

Pro Bono Practices and Opportunities in Hong Kong

I. Introduction

The term pro bono has become very topical in recent years in Hong Kong. There is increasing recognition within Hong Kong’s legal community that legitimate legal needs are not being addressed through traditional legal aid, and many international and local law firms in Hong Kong have expanded their pro bono practices in the region by working with local NGOs with a view to promoting more equal access to justice in Hong Kong.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	1. Describe the laws/rules that regulate the provision of legal services?	<p>Hong Kong lawyers either practice as barristers or solicitors, but not both.¹ The Law Society of Hong Kong² is the professional association responsible for regulating solicitors, the Hong Kong Bar Association³ being the equivalent association for regulating barristers.</p> <p>Legal Practitioners Ordinance (Cap. 159)⁴ (“LPO”) regulates the provision of legal services in Hong Kong.</p>
	2. Describe any licensure requirements governing the provision of legal services.	<p>Section 7 of the LPO provides that, in order to be qualified to act as a solicitor in Hong Kong, a person needs to be: (i) on the roll of solicitors; (ii) not suspended from practice; (iii) in possession of a current practicing certificate; and (iv) in compliance with the indemnity rules made by the Council of the Law Society of Hong Kong. Rule 6(1) of the Solicitors (Professional Indemnity) Rules (Cap. 159M) provides that “every solicitor who is, or held out to the public as, a solicitor in practice in Hong Kong shall be required to have and maintain Indemnity”, subject to certain exemptions as set out in Rule 7.</p> <p>Barristers are legal practitioners, experts in advocacy and litigation.⁵ A candidate becomes qualified for admission as a barrister in Hong Kong if they are: (i) a holder of a Postgraduate Certificate in Law; (ii) a solicitor in Hong Kong; or (iii) an overseas lawyer.⁶ A qualified solicitor in Hong Kong must have been admitted for at least three years before his application for admission as a</p>

¹ 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 May 1, 2019).

² The Law Society of Hong Kong, http://www.hklawsoc.org.hk/pub_e/ (last visited on May 1, 2019) .

³ Hong Kong Bar Association, <https://www.hkba.org/> (last visited on May 1, 2019) .

⁴ Legal Practitioners Ordinance (Cap. 159), available at <https://www.elegislation.gov.hk/hk/cap159> (last visited on May 1, 2019) .

⁵ Hong Kong Bar Association, About Us, <https://www.hkba.org/about-us> (last visited on May 1, 2019).

⁶ Legal Practitioners Ordinance, Section 27, available at <http://www.hkllii.hk/eng/hk/legis/ord/159/s27.html> (last visited on May 1, 2019).

		<p>barrister.⁷ 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.⁸ Barristers are generally instructed through solicitors.⁹ Typically, only barristers have the right of audience¹⁰ in the Court of Appeal and the Court of Final Appeal.¹¹ In 2013, a special category known as Solicitor-Advocate was created to give solicitors who are awarded this title full rights of audience equivalent to those of barristers.</p> <p>Lawyers qualified in jurisdictions outside Hong Kong may apply to be registered as foreign lawyers. Registered foreign lawyers are prohibited from practicing Hong Kong law.¹²</p>
(b)	Pro Bono Practice and Culture	
	<p>1. Describe the rules that regulate the provision of pro bono legal services e.g. any explicit regulation or limitation on providing free legal services in some or all contexts, details of any mandatory or minimum fees imposed on provision of legal services.</p>	<p>The primary rules that regulate the provision of pro bono legal services are the regulatory and insurance requirements applicable to legal practitioners in Hong Kong. In this regard, see II.(a) above on professional regulation and II.(c) below on professional indemnity insurance.</p> <p>Otherwise, the Hong Kong Bar Association and the Law Society of Hong Kong impose few barriers on pro bono work for Hong Kong lawyers.</p>
	<p>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</p>	<p>There are no mandatory requirements on lawyers to work a minimum number of pro bono hours in Hong Kong.</p>
	<p>3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?</p>	<p>Aspiring lawyers in Hong Kong are not required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers.</p>
	<p>4. What are the main areas of law which require or present opportunities for the provision of pro bono legal services? What are the major unmet legal needs?</p>	<p>According to the “This Way – Finding Community Legal Assistance in Hong Kong” Report published jointly by DLA Piper and PILnet in May 2017, the top legal issues reported by NGOs and which</p>

⁷ Barristers (Qualification for Admission and Pupillage) Rules (Cap. 159AC), Rule 4, available at <http://www.hklii.hk/eng/hk/legis/reg/159AC/s4.html> (last visited on May 1, 2019).

⁸ Ibid.

⁹ Hong Kong Bar Association’s Code of Conduct, paragraph 5.16, available at <https://www.hkba.org/content/code-conduct> (last visited on May 1, 2019).

¹⁰ A right of audience is a right of lawyers to appear and conduct proceedings in court on behalf of their client.

¹¹ Hong Kong Bar Association, About Us.

¹² Foreign Lawyers Registration Rules, Section 12, available at <http://www.hklii.hk/eng/hk/legis/reg/159S/s12.html> (last visited on May 1, 2019).

	<p>present opportunities for the provision of pro bono legal services were criminal law followed by discrimination, housing, labor/employment, immigration, social welfare, family and domestic violence.¹³</p>
<p>5. Who are the main providers of pro bono legal services? e.g., NGOs, governmental or other public services, schools and universities, private law firms (local or international) or corporate organizations?</p>	<p>There are three main providers of pro bono legal services in Hong Kong:</p> <p><i>NGOs:</i></p> <ul style="list-style-type: none"> • The Justice Centre Hong Kong (the “Justice Centre”) is an example of an NGO that provides pro bono legal services.¹⁴ The Justice 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.¹⁵ • PILnet, a global network for public interest law, operates a pro bono clearinghouse in Hong Kong since 2013, pairing up NGOs in need of legal services with providers of pro bono legal services.¹⁶ • The Hong Kong Centre for Pro Bono Service Limited¹⁷ runs a monthly legal clinic in Shum Shui Po, assisting clients with a wide range of legal problems such as sham marriages, children’s custody, prisoner’s rights, criminal appeals, immigration, refugee claims, property rights, sentencing, traffic accidents, deaths in custody, coronial inquests, guardianship orders, wills and probate, and legal aid applications. • Another NGO that has leveraged the pro bono support and resources of the legal community is HELP for Domestic Helpers, assisting foreign domestic helpers.¹⁸ HELP for Domestic Helpers has partnered up with lawyers from different law firms and companies to provide guidance on legal

¹³ “This Way – Finding Community Legal Assistance in Hong Kong” Report, Available at http://www.pilnet.org/images/FINAL_REPORT_31_May_2017.pdf (last visited on May 1, 2019).

¹⁴ Justice Centre Hong Kong, <http://www.justicecentre.org.hk/> (last visited on May 1, 2019).

¹⁵ Justice Centre Hong Kong, How We Help, <http://www.justicecentre.org.hk/how-we-help/> (last visited on May 1, 2019).

¹⁶ PILnet, Where We Work, <https://www.pilnet.org/public-interest-lawyers/asia.html> (last visited on May 1, 2019).

¹⁷ Hong Kong Centre for Pro Bono Service Limited, <http://www.probono.org.hk/> (last visited on May 1, 2019).

¹⁸ HELP for Domestic Helpers, <http://helpfordomesticworkers.org/en/home/> (last visited on May 1, 2019).

		<p>issues to domestic helpers.¹⁹ The NGO has helped over 25,000 domestic workers since its establishment.</p> <p>Bar Association and Law Society Programs:</p> <ul style="list-style-type: none"> • The Bar Association sponsors the Bar Free Legal Service Scheme, a popular program among barristers providing legal advice and representation where Legal Aid assistance is otherwise unavailable.²⁰ • The Pro Bono Committee of the Law Society encourages participation in pro bono work and oversees various pro bono schemes and projects such as the Free Legal Consultation Service and the Duty Lawyer Scheme. <p>University Legal Clinics:</p> <ul style="list-style-type: none"> • The University of Hong Kong runs the Free Legal Advice Scheme under the Duty Lawyer Service, providing preliminary legal advice to members of the public.
<p>(c) Obstacles to Provision of Pro Bono Legal Services</p>		
	<p>1. Do lawyers require a license to provide pro bono legal services?</p>	<p>Apart from the licensure requirements governing the provision of legal services as set out in II.(a) above, no specific license is required for lawyers in Hong Kong to provide pro bono legal services.</p>
	<p>2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?</p>	<p>As mentioned in II.(a) above, registered foreign lawyers are prohibited from practicing Hong Kong law. That said, it seems that registered foreign lawyers may provide pro bono legal services on issues relating to non-Hong Kong law. They may also work on pro bono matters pertaining to Hong Kong law issues under the supervision of qualified Hong Kong law practitioners.</p>
	<p>3. Do lawyers require professional indemnity legal insurance cover for any pro bono legal services that they provide? If so, are they prohibited from working under the cover of another pro bono provider, such as a private law firm or organization working on the same pro bono project?</p>	<p>As mentioned in II.(a) above, Rule 6(1) of the Solicitors (Professional Indemnity) Rules (Cap. 159M) provides that “every solicitor who is, or held out to the public as, a solicitor in practice in Hong Kong shall be required to have and maintain Indemnity”, subject to certain exemptions as set out in Rule 7. The Indemnity refers to The Professional Indemnity Scheme (“PIS”), which provides compulsory professional indemnity to Hong Kong</p>

¹⁹ HELP for Domestic Helpers, About Us, <http://helpfordomesticworkers.org/en/about-help-for-domestic-workers/> (last visited on May 1, 2019).

²⁰ Hong Kong Bar Association, Bar Free Legal Services Scheme, <https://www.hkba.org/content/bar-free-legal-services-scheme> (last visited on May 1, 2019).

	<p>law firms against losses arising from civil liability incurred in connection with their practices. The limit of indemnity under the PIS is HK\$10 million per claim.²¹</p> <p>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 pro bono legal services. Without their firm's approval, pro bono lawyers may find themselves unprotected in the event a client seeks compensation for poor legal advice.²² If a lawyer is to do pro bono work in a personal capacity, i.e. outside of their employment / not with a law firm, they will have to take extra care to ensure that indemnity insurance is provided.²³</p> <p>Practicing barristers must subscribe to the Bar Association's Master Professional Indemnity Policy.²⁴</p>
<p>4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?</p>	<p>There are no specific rules in Hong Kong that prohibit advertising of pro bono successes or soliciting new pro bono clients. That said, any marketing activities conducted by solicitors should be conducted in accordance with the Solicitors' Practice Promotion Code²⁵; and barristers engaging in advertising or promotion in connection with their practice should comply with the Bar Association Code of Conduct.²⁶</p>
<p>5. Do lawyers receive any "Continuing Legal Education" or equivalent credit for pro bono hours worked?</p>	<p>Lawyers do not usually receive Continuing Professional Development credit for pro bono hours worked in Hong Kong. That said, the Law Society ordinarily accredits training courses provided by NGOs on pro bono work, such as those organized by the Justice Centre, with Continuing Professional Development points.</p>

²¹ Solicitors (Professional Indemnity) Rules (Cap. 159M), Schedule 3, Section 2(1), Available at https://www.elegislation.gov.hk/hk/cap159M?xpid=ID_1438402755643_001 (last visited on May 1, 2019).

²² South China Morning Post, "Pro Bono Legal Help Levels Playing Field for Hong Kong NGOs" published 26 May 2014, available at <https://www.scmp.com/news/hong-kong/article/1519480/pro-bono-legal-help-levels-playing-field-hong-kong-ngos> (last visited on May 1, 2019).

²³ "This Way – Finding Community Legal Assistance in Hong Kong" Report, Available at http://www.pilnet.org/images/FINAL_REPORT_31_May_2017.pdf (last visited on May 1, 2019).

²⁴ Hong Kong Bar Association's Code of Conduct, paragraph 5.3, available at <https://www.hkba.org/content/code-conduct> (last visited on May 1, 2019). See also HK Bar Professional Indemnity Insurance at <https://hkbarinsurance.com/> (last visited on May 1, 2019).

²⁵ See https://www.hklawsoc.org.hk/pub_e/professionalguide/volume2/default.asp?cap=25 (last visited on May 1, 2019).

²⁶ Hong Kong Bar Association's Code of Conduct, Chapter 8 on Practice Promotion, available at <https://www.hkba.org/content/code-conduct> (last visited on May 1, 2019).

(d)	Sources of Pro Bono Opportunities and Key Contacts	
	<p>1. Describe any governmental sources of pro bono and/or other legal services in Hong Kong.</p>	<p>The pro bono web page on the Law Society’s website contains a list of other pro bono opportunities and resources²⁷, some of which are set out below:</p> <ul style="list-style-type: none"> • Duty Lawyer Scheme provides legal representation by lawyers in private practice for a wide range of criminal offences at the Magistrates Courts, Juvenile Courts and Coroners Courts. • Free Legal Advice Scheme provides a one-off preliminary legal advice without a means test. This Scheme does not offer any follow up service nor representation. • CAT & Non-refoulement Claims Scheme provides legal assistance to non-refoulement protection claimants, including but not limited to accompanying the claimant to attend screening interview(s) before the Immigration Department; preparing submissions for the appellant/petitioner; representing the claimant at oral hearing; and assisting the claimant in making a request to re-open a non-refoulement claim. • Tel-law Scheme is a free, pre-recorded legal information hotline, providing information on a wide range of legal topics. • Free Legal Consultation Service by the Law Society, with participating law firms providing an initial free consultation to the public of up to 45 minutes in a wide range of practice areas. • Free Legal Helpline which offers free legal advice to the general public in areas of personal injuries, matrimonial law, criminal law and mediation. All participating solicitor volunteers have at least 3 years of experience in the relevant area of practice. <p>The Bar Association runs the Bar Free Legal Service Scheme, which provides “free legal advice and representation in cases where Legal Aid is not available or where the applicant is unable to afford legal assistance, and the case is thought to be one</p>

²⁷ Law Society of Hong Kong, Pro Bono Services, available at https://www.hklawsoc.org.hk/pub_e/probono/public/pbs_ls.asp (last visited on May 1, 2019) and https://www.hklawsoc.org.hk/pub_e/probono/public/pbs_dls.asp (last visited on May 1, 2019).

	<p>where assistance should be given”.²⁸ Barristers who have volunteered are placed on a panel. Each of them has offered their services free of charge for 3 days or 20 hours each year.</p>
<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Hong Kong.</p>	<p>The main non-governmental sources of pro bono and/or other pro bono resources in Hong Kong are:</p> <ul style="list-style-type: none"> • NGOs, such as the Justice Centre, the Hong Kong Centre for Pro Bono Service Limited and HELP for Domestic Helpers, are the main non-governmental sources of pro bono in Hong Kong. Many of these organizations have expertise in their practice areas such as criminal, immigration, employment and discrimination laws. • PILnet operates a pro bono clearing house in Hong Kong, regularly circulates to providers of pro bono legal services (such as law firms) lists of potential pro bono opportunities setting out the legal services required by different NGOs. • Law firm pro bono programs offer legal services free of charge to the community. In Hong Kong, law firms have become increasingly aware of the need to do more pro bono work. Law firms frequently partner with NGOs to work on pro bono cases.
<p>3. Is there any public or private organization with which a local or foreign attorney can register in order to be made aware of pro bono opportunities?</p>	<p>Local or foreign attorneys can consider joining TrustLaw²⁹ or PILnet’s Hong Kong Pro Bono Clearinghouse,³⁰ which regularly send out pro bono opportunities with NGOs operating regionally.</p>

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²⁸ Hong Kong Bar Association, Bar Free Legal Services Scheme, available at <https://www.hkba.org/content/bar-free-legal-services-scheme> (last visited on May 1, 2019).

²⁹ See www.trust.org/trustlaw (last visited on May 1, 2019).

³⁰ See <https://www.pilnet.org/public-interest-law-programs/pro-bono-law.html> (last visited on May 1, 2019).