

Pro Bono Practices and Opportunities in Malaysia¹

I. Introduction

The pro bono legal services in Malaysia are provided on a voluntary basis primarily through legal aid centers managed by the Malaysian Bar and various private sector initiatives and complement the well-established government-sponsored legal aid scheme. Although legal services in Malaysia have been liberalized to allow foreign lawyers to practice in Malaysia under limited circumstances, representation of pro bono clients in court proceedings are limited to advocates and solicitors qualified to practice in Malaysia. Members of the Malaysian Bar actively participate in pro bono work in the areas of human rights, criminal defense and public interest. Pupils are encouraged to participate in pro bono legal work during their legal training to instill a sense of social responsibility.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	1. Describe the laws/rules that regulate the provision of legal services?	<p>The Legal Profession Act 1967 (the “LPA”)² consolidates laws relating to the provision of legal services and legal profession in Malaysia.</p> <p>The Malaysian Bar³ oversees the regulation and enforcement of the LPA within the Peninsula Malaysia whereas the Sabah Law Society⁴ and the Advocates’ Association of Sarawak⁵ regulate and enforce the LPA within the states of Sabah and Sarawak, respectively. There is no overarching governmental regulatory body of legal profession in Malaysia. Instead, attorneys in the federal government sector are governed by the Judicial and Legal Service Commission whereas the private sector is governed through three main bar associates mentioned here.</p>
	2. Describe any licensure requirements governing the provision of legal services.	<p>Advocates and solicitors have the exclusive right to appear and plead in all Courts of Justice in Malaysia⁶.</p> <p>A person cannot practice as an advocate and solicitor unless his or her name is on the Roll of advocates and solicitors of the High Court and has a valid practicing certificate⁷.</p> <p>All matters pertaining to the qualifications and</p>

¹ This chapter was drafted with the support of Sharon Tan of Zaid Ibrahim & Co. (a member of ZICO Law) - Advocates & Solicitors.

² LPA - <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20166.pdf> (last visited on May 1, 2019).

³ The Malaysian Bar - <http://www.malaysianbar.org.my/> (last visited on May 1, 2019).

⁴ Sabah Law Society - <https://sabahlawsociety.org/> (last visited on May 1, 2019).

⁵ Advocates’ Association of Sarawak - <http://www.sarawak-advocates.org.my/> (last visited on May 1, 2019).

⁶ Section 35(1) of the LPA.

⁷ Section 36(1) of the LPA.

		<p>requirements for admission to the Bar in Malaysia are governed by the LPA. To be eligible to practice as an advocate and solicitor in Malaysia, a person must satisfy all the requirements provided in the LPA (e.g. academic requirements, practical requirements and formal requirements), including the requirement to hold a valid practicing certificate⁸.</p> <p>An unauthorized person who (a) acts as an advocate or solicitor or (b) willfully or falsely pretends to be, or takes or uses any name, title, addition or description implying that he or she is duly qualified or authorized to act as an advocate and solicitor, or that he is recognized by law as so qualified or authorized, is guilty of an offence and shall be liable to a fine not exceeding RM 2500 or to imprisonment for up to 6 months or both on conviction⁹.</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 Malaysian Bar is responsible for providing or assisting in the promotion of pro bono legal services known locally as the legal-aid scheme in Malaysia whereby an impecunious person may be represented by advocates and solicitors¹⁰ at no cost, including criminal defense representation.</p> <p>The Legal Aid Act 1971¹¹ provides for the administration of state- funded free legal aid to qualified persons for criminal, civil and Shariah matters.</p> <p>The criminal matters for which legal aid is available are:</p> <ol style="list-style-type: none"> 1. All criminal proceedings in which the accused not being represented by counsel pleads guilty to the charge or charges and wishes to make a plea in mitigation in respect thereof. 2. Criminal proceedings under the Child Act 2001 [Act 611]¹².

⁸ Section 36(1) and 37 of the LPA .

⁹ Section 37(1) of the LPA.

¹⁰ Section 42(1)(h) of the LPA.

¹¹ See <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/ACT%2026.pdf> (last visited on May 1, 2019).

¹² Originally governed by the Children and Young Persons Act 1947 followed by the Child Protection Act 1991 [Act 468] w.e.f 1 March 1992, applicable only in Peninsular Malaysia and Federal Territory of Labuan—see P.U. (B) 77/1992. The Child Protection Act [Act 468] was repealed by the Child Act 2001 [Act 611] w.e.f 1 August 2002, applicable throughout Malaysia—see P. U. (B) 229/2012.

	<p>3. Criminal proceedings under the Minor Offences Act 1955 [Act 336].</p> <p>Administered by the Legal Aid Department, relevant legislation and regulations (including amendments in 2017) are accessible online.¹³</p> <p>The Legal Aid Act 1971 mainly relates to state-funded legal aid and there are no such rules in Malaysia for pro bono legal services other than a body of rules governing legal profession, e.g. LPA. The Legal Aid Centre set up pursuant to the LPA is the main nongovernmental sources of pro bono services in Malaysia which can make its own rules and regulations.</p>
<p>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</p>	<p>The LPA does not impose any obligation to do pro bono work in Malaysia.</p> <p>Generally, advocates and solicitors undertake pro bono work through legal aid centers nationwide on a voluntary basis.</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>Every pupil¹⁴ aspiring to be a lawyer in Malaysia is required to serve at a legal aid center for at least fourteen (14) days during his/her period of pupillage¹⁵.</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>The legal aid centers provide legal assistance in the core areas of criminal law, family law, Shariah law, employment law and public law.</p> <p>According to the Universal Periodic Review of 2018 conducted by the United Nations under the auspices of the Human Rights Council, human rights violations remains a main concern in Malaysia¹⁶ and this is an area where there is currently an unmet demand for pro bono legal assistance.</p>
<p>5. Who are the main providers of pro bono legal services? e.g., NGOs, governmental or other public</p>	<p>While there are a number of NGOs providing pro bono legal services in collaboration with advocates</p>

¹³ See <http://www.jbg.gov.my/index.php/en/> (last visited on May 1, 2019), under the section entitled Acts and Regulations.

¹⁴ Section 12 (1) of the LPA.

¹⁵ See http://www.malaysianbar.org.my/bc_rulings/10.06._compulsory_attendance_of_pupil_at_a_legal_aid_centre.html (last visited on May 1, 2019).

¹⁶ Reported violations include restrictions on the freedoms of assembly, and expression; Peaceful Assembly; *Administrative Detention*; Sexual Orientation and Gender Identity. See Malaysia 2018 Universal Periodic Review Submission, available a <https://www.hrw.org/news/2018/03/29/submission-universal-periodic-review-malaysia> (last visited on May 1, 2019).

	services, schools and universities, private law firms (local or international) or corporate organizations?	and solicitors, the Bar Council of Malaysia (the “ Bar Council ”) is the main organization which coordinates private sector pro bono legal services in Malaysia.
(c)	Obstacles to Provision of Pro Bono Legal Services	
	1. Do lawyers require a license to provide pro bono legal services?	Only advocates and solicitors ¹⁷ who are licensed to practice law in Malaysia can provide legal services, including pro bono legal services, in Malaysia.
	2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?	<p>Malaysian law has been liberalized to permit foreign lawyers to practice in Malaysia under limited circumstances and in certain permitted areas of practice (<i>i.e.</i> a transaction regulated by Malaysian law and at least one other national law, or a transaction regulated solely by any law other than Malaysian law). Any foreign lawyer who intends to practice in Malaysia is required to register with the Bar Council under the LPA. In the case of a qualified foreign law firm, the Malaysian Bar has stated that there should be a proviso that such aspect of work regulated by Malaysian law shall be undertaken in conjunction with one or more advocates and solicitors of the High Court of Malaya holding a valid and subsisting practicing certificate.</p> <p>However, permitted practice areas, specifically, exclude: constitutional and administrative law; conveyancing; criminal law; family law; succession law, including wills, intestacy, probate and administration; trust law, where the settlor is an individual, and the law relating to charities and foundations, whether the settlor is an individual or a corporation; retail banking, including corporate or commercial loans to small and medium enterprises; registration of patents and trademarks; appearing or pleading in any court of justice in Malaysia; representing a client in any proceedings instituted in such a court or giving advice, whether or not the main purpose of which is to advise the client on the conduct of such proceedings; and appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Malaysia.¹⁸</p>

¹⁷ Section 3 of the LPA defines **advocate and solicitor** means an advocate and solicitor of the High Court admitted and enrolled under the LPA or under any written law prior to the coming into operation of the LPA.

¹⁸ See http://www.malaysianbar.org.my/trade_in_legal_services_formerly_known_as_gats/liberalisation_of_legal_services.html (last visited on May 1, 2019) for further information on the liberalization of legal services.

		Due to the exclusions mentioned above and also because pro bono services in Malaysia mainly relate to criminal matters, it is very difficult for foreign lawyers to undertake pro bono work.
	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?	Professional indemnity insurance is administered by the Bar Council on behalf of every advocate and solicitor. Regardless of the nature of the work conducted by an advocate and solicitor (i.e. legal service or pro bono legal service), all advocates and solicitors are insured under a single master policy before they can be issued their practicing certificates ¹⁹ . Such policy would also cover pro bono work in Malaysia.
	4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?	The Legal Profession (Publicity) Rules 2001 (“ LPPER 2001 ”) which provides the rules for general publication by an advocate and solicitor, prohibits the advertising of pro bono successes or soliciting new pro bono clients. These rules prohibit the following practices ²⁰ : (i) making any claim that an advocate or solicitor or any other advocate and solicitor practicing in his or her firm is a specialist or expert in any area of practice; (ii) make any direct or indirect reference to the number or proportion of cases that have been successfully undertaken by an advocate or solicitor or the advocate’s or solicitor’s firm, or to the advocate’s or solicitor’s earnings or the earnings of any other advocates and solicitors practicing in the same firm.
	5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?	The Malaysian Bar advocates continuing legal education (“ CPD ”) for any advocate and solicitor admitted from 1 July 2011 onwards and for pupils who commenced their pupillage from 1 July 2016 onwards. An advocate and solicitor who handles files from the legal aid centers will receive 1 CPD point for each file when the file is concluded ²¹ .
(d)	Sources of Pro Bono Opportunities and Key Contacts	

¹⁹ See <https://www.praktis.com.my/about-us/history-of-pii> (last visited on May 1, 2019).

²⁰ Rule 5(1)(b) of the LPPER 2001.

²¹ CPD Guidelines, updated as at 10 January 2017 - http://cpd.malaysianbar.org.my/wp-content/uploads/2017/05/CPD-Guidelines-Cycle-3_v1-2.pdf (last visited on May 1, 2019).

<p>1. Describe any governmental sources of pro bono and/or other legal services in Malaysia.</p>	<p>The Yayasan Bantuan Guaman Kebangsaan (“YBGK”) is a government legal aid center governed by the Legal Aid Act 1971 (as described above).²²</p>
<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Malaysia.</p>	<p>The Legal Aid Centre by the Bar Council legal aid center (Kuala Lumpur) is the main non-governmental sources of pro bono source in Malaysia.²³</p>
<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><u>In Peninsular Malaysia</u></p> <p>The Bar Council legal aid center is the main organization which coordinates the pro bono opportunities, including the registration process.²⁴</p> <p>Suaram - a non-governmental organization established in 1989 to monitor and advocate for the respect of human rights in Malaysia.²⁵</p> <p>UNHCR - a global organization dedicated to saving lives, protecting rights and building a better future for refugees, forcibly displaced communities and stateless people.²⁶</p> <p>United Nations Development Programme²⁷</p> <p>Tenaganita - a Malaysian human rights organization dedicated in assisting, building, advocating and protecting migrants, refugees, women and children from exploitation, abuse, discrimination, slavery and human trafficking.²⁸</p> <p>Women’s Aid Organization - seeks to end violence against women and promote gender equality in Malaysia.²⁹</p> <p>AWAM - an independent feminist organization in Malaysia committed to ending gender-based violence and upholding equality and rights for all.³⁰</p> <p><u>In Sarawak</u></p> <p>Advocates Association of Sarawak³¹</p>

²² See <https://www.kllac.com/ybgk-program/> (last visited on May 1, 2019).

²³ See <https://www.kllac.com/lac-program/> (last visited on May 1, 2019).

²⁴ See <https://www.kllac.com/lac-program/> and <https://www.kllac.com/volunteer-lawyers-registration-form/> (last visited on May 1, 2019).

²⁵ See <https://www.suaram.net/> (last visited on May 1, 2019).

²⁶ See <https://www.unhcr.org/en-my/> (last visited on May 1, 2019).

²⁷ See <http://www.my.undp.org/> (last visited on May 1, 2019).

²⁸ See <http://www.tenaganita.net/> (last visited on May 1, 2019).

²⁹ See <https://wao.org.my/> (last visited on May 1, 2019).

³⁰ See <https://www.awam.org.my/> (last visited on May 1, 2019).

		<u>In Sabah</u> Sabah Law Society's Legal Aid Clinic ³²
--	--	---

May 2019
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.

³¹ See <http://www.sarawak-advocates.org.my> (last visited on May 1, 2019).

³² See <https://sabahlawsociety.org/for-public/legal-aid-clinic/> (last visited on May 1, 2019).