

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

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

August 2012

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FOREWORD

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

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

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

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

August 2012

Gianni De Stefano and Wendy Atrokhov



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THANKS

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

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

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

PRO BONO PRACTICES AND OPPORTUNITIES IN SAUDI ARABIA

The provision of *pro bono* legal services is currently not as institutionalized in the Kingdom of Saudi Arabia (“Saudi Arabia”) as it is in Western Jurisdictions. Saudi Arabia does not currently regulate nor does it expressly mandate the provision of legal aid by lawyers practicing in Saudi Arabia. However, attorneys practicing in Saudi Arabia at times enter into *ad hoc* arrangements with local governmental agencies and nonprofit 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*.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN SAUDI ARABIA

A. The Legal Profession

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.¹ In order to practice law in Saudi Arabia any lawyer must be licensed by the Ministry of Justice (“MoJ”) or else must be supervised by an attorney licensed by the MoJ. Only Saudi nationals, holding a local degree in Sharia’a² 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 offences 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 nonlawyer 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.³ As of the date of this chapter the unofficial number of licensed lawyers in Saudi Arabia is approximately 2000.⁴

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.

B. Structure Of The Judicial System

The judicial system in Saudi Arabia is currently undergoing a reorganization with the recent enactment of the new 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”). The process and period of implementing the reorganization of each specific branch of the new judicial system is detailed in the Plan for the Implementation of the Judicial System Act and the Board of Grievances Act.⁵ Pursuant to the above implementation plan the transitional implementation period shall not exceed three years from the date the Civil Procedure Law and Criminal Procedure Law are amended and become effective, and the Board of Grievances Procedure Law is enacted and becomes effective. However, the latter laws are yet to be amended and enacted.

¹ 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.

² Sharia’a is the moral code and religious law of Islam which is the supreme law in Saudi Arabia.

³ Code of Law Practice, *supra* n.1 at art. 18.

⁴ Contact at the Ministry of Justice.

⁵ Published in the Official Gazette no. 4170 on (Oct. 12) 2007 G.

Pursuant to the new judicial system, Saudi Arabia recognizes a dual system of courts with separate administrative and nonadministrative courts. Under the new judicial system, the administrative arm of the judicial system in Saudi Arabia is regulated by the Board of Grievances Act⁶ enacted 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.⁷ Until the full implementation of the Judicial System Act, the Board of Grievances also has jurisdiction to hear all types of commercial disputes.

As stated above, the Judicial System Act is relatively new and is yet to be fully implemented. Some of the provisions of the old act and old structures remain in force during the implementation of the Judicial System Act, including the nonadministrative functions of the Board of Grievances described above. Under the Judicial System Act, nonadministrative 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.

C. Government-Provided Legal Aid

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 to establish the "Attorneys' Authority" and is currently in the process of being enacted. This new regulation is expected to include mandatory provisions on legal aid that are expected to apply to all lawyers practicing in Saudi Arabia.⁸

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 it.⁹ The MoJ is also often approached by the National Society for Human Rights (the "NSHR"), which is a human rights organization associated and funded by the Saudi government, and the Commission on behalf of disadvantaged groups of individuals seeking 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.¹⁰

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 to which Saudi Arabia is a party, state parties commit to provide adequate help to individuals without enough financial resources to defend their rights by ensuring proper legal aid.¹¹ State parties also commit to grant each person charged with a criminal offence the right to have free legal assistance through a defense lawyer, if that person cannot defend

⁶ Board of Grievances Act issued by the Royal Decree number m/78 dated 19/9/1428 H (corresponding to Sep. 30, 2007 G).

⁷ *Id.* at art. 13.

⁸ *Al-Madina* newspaper issue number 16426 on Sunday Apr. 13, 2008, and *Okaz* newspaper issue 3502 on Tuesday Jun. 18, 2011;

⁹ Email from Judge Yousuf Al-Farraj (May 20, 2012) (on file with author).

¹⁰ Contact at the Institute of Public Administration.

¹¹ Arab Charter on Human Rights dated May 23, 2004 G. which entered into force on Apr. 17, 2009 G.), art. 13.

himself or herself or if the interests of justice require so. Nevertheless, 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 a number of countries including Saudi Arabia are a member, grants foreigners of member states the right for free legal assistance within the borders of each member in the same manner as its own citizens and in accordance with law in force thereon.¹²

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,¹³ Sudan¹⁴ and Yemen.¹⁵

II. *PRO BONO* IN SAUDI ARABIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

While Saudi Arabia does not have an established and formalized *pro bono* culture, individual attorneys in Saudi Arabia often provide *pro bono* services on a nonformal basis.

In addition, the government has supported the provision of legal aid on a volunteer basis in a number of specific contexts. As the legal profession continues to mature in Saudi Arabia, it is expected that *pro bono* services will become more institutionalized.

III. CONCLUSION

The practice of providing *pro bono* legal services is not institutionalized in Saudi Arabia. However, the new expected regulations, the strong presence of international law firms and the increased interest and awareness on human rights in recent years in Saudi Arabia should help in shaping a stronger *pro bono* culture.

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Pro Bono Practices and Opportunities in Saudi Arabia

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¹² Riyadh Arab Convention for Judicial Cooperation dated Apr. 6, 1983 G (which entered into force on Oct. 30, 1985 G), art. 4.

¹³ Bilateral Treaty for Judicial Cooperation between Kazakhstan and Saudi Arabia dated Apr. 7, 2006 G, art. 3.

¹⁴ Bilateral Treaty for Judicial Cooperation between Sudan and Saudi Arabia dated Apr. 23, 2010 G, art. 5.

¹⁵ Bilateral Treaty for Judicial Cooperation between Yemen and Saudi Arabia dated Oct. 17, 2008 G, art.6.