is not an Advocate cannot appear before the court. The Law Council exercises control over and supervises professional legal education in Uganda. The Uganda Law Society is charged with maintaining and improving the standards of conduct and learning of the legal profession in Uganda according to §3(a) of the Uganda Law Society Act. To become an attorney, one must obtain a Bachelors of Laws from an approved undergraduate university. Attorneys who wish to become Advocates must pass a Bar Course offered by the Law Development Centre in Kampala. In addition, an Advocate must have completed an internship or clerkship lasting 2.5 months. Foreign attorneys must attend core subject classes at a Ugandan university and take the Bar Course before practicing in Uganda.

## LEGAL RESOURCES FOR INDIGENT PERSONS

### The Right to Legal Assistance<sup>8</sup>

The law concerning state government-provided legal aid is set out in the Constitution. Article 28(3)(e) reads:

*Every person who is charged with a criminal offence shall be permitted to appear before the court in person or, at that person's own expense, by a lawyer of his or her choice; [...] (d) in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State.*

In Uganda, every defendant in a criminal trial is entitled to an attorney. However, only defendants charged with crimes that carry a death or life imprisonment sentence are entitled to a government-provided Advocate. As such, many Ugandans are left essentially without legal aid because they cannot afford to hire an Advocate nor are they entitled to government-provided counsel except in the most extreme circumstances. Similarly, any party may retain an attorney for a civil suit, but the government does not provide free legal counsel in any civil suit.

### Unmet Needs Analysis

Due to the insufficient and limited nature of government sponsored legal aid coupled with a large impoverished population, there is a severe unmet legal need in Uganda. First, Uganda has a severe shortage of attorneys, with only 2,000 attorneys for 37.5 million people.<sup>9</sup> Second, because a large

<sup>6</sup> JUDICIAL SERVICE COMMISSION, Our Mission, Vision and Objectives, [http://www.jsc.go.ug/index.php?view=article&catid=29%3Athe-cms&id=22%3Aour-missionvision-and-objectives&format=pdf&option=com\\_content&Itemid=34](http://www.jsc.go.ug/index.php?view=article&catid=29%3Athe-cms&id=22%3Aour-missionvision-and-objectives&format=pdf&option=com_content&Itemid=34) (last visited on September 4, 2015).

<sup>7</sup> INTERNATIONAL BAR ASSOCIATION, How to Qualify as a Lawyer in Uganda, [http://www.ibanet.org/PPID/Constituent/Student\\_Committee/qualify\\_lawyer\\_Uganda.aspx](http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Uganda.aspx) (last visited on September 4, 2015).

<sup>8</sup> CONSTITUTION OF THE REPUBLIC OF UGANDA, supra n. 4 at § 28(3)(e). In limited situations involving alleged crimes before the High Court, a judge can require the government to provide free legal aid outside the confines of a capital offense if such provision is "in the interests of justice," THE POOR PERSONS DEFENCE ACT, Chap. 20 (1998).

<sup>9</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, Access to Legal Aid in Criminal Justice Systems in Africa, Survey Report (2011) available at



proportion of Uganda's population live below the poverty line, the lack of statutory free legal aid largely restricts the average citizen's access to justice. Legal representation is only available in a limited number of Uganda's districts (as of 2011, it was as low as 16% of Uganda's districts).<sup>10</sup> Third, there is a substantial backlog of cases which presents a serious structural and administrative burden.

The Ugandan government, through the implementation of The Law Development Center Act, established a Law Development Center that, in part, is responsible for "assisting in the provision of legal aid and advice to indigent litigants and accused persons" as an attempt to address some of the obstacles to justice.<sup>11</sup> Despite this effort, however, there are still a significant number of indigent Ugandans who cannot afford legal services nor benefit from government-provided legal assistance.

## The Role of NGOs and Outside Entities

The biggest restriction to government-provided legal services in Uganda is inadequate funding due to the costly nature of conducting civil and criminal proceedings. NGOs play an integral part in offering legal aid to people that would otherwise not have access to legal services. NGOs such as the Ford Foundation (which has started a clinical law program in Uganda) have committed resources to Uganda directed toward providing Ugandans with access to legal aid. All NGOs and other providers of legal aid must register as a legal aid provider before engaging in the business of assisting indigent persons.

The Legal Aid Project ("LAP") was established by the Uganda Law Society in 1992 with assistance from the Norwegian Bar Association<sup>12</sup> to provide legal assistance to indigent and vulnerable people in Uganda. LAP has its head office in Kampala and branches in Kabarole, Kabale, Masindi, Jinja, Gulu and Luzira. The LAP helps thousands of indigent men, women and children to gain access to justice and to defend their legal and human rights. Their work includes the provision of legal information, dispute resolution and court representation.

Other governments, such as the United States through its USAID program, also contribute to Ugandan legal aid. The USAID program recently gave a grant and worked in partnership with local groups to establish an alternative dispute resolution program.<sup>13</sup> The Canadian Bar association likewise donated money to fund the Access to Justice for Children and Youth Project, a four-year initiative aimed at enhancing access to justice for children and youth in Eastern Africa.

## The Role of Paralegals<sup>14</sup>

A significant part of the role that NGOs play is training paralegals and equipping them to provide legal aid. Paralegals conduct "Paralegal Aid Clinics" on a regular basis in the main prisons across the country. These clinics are aimed primarily at prisoners awaiting trial and aim to empower prisoners to apply the law in their own cases.

Paralegals assist with various tasks including case work, community education, mobilization, advocacy, conflict resolution, police work, court work and prison work.<sup>15</sup> Though paralegals cannot represent

---

[http://www.unodc.org/pdf/criminal\\_justice/Survey\\_Report\\_on\\_Access\\_to\\_Legal\\_Aid\\_in\\_Africa.pdf](http://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf) (last visited on September 4, 2015).

<sup>10</sup> Id.

<sup>11</sup> THE LAW DEVELOPMENT CENTRE ACT, Ch. 132 (1970) <http://www.ulii.org/ug/legislation/consolidated-act/132> (last visited on September 4, 2015).

<sup>12</sup> UGANDA LAW SOCIETY, Introduction, <http://www.uls.or.ug/projects/legal-aid-project/introduction/> (last visited July 21, 2015).

<sup>13</sup> UGANDA LAW SOCIETY, Annual Report 2014 at 14, available at [http://www.uls.or.ug/site/assets/files/1022/uls\\_annual\\_report-2014.pdf](http://www.uls.or.ug/site/assets/files/1022/uls_annual_report-2014.pdf) (last visited on September 4, 2015).

<sup>14</sup> PENAL REFORM INTERNATIONAL, Index of Paralegal Services in Africa (2012) <http://www.penalreform.org/publications/index-paralegal-services-africa> (last visited on September 4, 2015).



accused suspects in court, they work closely with inmates and accused persons to inform them of their constitutional rights, teach them how to represent themselves, and obtain bail for minor offenses.<sup>16</sup> The Paralegal Advisory Service<sup>17</sup> aims to provide basic legal assistance and seeks to secure access to bail for eligible individuals. The program empowers pre-trial detainees to seek justice by furnishing them with information on their rights and on the procedures and workings of the justice system. This initiation of the program in Uganda has coincided with a decrease in the percentage of detainees awaiting trial in Uganda, with the percentage of detainees awaiting trial falling from 64% in 2005 to 55% in 2015.<sup>18</sup>

The Paralegal Aid Clinics are essential because of the high number of incarcerated Ugandans who have not yet faced trial; 55% of the prison population are on remand or awaiting trial and the number of prisoners incarcerated in Uganda is more than double the official prison capacity.<sup>19</sup> An audit conducted by the Ugandan Prisons Service found that over 460 prisoners<sup>20</sup> had exceeded their constitutional remand period and were due for unconditional bail but were still serving time in prison.<sup>21</sup> The audit also found that a majority of the prison population have been deprived of effective legal representation (with the exception of those entitled to statutory legal representation for capital offences) and do not have a proper understanding of their legal rights.

Since 2005, paralegals in Uganda have supported more than 165,000<sup>22</sup> prisoners in criminal law proceedings, and assisted 2,500 accused Ugandans obtain bail in a period of nine months.<sup>23</sup> The Commissioner General of Prisons in Uganda attributes the reduction of the remand population to the work of the paralegals, although the number has crept back up to 55% as of 2015. Uganda now has more than 70 paralegals working in the criminal justice system. The work of paralegals is seen by the authorities to have:

- Significantly helped decongest prisons by speeding up the conclusion of long- pending cases in courts;
- Helped remove bottlenecks curtailing access to justice for the poor by facilitating meetings between key criminal justice agencies; and
- Improved prison conditions

## The Uganda Law Society

All practicing attorneys can subscribe to the Uganda Law Society, which is the main legal professional organization throughout Uganda. The Law Council has tasked the Uganda Law Society with carrying out pro bono in Uganda. The Uganda Law Society established the Pro Bono Project in 2008 and since then

---

<sup>15</sup> Access to Legal Aid, supra n. 9.

<sup>16</sup> DANISH INSTITUTE FOR HUMAN RIGHTS, Paralegal Advisory Service, [http://dihf.org/legalaid/index.php?option=com\\_content&task=view&id=22&Itemid=35](http://dihf.org/legalaid/index.php?option=com_content&task=view&id=22&Itemid=35) (last visited on September 4, 2015).

<sup>17</sup> Id.

<sup>18</sup> INTERNATIONAL CENTRE FOR PRISON STUDIES, Uganda, <http://www.prisonstudies.org/country/uganda> (last visited on September 4, 2015); Paralegal Advisory Service, supra n. 16.

<sup>19</sup> Id.

<sup>20</sup> Index of Paralegal Services, supra n. 14.

<sup>21</sup> The law requires suspects to be charged within 48 hours of arrest (120 days for terrorism and 360 days for capital offences), but suspects are frequently held longer. If the case is presented to the court before the expiration of this period, there is no limit on pretrial detention, see UNITED STATES DEPARTMENT OF STATE, Country Reports on Human Rights Practices (Feb. 25, 2004) available at <http://www.state.gov/j/drl/rls/hrrpt/2003/27758.htm> (last visited on September 4, 2015).

<sup>22</sup> Index of Paralegal Services, supra n. 14.

<sup>23</sup> Paralegal Advisory Service, supra n. 16.



13,000 attorneys have participated and offered pro bono services to the public. At the regional level, it is also possible to join the East African Law Society.

The Uganda Law Society currently boasts over 2,000 members, hosts dozens of events, and spearheads pro bono initiatives in the country.<sup>24</sup> A regional pro bono day was initiated by the Uganda Law Society to increase access to justice through the provision of free legal services by Advocates to the poor, indigent and marginalized in Uganda. At this event, Advocates provide legal aid services to walk-in clients in all the regions where the Uganda Law Society Legal Aid Offices operate: Kampala, Jinja, Soroti, Arua, Gulu, Masindi, Kabarole, Kabale and Mbarara. This year the pro bono day was on February 27, 2015.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

There is a relatively large network of pro bono services available across Uganda. Pro bono centers are mainly concentrated in the major cities and pro bono services are primarily provided by Justice, Law and Order Sector institutions and civil society organizations<sup>25</sup> that are instrumental in providing pro bono services to the poor and marginalised groups.

In addition, the Legal Aid Basket Fund, together with the Law Council, created a pro bono pilot scheme in October 2008. The scheme allows various donors to contribute donations to a single fund, which is then centrally coordinated by a pro bono manager based at the Uganda Law Society and administered by legal officers at the various regional LAP offices. The goal of the scheme is to combine different streams of legal aid money to a single entity that could enable indigent, vulnerable and marginalized persons access to justice more efficiently.

The need for active pro bono support and services in Uganda has also been recognized by the Uganda Law Society and the Law Council. Acting together in 2009, they passed Regulations SI No. 39 under the Advocates Act, which made it mandatory for every attorney to provide forty (40) hours of pro bono legal services per year:

- [E]very Advocate shall provide services when required by the Law Council or pay a fee prescribed by the Law Council in lieu of such services; and
- That where any Advocate does not comply with sub section (1), the Law Council shall refuse to issue or renew a practicing certificate to that Advocate under sub section 11 of this Act.<sup>26</sup>

The Advocates Act imposes an ethical and social responsibility on all attorneys (including in-house attorneys) to provide pro bono services. If an Advocate does not annually perform 40 hours of pro bono work or pay the fee in lieu, he or she will not remain certified to practice law.

As a result of this legislation, law firms that actively provide pro bono services have become attractive places to work for newly qualified attorneys because they often provide support for attorneys seeking to comply with this new requirement, and oftentimes are given “credit” for pro bono hours in meeting billable hour thresholds. The Advocates Act pro bono requirement has enabled attorneys to give back to the community, which enhances morale, provides excellent training and allows attorneys to connect with clients and communities in ways that were not previously possible. Furthermore, it allows attorneys to gain valuable courtroom experience at an earlier stage of their career and means that commercial

---

<sup>24</sup> Annual Report 2014, supra n. 13.

<sup>25</sup> Anthony Conrad K. Kakooza, Pro Bono Publico and Its Administration in Uganda, ACADEMIA.EDU, available at [http://illinois.academia.edu/AnthonyKakooza/Papers/1608827/PRO\\_BONO\\_PUBLICO\\_AND\\_ITS\\_ADMINISTRATION\\_IN\\_UGANDA](http://illinois.academia.edu/AnthonyKakooza/Papers/1608827/PRO_BONO_PUBLICO_AND_ITS_ADMINISTRATION_IN_UGANDA) (last visited on September 4, 2015).

<sup>26</sup> Anthony Masake, The Pro Bono Service Ensures Access to Justice for All in Society, DAILY MONITOR (Feb. 24, 2012, 12:00 AM) available at <http://www.monitor.co.ug/OpEd/Letters/-/806314/1333460/-/11d0ra6/-/index.html> (last visited on September 4, 2015); id.



attorneys will gain experience by assuming responsibility for matters that they might not otherwise take on in their mainstream practice.

## Barriers To Pro Bono Work And Other Considerations<sup>27</sup>

### Insufficient Funding

Many NGOs and organizational groups providing free legal services receive funding from foreign groups. Since the availability of funds may fluctuate due to conditions outside the organizations' control, their provision of free legal services is unpredictable.

For example, the LAP is funded by the Norwegian Agency for Development Cooperation through the Norwegian Bar Association. Its activities and administrative budget are therefore dependent on the continued backing of the Norwegian Bar Association.

### Infrastructure Problems

The Advocates Regulations,<sup>28</sup> which made it mandatory for every attorney to provide forty (40) hours of pro bono legal services per year, are not yet operational. While attorneys who do not provide 40 hours of pro bono services a year must pay a fine, the Law Council has not yet created a pro bono account to receive such funds. As a result, few attorneys provide voluntary pro bono services to members of the public.

Recently, a draft Legal Aid Policy attempting to establish a cohesive and enlarged public legal aid scheme has been circulated to the Ugandan Cabinet for approval.<sup>29</sup> The proposed reforms include recommendations to broaden the class of people who qualify for public legal aid, establish an independent legal aid body to administer funds, and create a public-private partnership to more effectively and efficiently deploy legal aid.

### Opt-Out Right

As noted above, the Advocates Act made it mandatory for all attorneys to provide pro bono legal services, unless they pay a fee for an exemption. Situations could arise that too many attorneys decide to pay the opt-out fee, leaving few, more economically-disadvantaged, attorneys to provide pro bono work.

### Logistical Realities

Most of the legal apparatus and aid providers are located in large cities, namely Kampala, while 87% of Ugandan citizens live in rural areas. Although NGOs perform a crucial role in providing access to justice, many only have the resources and funding available to operate in major cities, leaving many rural citizens with no legal recourse.

## Pro Bono Resources

- The Uganda Law Society: engages in legal aid and pro bono which are its flagship projects with the aim of extending access to justice to the poor, indigent and most vulnerable across Uganda. (See <http://www.uls.or.ug/> (last visited on September 4, 2015) for more information).
- The LDC Legal Aid Clinic: was established for the main purpose of improving the level of training of Bar Course students and to promote the lawyer's role of service to the community and legal representation of needy persons. (See <http://www.ldc.ac.ug/> (last visited on September 4, 2015) for more information).
- The Public Defender Association of Uganda: offers legal aid to indigent persons, particularly to persons charged with criminal offences. (See

<sup>27</sup> Pro Bono Publico, supra n. 25.

<sup>28</sup> Id.; The Pro Bono Service, supra n. 26.

<sup>29</sup> JUSTICE LAW AND ORDER SECTOR, Draft National Legal Aid Policy (June 2012).



<http://humanrightshouse.org/noop/page.php?p=Articles/5063.html&d=1> (last visited on September 4, 2015) for more information).

- The Legal Aid Project of the Uganda Law Society: was established by the Uganda Law Society to provide legal assistance to indigent and vulnerable persons in Uganda. (See <http://www.uls.or.ug> (last visited on September 4, 2015) for more information)
- The Refugee Law Project: engages in the provision of free legal assistance to the refugee population and asylum seekers in Uganda. (See <http://www.refugeelawproject.org> (last visited on September 4, 2015) for more information).
- The Uganda Association of Women Lawyers: is affiliated with the *Federacion Internacional de Abogadas* (The International Federation of Women Lawyers) founded in Mexico. It mainly provides legal aid to women in Uganda. (See <http://www.fidauganda.org> for more information).
- Platform for Labour Action: promotes and protects the rights of employees in Uganda through the provision of legal aid to employees in the resolution of employment-related disputes. (See <http://www.pla-uganda.org> (last visited on September 4, 2015) for more information).
- Uganda Land Alliance: was formed to enhance access, control, and ownership of land by poor and marginalized people in Uganda. (See <http://www.ulaug.org> (last visited on September 4, 2015) for more information).
- Uganda Network on Law, Ethics, and HIV/AIDS: advocates for the legal and human rights of people living with HIV/AIDS. (See <http://www.uganet.org> (last visited on September 4, 2015) for more information).
- Uganda Christian Lawyers' Fraternity: was founded in 1987 by Christian law students at Makerere University. The fraternity is involved in advocacy and representation of disadvantaged people. (See <http://ugclf.org> (last visited on September 4, 2015) for more information).
- Justice for Children: provides free legal representation to impoverished children. The JFC is a non-profit, advocacy group protecting abused children and their families by assisting in navigating administrative processes and protecting them from their abusers. (See <http://www.crin.org/en> (last visited on September 4, 2015) for more information).
- Legal Action for Persons with Disabilities: focuses on ensuring that persons living with disabilities in Uganda have access to justice (See <http://www.disabilityrightsfund.org> (last visited on September 4, 2015) for more information).
- Platform for Labour Action: is an NGO that promotes and protects the rights of vulnerable and marginalized workers through empowerment of communities and individuals, action oriented research, policy dialogue, and legal aid in Uganda. (See <http://www.pla-uganda.org/> (last visited on September 4, 2015) for more information).
- World Voices Uganda: facilitates access to justice for the poor, and the protection and promotion of human rights, governance and accountability. (See <http://worldvoicesuganda.org> (last visited on September 4, 2015) for more information).
- Foundation for Human rights Initiative: seeks to remove impediments to democratic development and meaningful enjoyment of the fundamental freedoms enshrined in the 1995 Uganda Constitution as well as other internationally recognized human rights. Focused primarily on promoting human rights, it provides pro bono representation mainly through public interest cases. (See <http://www.fhri.or.ug/> (last visited on September 4, 2015) for more information).
- Human Rights Awareness and Promotion Forum: promotes human rights awareness in Uganda. It also provides legal aid services for the advancement of women and minority rights. (See <http://hrapf.org> (last visited on September 4, 2015) for more information).
- International Justice Mission: is a Christian Non Governmental Organization led by Human Rights professionals, which helps people suffering from injustices and oppression, who have not been able to obtain justice through local authorities. IJM investigates and documents cases of abuse and provides pro bono legal representation to vulnerable individuals. (See <https://ijm.org/> (last visited on September 4, 2015) for more information)
- Youth Justice Support Uganda: provides information, advice and legal representation to street children involved in criminal proceedings; YJSU educates street children and organizations working with them about their legal rights and the legal process. (See



<http://opencharities.org/charities/1122043#sthash.g2W8vHaN.dpuf> (last visited on September 4, 2015) for more information)

- Justice Centres Uganda: promotes the rights of vulnerable communities through basic legal aid, legal and human rights awareness, community outreach, empowerment and advocacy. (See <http://www.justicecentres.go.ug/> (last visited on September 4, 2015) for more information)

## CONCLUSION

Despite the substantial efforts of pro bono service providers in the country, access to justice for many citizens remains elusive. Most legal aid organizations are based in Kampala or other urban areas due to easy access to utilities as well as the availability of security and other necessities such as banking and communication services and courts. As a result, the vast majority of the population, which lives in rural areas, remains unable to access legal services.

While the Advocates Act is a significant development in the provision of legal services to Uganda's vulnerable citizens, there is currently little government policy to provide effective and efficient legal aid services to indigent citizens in Uganda. As such, there exists a large unmet legal need for pro bono services. The government has attempted to address some of this need through a draft judicial strategic investment plan spearheaded by the Justice Law and Order Sector that endeavors to improve the performance of the judiciary and provide access to justice for all people in Uganda. This proposal is only in the development stages, leaving pro bono services as the only option for many impoverished Ugandans confronted with legal issues.

September 2015

Pro Bono Practices and Opportunities in Uganda

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Ukraine<sup>1</sup>

### INTRODUCTION

Similar to other countries that were part of the former Soviet Union, pro bono culture in Ukraine is not yet as developed as in western countries. However, the adoption of international standards and traditions with respect to the legal profession, as well as engagement by NGOs in Ukraine, have increased pro bono activity in recent years. The Euromaidan Revolution of 2014 and conflicts in Crimea and Eastern Ukraine have also influenced the development of pro bono culture in Ukraine. During and after these historical events, numerous initiatives appeared aimed at assisting protesters, mobilized persons, volunteers or internally displaced persons, and a significant amount of this work was carried out pro bono.

Additionally, Ukraine is undergoing significant legal reforms aimed at institutionalizing the provision of free legal aid. Today, both national and international law firms and solo legal practitioners have more opportunities than ever before to provide pro bono legal services in Ukraine.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution

The Constitution of Ukraine (the “**Constitution**”) establishes the foundation of the Ukrainian justice system, generally sets out the jurisdiction of courts, and provides for the right of citizens to legal aid and defense in criminal cases. The procedures of the justice system are codified in specific statutes.

##### Procedural Codes and other Laws

The main procedural codes and laws relevant to the Ukrainian justice system are Procedural Codes (Criminal, Civil, Administrative, Commercial), the Code of Administrative Offences of Ukraine, the Laws of Ukraine “On Court System and Status of Judges”, “On Advocacy and Advocates’ Practice” and “On Free Legal Aid”

#### The Courts

The Ukrainian judicial system consists of the Constitutional Court of Ukraine and lower courts with jurisdiction over either regular, commercial or administrative matters. Regular courts have jurisdiction over civil, criminal and administrative offence cases. Commercial courts oversee certain commercial disputes, e.g. disputes involving contractual obligations and/or corporate governance/management matters. Finally, administrative courts adjudicate actions against governmental agencies and authorities.

Each of the three jurisdictions has four levels: (i) the local courts are the courts of first instance, (ii) courts of appeal hear cases appealed from the local courts, (iii) the cassation court hear appeals from the courts of appeal and (iv) the Supreme Court of Ukraine is the final and highest appellate court. Previously, access to the Supreme Court of Ukraine was limited. In particular, application could not be submitted directly to the Supreme Court of Ukraine. Only the court of the third instance had the right to submit cases to the Supreme Court of Ukraine. However, recently this was partially remedied by the Law of Ukraine “On Securing the Right to Fair Trial”<sup>2</sup>, which expands the grounds for the Supreme Court of Ukraine to hear a case and simplifies the procedure, now allowing parties to submit applications for review of cassation court decisions directly.

---

<sup>1</sup> This chapter was drafted with the support of Mykola Stetsenko, Dmytro Tkachuk and Andriy Romanchuk from Avellum as well as Dmytro Koval from the Center of International Law and Justice.

<sup>2</sup> Cf. Law of Ukraine “On Securing the Right to Fair Trial” No. 192-VIII, dated February 12, 2015, available at <http://zakon4.rada.gov.ua/laws/show/192-19> (last visited on September 4, 2015) in Ukrainian.



Historically, Ukrainian citizens held very little trust in the Ukrainian court system due to high levels of corruption. Following the Euromaidan Revolution, the Parliament of Ukraine adopted the Law of Ukraine “*On Restoration of Trust in the Judiciary*”<sup>3</sup> to address corruption. The law imposes strict penalties, including dismissal, for judges that abuse their office or issue politically motivated judgments.

## The Practice of Law

### Education

To comply with the Bologna Process<sup>4</sup>, Ukraine has recently reformed its education system. The aim has been to bring the system of higher education in Ukraine more in line with wider European standards. A law degree is required for certain categories of the legal profession. For example, only after obtaining a Master’s degree (the specialist’s degree was recently abolished and specialist’s degrees obtained previously are now equated to a Master’s degree), graduates are pre-qualified for the title of “advocate”, the receipt of which, however, requires further qualification (cf. below Sec. II. D.). The same applies to professions like judges or notaries.

Despite the relatively high amount of law graduates each year, the quality of the legal education in Ukraine has not adequately prepared graduates to enter the work force. Graduates often lack practical legal skills and employers must invest substantial effort and time to provide the appropriate level of training<sup>5</sup>. In response, many law firms have taken a more active role in the educational process by giving lectures (on a pro bono basis) and otherwise sharing knowledge.

### Licensure

The Ukrainian legal profession is comprised of licensed attorneys referred to as “advocates” and unlicensed lawyers referred to as “jurists”. The main difference between advocates and jurists is that only advocates are entitled to represent clients in criminal proceedings.<sup>6</sup> In addition to obtaining an advanced degree, advocates must also pass an examination testing their practical and theoretical legal skills as well as be proficient in the Ukrainian language.

Jurists are not subject to these same stringent requirements. Jurists are also not covered by the attorney-client privilege.<sup>7</sup>

### Demographics

While Ukraine boasts a number of international law firms, most attorneys are employed in smaller offices or act as solo practitioners. As of April 1, 2008 there were approximately 80,000 practicing advocates and

---

<sup>3</sup> Cf. Law of Ukraine “On Restoration of Trust in the Judiciary” No. 1188-VII, dated April 08, 2014, available at <http://zakon4.rada.gov.ua/laws/show/1188-18> (last visited on September 4, 2015) in Ukrainian.

<sup>4</sup> Cf. [http://www.coe.int/t/dg4/highereducation/EHEA2010/BolognaPedestrians\\_en.asp#P15\\_226](http://www.coe.int/t/dg4/highereducation/EHEA2010/BolognaPedestrians_en.asp#P15_226) (last visited on September 4, 2015).

<sup>5</sup> Cf. Quality education – successful carrier, available at <http://yur-gazeta.com/publications/practice/trudove-pravo/yakisna-osvita--vdala-karera.htm> (last visited on September 4, 2015) in Ukrainian.

<sup>6</sup> This issue was and is subject of controversial discussions of the last decade between Ukrainian lawyers. Although Ukrainian and international courts in their decisions allowed non-advocates to represent its clients in criminal proceedings, the newly adopted Code of Criminal Procedure of Ukraine lists only advocates as legal representatives of clients in criminal matters. As shown below (cf. Sec. on the Legal Regulation of Lawyers), there are even intentions to establish a representation monopoly for advocates for all types of proceeding before courts.

<sup>7</sup> V. Kukharchyk and M. Kulya, The Legal Profession in Ukraine (Apr. 2008), available at <http://www.osce.org/odihr/36311> (last visited on September 4, 2015).



jurists. In 2012, this figure increased to 111,026 resulting in 244.2 lawyers per capita (this is significantly above the European average).<sup>8</sup>

## Legal Regulation of Lawyers

The activities of advocates are governed by the Law of Ukraine “*On Advocacy and Advocate’s Practice*”<sup>9</sup>, the Regulations “*On Higher Qualifications and Disciplinary Bar Commission*”<sup>10</sup> and “*On Advocates Council*”<sup>11</sup> as well as the Rules of Advocates’ Ethics. These laws and regulations establish institutions that regulate the legal profession (e.g. the Higher Qualifications and Disciplinary Commission, Advocates Counsel, qualifications and disciplinary commissions). These institutions are responsible for overseeing licensure and disciplinary matters. There are current efforts underway to significantly change the legal profession. Bill No. 1794-1 of February 2, 2014 “*On Amending the Law of Ukraine ‘On Advocacy and Advocates’ Practice*” presented before the Ukrainian Parliament<sup>12</sup> would (i) increase the licensing requirements for becoming an “advocate”, (ii) expand the definition of attorney-client privilege, (iii) introduce additional disciplinary penalties on “advocates”, and (iv) require that only “advocates” be entitled to represent clients before courts, whether in criminal or civil matters.

Currently “jurists” are not subject to any mandatory requirements or to any binding ethical standards.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

#### Legal basis

Article 59 of the Constitution provides every citizen with the right to receive legal aid. Additionally, Article 63 of the Constitution specifies that a suspect, an accused or a defendant has the right to a defense, while Article 129 specifies that one of the main principles of legal proceedings shall be to ensure the right of an accused person to a defense.<sup>13</sup>

---

<sup>8</sup> Cf. the Report of the European Commission for the Efficiency of Justice on “European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice”, p. 377, 379 available at [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp) (last visited on September 4, 2015).

<sup>9</sup> Cf. Law of Ukraine “On Advocacy and Advocate’s Practice” No. 5076-VI, dated July 5, 2012, available at <http://zakon4.rada.gov.ua/laws/show/5076-17> (last visited on September 4, 2015) in Ukrainian.

<sup>10</sup> Cf. Regulation “On Higher Qualification and Disciplinary Bar Commission” approved by Founding Congress of Advocates of Ukraine on November 17, 2012, available at <http://vkdko.org/polojennia/> (last visited on September 4, 2015) in Ukrainian.

<sup>11</sup> Cf. Regulation “On Advocates Council of Ukraine” approved by Founding Congress of Advocates of Ukraine on November 17, 2012, available at <http://unba.org.ua/assets/uploads/legislations/pologennya/2014.04.26-27-pologennya-pro-rau-pazy.pdf> (last visited on September 4, 2015) in Ukrainian.

<sup>12</sup> Cf. the Bill “On Amending the Law of Ukraine “On Advocacy and Advocates’ Practice” and certain other legislative acts of Ukraine (regarding the status and guarantees of practice of law, as well as formation and operation of advocacy self-government bodies)” No. 1794-1 registered in the Parliament on February 4, 2015, available at [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=53817](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53817) (last visited on September 4, 2015) in Ukrainian.

<sup>13</sup> Cf. Ukraine Const., available at [http://gska2.rada.gov.ua/site/const\\_eng/constitution\\_eng.htm](http://gska2.rada.gov.ua/site/const_eng/constitution_eng.htm) (last visited on September 4, 2015).



## Implementation of Right to Legal Aid in Civil and/or Criminal Proceedings

Pursuant to the Civil Procedural Code of Ukraine<sup>14</sup> litigants in civil cases have, among other things, the right to free legal representation. Similarly, the *Code of Administrative Procedure of Ukraine*<sup>15</sup> stipulates that individuals with cases before administrative courts have, among other things, the right to free legal representation in the manner prescribed by law.

In criminal proceedings the following persons are entitled to free legal representation: (i) persons who are under administrative detention or administrative arrest; (ii) persons suspected in committing a crime who are arrested by investigative authorities; (iii) persons taken into custody; and (iv) persons entitled to a mandatory defense according to the Criminal Procedural Code of Ukraine<sup>16</sup>.

The Law of Ukraine “*On Free Legal Aid*”<sup>17</sup> set forth the conditions and requirements for the entitlement to legal aid.

## State-Subsidized Legal Aid

### General overview – the Law “On Free Legal Aid”

On June 2, 2011, the Parliament of Ukraine adopted the Law “*On Free Legal Aid*” which became effective on July 9, 2011. The law regulates the provision of free legal aid in Ukraine.<sup>18</sup>

The law introduces the concept of primary and secondary legal aid. Within the primary legal aid system, the government provides citizens with information about their rights under the judicial system, including the right to appeal actions or inactions of governmental authorities. Secondary legal aid is legal aid in a “classical” sense and includes, among other things, the provision of defense against prosecution and representation in courts.

Since July 1, 2015, the Ministry of Justice of Ukraine has established 100 centres of free legal aid. The purpose of the centres is to provide free secondary legal aid to socially vulnerable citizens in civil and administrative proceedings as well as to victims and witnesses in criminal proceedings.<sup>19</sup> The Ministry of Justice has taken steps to ensure that attorneys providing secondary legal aid remain independent from government influence.

### Eligibility criteria

#### General Eligibility criteria

All persons who are under the jurisdiction of Ukraine (regardless of citizenship) are entitled to primary legal aid in Ukraine. The following categories of people are entitled to secondary legal aid in Ukraine:

---

<sup>14</sup> Cf. Article 12 of the Civil Procedural Code of Ukraine No. 1618-IV dated December 18, 2004, available at <http://zakon4.rada.gov.ua/laws/show/1618-15/paran91#n91> (last visited on September 4, 2015) in Ukrainian.

<sup>15</sup> Cf. Article 16 of the Code of Administrative Procedure of Ukraine No. 2747-IV dated July 6, 2005, available at <http://zakon4.rada.gov.ua/laws/show/2747-15/paran158#n158> (last visited on September 4, 2015) in Ukrainian.

<sup>16</sup> Cf. Article 20 of the Criminal Procedure Code of Ukraine No. 4651-VI dated April 3, 2012, available at <http://zakon4.rada.gov.ua/laws/show/4651-17/paran505#n505> (last visited on September 4, 2015) in Ukrainian.

<sup>17</sup> Law of Ukraine “On Free Legal Aid” (Ukraine Const.), available at <http://helsinki.org.ua/en/index.php?id=1311157859> (last visited on September 4, 2015) in the old version. For current version cf. <http://zakon2.rada.gov.ua/laws/show/3460-17> (last visited on September 4, 2015) in Ukrainian.

<sup>18</sup> Expert Advisory Centre “Legal Analytics,” Free legal aid in Ukraine. Legal review of the Law of Ukraine “On free legal aid,” available at <http://legalanalytics.com.ua/en/consultacija/20-ogladzakonyprobezoplatnypravovydopomogy.html> (last visited on September 4, 2015).

<sup>19</sup> Cf. <http://minjust.gov.ua/ua/news/47371> (last visited on September 4, 2015) in Ukrainian. Map of the centers available at <http://minjust.gov.ua/ua/news/47372> (last visited on September 4, 2015) in Ukrainian.



- persons whose average monthly income is lower than the minimum subsistence level as calculated in accordance with the Law of Ukraine “*On the Minimum Subsistence Level*”;
- orphaned children, children whose parents have been stripped of their parental rights and children that may become or have become victims of family violence;
- persons under administrative detention or administrative arrest;
- persons detained or taken into custody in accordance with the Criminal Procedural Code as well as persons in criminal proceedings whose legal counsel is appointed by the court.
- refugees;
- war veterans, persons with special merits, those who have rendered special labor services to the country, and victims of Nazi persecution;
- persons who are the subject of mandatory psychiatric care or civil incapacitation proceedings;
- persons rehabilitated in accordance with Ukrainian legislation; and
- stateless citizens and foreign citizens who are entitled to legal aid in accordance with Ukraine’s international agreements<sup>20</sup>.

### Mandatory assignments to Legal Aid Matters

The Law of Ukraine “*On Advocacy and Advocate Activities*”<sup>21</sup> requires advocates which have entered into an agreement on the provision of secondary legal aid with the state to participate in the secondary legal aid regime. Such advocates can decline legal aid assignments only upon certain specified grounds (e.g. temporary disability; lack of qualification for the legal aid case; conflicts of interests; violation of confidentiality; huge workload on other engagements). Moreover, an advocate who provided legal aid during a preliminary investigation stage cannot decline to accept assignment of legal aid in further court proceedings related to the same case.

The state compensates attorneys providing secondary legal aid at a rate significantly lower than market rates. Rates are determined by the Cabinet of Ministers of Ukraine for the performance of discrete tasks (i.e., conducting preliminary analysis of a case, gathering information and documents at any stage of court proceedings).<sup>22</sup>

### Unmet Needs and Access Analysis

State-funded legal aid has dramatically expanded legal access to the most vulnerable Ukrainian citizens since its introduction in 2011. However, challenges to the provision of effective and quality free legal aid to vulnerable Ukrainian citizens remain. In particular, there is limited funding for free legal aid and the fees received by advocates providing legal aid are minimal, making it difficult to attract high quality advocates.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

Currently, there are no legislative requirements for private attorneys, whether advocates or jurists, to do mandatory pro bono work. Nevertheless, attorneys in Ukraine are increasingly providing more pro bono services voluntarily. For example, during the Euromaidan events in Kyiv, special coordination centres were established where attorneys provided free legal aid to victims of clashes with the riot police<sup>23</sup>. Additionally, due to the events in Eastern Ukraine after the Euromaidan Revolution, there exist various

<sup>20</sup> Cf. § III, art. 14 o Law of Ukraine “On Free Legal” Aid.

<sup>21</sup> Cf. Law of Ukraine “On Advocacy and Advocate’s Practice” No. 5076-VI, dated July 5, 2012, available at <http://zakon4.rada.gov.ua/laws/show/5076-17> (last visited on September 4, 2015) in Ukrainian.

<sup>22</sup> Cf. “Procedure for Payment for Services and Reimbursement of Losses for Attorneys Providing Secondary Legal Aid” approved by Resolution of the Cabinet of Ministers of Ukraine No. 465, dated September 17, 2014.

<sup>23</sup> Cf. <http://euromaidansos.org/en/who-we-are> (last visited on September 4, 2015).



initiatives for private attorneys to provide legal aid to soldiers participating in military operations in Eastern Ukraine as well as their families<sup>24</sup>.

Also, in 2013, the Ukrainian Pro Bono Clearing House was established, where private attorneys can register to provide legal aid to those in need (cf. below under Sec. IV. A.4.(b))<sup>25</sup>.

### Law Firm Pro Bono Programs

Many firms in Ukraine evaluate pro bono opportunities on a case-by-case basis and some have been involved in notable cases. For instance, the Kiev office of Egorov, Puginsky, Afanasiev and Partners (formerly Magisters), represented plaintiffs who suffered from the 2006 Elita Center real estate scam in which 1,759 condominium buyers lost an estimated US\$80 million. Firms in Ukraine have provided various pro bono services to different organizations, including the United Nations High Commissioner for Refugees, the Eastern European Foundation, the International Chamber of Commerce and Ukraine's football federation<sup>26</sup>.

Currently, many law firms in Ukraine focus on educational advocacy and teaching opportunities. In 2013, the Marchenko Danevych Law Firm was recognized for its significant contribution to the development of legal education<sup>27</sup>. Avellum Partners Law Firm attorneys often lecture at law schools and mentor law students.<sup>28</sup> Furthermore, many law firms contribute to the development and implementation of reforms in Ukraine on a pro bono basis<sup>29</sup>.

Finally, due to the current financial and geopolitical turmoil in Ukraine, many established law firms have stopped practicing in Ukraine. Consequently, the number of new locally based law firms has risen, creating competition among new firms and those more established firms that continue to practice in Ukraine.<sup>30</sup> As such, many firms have used pro bono as a means of business development.<sup>31</sup>

### Legal Department Pro Bono Programs

Currently, attorneys working "in-house" within legal departments of Ukrainian companies do not commonly participate in pro bono legal work. In addition to the historical lack of a pro bono culture in Ukraine, Ukrainian companies typically do not have pro bono policies in place and pro bono work is rarely encouraged by management. However, in-house attorneys may engage in pro bono activities outside of work by volunteering with NGOs.

---

<sup>24</sup> Cf. <http://legal100.org.ua/> (last visited on September 4, 2015) in Ukrainian.

<sup>25</sup> Cf. <http://pro-bono.in.ua/> (last visited on September 4, 2015) in Ukrainian.

<sup>26</sup> M. Rachkevych, Firms encourage lawyers to do pro bono work for governments, nonprofits and low-income people (June 30, 2011), Kiev Post, available at <https://www.kyivpost.com/content/business/firms-encourage-lawyers-to-do-pro-bono-work-for-go-107794.html?flavour=mobile> (last visited on September 4, 2015)

<sup>27</sup> Cf. <http://www.marchenkodanevych.com/en/press-centre/news-and-events/826--marchenko-danevych-> (last visited on September 4, 2015).

<sup>28</sup> Cf. <http://www.avellum.com/en/index/news/1502/>, <http://www.avellum.com/en/index/news/348/> (last visited on September 4, 2015) and <http://www.avellum.com/en/index/news/1525/> (last visited on September 4, 2015).

<sup>29</sup> Cf. as example: [http://www.asterslaw.com/community/pro\\_bono.php](http://www.asterslaw.com/community/pro_bono.php) (last visited on September 4, 2015).

<sup>30</sup> For more details cf. <http://www.legal500.com/c/ukraine/legal-market-overview> (last visited on September 4, 2015) as well as following presentations of II. International Forum for Advancing of Legal Services as of December 4, 2014, available at <http://pravo.ua/docs/events/11/Kolesnik.pptx> (last visited on September 4, 2015) and <http://pravo.ua/docs/events/11/Lysenko.pptx>, (last visited on September 4, 2015) both in Russian.<sup>31</sup> Cf. presentation of Asters law firm with regard to this topic hold at II. International Forum for Advancing of Legal Services hold in Kiev on December 4, 2014, available at <http://pravo.ua/docs/events/11/Yesaulenko.ppt> (last visited on September 4, 2015) in Russian.

<sup>31</sup> Cf. presentation of Asters law firm with regard to this topic hold at II. International Forum for Advancing of Legal Services hold in Kiev on December 4, 2014, available at <http://pravo.ua/docs/events/11/Yesaulenko.ppt> (last visited on September 4, 2015) in Russian.



## NGO's Pro Bono Programs

**USAID Access to Justice and Legal Empowerment Project (“LEP”)**

The USAID LEP is a four-year project, which is working to improve access to justice in the areas of employment, healthcare, and property rights by increasing the availability of pro bono legal services and the impact of legal and advocacy organizations in Ukraine. The project aims to build a pro bono advocacy network - connecting law school clinics, advocacy NGOs and private attorneys to provide public consultations and legal representation. LEP also runs public information campaigns about the legal rights of citizens. By operating a referral system, the project connects private sector attorneys with vulnerable underrepresented groups in need of legal aid. The LEP engages private law firms and businesses to promote a pro bono culture and engages judicial officials to create a more cooperative and supportive environment for student advocates and pro bono attorneys.<sup>32</sup>

As of today, more than 128 legal advocacy organizations and legal clinics, and 27 law firms have joined LEP networks. On January 25, 2011, the Ukrainian Bar Association (the “**UBA**”), which includes more than 2,000 lawyers across Ukraine and is a member of the International Bar Association, officially endorsed the Access to Justice Project and encouraged their members to demonstrate social responsibility and join LEP networks to nurture the culture of pro bono legal services in Ukraine.<sup>33</sup>

**UHHRU and ULAF Initiatives<sup>34</sup>**

The Ukrainian Helsinki Human Rights Union (the “**UHHRU**”) has established a three year program aimed at promoting and cultivating human rights in Ukraine in line with European standards.

Additionally, in 2013, the Ukrainian Legal Aid Foundation (the “**ULAF**”) and UHHRU established the Ukrainian Pro Bono Clearing House (the “**Clearing House**”)<sup>35</sup>. The Clearing House sets out a platform for the provision of pro bono services in Ukraine - the organization matches attorneys with individuals who apply for legal aid through the program.

The Clearing House partners with a number of private attorneys, law firms, such as DLA Piper and Juscutum, and a number of NGO's.

Aside from its work with the Clearing House, the ULAF also works independently on several projects aimed at further developing the pro bono culture in Ukraine.<sup>36</sup>

**Environmental Advocacy<sup>37</sup>**

The international NGO “Environment People Law” has initiated a project aimed at environmental advocacy and awareness. The project has the following objectives: (i) development of an educational course on environmental law for judges, (ii) raising the awareness of judges about Ukrainian and foreign jurisprudence regarding environmental protection, and (iii) development of recommendations for elimination of barriers in access to justice. The project is funded by USAID.

**International Renaissance Foundation**

The International Renaissance Foundation, an NGO founded and funded by George Soros focuses on establishing democratic values in Ukraine, eradicating corruption, and fostering the development of civil society<sup>38</sup>. This NGO has initiated and provided assistance to many pro bono initiatives in Ukraine.

<sup>32</sup> Cf. USAID Access to Justice and Legal Empowerment in Ukraine, available at [http://pdf.usaid.gov/pdf\\_docs/pdacx372.pdf](http://pdf.usaid.gov/pdf_docs/pdacx372.pdf) (last visited on September 4, 2015).

<sup>33</sup> Id.

<sup>34</sup> Cf. Responding to Human Rights Violations and Empowering Citizens and Human Rights Defenders in Ukraine Activity, available at <http://helsinki.org.ua/files/docs/1412853691.pdf> (last visited on September 4, 2015).

<sup>35</sup> Cf. <http://pro-bono.in.ua/> (last visited on September 4, 2015) in Ukrainian.

<sup>36</sup> Cf. <http://ulaf.org.ua/?lang=en> (last visited on September 4, 2015).

<sup>37</sup> Cf. Improvement of access to justice in the sphere of protection of environmental rights of citizens and the environment, available at <http://epl.org.ua/en/about-en/project/1622-project-improvement-of-access-to-justice-in-the-sphere-of-protection-of-environmental-rights-of-citizens-and-the-environment-funded-by-usaid> (last visited on September 4, 2015).



## Bar Association Pro Bono Programs

### “Let’s Support Law Clinics Together”

In March 2012, the law firm Asters and the UBA, in cooperation with the UBA Students’ League, launched the pro bono project “Let’s Support Law Clinics Together.” The project aims to bring together law firms and bar associations in order to create an effective system of free legal aid, in particular by supporting law clinics throughout Ukraine. As part of the project, law clinics will receive equipment while Asters attorneys will provide advice and support in processing legal requests of persons requiring legal aid. Both Asters and the UBA actively soliciting the assistance of law other law firms and bar associations to join in this effort.<sup>39</sup>

### American Bar Association Rule of Law Initiative

The American Bar Association, through its Rule of Law Initiative program, has made significant contributions to civil society in Ukraine by supporting efforts to combat corruption, cybercrime and human trafficking, as well as efforts to reform the law enforcement system. It also trains justice sector professionals, supports local institutions that provide pro bono legal aid to the poor and educates the public about their rights. From 1992 until 2010, the program supported a network of more than 40 legal advocacy NGOs throughout Ukraine, which provided pro bono legal services to socially vulnerable populations. Currently, one of the program’s projects is aimed at strengthening the prosecution of hate crimes, increasing the protection of victims of such crimes and raising public awareness about, and tolerance for, ethnic and minority populations.<sup>40</sup>

### Legal Aid to Soldiers and their Families<sup>41</sup>

The UBA has initiated a project, aimed at the provision of civil legal aid to soldiers participating in military operations in Eastern Ukraine as well as their families. For example, attorneys provide pro bono legal services to help such individuals obtain the financial compensation and/or health care to which they are entitled, but have not yet received, from the Ukrainian government. Such services include, among other things, assistance in obtaining financial assistance, housing assistance, death and disability benefits and obtaining a military operations participant status<sup>42</sup>. From September 2014 until July 2015, 121 attorneys voluntarily participated in the project, 378 requests for help were submitted, 250 consultations were provided, and 60 court proceedings were initiated, ten (10) of which were favorably adjudicated. UBA does not provide services to soldiers fighting for separatist groups in Eastern Ukraine.

## University Legal Clinics and Law Students

Pursuant to the Law “On Free Legal Aid” university legal clinics and law students are not permitted to provide legal aid. However, as a matter of practice, such legal clinics do exist in many universities and provide free pro bono legal aid. Law students usually participate in the legal clinics on a voluntary basis.

## Historic Development and Current State of Pro Bono

### Historic Development of Pro Bono

During Soviet times, pro bono culture was practically non-existent in Ukraine. Following the breakup of the Soviet Union, international and national NGOs started to appear in Ukraine, various social programs

---

<sup>38</sup> Cf. <http://www.irf.ua/en/about/irf/> (last visited on September 4, 2015).

<sup>39</sup> A presentation of the Pro Bono project “Let’s Support Law Clinics Together” has been held, available at <http://jurliga.ligazakon.ua/news/2012/3/6/58791.htm> (last visited on September 4, 2015). Also cf.: [http://www.asterslaw.com/news\\_media/news/2676/](http://www.asterslaw.com/news_media/news/2676/) (last visited on September 4, 2015).

<sup>40</sup> For further initiatives see Rule of Law Initiative Ukraine’s homepage available at [http://www.americanbar.org/advocacy/rule\\_of\\_law/where\\_we\\_work/europe\\_eurasia/ukraine.html](http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/ukraine.html) (last visited on September 4, 2015).

[ftnt no. 40 reference has no text]

<sup>42</sup> This status provides the soldier and his family with numerous benefits, including healthcare, education, pensions, public transportation, municipal services and beneficial tax treatment.



began to emerge and Ukrainian private practitioners, law firms, and NGOs began to adopt western pro bono practices. Recent geopolitical events have increased the provision of pro bono practices in Ukraine.

Prior to the Euromaidan Revolution and subsequent military conflict, pro bono activities were mainly focused on providing legal aid to socially vulnerable groups such as the disabled, low-income persons, veterans or orphans. After the Euromaidan Revolution and the subsequent conflict, legal practitioners provided pro bono assistance to help internally displaced persons and other efforts to provide humanitarian aid to those affected by the conflict. This has led to a greater awareness of the need for pro bono services and has helped to create a greater desire to participate in pro bono among legal practitioners. Last, there are legislative efforts underway in Ukraine to reform governmental institutions and remove corruptions from all facets of the government. The results of such efforts remain to be seen, but this could open a new field for socially engaged attorneys and NGOs to provide services on a pro bono basis.

### Barriers To Pro Bono Work And Other Considerations

Pro bono opportunities for international law firms located in Ukraine are largely limited to representing and consulting NGOs, as well as consulting individuals on their respective civil matters. Non-Ukrainian speakers or attorneys without an “advocate” license are unable to represent individuals in criminal cases in Ukrainian courts. Further, non-Ukrainian attorneys without an advanced knowledge of the Ukrainian language and culture will even face difficulties in representing clients in civil cases. Despite these more formal institutional barriers, the main barrier to a thriving pro bono culture in Ukraine is the historical lack of pro bono culture or advocacy. However, the establishment of free legal aid, and the mandatory provision of legal services by attorneys practicing in Ukraine, is a significant change in the legal landscape. At this point, it is too early to assess the effectiveness and quality of the free legal aid. Nevertheless, the general outlook for the future is positive.

## CONCLUSION

Ukraine has long been in need of a legal aid system that can serve its indigent citizens. Since the breakup of the Soviet Union, the provision of pro bono services has increased and this trend is likely to continue in the future. Governmental efforts to increase legal aid have also support this trend, although the effectiveness of these programs remain to be seen. Today, legal practitioners have many opportunities to provide pro bono services by working individually or collaborating with existing NGOs. The provision of such services will help create a robust and functioning civil society in Ukraine.

September 2015

Pro Bono Practices and Opportunities in Ukraine

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



# Pro Bono Practices and Opportunities in the United Arab Emirates

## INTRODUCTION

The provision of pro bono legal services and state funded legal aid are currently not institutionalized practices in the United Arab Emirates (the “**UAE**”) in the same manner that they are in many western jurisdictions. As such, the provision of these legal services is not common. This chapter sets out the current state of pro bono and legal aid practices in the UAE by describing the regulatory framework of the legal profession and the judicial system and providing details on the provision of pro bono and free legal service opportunities.

## OVERVIEW OF THE LEGAL SYSTEM

### The Constitution and Governing Laws

The UAE is a constitutional federation<sup>1</sup> of seven emirates (Abu Dhabi, Dubai, Sharjah, Ras Al Khaimah, Umm Al Quwain, Ajman and Fujairah, each an “**Emirate**” and together the “**Emirates**”) established in 1971 (the “**Federation**”).<sup>2</sup> In establishing the Federation, the UAE adopted a provisional constitution which later became permanent (the “**Constitution**”).<sup>3</sup> The Constitution mandates a codified civil system of law rather than a precedential system based on common law principles. Alongside this civil system, the Constitution also provides for the existence of Islamic Shari’a law as a main and dual source of legislation.<sup>4</sup>

The Constitution allocates governing and executive powers between the federal government and the local governments of each Emirate and establishes the Supreme Council of the Rulers of all the Emirates (the “**Supreme Council**”) as the foremost legislative and executive authority in the Federation. The principle functions of the Supreme Council are to prepare, propose and ratify federal legislation as well as to oversee general adherence to the provisions of the Constitution by federal and local government authorities. The laws promulgated by the Supreme Council are carried out and enforced by a Council of Ministers and various federal ministries.<sup>5</sup> At a lower level, local governments remain authorized to regulate local matters, including establishing and creating rules governing civil and criminal courts.<sup>6</sup>

### The Courts

At inception, the Constitution allowed each Emirate the right to either join the federal judicial system or maintain its own independent court system. Only the Emirates of Dubai and Ras Al Khaimah operate independent judicial systems. However, Dubai recently chose to adopt the federal civil procedure rules in relation to civil cases brought in Dubai Courts.

---

<sup>1</sup> See The Seven Emirates, GOVERNMENT.AE, available at <http://www.government.ae/en/web/guest/seven-emirates>, (last visited on September 4, 2015).

<sup>2</sup> See Background on the United Arab Emirates (UAE) Legal System, GULF-LAW.COM, available at [http://www.gulf-law.com/uaecolaw\\_legalsystem.html](http://www.gulf-law.com/uaecolaw_legalsystem.html), (last visited on September 4, 2015).

<sup>3</sup> Ibid.

<sup>4</sup> Essam Tamimi, *Litigation in the United Arab Emirates*, 20, *International Legal Practice* 134, 135 (1995).

<sup>5</sup> Andrew Tarbuck & Christopher Lester (2011), *Dubai’s Legal System: Creating a legal and regulatory framework for a modern society*, LW.COM, available at [www.lw.com/thoughtLeadership/dubai-legal-and-regulatory-system](http://www.lw.com/thoughtLeadership/dubai-legal-and-regulatory-system), (last visited on September 4, 2015).

<sup>6</sup> Id. at 1.



The Federal Supreme Court heads the federal judiciary (also known as the Court of Cassation).<sup>7</sup> The Courts of First Instance are the first tier of federal trial courts. Decisions of the Courts of First Instance can be appealed to the Courts of Appeal. Decisions of the Courts of Appeal can then be appealed to the Federal Supreme Court to the extent that the dispute refers to a matter of law only. The judgment of the Courts of Appeal will remain binding unless the Federal Supreme Court “grants an interlocutory order to stay execution of the judgment.”<sup>8</sup> While the United Arab Emirate’s civil law system does not rely on judicial precedent, decisions of the Federal Supreme Court, while not binding, remain persuasive on all lower courts and governmental institutions.<sup>9</sup>

In the absence of specific, codified legislation, UAE courts are obliged to adopt the general principles of Islamic jurisprudence and justice and in applying these principles are generally not bound by previous Shari’a court decisions.<sup>10</sup> Shari’a courts are organized and supervised locally in each Emirate<sup>11</sup> and hear mostly civil matters and matters relating to personal status such as inheritance and divorce.<sup>12</sup>

Judges for the Federal Supreme Court are appointed by the President of the UAE following approval by the Supreme Council.<sup>13</sup> Other Federal Judges are appointed by the UAE President after nomination from the Minister of Justice.<sup>14</sup> Judges to the courts of Dubai<sup>15</sup> and Ras Al Khaima<sup>16</sup> are appointed independently by their individual rulers. Generally, judges in Shari’a courts are appointed by the ruler’s court in the particular Emirate in which the court is located (the “**Ruler’s Court**”). The Ruler’s Courts provide various legal services to the local Emirate, including the supervision of all legal matters involving the local government.<sup>17</sup>

Judges who are UAE citizens are nominated for life and as such their appointment may only be terminated for reasons of ill-health, death, resignation, the reaching of retirement age, disciplinary discharge or upon appoint to another governmental position.<sup>18</sup> Judges who are non-United Arab Emirate nationals have contracts which are subject to renewal and which may either be left to expire or terminated in accordance with their terms.<sup>19</sup>

---

<sup>7</sup> See Judicial System in Abu Dhabi, ABUDHABI.AE, available at [https://www.abudhabi.ae/portal/public/en/gen\\_info\\_detail?docName=ADEGP\\_DF\\_301102\\_EN&\\_adf.ctrl-state=eb115e3cp\\_4&\\_afLoop=3360053854753024](https://www.abudhabi.ae/portal/public/en/gen_info_detail?docName=ADEGP_DF_301102_EN&_adf.ctrl-state=eb115e3cp_4&_afLoop=3360053854753024), (last visited on September 4, 2015).

<sup>8</sup> See Litigation and Arbitration, AHMEDLAWFIRM.COM, available at [http://www.ahmedlawfirm.com/practice\\_areas/litigation-arbitration/](http://www.ahmedlawfirm.com/practice_areas/litigation-arbitration/), (last visited on September 4, 2015).

<sup>9</sup> Ibid.

<sup>10</sup> Id. at 1.

<sup>11</sup> Ibid.

<sup>12</sup> Id. at 4.

<sup>13</sup> United Arab Emirates Constitution (1971) Article 96.

<sup>14</sup> Nathan J. Brown, A Study Presented to The United Nations Development Programme on Governance in the Arab Region (2001) at 50.

<sup>15</sup> Dubai Law No. 3 of 1992 forming the Courts in the Emirate of Dubai, Article 6.

<sup>16</sup> See The UAE Court system, USCONSULATE.GOV, available at [http://dubai.usconsulate.gov/emergency\\_uae\\_court.html](http://dubai.usconsulate.gov/emergency_uae_court.html), (last visited on September 4, 2015).

<sup>17</sup> See The Government of Dubai Legal Affairs Department, DUBAI.AE, available at <http://dubai.ae/en/Lists/GovernmentDepartments/DispForm.aspx?ID=49&category=Government>, (last visited on September 4, 2015).

<sup>18</sup> United Arab Emirates Constitution (1971) Article 97.

<sup>19</sup> Federal Law No. 10 of 1973 regarding the Federal Supreme Court, Article 4.



## The Practice of Law

The legal profession in the UAE is governed by Federal Law No. 23 of 1991. All firms (whether local or foreign) providing legal services must be licensed in the Emirate in which they choose to operate.<sup>20</sup> License requirements for individual attorneys of such firms are dependent on the nationality of the attorney, the type of law to be practiced and the geographical location of their office.

In order to appear before the Federal courts (including Shari'a courts), attorneys must be licensed by the Ministry of Justice and in order to appear before courts in Dubai and Ras Al Khaimah, attorneys must be licensed as advocates by each local Ruler's Court. In addition, attorneys must be graduates of a recognized law college or Shari'a college, which in practice generally limits the practice of law before the Federal and Shari'a Courts to UAE citizens.<sup>21</sup> However, in Dubai, certain expatriate attorneys may represent their clients in courts at all levels.<sup>22</sup>

Foreign law firms are permitted to operate in the UAE as legal consultancies, but generally cannot make court appearances on behalf of clients, due to the fact that only Arab attorneys (that is, UAE national attorneys and attorneys from certain other Arab countries who must satisfy specified criteria before a licence is issued) have rights of audience in the UAE.<sup>23</sup>

'Free Zones' are an exception to this general rule. Free zones are pockets of land designated as being free of Federal laws and regulations. Free zones operate their own internal legal system in order to promote the establishment of international business in the region. The most influential of these free zones with regards to the provision of legal services by foreign attorneys is the Dubai International Finance Centre (the "DIFC"). The DIFC is a separate legal jurisdiction with its own body of law, including corporate law and employment law, as well as its own court system.<sup>24</sup> The DIFC operates a sophisticated regulatory regime overseen by the Dubai Financial Services Authority (the "DFSA").<sup>25</sup> Any law firm that operates in or from the DIFC must be licensed by both the Ruler's Court in Dubai and by the DFSA.<sup>26</sup> In contrast to non-free zone jurisdictions, foreign attorneys are permitted to advise clients before the DIFC Courts, provided that they are appropriately registered with the DIFC Courts.<sup>27</sup>

According to the most recently available Ministry of Justice statistics, there were 725 registered attorneys in the UAE in 2011.<sup>28</sup> This number includes 555 UAE nationals,<sup>29</sup> but this figure does not take into account attorneys working for foreign law firms.

---

<sup>20</sup> Id. at 4.

<sup>21</sup> See United Arab Emirates, Chapter 3: The Judicial System, GULF-LAW.COM, available at [http://gulf-law.com/uae\\_judicial.html](http://gulf-law.com/uae_judicial.html), (last visited on September 4, 2015).

<sup>22</sup> See Ruling allows expatriate lawyers in all Dubai courts, THENATIONAL.AE, available at <http://www.thenational.ae/news/uae-news/courts/ruling-allows-expatriate-lawyers-in-all-dubai-courts>, (last visited on September 4, 2015).

<sup>23</sup> See Dubai lawyers to require licenses from next month, THENATIONAL.AE, available at <http://www.thenational.ae/business/economy/dubai-lawyers-to-require-licences-from-next-month> (last visited on September 4, 2015).

<sup>24</sup> See About the courts, DIFC.AE, available at <http://difccourts.ae/about-the-courts/>, (last visited on September 4, 2015).

<sup>25</sup> See A guide for firms seeking registration as an Ancillary Service Provider, DFSA.AE, available at <http://www.dfsa.ae/Documents/Applying%20for%20Registration.pdf>, (last visited on September 4, 2015).

<sup>26</sup> Ibid.

<sup>27</sup> See Legal Framework, DFSA.AE, available at <http://www.dfsa.ae/Pages/LegalFramework/LegalFramework.aspx>, (last visited on September 4, 2015).

<sup>28</sup> See Emirati lawyers seek total emiratization of profession, GULF-NEWS.COM, available at <http://gulfnews.com/news/uae/general/emirati-lawyers-seek-total-emiratization-of-profession-1.990503>, (last visited on September 4, 2015).



## Malpractice

Clients dissatisfied with the quality of legal services they have received in the UAE currently have little recourse other than to file a complaint with the relevant Ruler's Court in the Emirate in which the law firm or attorney practices. Unlike in other jurisdictions, there is no equivalent in the UAE to an ombudsman complaints service. With regard to the services provided by foreign law firms or individual foreign attorneys, clients are always able to file a complaint with the relevant bar association, if any, in the attorney's home jurisdiction.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The UAE government provides free legal representation to defendants in certain criminal cases in the UAE. Under the Criminal Procedures Code (Federal Law No. 35 of 1992), a defendant has the right to be represented by a government-provided attorney in any case that involves a possible punishment of death or life imprisonment, regardless of financial need, immigration status or case merit.<sup>30</sup> The government also has discretion to provide attorneys for indigent defendants in certain other felony cases.<sup>31</sup> Government-appointed attorneys operate in private practices and are compensated by the government for their service generally at below market level rates.<sup>32</sup> The acceptance of any governmental appointment is optional. It is not clear how the courts select attorneys for appointment or if there is a database of firms willing to accept legal aid appointment.

The economic downturn in 2008 and the resultant increase in civil litigation has led a number of legal practitioners in the UAE to suggest that authorities should offer state-subsidized legal aid to non-indigent persons involved in civil cases, in a manner similar to the criminal regime.<sup>33</sup>

The Abu Dhabi Justice Department founded a legal aid office in May 2011, which aims to provide free legal services to indigent people involved in civil matters, whether as a plaintiff or defendant.<sup>34</sup> The service, initially limited to cases in which applicants were unemployed or facing financial difficulty, is now open to all Emirati nationals and aims to provide advocacy services as well as assistance with the payment of expert fees.<sup>35</sup> A similar service is offered by the Government of Dubai to both indigent and non-indigent applicants; however, the service offered is limited to an initial consultation with an attorney.<sup>36</sup> In 2009, Dubai established the Real Estate Regulatory Agency ("**RERA**") which provides free legal assistance to individuals engaged in disputes regarding real property.<sup>37</sup> In addition, the Dubai Community

---

<sup>29</sup> Ibid.

<sup>30</sup> Penal Procedure Law, Federal Law No. 35 of 1992, Article 4.; see also 2009 Human Rights Report: United Arab Emirates, STATE.GOV, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136082.htm>, (last visited on September 4, 2015).

<sup>31</sup> Ibid.

<sup>32</sup> Federal Law No. 23 of 1991, Article 24.

<sup>33</sup> See Call to extend free legal aid to civil cases, UAEINTERACT.COM, available at [http://www.uaeinteract.com/docs/Call\\_to\\_extend\\_free\\_legal\\_aid\\_to\\_civil\\_cases/37151.htm](http://www.uaeinteract.com/docs/Call_to_extend_free_legal_aid_to_civil_cases/37151.htm), (last visited on September 4, 2015).

<sup>34</sup> Administrative decree No. 106/2011.

<sup>35</sup> See Legal Aid in ADJD, ADJD.GOV.AE, available at <http://www.adjd.gov.ae/portal/site/adjd/LegalAid/?language=en>, (last visited on September 4, 2015).

<sup>36</sup> See Volunteer Lawyers Program for Legal Consultants, DUBAICOURTS.GOV.AE, available at [http://www.dubaicourts.gov.ae/portal/page?\\_pageid=292,699887&\\_dad=portal&\\_schema=PORTAL](http://www.dubaicourts.gov.ae/portal/page?_pageid=292,699887&_dad=portal&_schema=PORTAL), (last visited on September 4, 2015).

<sup>37</sup> Ibid.



Development Authority announced it would establish a public defenders' office at the Dubai courts by 2012.<sup>38</sup> However, to date, this initiative has not been implemented.

As the UAE has a large number of migrant workers, the government also provides certain forms of legal assistance to foreign employees with labor grievances. The Ministry of Labor distributes information to foreign workers in several languages, explaining their rights under the labor law and how they can individually or collectively pursue labor disputes.<sup>39</sup> Workers can file labor-related complaints with the Ministry of Labor, which also provides mediation services.<sup>40</sup> The parties to any labor disputes are not required, and generally are not allowed, to be represented by attorneys in such mediations, and the parties pay no fees to the relevant ministry for such mediation services. Either party to the mediation can have the dispute referred from mediation to the labor court system.<sup>41</sup> Domestic employees are not covered by the labor law, but may file employment-related complaints with the Ministry of Interior as an alternative to resorting to litigation.<sup>42</sup>

On the whole, the demand for legal services, whether in the form of state-sponsored legal aid or pro bono assistance, is greatest among low income, foreign workers involved in both civil and misdemeanor/felony cases, and it is these classes of persons who are least supported at a governmental level.<sup>43</sup>

## PRO BONO ASSISTANCE

### Barriers to Pro Bono

Private attorneys and law firms in the UAE generally do not engage in pro bono work on a regular basis. There are no legal or licensing specifications which require that attorneys practicing in the UAE undertake a certain number of pro bono hours each year. While some non-governmental organisations (“NGOs”) work to address human rights disputes generally in the UAE, there are very few NGOs that provide free legal services to individuals or that focus on providing legal aid to disadvantaged groups. The Abu Dhabi Judicial Department sought to change this in 2011 when the “legal aid section” was formed to provide easier access to justice.<sup>44</sup>

Several factors make it difficult for foreign attorneys to provide pro bono legal services in the UAE. The ability of foreign attorneys to represent disadvantaged individuals is limited by the fact that, in general, only UAE nationals who are qualified attorneys may represent litigants before most courts in the UAE. In addition, many foreign attorneys do not speak Arabic, which is often a necessity when dealing with local courts and institutions. As a result, foreign attorneys in the UAE have focused the bulk of their charitable

---

<sup>38</sup> See Dubai courts to provide free lawyers to poor defendants, THENATIONAL.AE available at <http://www.thenational.ae/news/uae-news/courts/dubai-courts-to-provide-free-lawyers-to-poor-defendants>, (last visited on September 4, 2015).

<sup>39</sup> See United Arab Emirates 2013 Human Rights Report, STATE.GOV, available at <http://www.state.gov/documents/organization/220592.pdf>, (last visited on September 4, 2015).

<sup>40</sup> Ibid.; see also Report of the Working Group on the Universal Periodic Review: United Arab Emirates, LIB.OHCHR.ORG, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/A\\_HRC\\_10\\_75\\_United\\_Arab\\_Emirates\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/A_HRC_10_75_United_Arab_Emirates_E.pdf), (last visited on September 4, 2015).

<sup>41</sup> Penal Procedure Law, Federal Law No. 35 of 1992, Article 4.; see also 2009 Human Rights Report: United Arab Emirates, LIB.OHCHR.ORG, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136082.htm>, (last visited on September 4, 2015).

<sup>42</sup> Ibid.

<sup>43</sup> Human Rights Watch, I already bought you, available at [http://www.hrw.org/sites/default/files/reports/uae1014\\_forUpload.pdf](http://www.hrw.org/sites/default/files/reports/uae1014_forUpload.pdf), (last visited on September 4, 2015).

<sup>44</sup> See Legal Aid in ADJD, ADJD.GOV.AE, available at <http://www.adjd.gov.ae/portal/site/adjd/LegalAid?language=en>, (last visited on September 4, 2015).



efforts on non-legal charitable work, such as fundraising for local charities, rather than in engaging in “legal” pro bono services and opportunities.

Public awareness is a further limiting factor on the creation of a robust pro bono culture. While information and resources are available on the internet, many people do not have access to this information due to lack of financial means. The Emirates of Dubai and Abu Dhabi are making efforts to ensure information as to rights and services is disseminated to the wider population, but the other Emirates appear to be making less of an effort in this regard.<sup>45</sup>

## Pro Bono Opportunities

Notwithstanding these limiting factors, some foreign attorneys do provide pro bono services to local charities in the UAE. Generally, these opportunities have consisted of advising charities and NGOs on issues involving foreign laws or local law (such as licensing requirements, general corporate and finance matters, cross-border collaborations, employment law issues, etc.) and/or drafting legal documents on behalf of these entities.<sup>46</sup> Attorneys serving in-house or with law firms can also serve on the board of directors of non-profit organizations and can organize fundraising events.<sup>47</sup>

In 2009, the DIFC Courts established a pro bono program, which is the first of its kind in the Middle East.<sup>48</sup> The pro bono program allows individuals who cannot afford an attorney the ability to seek free advice from attorneys registered with the DIFC Courts. The services offered as part of the pro bono program range from basic advice to full case management and representation in litigation proceedings for areas of law within the DIFC Court’s jurisdiction.<sup>49</sup> The DIFC Courts also host bi-weekly clinics in which individuals can discuss their case, along with alternative dispute resolution strategies, with volunteer attorneys. The services are accessible to individuals who cannot afford legal representation, with the provisions of services being determined on a case by case basis by the DIFC Court’s Registry office.<sup>50</sup> In deciding on eligibility, the DIFC Court’s Registry office will also take into consideration the merit of the case should it proceed to trial. To date, more than 39 leading law firms have registered to provide voluntary services under this program, including Al Tamimi & Co., Clyde & Co LLP, Clifford Chance LLP, Norton Rose LLP, Latham & Watkins LLP and DLA Piper.<sup>51</sup>

In 2014, the United Arab Emirates University (“**UAEU**”) launched a legal clinic to offer legal advice and consultancy services to both students and the local community on a pro bono basis. There is limited information available on the program’s success or whether other universities in the UAE will begin to offer similar clinics.<sup>52</sup> Given this development at UAEU is particularly recent, it remains to be seen whether other universities in the Emirates will follow suit.

---

<sup>45</sup> See UAE’s population – by nationality, BQDOHA.COM, available at <http://www.bqdoha.com/2015/04/uae-population-by-nationality>, (last visited on September 4, 2015).

<sup>46</sup> Id. at 44.

<sup>47</sup> See Corporate Social Responsibility, TAMIMI.COM, available at <http://www.tamimi.com/en/section/corporate-social-responsibility>, (last visited on September 4, 2015); see also Working with the Community, TROWER.COM, available at <http://www.towers.com/about/working-with-the-community> (last visited on September 4, 2015).

<sup>48</sup> See Pro Bono Program, DIFCCOURTS.AE, available at <http://draacademy.ae/pro-bono-programme/programme-overview/> (last visited on September 4, 2015).

<sup>49</sup> See Frequently Asked Questions, DIFCCOURTS.AE, available at <http://draacademy.ae/pro-bono-programme/faqs/> (last visited on September 4, 2015).

<sup>50</sup> Ibid.

<sup>51</sup> See DIFC Courts establish pro bono fund to support disadvantaged, DIFCCOURTS.AE, available at <http://difccourts.ae/12-September-2011-difc-courts-establishes-pro-bono-fund-to-support-disadvantaged/>, (last visited on September 4, 2015).

<sup>52</sup> See UAEU Launches the First Free Legal Advice Clinic in the UAE, UAEU.AC.AE, available at [http://www.uaeu.ac.ae/en/news/2014/09/legal\\_advice\\_clinic.shtml](http://www.uaeu.ac.ae/en/news/2014/09/legal_advice_clinic.shtml), (last visited on September 4, 2015).



## CONCLUSION

The practice of providing pro bono legal services is not well established in the UAE, politically, socially or within the legal community. However, the development of western practices within the legal profession, the strong presence of internationally qualified attorneys and the increased interest in, and awareness of, human rights in recent years in the region should help in shaping a stronger pro bono and legal aid culture in the future.

September 2015

Pro Bono Practices and Opportunities in the United Arab Emirates

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



# Pro Bono Practices and Opportunities in the United States of America

## INTRODUCTION

The United States has a deep, longstanding, and evolved system and tradition of providing pro bono legal support to those in need, and there is widespread engagement in pro bono among non-profit organizations, private law firms, individual practitioners, and in-house counsel. Despite the breadth of participation among attorneys, the demand for critical low-cost legal services in the United States far exceeds the supply of services available. There is no shortage of opportunities – in terms of number, variety, or skill level required. This section provides a brief, high-level overview of the legal system in the United States and the legal culture regarding legal aid and pro bono work. In addition, this section contains some resources to use as a first step in locating and identifying appropriate pro bono opportunities in the United States and outlines some basic considerations to keep in mind when deciding whether and what kind of pro bono work to undertake.

## OVERVIEW OF THE LEGAL SYSTEM<sup>1</sup>

### The Constitution and Governing Laws

The U.S. government is structured based on the doctrine of “separation of powers,” in which the sovereignty of the people is divided among three separate but co-equal branches: the Executive, the Legislative, and the Judiciary. Sovereignty is further divided between the federal government and the governments of the individual states. In addition, Native American governments retain a “quasi-sovereign” status in the U.S. federal system.

Accordingly, the federal, state, and tribal governments have separate legal systems with separate laws and regulations. As a general rule, however, the U.S. Constitution and federal laws made pursuant thereto are “the law of the land.”<sup>2</sup> However, where the U.S. Constitution or federal law is silent or does not apply to a particular matter, state, local, or tribal law will apply. Like the federal government, each state government and, where applicable, tribal government, will have its own governing constitution.

### The Courts

The structure of the U.S. judiciary is complex. The United States has a “common law” legal system with two separate and distinct judiciary systems: federal and state. Although the two systems share many similarities, federal and state courts have procedurally and substantively different rules and laws. Attorneys practicing in the United States should pay special attention to the specific court in which they are appearing and the type of law (federal or state) being applied. Moreover, issues of jurisdiction and federalism are highly complex and often contested in the United States, and a foreign practitioner should be cognizant of the complexity in this area.

The federal judiciary is administered by the U.S. Supreme Court and is comprised of the U.S. Supreme Court, 13 U.S. Courts of Appeals and 94 U.S. District Courts. The U.S. District Courts are the federal trial courts. Decisions of the trial courts can be appealed to a U.S. Court of Appeals. A party can request the

---

<sup>1</sup> For more details regarding the structure of the U.S. legal system, see generally ADMIN. OFFICE OF THE U.S. COURTS, *Understanding the Federal Courts* (2010), available at <http://www.uscourts.gov/file/understanding-federal-courts.pdf> (last visited on September 4, 2015); Comparing Federal & State Courts, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts> (last visited on September 4, 2015); and Court Role and Structure, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/about-federal-courts/court-role-and-structure> (last visited on September 4, 2015).

<sup>2</sup> U.S. CONST., art. IV, cl. 2.



U.S. Supreme Court to review a Court of Appeals decision, but the Supreme Court is generally under no obligation to accept a case for review.

Federal courts are generally limited to hearing issues regarding federal law, but often consider and apply related state law. The rulings of the U.S. Supreme Court are binding on all courts on issues of federal law, which includes issues regarding the U.S. Constitution.

Most judges in the federal court system are appointed by the U.S. President and confirmed by the U.S. Senate. These judges are appointed for a “life term”; i.e., they may only be removed for failure to exhibit “good behaviour” while in office.<sup>3</sup>

The structure of state courts is established by the Constitution and laws of each state and therefore varies from state to state. Similar to the federal system, one court will be the “highest” court or “court of last resort” in the state (i.e., a state court analogue to the U.S. Supreme Court in the federal judiciary), and this court typically administers the state judiciary system. Generally, the first decision made by the judiciary in the state court system is made by a trial court.<sup>4</sup> A decision of a state trial court can then be appealed to an intermediate appellate court. Generally, a party can request the state’s highest court to review an intermediate appellate court’s decision, but the state’s highest court is under no obligation to accept a case for review.

In navigating any state court system, practitioners should take care to familiarize themselves with the nomenclature for the courts in that particular state. The names of the trial courts, intermediate appellate courts, and even the “court of last resort” vary from state to state. For instance, in many states, the “court of last resort” is known as the Supreme Court; however, in other states, the “court of last resort” is known as the “Court of Appeals” or “Court of Appeal,” and the trial court is known as the “Supreme Court.”<sup>5</sup>

State courts may hear issues of state law and many issues of federal law. With respect to issues of state law – including issues regarding the state constitution – state courts are bound by the rulings of the state supreme court. Any courts or tribunals that serve specific cities, counties, and other types of local municipal governments are also generally considered to be state courts. Many states also have specialized courts that handle discrete legal matters including, for example, probate, juvenile and family courts.

State court judges are either appointed or elected, depending on the laws of the particular state.

The federal court system and each state court system have different procedural rules. In both systems, each particular court may have its own rules, and similarly, each individual judge may have his or her own rules. These “Local Rules” or “Chamber Rules” are often available online at the particular courthouse’s website and at the particular judge’s webpage. These rules typically include what each attorney must do in order to qualify to appear before a particular court and for practicing law in a particular location.<sup>6</sup>

Both the federal and state court systems are also intertwined to varying degrees with federal and state administrative and legislative court systems. These administrative and legislative courts often operate like judicial courts but the rules for administrative and legislative adjudications are different. For example, many immigration disputes are adjudicated administratively by federal administrative agencies.

---

<sup>3</sup> U.S. CONST., art. III, § 1.

<sup>4</sup> For example, in New York, the trial court is known as the “supreme court,” whereas in California, the trial court is known as the “superior court.”

<sup>5</sup> Compare California (the trial court is known as the “Superior Court”; the appellate court is known as the “Court of Appeal”; and the highest court is the California Supreme Court), with New York (the trial court is known as the “Supreme Court”; the appellate court is known as the “Appellate Division”; and the highest court is the New York Court of Appeals).

<sup>6</sup> See, e.g., Rules of Court, Superior Court of California, County of San Diego, [http://www.sdcourt.ca.gov/portal/page?\\_pageid=55.1117634&\\_dad=portal&\\_schema=PORTAL](http://www.sdcourt.ca.gov/portal/page?_pageid=55.1117634&_dad=portal&_schema=PORTAL) (last visited on September 4, 2015).



## The Practice of Law

### Education

In the United States, legal education is driven primarily by state licensing requirements for the practice of law. All states recognize graduation from an American Bar Association (“ABA”)-approved law school as meeting the educational requirements to be eligible to sit for a state bar examination, the passage of which is typically required before an attorney may be admitted to the bar (i.e., licensed to practice) in a particular state. Most law schools require students to have a bachelor’s degree. Accordingly, most practicing attorneys in the United States will have at least a bachelor’s degree and at least the first professional degree in law offered by U.S. law schools: the Juris Doctor or “J.D.” Most U.S. law schools operate on a three-year curriculum, but some offer accelerated 2- or 2.5-year programs. Additional degrees, such as the L.L.M. (Master of Laws) and Ph.D. in Law, may also be available. As the first professional degree available in law, the J.D. is considered to be roughly equivalent to the L.L.B. in other countries. Many law schools require some form of pro bono service as a requirement for graduation, typically in the range of 20 to 70 hours.

After becoming licensed to practice law, most states require continuing legal education (CLE) as a condition to maintaining licensure. These CLE requirements vary from state to state. California, for example, requires 25 hours of CLE over tri-annual reporting periods in various subjects, including ethics, substance abuse or mental illness, and elimination of bias in the profession.<sup>7</sup> New York requires 24 hours of CLE over bi-annual reporting periods, including four hours focused in ethics and professionalism.<sup>8</sup> Some states have adopted rules that allow for pro bono work to substitute for CLE requirements.<sup>9</sup>

### Licensure

Admittance to a state bar association is typically required before an attorney may “practice law” in the United States, and extends to foreign-qualified attorneys and attorneys employed by corporate legal departments. Because the licensing of attorneys occurs on a state-by-state level, the definition of the “practice of law” varies; however, in general the “practice of law” means the representation or counselling of another individual as a client.<sup>10</sup> In other words, if an individual counsels, advises, or represents another person for the purpose of providing legal advice or legal representation, he or she is engaged in the “practice of law” and must be licensed by the state in which he or she is practicing. However, every individual in the United States is entitled to represent himself or herself, regardless of whether he or she is an attorney, though it is not often recommended and sometimes requires the court to affirm that the waiver of counsel is an affirmative, knowing, voluntary, and intelligent act.

In addition to general licensing requirements, attorneys may also be required to follow special procedures for admittance to or appearance before specific judicial or administrative tribunals, which is discussed in more detail in Sections II.D and IV.B.2, *infra*.

---

<sup>7</sup> California MCLE Requirements, AMERICAN BAR ASSOCIATION, [http://www.americanbar.org/cle/mandatory\\_cle/mcle\\_states/states\\_a-k/california.html](http://www.americanbar.org/cle/mandatory_cle/mcle_states/states_a-k/california.html) (last visited on September 4, 2015).

<sup>8</sup> New York MCLE Requirements, AMERICAN BAR ASSOCIATION, [http://www.americanbar.org/cle/mandatory\\_cle/mcle\\_states/states\\_l-o/new\\_york.html](http://www.americanbar.org/cle/mandatory_cle/mcle_states/states_l-o/new_york.html) (last visited on September 4, 2015).

<sup>9</sup> Continuing Legal Education (CLE)/Pro Bono State Rules, AMERICAN BAR ASSOCIATION, <http://apps.americanbar.org/legalservices/probono/clerules.html> (last visited on September 4, 2015).

<sup>10</sup> For a summary of the various state definitions of what constitutes the “practice of law,” see AMERICAN BAR ASSOCIATION, STATE DEFINITIONS OF THE PRACTICE OF LAW, available at [http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/model\\_def\\_statutes.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/model_def_statutes.authcheckdam.pdf) (last visited on September 4, 2015).



## Demographics<sup>11</sup>

In 2014, there were approximately 1.28 million licensed attorneys in the United States, a country with a population of approximately 321 million, or approximately 250 people per licensed attorney. In terms of legal aid, however, there are approximately 6,415 people in need per legal aid attorney.

This shortage exists despite the fact that the number of attorneys as a percentage of the population in the United States has risen steadily over time, particularly during the last few decades. Regarding specific states, New York and California have, by far, the most licensed attorneys. The legal profession in Texas, which has the third largest population of attorneys, is only about half the size of either New York or California.

The demographic makeup of the U.S. legal profession continues to evolve. The U.S. legal profession continues to be dominated by male attorneys, but this is much less the case since 1980. The proportion of female attorneys more than tripled from 1980 to 2000 and now constitutes almost a third of the profession. Female law students have constituted almost half of the student population for the past five years.

Racial diversity in the U.S. legal profession remains relatively static. In 2010, most licensed attorneys were white (88%). African American attorneys constituted almost 5% of the profession and Hispanic and Asian American attorneys each comprised between 3% and 4%.

In 2005, most attorneys—almost three-quarters—worked in private practice, with less than 10% in government or private industry. Three percent work in the judiciary and 1% in education, legal aid or public defense, and private associations. Of the attorneys in private practice, almost half are solo practitioners. Approximately 34% worked in firms with 2–100 attorneys and 16% worked at large firms with over 100 attorneys.

U.S. law firms that have offices outside the United States often staff the office with a combination of U.S.-qualified and locally qualified attorneys. Although there appears to be a developing trend towards basing in-house attorneys abroad, U.S. companies often engage outside counsel in the areas outside the United States where they operate.

## Regulation of Attorneys and the Provision of Legal Services

Attorneys and the provision of legal services are generally regulated by the individual states through rules and regulations promulgated by the state's courts, legislature, and/or bar association. These rules and regulations govern the standards for bar admission, ethics, conduct, continuing education requirements, and discipline for attorneys. An attorney admitted to practice law (i.e., admitted to the bar) in one state is not automatically authorized to practice in any other state. In addition, attorneys may also be required to apply for admission to practice law before specific federal and agency tribunals.

Although the requirements for admission vary from state to state, most require an applicant to have good moral character, be a resident or employed in the state, have graduated from an accredited law school, and pass a bar examination for that state.

The bar associations of each state should not be confused with the ABA. The ABA is a national organization that provides law school accreditation, continuing legal education, information about the law for practitioners and for the public, and initiatives to improve the legal system for the public. The ABA also publishes “model” rules for various issues, and many states use these model rules in formulating their own standards. But the ABA does not regulate the conduct of practicing attorneys; nor does it act as an

---

<sup>11</sup> The data in this section was drawn from AMERICAN BAR ASSOCIATION, LAWYER DEMOGRAPHICS (2014), available at [http://www.americanbar.org/content/dam/aba/administrative/market\\_research/lawyer-demographics-tables-2014.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2014.authcheckdam.pdf) (last visited on September 4, 2015); and AMERICAN BAR ASSOCIATION, NATIONAL LAWYER POPULATION BY STATE (2014), available at [http://www.americanbar.org/content/dam/aba/administrative/market\\_research/national-lawyer-population-by-state-current.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-current.authcheckdam.pdf) (last visited on September 4, 2015).



umbrella organization for the individual bar associations of the states. For specific information regarding the regulation of attorneys and the provision of legal services, practitioners must consult the state-specific and court-specific rules.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

In the United States, defendants have a right to government-appointed counsel in criminal and quasi-criminal proceedings. When counsel represents an individual, the right to counsel extends to a right to effective assistance. These rights are based in the Sixth Amendment to the U.S. Constitution. States may impose broader rights to counsel through their respective state constitutions and laws.

Criminal defendants entitled to counsel are appointed a federal public defender in federal cases and a state public defender in state cases.<sup>12</sup> There is generally no right to counsel in civil matters.<sup>13</sup>

### State-Subsidized Legal Aid

The demand for low-cost or free legal services in the United States is high. Though pro bono service is one crucial component of meeting this demand, the importance of state-subsidized legal aid cannot be underestimated.<sup>14</sup>

Free legal services in civil matters are primarily provided by non-profit legal aid organizations or by private practitioners in partnership with the government. Many of the non-profit legal aid organizations represent low-income individuals and/or screen clients and matters for referral to individual attorneys, law firms, or in-house legal departments. The eligibility criteria for these services varies among the different legal aid organizations, as it is often dependent on the particular service's source of funding and/or its particular mission or target population. Legal aid organizations largely depend on federal, state and/or private funding for their operations.<sup>15</sup>

The Legal Services Corporation (“LSC”), a federal government non-profit organization, is the largest funding source for civil legal aid in the United States. Approximately 95% of its funding is distributed to over 130 independent non-profit legal aid organizations with more than 900 offices across the United States. Organizations or programs that receive LSC funding must serve clients that are at or below 125% of the federal poverty level.

The administration of state legal aid funding varies by state. In California, for example, state funding for legal services projects is only provided upon application and approval by the State Bar of California.

<sup>12</sup> In Federal matters, indigent criminal defendants may also be appointed a private attorney selected from a special “Criminal Justice Act (CJA) Panel”. The CJA was enacted in 1964, prior to the establishment of the Federal Public Defender Service, to provide counsel to criminal defendants who could not otherwise afford representation. Today, 10,000 private practitioners are “panel attorneys” who accept assignments to represent indigent defendants in federal court. Panel attorneys are compensated an hourly rate of between \$128-\$181 per hour, with maximum aggregate cap amounts set for each case. See Defender Services, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/services-forms/defender-services> (last visited on September 4, 2015). Many states have panel attorneys who perform the same function in criminal proceedings in state court.

<sup>13</sup> Some states provide for a right of counsel for low income individuals in certain categories of civil matters. See Issue History, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, <http://www.civilrighttocounsel.org/about/history> (last visited on September 4, 2015).

<sup>14</sup> Pro bono service is the voluntary contribution of legal services by private attorneys; state-subsidized legal aid is the provision of free or low-cost legal services by the federal or state governments.

<sup>15</sup> For a general breakdown of the funding sources for the U.S. civil legal aid system, see generally Alan W. Houseman, Civil Legal Aid in the United States: An Update for 2013, Center for Law and Social Policy (Nov. 2013), available at <http://www.clasp.org/resources-and-publications/publication-1/CIVIL-LEGAL-AID-IN-THE-UNITED-STATES-3.pdf> (last visited on September 4, 2015).



Eligibility for representation from a state funded legal aid project is limited to clients whose household income is at or below 200% of the federal poverty level.

Many private funding sources attach similar eligibility and other restrictions to their funding.

Generally, courts cannot force private attorneys to accept pro bono clients or matters. However, private practitioners who volunteer for placement programs with the court may be required to commit to a level of service they can provide to the courts, and they may be compensated for such assigned matters, if even at a reduced fee. In general, private attorneys will not be forced to take on a workload beyond their skill or capacity.

In addition to federal- and state-subsidized legal aid programs, many courts are working to make alternative dispute resolution mechanisms (such as mediation or arbitration) available to indigent persons at reduced or no cost (including representation by a licensed attorney).

LSC's 2009 Justice Gap Report estimates that at least half of those eligible for legal aid services are turned away due to insufficient resources, and less than one in five legal problems experienced by low income individuals are addressed with the assistance of a licensed attorney. Exacerbating this problem is the decline in federal, state, and private funding to legal aid organizations in recent years due to economic recession.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

As noted, the demand for free legal services in the United States for civil matters is high, and there is a critical shortfall of pro bono capacity to meet that demand. As there is no right to counsel in civil matters, those in need of free legal support depend upon private, non-profit legal aid organizations and private practitioners to provide legal support pro bono. There is generally no mandatory requirement imposed by state bars for attorneys to provide their services pro bono or to report pro bono service. However, the American Bar Association Model Rule 6.1 provides that "Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono public legal services per year." Although the ABA Model Rules are not mandatory or binding, a number of state bars have adopted the model rule or variations thereof.

### Historic Development and Current State of Pro Bono

#### Pro Bono Trends and Current State of Pro Bono

Despite the significant gap between supply and demand, a recent study by the ABA indicated that U.S. attorneys provide pro bono legal work at a rate almost three times the rate of volunteer work in the general population: 73% of attorneys do pro bono work whereas about 26% of the general population does volunteer work.<sup>16</sup> On average, the number of hours devoted to pro bono work per year per attorney was 56.5 hours in 2011.<sup>17</sup> Both the proportion of attorneys doing pro bono work and the average number of hours spent on pro bono work appears to be increasing.<sup>18</sup> Most of this pro bono work was provided free

---

<sup>16</sup> Press Release, Nearly Three-Fourths of America's Lawyers Do Pro Bono Work, According to a New ABA Study, American Bar Association (Feb. 18, 2009) [hereinafter Nearly Three-Fourths of America's Lawyers Do Pro Bono Work].

<sup>17</sup> Press Release, New ABA Report Reveals Legal Pro Bono Service Trends, American Bar Association (Mar. 21, 2011), available at [http://www.americanbar.org/news/abanews/aba-news-archives/2013/08/new\\_aba\\_report\\_revea.html](http://www.americanbar.org/news/abanews/aba-news-archives/2013/08/new_aba_report_revea.html) (last visited on September 4, 2015).

<sup>18</sup> See Nearly Three-Fourths of America's Lawyers Do Pro Bono Work, *supra* note 16; ABA STANDING COMM. ON PRO BONO & PUBLIC SERVICE, SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 5-6 (Mar. 2013) [hereinafter SUPPORTING JUSTICE III].



of charge rather than at a reduced rate.<sup>19</sup> Pro bono work is widely available to all types of practitioners, whether as part of bar associations, public or private legal aid programs, or independent non-profit organizations. Further, pro bono work is not limited to licensed practitioners – law students may engage in pro bono work under certain conditions.<sup>20</sup>

27% of pro bono opportunities are referred to attorneys through legal aid organizations.<sup>21</sup> Other sources for pro bono work include referrals from other attorneys, family or friends, clients, co-workers, and the court.<sup>22</sup>

Because virtually all civil legal aid is provided pro bono, the United States' decentralized system for pro bono referrals is the most evolved and robust in the world. As further described below, there are nearly unlimited resources for attorneys seeking to engage.

### Pro Bono Barriers and Other Considerations

Given the legal profession's commitment to providing pro bono services, there are few regulatory barriers to engaging in pro bono work beyond the general state licensing requirements. The United States and the individual states generally follow the "American Rule" for the allocation of fees and costs of suit: each party is typically responsible for its own costs and fees.<sup>23</sup> And as with legal services in general, practitioners should take care to ensure that they are licensed to practice in the state where they seek to practice and are cognizant of the rules regarding the administration of fee agreements and duties regarding the attorney-client relationship.<sup>24</sup> Although pro bono work is typically free in the United States (i.e., there is no statutorily mandated minimum legal fee schedule) and many states do not require fee arrangements to be in writing,<sup>25</sup> for practical reasons a written agreement detailing waiver or reduction of fees for pro bono work may still be preferable. In addition, ethical and competency standards apply equally to pro bono practice as they do to non-pro bono (paid) work. If an attorney is properly licensed to practice in the United States, whether in solo practice, firm practice, or in-house practice, he or she will likely have little difficulty – in terms of regulatory obstacles – engaging in pro bono work.

Accordingly, barriers to pro bono work in the United States tend to be practical. A recent survey found five primary practical barriers:<sup>26</sup>

- Lack of time;
- Family commitments;
- Competing billable hours; lack of skills; lack of information on opportunities;
- Lack of administrative support; lack of desire; lack of malpractice insurance;<sup>27</sup> and

---

<sup>19</sup> SUPPORTING JUSTICE III. *supra* note 18, at 5–9.

<sup>20</sup> See Directory of Law School Public Interest and Pro Bono Programs, AMERICAN BAR ASSOCIATION, available at <http://apps.americanbar.org/legalservices/probono/lawschools/> (last visited on September 4, 2015).

<sup>21</sup> SUPPORTING JUSTICE III. *supra* note 18, at 13.

<sup>22</sup> *Id.*

<sup>23</sup> There are some exceptions, however, provided for by "fee-shifting" statutes, which authorize the prevailing party in a lawsuit to collect its fees or costs from the opposing party or parties.

<sup>24</sup> See MODEL RULES OF PROF'L CONDUCT (2013), available at [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html) (last visited on September 4, 2015).

<sup>25</sup> See, e.g., CAL. RULES OF PROF'L CONDUCT R. 4-200 Fees for Legal Services (2015), available at <http://rules.calbar.ca.gov/Rules/RulesofProfessionalConduct.aspx> (last visited on September 4, 2015).

<sup>26</sup> SUPPORTING JUSTICE III, *supra* note 18, at 26. In addition, the existence of clients who are not eligible for legal aid but unable to afford full-cost legal fees may be a further barrier, but in the United States there are legal insurance or prepaid legal plans available for individuals who wish to insure against the potential for legal fees. In addition, the cost of litigation is often included within other types of insurance policies.



- Employer discouragement.

As indicated above, the main barrier appears to be time constraint (lack of time, family commitments, and competing billable hours), with secondary barriers in administrative and informational constraints (lack of information, lack of administrative support) and financial constraints (competing billable hours, lack of malpractice insurance).<sup>28</sup> There are some motivational constraints (lack of desire, employer discouragement). In-house attorneys perceive a similar set of barriers, as well as concerns unique to in-house counsel, such as the location of the corporation in relation to courts, clients, or government agencies.

Another sometimes-difficult practical consideration – whether an attorney works in a firm, in solo practice, or in an in-house corporate legal department – involves adherence to ethical rules regarding client loyalty and confidentiality. Generally, attorneys owe both current and past clients duties of loyalty and confidentiality, among others.<sup>29</sup> Therefore, attorneys in the United States typically may not represent clients on opposing sides of the same matter. Furthermore, attorneys are restricted in undertaking representation of a new client if such representation is adverse to the former client's interests in a substantially related matter. Attorneys working in firms face an even more complicated situation because these conflicts often transfer from one attorney to another, and special procedures must be followed to avoid disqualification.

Foreign practitioners who seek to engage in pro bono work within the United States, in addition to complying with general state licensing rules, should pay special attention to adhering to the state bar association's rules regarding conflicts of interest. For attorneys in firm practice, this may be a painstaking process if there are not already established procedures for checking for potential conflicts of interests and, as required by state ethical rules, contacting clients to notify them of the potential conflict or to obtain permission to undertake the new representation despite the potential conflict. For attorneys practicing in-house, although dwindling public financial support for legal aid has led many corporations to push for more structured pro bono work for in-house counsel, conflicts checks for in-house counsel pro bono work are equally necessary even though the in-house attorney's client is immediately accessible. Some courts have made pro bono work more accessible in terms of potential conflicts by expressly holding that a conflict of interest is not necessarily created just because a counsel's firm may represent adverse parties in unrelated matters.

---

<sup>27</sup> Generally, there is no requirement for attorneys to obtain legal malpractice insurance; however, most attorneys carry some form of malpractice insurance, and a lack thereof must be disclosed to clients. See, e.g., Malpractice Insurance, AMERICAN BAR ASSOCIATION, available at [http://www.americanbar.org/portals/solo\\_lawyers/going\\_solo/malpractice\\_insurance.html](http://www.americanbar.org/portals/solo_lawyers/going_solo/malpractice_insurance.html) (last visited on September 4, 2015); W. Brian Ahern, Lawyers Must Now Disclose Lack of Malpractice Insurance, 29 L.A. COUNTY BAR ASS'N UPDATE Issue nine (Oct. 2009), available at <http://www.lacba.org/showpage.cfm?pageid=11125> (last visited on September 4, 2015). However, many legal service providers or referral organizations will offer low- or no-cost malpractice insurance for the volunteer attorney for the pro bono matter. See, e.g., California Courts, Frequently Asked Questions (FAQs) about Pro Bono, available at <http://www.courts.ca.gov/partners/documents/probono-faq.pdf> (last visited on September 4, 2015). For more information on resources regarding the issue of insurance coverage for pro bono work, see AMERICAN BAR ASSOCIATION, Pro Bono Work and Malpractice Coverage: A Guide for the Pro Bono Attorney (Apr. 2013), available at [http://www.americanbar.org/content/dam/aba/administrative/lawyers\\_professional\\_liability/lpl\\_pro\\_bono\\_work\\_and\\_malpractice\\_coverage.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/lawyers_professional_liability/lpl_pro_bono_work_and_malpractice_coverage.authcheckdam.pdf) (last visited on September 4, 2015) and Corporate Pro Bono, Professional Liability Insurance for In-House Pro Bono (Aug. 2014), available at <http://www.cpbo.org/wp-content/uploads/2014/08/Insurance-Paper-final.pdf> (last visited on September 4, 2015).

<sup>28</sup> Corporate Counsel Pro Bono, AMERICAN BAR ASSOCIATION, [http://apps.americanbar.org/legalservices/probono/corporate\\_counsel.html#barriers](http://apps.americanbar.org/legalservices/probono/corporate_counsel.html#barriers) (last visited on September 4, 2015). For a great resource that addresses the barriers, considerations, and approaches for in-house attorneys, see David P. Hackett et al., PRO BONO SERVICE BY IN-HOUSE COUNSEL: STRATEGIES AND PERSPECTIVES (2010).

<sup>29</sup> See, e.g., MODEL RULES OF PROF'L CONDUCT R. 1.6 (Confidentiality of Information), 1.7 (Conflict of Interest: Current Clients), 1.9 (Duties to Former Clients), and 1.10 (Imputation of Conflicts of Interest: General Rule), supra note 24.



All practitioners, and in particular those working in house, should also be cognizant of the decentralized nature of the federal and state licensing schemes and special licensing processes. As noted, in order to practice law in the United States, typically a practitioner must be licensed by the state bar association; with few exceptions, an attorney admitted to practice law (i.e., admitted to the bar) in one state is not automatically authorized to practice in any other state. However, many state bar associations have processes to grant special permission to a person who is not a member of the state bar but who is eligible to practice law in another state and who seeks to represent a specific client on a specific matter in the particular state; this process is commonly known as an application for *pro hac vice* status. The *pro hac vice* process will differ from state to state and among individual federal jurisdictions.<sup>30</sup> In addition, as noted, some states offer reciprocal admission if the practitioner is already licensed to practice in a qualifying state. The ABA is currently advocating for expansion of the adoption of local rules to allow in-house counsel to provide pro bono services in the jurisdiction in which they work even if they are only licensed in another jurisdiction. Attorneys seeking to practice pro bono under rules providing for this type of exception should consult their local jurisdiction's specific rules, as such rules vary from jurisdiction to jurisdiction.<sup>31</sup>

Special licensing and admission processes may also apply to representation of clients before administrative agencies. Agency-specific certifications to represent individuals in administrative proceedings are becoming increasingly common. This process is often known as "accreditation." For example, in immigration matters, the U.S. Department of Justice recently has begun to require accreditation of attorneys or other non-attorney representatives before it will permit a particular attorney or other non-attorney representative to represent an individual client before the agency. It is important to note that applications for accreditation may take some time before status is granted, and retaining accreditation status may also require continuing legal education in the field of law specific to the agency.

Finally, we note that the rules cited in this section involve the ABA's Model Rules, and it is important to keep in mind that each state bar has its own ethical and other rules regarding the practice of law.<sup>32</sup>

### Pro Bono Resources

There is an abundance of referral organizations throughout the United States at the national state and local level. Some useful starting points include the following:

- ABA Standing Committee on Pro Bono & Public Service, [apps.americanbar.org/legalservices/probono](https://apps.americanbar.org/legalservices/probono) (last visited on September 4, 2015). The ABA is the largest legal professional association in the United States, and its website has additional links to various national clearinghouse libraries and lists of pro bono programs at law schools and at the local level.<sup>33</sup>
- Pro Bono Institute, Resources, [www.probono.org/resources](http://www.probono.org/resources) (last visited on September 4, 2015). The Pro Bono Institute is a nonprofit organization based in Washington, D.C. and provides research, consultation, analysis and assessment, training, and other services to various legal

---

<sup>30</sup> Compare Pro Hac Vice, U.S. District Court for the Southern District of California, <https://www.casd.uscourts.gov/Attorneys/AttorneyAdmission/SitePages/ProHacVice.aspx> (last visited on September 4, 2015) (pro hac vice requirements), with Local Rule 46.1. Attorney Admission, U.S. Court of Appeals for the Second Circuit, available at [http://www.ca2.uscourts.gov/clerk/case\\_filing/rules/title7/local\\_rule\\_46\\_1.html](http://www.ca2.uscourts.gov/clerk/case_filing/rules/title7/local_rule_46_1.html) (last visited on September 4, 2015) (same).

<sup>31</sup> See Corporate Pro Bono, Multijurisdictional Practice in the U.S.: In-House Counsel Pro Bono (Apr. 2015), available at <http://www.cpbo.org/wp-content/uploads/2015/04/MJP-Guide-2015-April.pdf> (last visited on September 4, 2015).

<sup>32</sup> See ABA Model Rule 6.1 and Its Application, State-by-State, AMERICAN BAR ASSOCIATION, <http://apps.americanbar.org/legalservices/probono/policies-rules.html> (last visited on September 4, 2015).

<sup>33</sup> Standing Committee on Pro Bono & Public Service, AMERICAN BAR ASSOCIATION, [http://www.americanbar.org/groups/probono\\_public\\_service.html](http://www.americanbar.org/groups/probono_public_service.html) (last visited on September 4, 2015).



audiences in order to advance the provision of legal services to poor, disadvantaged and other individuals in need of legal assistance.<sup>34</sup>

- Corporate Pro Bono, [www.cpbo.org](http://www.cpbo.org) (last visited on September 4, 2015). CPBO is the global partnership project of the Pro Bono Institute and the Association of Corporate Counsel. It focuses specifically on opportunities for pro bono work for in-house counsel and legal departments.<sup>35</sup>
- Legal Services Corporation, [www.lsc.gov/local-programs/program-profiles](http://www.lsc.gov/local-programs/program-profiles) (last visited on September 4, 2015). As noted, the Legal Services Corporation is the largest single funder of legal aid programs in the United States. Most of its funding is directed to approximately 130 programs, which are listed on this webpage.<sup>36</sup>
- Various state bar associations. Practitioners should also check with the state bar association in their jurisdiction for additional opportunities. The ABA has compiled and made available links to the websites of the various state bar associations at the following web address: [www.americanbar.org/portals/solo\\_home/state-and-local-bar-association-resources.html](http://www.americanbar.org/portals/solo_home/state-and-local-bar-association-resources.html) (last visited on September 4, 2015).
- Probono.net, an online resource providing information and links to referral organizations and pro bono opportunities as well as training materials for various pro bono practice areas. Their website is available at [www.probono.net](http://www.probono.net) (last visited on September 4, 2015).

## CONCLUSION

There is a strong, evolved system and tradition of pro bono within the U.S. legal community, where a majority of practitioners provide some level of pro bono support each year. Despite this, the gap between the demand for and supply of pro bono legal services has never been greater.

The requirement that any individual seeking to practice law in the United States be licensed by a state bar is the primary barrier for non-U.S. attorneys seeking to undertake pro bono legal services.

Foreign practitioners for whom licensing in the United States is impracticable or infeasible can still find opportunities related to pro bono work in the United States. Many organizations based in the United States – both public and private – do substantial work in other countries in fields such as human rights, public health, economic development, and so on, and many of these organizations require localized expertise and assistance in foreign and international laws. In addition, many U.S. organizations require the assistance of foreign attorneys in aid of individuals currently in the United States. Often, these matters involve U.S. immigration laws and protections, including legal aid for refugees, asylees, and their families.

The scope of pro bono opportunities in the United States is broad enough to accommodate many different circumstances, skill sets, time commitments and interests.

September 2015

Pro Bono Practices and Opportunities in the United States of America

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

---

<sup>34</sup> About Us, PRO BONO INSTITUTE, <http://www.probonoinst.org/about-us/> (last visited on September 4, 2015).

<sup>35</sup> Our Mission, CORPORATE PRO BONO, <http://www.probonoinst.org/about-us/our-mission/> (last visited on September 4, 2015).

<sup>36</sup> Id.



## Pro Bono Practices and Opportunities in Uruguay<sup>1</sup>

### INTRODUCTION

The Uruguayan Constitution (the “**Constitution**”) guarantees free legal services for persons without resources who qualify for them according to strict legal regulations. Historically, such assistance has been offered by governmental agencies. However, an array of leading lawyers and firms in Uruguay are increasingly committed to providing pro bono services.

This section provides a brief description of the Uruguayan legal system and reviews the legal assistance available to people with limited resources. It also addresses the growth of pro bono in Uruguay.

### OVERVIEW OF THE LEGAL SYSTEM

#### Constitution and Governing Law

Uruguay is a Civil Law based country, with the Constitution being the primary source of law. After the Constitution in the order of authority comes the General Laws, some of which are compiled into different Codes (Commerce, Criminal, Civil, and Procedural).

The current Constitution was approved in 1967 (with amendments in 1989, 1994, 1996 and 2004). It establishes that laws should be written and passed by Parliament and enacted by the President of the Republic. The Constitution also declares Uruguay to be a *democratic republic*, and separates the government into three equal branches, [executive](#), [legislative](#) and judicial.

Sentences issued by jurisdictional justice (Courts of the first instance, Higher Courts and the Supreme Court of Justice) are used as a guide in subsequent trials although they are not binding and do not constitute legal precedent.

#### The Courts

The judiciary branch in Uruguay, like many other jurisdictions, is structured like a pyramid. The lower courts issue sentences to which interested parties have the right to appeal to higher courts and tribunals. Matters are matched to different specialization courts according to the content of the matter (ex. family, civil, criminal).

The Supreme Court is the highest court and final ruler in the Uruguayan judicial system. Below the Supreme Court are a number of appealation courts divided according to the nature of the issues resolved.

Before trying a matter at a Court of First Instance, certain matters may first be brought before a magistrate of lower court depending on certain regulated aspects (such the sums into which a matter is evaluated).

#### The Practice of Law

Different universities offer a juris doctor degree in Uruguay, of which one is state-owned whereas the rest are private institutions. Examinations are administered by the competent and independent authorities in each of the five universities. In addition, law degrees issued by private universities must be validated by the Department of Education and Culture (Ministry of Education and Culture), before an individual is officially recognized as a lawyer.

Once a person meets the pertinent requirements to practice law, he or she must also take an oath before the Supreme Court, which issues the document for registration of the person to practice law, as

---

<sup>1</sup> This chapter was drafted with the support of Victoria Picón, Ana Laura Benavidez from the ONG Esalco and Mariana Errazquin from the law firm Jiménez de Aréchaga, Viana & Brause



prescribed in Article no. 137 of the "*Law on the Organization of the Judiciary and the Courts, no. 15750*" (Organic Law of the Judiciary and the Courts Organization, no. 15750).

The legal profession in Uruguay is not heavily regulated. Although the Bar Association of Uruguay, a professional association based in Montevideo founded in 1929, exists, membership in the organization is not required to practice law in Uruguay. There is no bar exam in order to practice law in Uruguay.

Graduate training is not required to become a lawyer, and disqualification from the practice of law is rare.

However, according to statistics published by the Lawyers Bar Association, approximately 70% of lawyers practicing law in Uruguay are members of the Lawyers Bar Association.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Articles 7, 8 and 254 of the Constitution state that justice will be freely provided for the poor declared such under the law.

### State-Subsidized Legal Aid

The following legal aid services are administered by the Office of the Public Defender of the Capital, located in Montevideo; and the defense system of the Interior (as applicable).

The Criminal Public Defender's office provides lawyers to represent the defense of those who commit crimes and do not have the resources to meet the fees of a lawyer. Its jurisdiction extends to all crimes, but the reality is that only 217 public defenders serve an average of 250,000 people per year.

The volume of legal aid being provided is also steadily increasing. By way of illustration, in 2013 in Montevideo, family defendants who work cases of domestic violence and vulnerable child conditions assisted a total of 6,362 people (64.7% more than in 2012); conducted 4,045 consultations (151% more than in 2012) and attended 13,382 judicial hearings (34.5% more than in 2012).

Legal assistance for criminal proceedings is provided free of charge, regardless of the financial situation of an individual. However, legal aid in civil matters is only available for those with an income level below the thresholds set out in Decision No. 7,414 (7,414 Agreed). Anyone who is single, has no significant assets, and does not have any dependents shall be granted legal aid if their income is no greater than three times the national minimum wage. Any individual who is married or has dependents and does not have any significant assets shall be granted legal aid if their income is not more than five times the national minimum wage.

### Unmet Needs and Access Analysis

The income thresholds set by law for legal aid entitlement are both strictly enforced (individuals with an income even slightly above such threshold will not receive assistance) and set so low that those who only just exceed the threshold are very likely to be unable to afford legal representation.

## PRO BONO ASSISTANCE

There are no laws regulating the performance of pro bono legal work in Uruguay. A number of private organizations and firms provide this kind of service. In such cases, the conditions of pro bono programs are independently regulated by each organization.



## Pro Bono Opportunities

In addition to the public defense services explained above, the University of the Republic provides free legal assistance through its Legal Office, which was established in 1950 as a mandatory internship for students of law. Since its inception, the Legal Clinic has expanded to other parts of Uruguay, resulting in the formation of neighborhoods Legal Clinics. The University also has an agreement with the Municipality of Montevideo in which the University provides staff and the municipality provides the necessary infrastructure.

Similar legal offices have been founded throughout other cities in Uruguay, including Salto, Paysandú, Bella Union and Maldonado.

Some law firms in Uruguay also provide free legal assistance.

In addition, IELSUR is an NGO that was founded in July 1984 by a group of lawyers to provide litigation and other forms of legal support in human rights violations that occurred during the civil-military dictatorship between 1973 and 1985. Today, IELSUR continues to fight human rights violations on a wider scale. IELSUR collaborates with several organizations, including the Committee on the Rights of the Child, ESCR-Net, the International Action Network on Small Arms, and the Latin American Coalition Against Gun Violence.

## Historic Development and Current State of Pro Bono

Public defense as an institution was established in Uruguay in the 19<sup>th</sup> century, but it was not until the 21<sup>st</sup> century that pro bono work has started to develop within the private sector. This development can be linked to increased corporate social responsibility and a greater focus on the key social needs that pro bono work can address.

## Barriers to pro bono work and other considerations

There are a number of possible barriers to pro bono work, including:

- The provision of pro bono services, strictly speaking, is not specifically recognized or regulated by Uruguayan law (notwithstanding public defense services), and the fact that the Uruguayan government does not provide incentives for further development of pro bono services (such as tax exemptions for NGOs).
- A general lack of awareness of the availability of pro bono services may also be an obstacle to the general public accessing these kinds of services.
- Socio-cultural barriers among law professionals and practitioners cannot be ignored. Many of them do not understand what pro bono means (outside of the “general knowledge” that somewhere in the city there is an institution that provides “legal aid for the poor”). The provision of free assistance is ignored sometimes due to the fact that, for some professionals, it does not sound like a “real job”.

## Pro Bono Resources

### Peace and Justice Service

SERPAJ (Peace and Justice Service) is an NGO that focuses on advocacy, education and defense of human rights and peace. SERPAJ does not provide direct legal assistance but rather organizes conferences and maintains a reference network of lawyers working pro bono.

Address: Joaquin Requena 1642, 11200, Montevideo, Uruguay Phone: +5982.408.5301 Fax: +5982.408.5701 Website: [www.serpaj.org.uy](http://www.serpaj.org.uy) Email: [serpajuy@serpaj.org.uy](mailto:serpajuy@serpaj.org.uy)



Ferrere Abogados

Ferrere Abogados law firm has dedicated an average of 3,000 hours a year to pro bono activities. Company lawyers help organizations that contribute to the social integration of the community, such as the Pereira Rossell Foundation, "Techo", the Awards Foundation and the Foundation of Friends of the Teatro Solis.

Address: Tower B - Av Dr. Luis A. de Herrera 1248, 11300, Montevideo, Uruguay Phone: +5982.623.0000 Website: <http://www.ferrere.com/>.

Vanrell Intellectual Property Attorneys

Vanrell IP lawyers fosters and promotes the social commitment of its employees as part of its mission and business vision. Pro bono legal services provided by this firm are treated with the same standards of quality as those services provided to paying clients and in compliance with the same applicable rules and ethical standards.

Juan Vanrell IP.  
Uruguay.  
Email: [juanvanrell@vanrell.com.uy](mailto:juanvanrell@vanrell.com.uy)

Jiménez de Aréchaga, Viana & Brause

The lawyers of Jiménez de Aréchaga, Viana & Brause participate in social projects such as:

- the Teleton Foundation for children’s rehabilitation and physical therapy processes;
- the Ronald McDonald House Association of Uruguay, focused on promoting philanthropic, educational and scientific work in order to help Uruguayan children and their families;
- La Magdalena, located in the northern part of Uruguay, dedicated to foster learning and religious education of rural families and the support of their health and social conditions, with the purpose of facilitating their permanent residence in the countryside.

Address: Zabala 1504, 11000 Montevideo, Uruguay. Phone: +598 29161460.  
Website: [www.jimenez.com.uy](http://www.jimenez.com.uy) (last visited on September 4, 2015)

Esalcu NGO

ESALCU specializes in providing aid to those most in need. It is a civil association recognized by the Ministry of Education and Culture with legal statue n8467 and started working in 2000 with the primary aim of enhancing equality in society by helping those most in need of assistance.

ESALCU’s pro bono activities include representing clients, processing paperwork for free in an array of processes concerning holdings, alimony, visitation, paternity investigations, approval of agreements, correction of birth regimes, domestic violence, etc. Many of the individuals who are helped by this NGO are involved in criminal cases.

Legal Clinic of the Faculty of Law (University of the Republic).

In 1950, the University of the Republic created the Office of the Faculty which, in addition to its teaching activities, provides free legal assistance to indigent persons, advise and assist the courts and administrative procedures.

For further information call: 400.3055  
Address: 18 de Julio 1824

Neighborhood Legal Clinics (Student Center of Law, Faculty of Law, University of the Republic). Supported by the Catholic Church and NGOs.

The C.E.D. It is the trade association formed by students of Lawyers and Notaries.

The primary and essential object of their offices (of which there are many across Montevideo) is to provide advice, assistance and free legal representation to people who request them according to certain pre-established criteria. (web site: [www.cedfeuu.edu.uy](http://www.cedfeuu.edu.uy))



## CONCLUSION

Pro bono is nascent in Uruguay, but is growing rapidly due to the recent international and local crises that have created new challenges and adversities for Uruguayan citizens. Every day more and more law firms and lawyers, as well as NGOs, realize not only that their social responsibilities require them to provide pro bono services to Uruguay's indigent people, but also the personal benefits of engagement and the positive impact that pro bono services can have on society.

The growth in research, education and funding for pro bono activities should provide new advances in this field through educating legal professionals regarding the potential positive social impact and the personal and professional progress that pro bono work can provide.

September 2015

Pro Bono Practices and Opportunities in Uruguay

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Venezuela<sup>1</sup>

### INTRODUCTION

There is a significant need for pro bono legal services in Venezuela due to the large social and economic gap that exists. Venezuelan lawyers have always done pro bono work for people close to them without such work being quantified or reported. However, the institutionalization of pro bono work outside of NGOs is a relatively recent development.

The main obstacle for the institutionalization of pro bono work is that there are no governmental policies or bar associations in Venezuela that require Venezuelan lawyers to perform professional volunteer work for people with limited resources. Pro bono has not been a priority for law firms in Venezuela. However, in recent years, law firms and practitioners have become more mindful of their role in helping people with limited resources gain access to justice through the provision of pro bono support.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Constitution of Venezuela grants all citizens the right of free access to the country's judicial systems and institutions to defend their rights and to obtain a judgment resolving their controversy. Such judicial access includes a right to free justice for all citizens, such that all Venezuelan citizens have the right to defend their interests in court, even if they have limited economic resources. This right to free justice has a significant impact in Venezuela, where approximately 27.5% of the population lives below the poverty level and cannot afford to pay for legal services.

The *Defensa Pública*, a public institution created under the control of the judiciary, has the primary purpose of ensuring effective legal protection for persons in Venezuela and the application of the constitutional right to free access to the legal system. The services granted by *Defensa Pública* are limited to certain matters, including criminal, civil, commercial, military, agrarian, labor, family, administrative law and constitutional proceedings. With regard to civil matters, Venezuelan citizens are also typically allowed to represent and defend themselves, without the support of public institutions.

##### The Courts

Civil, municipal and family courts are the most relevant for pro bono beneficiaries, given that the main legal problems that they face are related to these matters. These courts have given to the clearing house Fundación Pro Bono Venezuela ("**ProVene**") and to Venezuelan legal clinics (*Clinicas Jurídicas*), the possibility of conducting legal proceedings in such courts without the assistance of a lawyer. This benefits pro bono beneficiaries that now have the opportunity to appear before a court with documents drafted by ProVene or legal clinics and to carry out all the required judicial procedures without the need to appear with a lawyer. ProVene and the legal clinics in turn are able to assist more people as they do not need to appear before a court with pro bono beneficiaries.

In Venezuela, judges are not elected. Judges are appointed by the Executive Administrative Direction of the Judicial System (*Dirección Ejecutiva de la Administración*).

Sometimes the Supreme Tribunal of Justice by way of the National School for the Judiciary (*Escuela Nacional de la Magistratura*) organizes judicial contests for the selection of judges.

---

<sup>1</sup> This chapter was drafted with the support of Fundación Pro Bono Venezuela (ProVene)



## The Practice of Law

### Education

The practice of law in Venezuela requires a legal degree obtained from either a local university or a foreign university, provided such foreign degree is validated by a local university in accordance with Venezuelan law. A key component of a legal education in Venezuela is the professional traineeship requirement. To fulfill this requirement, law students must devote a specified number of hours (as determined by each university) to nonprofit legal matters. To assist students in fulfilling this requirement, Venezuelan Universities have created legal clinics through which law students provide pro bono legal services.

In addition, Venezuelan law students, as well as students of any other professional degrees in Venezuela, are required to perform a minimum of 120 hours of Community Services (*Servicio Comunitario*) in order to graduate. Community Services consist on volunteering in resource-poor areas surrounding the university. However, such volunteering does not oblige students to carry out professional works, *i.e.*, law students do not necessarily have to perform legal works (although work at legal clinics would qualify towards this requirement).

### Licensure

In order to practice law in Venezuela, a person with a legal degree must register with their regional bar association and the Lawyer Social Security Institute (*Instituto de Previsión Social del Abogado*). Venezuela does not have multiple license schemes or multiple levels of practitioners.

Foreign lawyers cannot practice as lawyers before any court or public institution if they have not validated their degree in Venezuela and if they are not registered with the Lawyer Social Security Institute (*Instituto de Previsión Social del Abogado*). However, there are no restrictions on international lawyers legally advising on a case or working on international cases in Venezuela.

### Demographics:

There are approximately 200,000 lawyers registered within the Venezuelan bar associations out of an overall population of roughly 30 million. In Caracas, there around 90,000 registered lawyers.

### Legal Regulation of Lawyers

Registration with one of the various bar associations existing in Venezuela is required to practice law, as well as registration with the Lawyer Social Security Institute (*Instituto de Previsión Social del Abogado*), a specific social security for lawyers. There are 23 different bar associations, one for each Venezuelan region, and each one is governed by its own regulations. All of these bar associations fall under the federal bar association (*Federación de Colegios de Abogados*). Venezuelan lawyers must also comply with the Lawyers Ethics Code (*Código de Ética del Abogado*) whose main purpose is to regulate the lawyers' activities to serve justice, freedom and law.

Upon a lawyer's registration with their regional bar association and the Lawyer Social Security Institute (*Instituto de Previsión Social del Abogado*) they are granted a registration number that allows them to both litigate and carry out any action as a lawyer in any practice of law in Venezuela.

Other than as noted above, there are no rules and requirements to carry out pro bono work in Venezuela.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Pursuant to the Organic Law of Public Defense (*Ley Orgánica de la Defensa Pública*) enacted in 1999, the Government created the Public Defense Office (*Defensa Pública*), a government entity that offers free advice, representation and guidance in civil, commercial, military, agrarian, labor, family, administrative law and constitutional proceedings. the Public Defense Office also offers free advice in criminal proceedings.



## State-Subsidized Legal Aid

There are no eligibility criteria for state-subsidized legal aid. The law only mentions the word 'person' to define its scope. Eligibility criteria based on financial means are expressly prohibited pursuant to article two of the Organic Law of Public Defense. In practice, however, the access is severely restricted due to the limited resources of the Public Defense Office (on which see paragraph (d) below).

## Mandatory assignments to Legal Aid Matters

Private attorneys are not required to accept matters assigned to them by a court or legal aid scheme.

## Unmet Needs and Access Analysis

The Public Defense Office is understaffed and works with limited resources. Accordingly, there remains a significant need for additional legal assistance for the indigent population of Venezuela.

## Alternative Dispute Resolution

Mediation, Arbitration, Etc.

State subsidized legal aid is only applicable for judicial and administrative proceedings.

### Ombudsman

Pursuant to the Constitution and the Organic Law of the Venezuelan Ombudsman, the Venezuelan Ombudsman has the authority to promote, defend and monitor compliance with constitutional rights in Venezuela and abroad, when applicable, free of charge.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Pro bono services are limited in Venezuela as a result of the political and social climate. There are great pro bono opportunities in Venezuela due to the high percentage of the population with limited financial resources that have no opportunities to be assisted or advised by a lawyer. Given that there are a lot of lawyers per capita in Venezuela, if every registered lawyer works a few hours each year on pro bono matters, this would cover a large proportion of the population.

Venezuelan organizations are working on the institutionalization of pro bono work among Venezuelan law firms and independent lawyers. Venezuelan lawyers are starting to be conscious of the fact that they can help their country via pro bono, improving the right of free access to justice for all Venezuelan citizens.

In addition, the current political and social climate in Venezuela makes it extremely difficult for NGOs to provide services to Venezuelan citizens efficiently or effectively. For example, although the Constitution recognizes and protects the development of humanitarian activities throughout the country, the government approved an amendment to the International Cooperation Law in December 2010 (*Ley de Cooperación Internacional*) that created new barriers for NGOs. Specifically, it requires NGOs to register under a controlling public authority and also permits public authorities to collect any funds that the NGOs receive from a variety of sources, including "*inheritances, donations, transfers and other resources received from other governments, international entities, cooperating sources and national or foreign public and private institutions for purposes of supporting cooperation*" and to redirect such funds "*in accordance with national priorities as determined by the State*".



## Private Attorneys

There is no obligation on private attorneys to do pro bono work in Venezuela. However, ProVene is making efforts to make law firms in Caracas achieve certain goals of pro bono hours per year, taking as its reference the Americas Declaration of Pro Bono (*Declaración Pro Bono de las Américas*) that requires law firms that are subscribed to it to work 20 hours per lawyer each year pro bono. In Venezuela, such a requirement could amount to approximately four million pro bono hours per year.

There is no obligation to report pro bono in Venezuela. ProVene is, however, making efforts to improve this by requiring law firms to report to the clearing house every six months the hours and pro bono cases they are working on. Following such reporting, ProVene informs law firms if the cases they are actually working on could be considered as pro bono pursuant to international standards and national standards established by ProVene.

## Law Firm Pro Bono Programs

Some law firms in Venezuela already have pro bono programs in which their lawyers are requested or suggested to work on pro bono cases sent by ProVene or by NGOs or other organizations founded by, or with relationships to, the partners of such law firms.

## Legal Department Pro Bono Programs

Venezuelan companies carry out different activities during the year that allow their employees, including lawyers in their legal departments, to work as a volunteer with different NGOs, following the guidelines of the company's Corporate Social Responsibility program (*Responsabilidad Social Empresarial*).

## Non-Governmental Organizations (NGOs)

ProVene is the clearing house in Venezuela, and is also the first and only organization in Venezuela dedicated to promoting access to justice and pro bono work.

There is a strong connection in Venezuela between law firms and NGOs that need legal assistance, sometimes because the founders of such NGOs are clients or partners of a law firm.

## Bar Association Pro Bono Programs

Bar Associations organize their own pro bono programs. For example, the Bar Association of Caracas provides free legal advice to the low income population of Caracas.

## University Legal Clinics and Law Students

As noted above, there is a legal requirement in Venezuela that students carry out 120 hours of community service before they can graduate into any profession. The volunteer work does not have to be strictly related to the professional career of the graduate but, nevertheless, this legal requirement has encouraged universities without legal clinics to institutionalize the creation of a space for law students to assist people with limited resources.

There are two universities in Caracas, Andrés Bello Catholic University and Central University of Venezuela, both of which have very successful and well known *Clínicas Jurídicas* programs that periodically assist the neighbors of the communities close to such universities. These clinics are directly coordinated by the law school of each university which appoints one or two teachers, who are lawyers, to supervise the work of the students and sign any required legal document. However, law students are in charge of the cases, being responsible for providing legal advice and for drafting the legal paperwork.

## Historic Development and Current State of Pro Bono

In Venezuela the biggest obstacle for the institutionalization of pro bono work is the ignorance of what is and what can be done as a pro bono work. This problem is being overcome by explaining to law firms and independent lawyers the need for pro bono work in their communities, and how the lives of people with limited resources can change with their assistance. In addition, the increase of pro bono internationally has made Venezuelan lawyers more interested in pro bono cases.



One of the key problems in the current state of pro bono work is the lack of information available to low income communities. Furthermore, the main obstacle for the institutionalization of pro bono work is that there are no governmental policies or bar associations in Venezuela that require Venezuelan lawyers to perform professional volunteer work for people with limited resources.

## Laws and Regulations Impacting Pro Bono

### “Loser Pays” Statute

In Venezuela, the losing party of a civil or commercial trial will be required to pay the legal fees. In a labor trial, an employee whose salary is less than three times the minimum national salary, as decreed by the National Executive, does not have to pay the legal costs of a labor proceeding.

### Statutorily Mandated Minimum Legal Fee Schedule

The Federation of Bar Associations of Venezuela issued a regulation establishing the minimum amounts to be charged by Venezuelan lawyers for their services. However, we understand that this regulation applies only to cases where the lawyer is charging for their work, and accordingly, it is not applicable to pro bono work.

### Practice Restrictions on Foreign-Qualified Lawyers

Lawyers that are not registered at the Lawyer Social Security Institute (*Instituto de Previsión Social del Abogado*) cannot practice as lawyers before any court or public institution in Venezuela. However, there are no restrictions for international lawyers to advise on a case or to work on international cases from Venezuela.

### Availability of Professional Indemnity Legal Insurance Covering pro bono activities by Attorneys

Even though not specifically provided for under Venezuelan law, professional indemnity insurance covering pro bono activities by attorneys is available in Venezuela.

### Availability of Legal Insurance for Clients

Even though not specifically provided for under Venezuelan law, professional indemnity insurance for the protection of moderate income individuals not eligible for legal aid but unable to afford full-cost legal fees is available in Venezuela.

## Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

The right of free access to justice in Venezuela is frequently violated for several reasons. It can be impossible for people to access Venezuelan legal institutions, not only because they do not have enough information on the relevant procedures, but also because they may have had bad experiences in the past and have lost confidence in the system. This lack of confidence is a direct consequence of the corruption and inefficiency of institutions in recent years. In addition, the State does not provide enough information on the system of justice, the legal procedures, courts or judges that allow citizens to address their legal needs. There is also no effective legal protection available for persons in Venezuela due to the severely limited resources of the *Defensa Pública*.

## Pro Bono Resources

The clearing house ProVene can provide accurate information on pro bono cases, at least in Caracas, due to its communication with pro bono beneficiaries and with different organizations and NGOs that require legal assistance. ProVene has been encouraging pro bono work in Venezuela assisting, directly and with allied law firms, more than 1,100 cases during 2015.

ProVene is working to attend to the legal needs of pro bono beneficiaries and to develop projects to overcome the institutional crisis faced by Venezuela and to assist the judiciary system to fill the legal aid needs of Venezuelan citizens. ProVene has been working to promote the right of free access to justice in Venezuela as a human right providing free legal advice in pro bono cases, through workshops on human rights and other basic legal topics as well as via cases of public interest in defense of discriminated minorities. Every particular project has been carried out with the assistance of lawyers specialized in different areas of law, carrying out legal research, drafting and workshops.



In addition, ProVene is currently drafting a report gathering all the information on pro bono cases carried out by Venezuelan law firms. ProVene has been asked by several organizations to provide information on Venezuelan pro bono cases and to serve as a certified organization to confirm the nature of the pro bono cases that Venezuelan law firms report to international organizations and to confirm if the quality of their pro bono work is equal to the quality of the work done for non-pro bono clients. This encourages law firms to be more disciplined and engaged in pro bono cases. ProVene’s contact details are as follows:

- Fundación Pro Bono Venezuela (ProVene):  
<http://www.provene.org/> (last visited on September 4, 2015)  
 Email: [gbello@provene.org](mailto:gbello@provene.org)

Other contact details applicable to Pro Bono activities in Venezuela are as follows:

- Colegio de Abogados de Caracas :  
<http://www.ilustrecolegiodeabogadosdecaracas.com/> (last visited on September 4, 2015). The Caracas Bar Association can assist Venezuelan citizens with obtaining a lawyer that can assist them with their matters.
- 
- Defensa Pública:  
[www.defensapublica.gob.ve](http://www.defensapublica.gob.ve) (last visited on September 4, 2015)  
 Email: [lopna@defensapublica.gob.ve](mailto:lopna@defensapublica.gob.ve)

## CONCLUSION

The pro bono movement is not yet fully developed in Venezuela, despite having a legal system that recognizes a right of free access to justice for all citizens.

Pro bono work in Venezuela has been a growing initiative during the past few years, thanks to, amongst others, organizations like ProVene which has encouraged Venezuelan lawyers to assist in pro bono cases and has also worked on an increasing number of pro bono projects.

Developments in the field of free access to justice and the creation of a network of local and international law firms established in Venezuela that are committed to pro bono services are positive indications that further growth in pro bono services will be forthcoming in the future. Individuals or organizations interested in getting involved with pro bono services in Venezuela are encouraged to contact ProVene for information or assistance.

September 2015

Pro Bono Practices and Opportunities in Venezuela

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.



## Pro Bono Practices and Opportunities in Vietnam<sup>1</sup>

### INTRODUCTION

The Socialist Republic of Vietnam (“**Vietnam**”) is a socialist country under the leadership of the Communist Party.<sup>2</sup> Since 1986 and the launch of the *Doi Moi* (Open Door) policy, Vietnam has implemented certain economic and political reforms that have helped it in its path towards greater international integration, including advancements in the legal sphere.<sup>3</sup>

When compared to the culture of pro bono work of other countries like the United States or the United Kingdom, Vietnam’s pro bono culture is still very much in its infancy. However, important legal developments have taken place which will hopefully pave the way for greater development of the practices of both legal aid and pro bono.

### OVERVIEW OF LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The current constitution of Vietnam was adopted in 2013 and is the fifth constitution adopted by the Vietnamese National Assembly since Vietnam became independent in 1945. As the document with the highest legal authority, “it sets out the structure of the legal and political system, such as the relationship between the governing institutions, as well as the relationship between the institutions and the people.”<sup>4</sup>

The National Assembly is the highest authority responsible for lawmaking activities and is also the country’s representative and legislative body.<sup>5</sup> The Government is the executive body of the National Assembly and the highest administrative body of the State.<sup>6</sup> At a local level, the People’s Committees act as the executive arm of the provincial government.<sup>7</sup>

##### The Courts

##### Levels, Relevant Types & Locations

Under the Vietnamese judicial system, there are the People’s Courts and organizations for economic arbitration.<sup>8</sup> The People’s Courts are made up of the Supreme People’s Court, the Superior People’s Courts, the Provincial Courts, the District Courts and the Military Courts.<sup>9</sup>

---

<sup>1</sup> This chapter was drafted with the support of the Vietnam International Law Firm, Yana Georgieva and Kaiyan Yeo.

<sup>2</sup> The Constitution of the Socialist Republic of Vietnam of the National Assembly dated November 28, 2013, art. 2 and art. 4 (the “**Constitution**”).

<sup>3</sup> Vietnam is now a member of various international organisations including the United Nations, the Association of Southeast Asian Nations and the World Trade Organisation.

<sup>4</sup> International Bar Association, How to qualify as a lawyer in Vietnam (2011), available at [http://www.ibanet.org/PPID/Constituent/Student\\_Committee/qualify\\_lawyer\\_Vietnam.aspx](http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Vietnam.aspx) (last visited on September 4, 2015).

<sup>5</sup> The Constitution, art. 69.

<sup>6</sup> The Constitution, art. 94.

<sup>7</sup> The Constitution, art. 114.

<sup>8</sup> Law on organization of the People’s Courts of the National Assembly dated November 24, 2014 (62/2014/QH13) (“**Law on organization of the People’s Courts**”), art. 3, and Law on Commercial Arbitration of the National Assembly dated June 17, 2010 (54/2010/QH12) (“**Law on Commercial Arbitration**”).



Each administrative district of the country has a District Court that functions as a court of first instance for most domestic civil and criminal cases.<sup>10</sup> A Provincial Court is located in each province of Vietnam and functions mainly as a court of appeal for cases held by the District Court, whilst also adjudicating as a court of first instance for cases which do not fall within the jurisdiction of the District Courts. The Supreme People's Court is the highest judicial body and reviews under cassation (*giám đốc thẩm*) or reopens judgments or decisions of lower courts that may have acquired legal force but have been appealed because of procedural violations.<sup>11</sup> It consists of a judicial council, the assisting apparatus and training institutions.<sup>12</sup> The judicial council may conduct trial under cassation or reopen procedures with a trial panel composed of five judges or all judges of the Supreme People's Court.<sup>13</sup>

Traditional means of informal dispute resolution continue to be used outside of the judicial process, and are often encouraged by law. One such area in which conciliation is encouraged as a means to resolve disputes is land law.<sup>14</sup> If such informal dispute resolution fails, the parties may send a petition to the People's Committee at the commune level of the locality where the disputed land is located for reconciliation. In the process of conciliation,<sup>15</sup> the parties need to coordinate with the Vietnam Fatherland Front Committee at the commune level and its member organizations and other social organizations.<sup>16</sup>

### Appointed and Elected Judges

The judges of the Supreme People's Court are appointed by the National Assembly on the proposal of the Chief Justice of the Supreme People's Court for a term of five years.<sup>17</sup> The Chief Justice of the Supreme People's Court is elected by and accountable to the National Assembly.<sup>18</sup> The judges of the District and Provincial Courts are appointed by the President, other than those that are appointed by the Chief Justice of the Supreme People's Court<sup>19</sup> based on the suggestion of the National Council for Judge Selection and Supervision.<sup>20</sup>

At the levels of the District and Provincial Courts, aside from judges, people's assessors also adjudicate and have equal rights to the judges.<sup>21</sup> These lay assessors are elected by the competent People's Council at the recommendation of the Fatherland Front Committee.<sup>22</sup>

## The Practice of Law

### Education

Legal education is undertaken at university where one can receive a bachelor's diploma in law. However, only a small number of law graduates pursue a career as lawyers. Critics of legal training in Vietnam say that the system needs an overhaul as it places a greater emphasis on theoretical learning and bypasses

---

<sup>9</sup> Law on organization of the People's Courts, art. 3.

<sup>10</sup> Law on organization of the People's Courts, art. 44.

<sup>11</sup> Law on organization of the People's Courts, art. 20.1.

<sup>12</sup> Law on organization of the People's Courts, art. 21.1.

<sup>13</sup> Law on organization of the People's Courts, art. 23.1.

<sup>14</sup> Law on land of the National Assembly dated November 29, 2013 (45/2013/QH13) ("**Land Law**"), art. 202.1.

<sup>15</sup> Land Law, art. 202.2.

<sup>16</sup> Land Law, art. 202.3.

<sup>17</sup> Law on organization of the People's Courts, art. 27.7.

<sup>18</sup> Law on organization of the People's Courts, art. 26.1.

<sup>19</sup> Law on organization of the People's Courts, art. 27.8.

<sup>20</sup> Law on organization of the People's Courts, art. 70 and 71.

<sup>21</sup> Civil Procedure Code of the National Assembly dated June 15, 2004 (24/2004/QH11), art. 11.

<sup>22</sup> Law on organization of the People's Courts, art. 86.1.



the development of practical skills required for lawyers like legal analysis, drafting and advising clients.<sup>23</sup> The stated goal for 2020 is to improve the university education system to meet the people's learning needs and the country's modernization requirements.

### Licensure

Practising law in Vietnam requires a bachelor's diploma in law, attendance at a lawyers' training course certified by the Vietnam Judicial Academy and a 12 month period of practical training at a law firm.<sup>24</sup> All lawyers must receive a certificate issued by the Ministry of Justice and be admitted to the Bar in the place of their practice.<sup>25</sup>

Foreign lawyers may practise in Vietnam if they are granted a permit for professional practice in Vietnam by the Ministry of Justice.<sup>26</sup> The process involves the submission of a written request to the Ministry of Justice for a practising license in Vietnam which should enclose, among other things, the foreign lawyer's practising certificate, his/her brief resume and certification that he/she was appointed to practise or recruited to work in Vietnam.<sup>27</sup>

### Demographics: Number of Lawyers per Capita

Vietnam has a population of 94.3 million individuals with 9,436 lawyers, and more than 3,500 trainee lawyers as of March 31, 2015.<sup>28</sup>

### Legal Regulation of Lawyers

The Ministry of Justice and the local Bar Association in each province regulate the legal profession in Vietnam. The Vietnam Bar Federation is the national Bar Association to which the local Bars are affiliated.<sup>29</sup> Lawyers are permitted to (i) participate in legal proceedings as defense counsels or representatives or defenders of legitimate rights and interests of claimants; (ii) providing legal consultancy; and (iii) representing clients beyond legal proceedings so as to carry out related legal tasks.<sup>30</sup> Nearly all provinces host a Bar Association and Provincial Associations which are established after consideration by the Ministry of Justice and decision by the People's Committee.<sup>31</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS & ENTITIES

### Right to Legal Assistance

Vietnam has signed and ratified human rights treaties including the International Covenant on Civil and Political Rights (1969) (the "ICCPR"), the International Covenant on Economic, Social and Cultural Rights (1976), the International Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Elimination of all forms of Discrimination Against Women, and the Convention on the

---

<sup>23</sup> UNDP National Consultant, Final Report: Assessment of Clinical Legal Education Program Law Training Institution in Vietnam at 3, (September 2014), Ha Noi, Vietnam. (hereinafter "UNDP Report"), available at [https://www.babseacle.org/?attachment\\_id=7569](https://www.babseacle.org/?attachment_id=7569) (last visited on September 4, 2015).

<sup>24</sup> Law on Lawyers of the National Assembly dated June 29 2006 (65/2006/QH11) ("**Law on lawyers**"), art. 10, and Circular on law practice probation of the Ministry of Justice dated November 28, 2013 (19/2013/TT-BTP), art. 6.1

<sup>25</sup> Law amending and supplementing a number of articles of the Law on Lawyers of the National Assembly dated November 20, 2012 (20/2012/QH13) ("**Law amending the Law on Lawyers**"), art. 1.8.3.

<sup>26</sup> Law amending the Law on Lawyers, art. 1.31.1.

<sup>27</sup> Law amending the Law on Lawyers, art. 1.31.4.

<sup>28</sup> Ministry of Justice (2015), The Second National Lawyers' Congress, (April 16, 2015), available at [http://moj.gov.vn/btp/News/Lists/ttls/View\\_Detail.aspx?ItemID=506](http://moj.gov.vn/btp/News/Lists/ttls/View_Detail.aspx?ItemID=506) (last visited on September 4, 2015).

<sup>29</sup> Law on Lawyers, art. 64.1, and Law amending the Law on Lawyers, art. 1.37.

<sup>30</sup> Law on lawyers, art. 22.

<sup>31</sup> Law amending the Law on Lawyers, art. 1.21.1 and 1.21.2.



Rights of the Child. The right to legal aid is an important right regulated in ICCPR, and is stipulated in Article 14.3.d.

Since 1945, legal aid organizations in Vietnam have been introduced based on the constitutional principle that “the power belongs to the people.” From 1946 to 1987, legal aid was regarded as a subset of administrative and jurisdiction services, and Bar Associations in each province allowed lawyers to provide legal aid. However, there still remained a lack of legal aid services. As a result, the National Legal Aid Agency and Provincial Legal Aid Centers were established in 1997.<sup>32</sup>

The National Legal Aid Agency of Vietnam is a body established under the Ministry of Justice that performs an advisory function to the Minister in connection with the state wide management of legal aid.<sup>33</sup> The Agency’s responsibilities include, among other things, formulating the strategy and national master plan for legal aid development and organizing the implementation of these objectives.<sup>34</sup> Legal aid in Vietnam extends to diverse fields such as civil and criminal proceedings, as well as family and children, administrative and employment law.<sup>35</sup>

## State-Subsidized Legal Aid

### Eligibility Criteria<sup>36</sup>

Legal aid beneficiaries include the poor<sup>37</sup>, specifically those individuals in urban areas, with an average income of VND 500,000<sup>38</sup> / person / month (VND 6,000,000 / person / year) or less. In rural areas, those households with an average income of VND 400,000<sup>39</sup> / person/ month (VND 4,800,000 / person / year) or less are also eligible for legal aid.

In addition to those in financial need, there are a number of preferential groups of individuals who are also eligible for legal aid. These groups include:

- Revolutionary activists before the uprising of August 19, 1945, war heroes and their families and persons awarded military titles;<sup>40</sup>
- Senior citizens aged 60 or older who live without a network of support;<sup>41</sup>
- Disabled people,<sup>42</sup>
- Individuals exposed to toxic chemicals or those that are HIV positive who live without a network of support;
- Children under 16 years of age who live without a network of support;<sup>43</sup>

<sup>32</sup> Decision on establishing legal aid organizations for poor people of the Prime Minister dated September 6, 1997 (734/TTg) (“**Decision 734**”).

<sup>33</sup> Decision 734, art. 1.

<sup>34</sup> Decision 734, art. 2.

<sup>35</sup> Law on Legal Aid of the National Assembly dated June 29, 2006 (69/2006/QH11) (“**Law on Legal Aid**”), Ch 5, s. 1.

<sup>36</sup> Decree detailing and guiding the implementation of the Law on Legal Aid of the Government dated January 12, 2007 (07/2007/ND-CP) (“**Decree 07/2007**”), art. 2, and Decree on amending and supplementing Decree 07/2007 of the Government dated February 5, 2013 (14/2013/ND-CP) (“**Decree 14/2013**”), art. 1.

<sup>37</sup> Decree 07/2007, Article 2.1.

<sup>38</sup> Decision on setting the poverty line in respect of poor households and households in danger of falling into poverty for the period 2011-2015 of the Prime Minister dated January 30, 2011 (09/2011/QĐ-TTg) (“**Decision 09/2011**”), art. 1.2. Roughly the equivalent of USD 23.00.

<sup>39</sup> Decision 09/2011, art. 1.1.

<sup>40</sup> Decree 07/2007, art. 2.2 and Decree 14/2013, art. 1.1.2.

<sup>41</sup> Decree 14/2013, art. 1.1.3.

<sup>42</sup> Decree 14/2013, art. 1.1.4.



- Ethnic minorities who live in areas with particular economic or social difficulties;<sup>44</sup>
- Others who are beneficiaries of legal aid pursuant to international treaties to which Vietnam is a member;<sup>45</sup> and
- Victims of human trafficking<sup>46</sup>

## Assignments to Legal Aid Matters

Assignments to legal aid matters are on a voluntary basis. To be eligible to assist with legal aid, a person must fulfill, among other things, the following criteria:<sup>47</sup>

- have full capacity for civil acts and be of good moral character;
- hold a bachelor of law degree;
- have a certificate of legal aid training;
- have at least two years' legal work experience; and
- be physically fit to ensure the fulfilment of assigned tasks.

Legal aid practitioners may obtain a salary pursuant to the salary bands of civil servants as prescribed by law and may be reimbursed for travel fees.<sup>48</sup>

## Unmet Needs & Access Analysis

Lack of comprehensive documentation and reporting means that it is unclear whether the current state-subsidized legal aid scheme adequately meets the needs of indigent and marginalized individuals and NGOs. However, comparing Vietnam's number of lawyers per capita against that of other countries, it is likely that the current legal aid scheme is not sufficient to service the needs of the people.

## Alternative Dispute Resolution – Mediation & Arbitration

Legal aid organizations can assign their staff to mediate between parties in a dispute to avoid sending cases to the courts or other agencies. When required, mediation can be carried out to avoid community strife, to maintain public order and security, and to protect the lawful rights and interests of legally aided persons.

The Arbitration Law states that disputes arising from “commercial activities,” disputes where at least one party is engaged in commercial activities, and other disputes where the law stipulates that arbitration is a permissible means of resolution may be resolved through arbitration.<sup>49</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Although the obligation for lawyers to work on a pro bono basis is enshrined in law<sup>50</sup>, the concept of pro bono assistance is still in its infancy in Vietnam. There are opportunities for private attorneys, law firms

---

<sup>43</sup> Decree 07/2007, art. 2.5.

<sup>44</sup> Decree 07/2007, art. 2.6.

<sup>45</sup> Decree 14/2013, art. 1.1.7.

<sup>46</sup> Decree 14/2013, art. 1.1.8.

<sup>47</sup> Law on Legal Aid, art. 21.

<sup>48</sup> Decree 07/2007, art. 26, and Decree 14/2013, art. 1.9.

<sup>49</sup> Law on Commercial Arbitration of the National Assembly dated June 17, 2010 (54/2010/QH12), art. 2.



and in-house counsel to get involved with pro bono work but this is largely dependent on the initiative of the particular attorney, law firm or legal department.

### Private Attorneys

Examples of private attorneys engaging in pro bono work range from those who continue to assist with legal proceedings and waive their fees when it becomes clear that their clients can no longer afford to pay<sup>51</sup>, to those who provide free legal advice in newspaper columns to readers on topics of interests.<sup>52</sup>

### Law Firm Pro Bono Programs

A foreign law firm may provide pro bono assistance in Vietnam as part of its global pro bono project. DLA Piper's Capacity Building workshop for NGOs in Vietnam is one such example.<sup>53</sup> In partnership with ActionAid, DLA Piper delivered a two-day training course to NGOs in Vietnam covering training on risk management and time management.

Locally, there are instances of law firms extending pro bono service to clients who fulfill the criteria for legal aid beneficiaries – see for example the website of Dragon Law Firm which sets out the firm's commitment to providing pro bono services in the form of free representation and legal advice, as well as provision of free legal texts to legal aid beneficiaries.<sup>54</sup> It is also common for law firms to provide pro bono services as part of the celebrations connected with Vietnam Lawyer's day held on October 10<sup>th</sup> annually.<sup>55</sup>

### Legal Department Pro Bono Programs

Similarly, legal departments of large companies may also organize projects undertaken on a pro bono basis, such as IBM's CLE workshops for Vietnamese university students.<sup>56</sup> This program consists of IBM in-house lawyers preparing and leading clinical legal education classes for Vietnamese university students in five Vietnamese universities, including the National Economics University of Viet Nam. The program's success has led to the incorporation of the program into some of the universities' official syllabi.

### NGOs

Organizations such as Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE) work with universities, law students, law faculties and members of the legal community to

---

<sup>50</sup> Law on Lawyers, art. 21.2(d), and Law amending the Law on Lawyers, art. 1.37, and Decree on the implementation of the Law on Lawyers of the Government dated October 14, 2013 (123/2013/ND-CP), Article 3.1.

<sup>51</sup> BBC (2015), Vietnamese lawyers do not only counsel in return for fees, (October 28, 2014), available at [http://www.bbc.com/vietnamese/vietnam/2014/10/141028\\_lawyers\\_reaction\\_mp\\_vn](http://www.bbc.com/vietnamese/vietnam/2014/10/141028_lawyers_reaction_mp_vn) (last visited on September 4, 2015).

<sup>52</sup> Luat Su Ngay Nay (2013), Free Legal Advice (September 2014), available at <http://luatsungaynay.vn/news/Tu-van-phap-luat/Tu-van-phap-luat-mien-phi-so-9-2014-766/> (last visited on September 4, 2015).

<sup>53</sup> DLA Piper (2015), Capacity Building for NGOs in Vietnam, available at <http://www.dlapiperprobono.com/what-we-do/work/pro-bono/capacity-building-ngo-vietnam.html> (last visited on September 4, 2015).

<sup>54</sup> Dragon Law Firm (2015), Dragon Law Firm – Legal aid (April 2010), available at <http://www.vanphongluatsu.com.vn/cong-ty-luat-dragon-tro-giup-phap-ly/> (last visited on September 4, 2015).

<sup>55</sup> Trung Nguyen Law Firm (2015), Trung Nguyễn Law Firm participated in free legal advice week to celebrate Vietnam Lawyer's day (September 2014), available at <http://www.luattrungnguyen.vn/2014/09/cong-ty-luat-tnhh-trung-nguyen-tro-giup.html> (last visited on September 4, 2015).

<sup>56</sup> BABSEA CLE (2015), IBM's Pro Bono Work in Viet Nam, available at <https://www.babseacle.org/articles/ibms-pro-bono-work-in-viet-nam/> (last visited on September 4, 2015).



develop CLE programs to assist communities, provide legal aid services and increase awareness of social justice and pro bono initiatives.<sup>57</sup>

### Bar Association Pro Bono Programs

Bar Associations in Vietnam have, in the past, set up pro bono programs which are usually organized as part of the celebrations connected with Vietnam Lawyer's day, a day dedicated to recognizing the achievements of the Vietnamese legal profession. These programs often involve members of the relevant Bar Association dedicating one day of pro bono work advising individuals and organizations on matters such as property reclamation and compensation, as well as initiating legal proceedings.<sup>58</sup> Other pro bono programs may involve lawyers introducing and explaining the impact of significant legislation relating to the rights and interests of the Vietnamese citizen. One recent example involved the Bar Association of Ha Tinh province, whose delegation introduced and explained important statutes to more than 100 inhabitants of Đức Lĩnh commune, Vũ Quang district.<sup>59</sup>

### University Legal Clinics & Law Students

Law clinics have been set up at a number of universities throughout the country including, Ho Chi Minh City University of Law, Can Tho University, University of Economics and Law, Hue University and National Economic University. The services provided primarily include in-house legal counselling that allow students a platform to provide legal teaching to communities in need.<sup>60</sup>

## Historic Development & Current State of Pro Bono

### Historic Development of Pro Bono

Before legislation regarding the practise of law and lawyers was put in place in the form of the Law on Lawyers, the involvement of lawyers in pro bono work was voluntary. Lawyers' involvement was inconsistent and limited to the provision of legal advice at Bar Association events, in certain legal newspapers, local radio and/or television programs with some work at legal aid centers.

### Current State of Pro Bono including Barriers and Other Considerations

After the Law on Lawyers came into effect, legislation clearly stipulated that lawyers were obligated to do pro bono work and that pro bono work is an integral part of a lawyer's practice. The Law on Lawyers also provided certain guidance on the quality of service to be provided by the lawyer including, among other things, ensuring that a pro bono client be treated the same way as other fee paying clients.

As to future considerations, suggestions as to how pro bono practices in Vietnam could be developed further include the request (i) that the Vietnam Bar Federation implements guidance for the various Bar Associations and other legal practising organizations on legal aid and pro bono work, including recognizing achievements of pro bono practitioners; and (ii) for greater coordination between the state

---

<sup>57</sup> BABSEA CLE (2015), Our Mission & Goals, available at <https://www.babseacle.org/our-mission-goals/> (last visited on September 4, 2015).

<sup>58</sup> Vietnam Bar Federation (2010), Hanoi Bar Association provides free legal advice to citizens (April 2014), available at <http://liendoanluatsu.org.vn/vi/gioi-thieu/Ky-niem-Ngay-truyen-thong-Luat-su-10-10-1945-10-10-2013/Doan-Luat-su-Ha-Noi-tu-van-mien-phi-cho-nguoi-dan-19/> (last visited on September 4, 2015).

<sup>59</sup> Vietnam Bar Federation (2010), Ha Tinh Province Bar Association provides free legal advice to citizens in remote regions (July 2015), available at <http://liendoanluatsu.org.vn/vi/news/Doan-luat-su/Doan-luat-su-tinh-Ha-Tinh-tro-giup-phap-ly-mien-phi-cho-nguoi-dan-vung-sau-vung-xa-1095/> (last visited on September 4, 2015).

<sup>60</sup> UNDP Report, supra n 22. at 37-39.



legal aid centers and the various Bar Associations in order to encourage lawyers to become involved in legal aid and pro bono work.<sup>61</sup>

### Laws & Regulations Impacting Pro Bono

The following are the laws that may impact pro bono services in Vietnam:

- *Law on Lawyers* – covering, among other things, the practise of law, rights and obligations of law practising organizations and socio-professional organizations of lawyers, legal training and encouragement of pro bono work;
- *Law amending the Law on Lawyers* – covering, among other things, the obligation of a lawyer to provide legal aid;
- *Law on Legal Aid* – covering, among other things, legal aid beneficiaries, legal aid providing organizations, persons, services and management of legal aid;
- *Decree 07/2007* – covering, among other things, the implementation of the Law on Legal Aid;
- *Decree 14/2013* – covering, among other things, the implementation of Decree 07/2007.

### Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

Obstacles which hinder access to justice include the nascent legal aid system, the shortage of lawyers, a lack of understanding by citizens of their legal rights and the role of lawyers in civil society.<sup>62</sup>

### Pro Bono Resources

Entities engaged in pro bono are:

- Vietnam Legal Aid <http://legalaid.gov.vn/> (last visited on September 4, 2015)
- Bridges Across Borders Southeast Asia Community Legal Education Initiative <https://www.babseacle.org/articles/ibms-pro-bono-work-in-viet-nam/> (last visited on September 4, 2015)
- Vietnam Bar Federation <http://liendoanluatsu.org.vn/vi/> (last visited on September 4, 2015)

## CONCLUSION

Although still in its infancy, pro bono legal work is continuing to gain increasing importance in Vietnam and is supported by the development of the Law of Lawyers which sets out the obligation of lawyers to be involved in legal aid / pro bono work. Greater coordination is required between the legal aid agencies of the state and the Bar Associations, but so far the signs are promising.

September 2015

Pro bono Practices and Opportunities in Vietnam

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text

---

<sup>61</sup> Vietnam Bar Federation (2010), Legal aid activities of Vietnamese lawyers and some solutions (January 2014), available at <http://liendoanluatsu.org.vn/vi/news/Dien-dan-44/Thuc-tien-hoat-dong-tro-giup-phap-ly-mien-phi-cua-luat-su-Viet-Nam-va-mot-so-giai-phap-382/> (last visited on September 4, 2015).

<sup>62</sup> Japan Federation of Bar Association (2015), Information Sheet Vietnam at 13, available at [http://www.nichibenren.or.jp/library/ja/bar\\_association/word/data/Vietnam.pdf](http://www.nichibenren.or.jp/library/ja/bar_association/word/data/Vietnam.pdf) (last visited on September 4, 2015).



Summary

Country	State-Subsidized Legal Aid Scheme	“Loser Pays” Statute	Minimum Legal Fee Schedule	Explicit Prohibition on Free Legal Service, in at Least Some Contexts	Prohibition Against Legal Advertising / Soliciting of Pro bono	Practice Restrictions on Foreign-Qualified Lawyers (Which Limit Pro bono)
Angola	Yes	Yes	No	No	No	Yes
Argentina	Yes	Yes	No, with certain exceptions	No	No	No
Armenia	Yes	Yes, with certain exceptions	No	No	No	No, however the foreign Attorneys need to be registered at the Chamber of Advocates to be able to practice attorney activity in Armenia
Australia	Yes	Yes	Yes, however in certain situations a court / registrar may allow a greater or lesser sum	Yes (partial) Prohibition on commercial matters, wills and estates, work injuries, defamation and pay disputes	No	Yes
Austria	Yes	Yes	Yes	No	Yes (partial prohibition)	Yes (partial restriction)
Azerbaijan	Yes	No	No	No	No	Yes



Country	State-Subsidized Legal Aid Scheme	“Loser Pays” Statute	Minimum Legal Fee Schedule	Explicit Prohibition on Free Legal Service, in at Least Some Contexts	Prohibition Against Legal Advertising / Soliciting of Pro bono	Practice Restrictions on Foreign-Qualified Lawyers (Which Limit Pro bono)
Belarus	Yes	Yes, with respect to criminal suspects if the defendant is found guilty	No	No	No	Yes
Belgium	Yes	Yes, with certain exceptions	No	No	Yes	Yes
Bolivia	Yes	No	No	No	No	No
Brazil	Yes	Yes	Yes, with certain exceptions	No (provided such free services are only provided to individuals and non-profit legal entities in need)	Yes	Yes (partial restriction)
Bulgaria	Yes	No	Yes	Yes	No	No
Canada	Yes	Yes	No	No	No	Yes
Chile	Yes	Yes, with certain limitations based on the judge’s discretion	No	No	Yes	Yes
China	Yes	No	No	No	No	Yes
Colombia	Yes	Yes	No	No	No	Yes



Country	State-Subsidized Legal Aid Scheme	“Loser Pays” Statute	Minimum Legal Fee Schedule	Explicit Prohibition on Free Legal Service, in at Least Some Contexts	Prohibition Against Legal Advertising / Soliciting of Pro bono	Practice Restrictions on Foreign-Qualified Lawyers (Which Limit Pro bono)
Costa Rica	Yes	No	Yes, with exceptions	No	No	Yes
Czech Republic	Yes – in all types of court proceedings.	Yes – in civil and administrative court proceedings	No.	No	No	Yes
Denmark	Yes	Yes	Yes	No	No	Yes
Dominican Republic	Yes	Yes	Yes	No	No	Yes
Ecuador	Yes	No	No	No	No	Yes
El Salvador	Yes	No	No	No	No	Yes
England and Wales	Yes	Yes	No	No	No	Yes
Finland	Yes	Yes	No	Yes	No	No
France	Yes	Yes, under certain conditions	No	No	No, but subject to strict rules	No
Georgia	Yes	No	No	No	No	Yes
Germany	Yes	Yes	No, with certain exceptions	No	Yes	No for EU-lawyers; Yes for other foreign lawyers.



Country	State-Subsidized Legal Aid Scheme	“Loser Pays” Statute	Minimum Legal Fee Schedule	Explicit Prohibition on Free Legal Service, in at Least Some Contexts	Prohibition Against Legal Advertising / Soliciting of Pro bono	Practice Restrictions on Foreign-Qualified Lawyers (Which Limit Pro bono)
Ghana	Yes	Yes	Yes	No	No	No
Greece	Yes	Yes	No	Yes	Yes	Yes
Guatemala	Yes	Yes	Yes	Yes	Yes	Yes
Haiti	Yes	No	No	No	No	Yes
Hong Kong	Yes	Yes	No	No	No	Yes
Hungary	Yes	Yes	Yes	No	No	No
India	Yes	No, but courts have discretion to award fees on a case-by-case basis	No	No	Yes	Yes
Indonesia	Yes	No	No	No	No	Yes
Ireland	Yes	Yes	No	No	No (but subject to the rules generally applicable to legal advertising)	Yes
Northern Ireland	Yes	No	No	No	No	No



Country	State-Subsidized Legal Aid Scheme	“Loser Pays” Statute	Minimum Legal Fee Schedule	Explicit Prohibition on Free Legal Service, in at Least Some Contexts	Prohibition Against Legal Advertising / Soliciting of Pro bono	Practice Restrictions on Foreign-Qualified Lawyers (Which Limit Pro bono)
Israel	Yes	No	No	No	No	Yes
Italy	Yes (Patrocinio a spese dello stato)	No – decided on a case-by-case basis depending on the court decision	No	No, with certain limitations	Yes	Yes
Japan	Yes	No	No	No	No	Yes
Jordan	Yes	No	No	No	No	Yes
Kenya	No	Yes – costs will usually be awarded to the successful party, but public interest exceptions may apply	Yes	No	No	Yes
Latvia	Yes	Yes	Yes for State-funded legal aid No for pro bono legal assistance	Yes	No	Yes
Liechtenstein	Yes	Yes	No	No	No	Yes
Lithuania	Yes	Yes	No	No	No	Yes
Luxembourg	Yes	Yes	No	No	Yes	No



Country	State-Subsidized Legal Aid Scheme	“Loser Pays” Statute	Minimum Legal Fee Schedule	Explicit Prohibition on Free Legal Service, in at Least Some Contexts	Prohibition Against Legal Advertising / Soliciting of Pro bono	Practice Restrictions on Foreign-Qualified Lawyers (Which Limit Pro bono)
Malaysia	Yes	No	No	No	Yes	Yes, with certain exceptions
Malta	Yes	Yes	Yes, with certain exceptions	No	Yes	No, subject to registration with the Bar in Malta
Montenegro	Yes	No	No	Yes	No	Yes
Morocco	Yes	Yes	Yes	No	No	Yes
Netherlands	Yes	Yes, in limited circumstances	No	No	No, but subject to conditions	Yes
New Zealand	Yes	Yes	No	No	No	Yes
Nicaragua	Yes	No	Yes. The legal fees established in the Code of Judicial Fees and its amendments.	No	No	Yes
Nigeria	Yes	Yes	No	No	Yes	Yes
Norway	Yes	Yes	No	No	No	Yes
Pakistan	Yes (partially)	No	No	No	No	Yes



Country	State-Subsidized Legal Aid Scheme	“Loser Pays” Statute	Minimum Legal Fee Schedule	Explicit Prohibition on Free Legal Service, in at Least Some Contexts	Prohibition Against Legal Advertising / Soliciting of Pro bono	Practice Restrictions on Foreign-Qualified Lawyers (Which Limit Pro bono)
Panama	Yes	No	Yes	No	No	No
Paraguay	Yes	Yes, with certain exceptions	Yes	Yes	No	Yes
Peru	Yes	Yes	Yes, with the exception of pro bono work.	No	No	No
The Philippines	Yes	Yes, in limited circumstances	Yes	No	No	Yes
Poland	Yes	Yes	No	No	No	No
Portugal	Yes	Yes, with conditions	No	No	Yes	No, subject to registration with the Bar Association.
Romania	Yes	Yes	Yes, with certain exceptions	No	Yes	Yes
Russia	Yes	Yes	No	No	No	No
Saudi Arabia	Yes, although currently unofficial. Formal regime proposed to be implemented	No	No	No	No	Yes
Scotland	Yes	Yes	No	No	No	No



Country	State-Subsidized Legal Aid Scheme	“Loser Pays” Statute	Minimum Legal Fee Schedule	Explicit Prohibition on Free Legal Service, in at Least Some Contexts	Prohibition Against Legal Advertising / Soliciting of Pro bono	Practice Restrictions on Foreign-Qualified Lawyers (Which Limit Pro bono)
Serbia	No, although legislation in progress	Yes	Yes	No	Yes	Yes
Singapore	Yes	Yes	No	No	No	Yes
Slovakia	Yes	Yes	Yes	Yes	Yes	Yes
Slovenia	Yes	No	No	No	No	Yes
South Africa	Yes	Yes	No	No	Yes	Yes
South Korea	Yes	Yes, subject to court’s discretion with a view to fairness (according to certain guidelines)	No	No	No	No
Spain	Yes	Yes, with certain exceptions	No	No	No	No
Sweden	Yes	No	No	No	No	Yes
Switzerland	Yes	Yes	No, although fees are subject to certain restrictions	No	Yes	Yes – foreign lawyers not obligated to accept legal aid postings
Taiwan	Yes	No	No	No	Yes	Yes



Country	State-Subsidized Legal Aid Scheme	“Loser Pays” Statute	Minimum Legal Fee Schedule	Explicit Prohibition on Free Legal Service, in at Least Some Contexts	Prohibition Against Legal Advertising / Soliciting of Pro bono	Practice Restrictions on Foreign-Qualified Lawyers (Which Limit Pro bono)
Thailand	Yes	Yes, subject to court’s discretion	No	No	No	Yes
Turkey	Yes	Yes	Yes, with certain exceptions	Yes, with certain exceptions	Yes	Yes
Uganda	Yes (for capital and life terms only)	Yes	Yes	No	Yes	Yes
Ukraine	Yes	Yes	Yes	No	No	No, except in criminal cases
United Arab Emirates	Yes, limited to certain individuals and circumstances	No	No	No	No	Yes (partial restriction)
United States of America	Yes	No	No	No	No	Yes
Uruguay	Yes	No, except in cases of malicious conduct in court	No	No	No	Yes
Venezuela	Yes	Yes, with certain exceptions	No (with respect to pro bono matters)	No	No	Yes
Vietnam	Yes	Yes	No	Yes	No	Yes