

Pro Bono Practices and Opportunities in Malta¹

I. Introduction

Although many Maltese law firms do provide pro bono legal services, there is no structure, support or guidance in place to assist lawyers in doing so. The large majority of local firms are relatively small and the provision of pro bono legal services has not become established in the same way that it has in the U.S. and U.K. (for example) with the development of large, multinational law firms. This is partly due to the well developed legal aid system in Malta but also due to the absence of a link between private law firms, NGOs and clients.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	<p>1. Describe the laws/rules that regulate the provision of legal services?</p>	<p>The Malta Chamber of Advocates is the regulator and representative body of lawyers².</p> <p>The Commission for the Administration of Justice³ supervises the workings of the Courts, the members of the Judiciary, and the members of the legal profession. The Committee for Advocates and Legal Procurators is incorporated within this Commission.</p> <p>Following the setting up of the commission for the Administration of Justice, a Code of Ethics⁴ was drawn up in consultation with and approved by the Chamber of Advocates. The Code of Ethics binds advocates with the force of the law. The adjudicating authority is the Committee for Advocates and Legal Procurators.</p> <p>A draft law regulating the legal profession (the Legal Profession (Advocates) Regulation Act, 2012) has been prepared but never presented before Parliament. After stalling for some time, due to political wrangling and prolonged discussions amongst professional bodies, the final draft of the bill is expected to be tabled before parliament in the second half of 2019.</p>
	<p>2. Describe any licensure requirements governing the provision of legal services.</p>	<p>To practice law in Malta, individuals must be in possession of a warrant issued by the President of the Republic and under the Public Seal of Malta (section 79 of the Code of Organization and Civil</p>

¹ This chapter was drafted with the support of Andrew Zammit of GVZH Advocates.

² See <http://www.avukati.org/> (last visited on May 1, 2019).

³ See <http://www.judiciarymalta.gov.mt/commission-for-the> (last visited on May 1, 2019).

⁴ See <http://www.avukati.org/download/code-of-ethics/> (last visited on May 1, 2019).

		<p>Procedures (the “COCP”)⁵). Section 81 of the COCP provides that a person shall only be entitled to obtain such a warrant if they:</p> <ul style="list-style-type: none"> a) is of good conduct and good morals; b) is a citizen of Malta or a Member State (or is otherwise permitted to work in Malta); c) has obtained the academic degree of Doctor of Law in Malta, or another prescribed qualification at masters level, or a comparable degree from a competent authority in accordance with the principles of mutual recognition of qualifications, after having read law in Malta or a Member State; d) has, for a period of not less than one year, regularly attended at the office of a practicing advocate of the bar of Malta and at the sittings of the superior courts; e) possesses a full knowledge of the Maltese language; and f) has been duly examined and approved by two judges who have found him to possess the requisite qualifications and to be competent to exercise the profession of advocate in the Court of Malta. <p>Before beginning to practice law in Malta, those holding a warrant must take an oath of allegiance and an oath of office before the Court of Appeal in a public setting.</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>There are no specific rules that provide a framework for pro bono representation in Malta (although the rules which regulate the provision of legal services generally will apply to pro bono legal services).</p> <p>Lawyers' fees are fixed by law and are stated in a Schedule attached to the COCP (Chapter 12 of the Laws of Malta). However, lawyers can enter into different fee arrangements with their clients, provided that any such agreement is made in writing. Lawyers in Malta are not permitted to negotiate a fee based on a percentage of their</p>

⁵ See <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8577&l=1> (last visited on May 1, 2019).

	client's anticipated award from the legal proceedings.
2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?	Lawyers in Malta are not required to work a minimum number of pro bono hours.
3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?	Aspiring lawyers in Malta are not required to complete a minimum number of hours of pro bono legal services to become licensed lawyers. However, in 2017 a legal clinic was formally inaugurated in the Law Faculty at the University of Malta ⁶ . Serving at the legal clinic has become obligatory for all law students reading for their Masters and carries a significant credit weighting.
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>Refugee and immigration matters are pervasive in Malta given the country's geographic location. As a result these present the main opportunities for the provision of pro bono legal services.</p> <p>The provision of pro bono legal services in Malta could also include:</p> <ul style="list-style-type: none"> • Provision of training and/or advice to vulnerable clients and/or groups; • Material support to NGOs or other organizations implementing access to justice projects; • Litigation support and/or training to NGO lawyers; • Assistance with drafting volunteer and administrative policies; and • Non legal support such as provision of office spaces or secretarial support⁷.
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>Some private law firms perform pro bono work in Malta (examples are listed at section II.(d)2.). However, it is less common for individual sole practitioners to do so.</p> <p>A number of NGOs provide free legal advice to clients. Some of these are listed at section II.(d).2.</p>

⁶ See https://www.um.edu.mt/crc/projects/legal_clinic (last visited on May 1, 2019).

⁷ Mckeown M., Director of Global Pro Bono, PILnet, How Can Pro Bono Legal Services Improve Access to Justice in Malta? Presentation given on 13th January 2017, Valletta, Malta

		<p>The legal clinic set up by the Faculty of Law at the University of Malta also assists consumers and asylum seekers by providing pro bono legal support.</p> <p>The Aditus Foundation⁸ is actively involved in assisting asylum seekers by safeguarding their fundamental human rights.</p>
(c)	Obstacles to Provision of Pro Bono Legal Services	
	1. Do lawyers require a license to provide pro bono legal services?	Lawyers in Malta do not require any other license in addition to the regular warrant required to practice law.
	2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?	<p>The provision of temporary services in Malta by a lawyer from a non-EU Member State under his/her home title is not permitted.</p> <p>The EU has comprehensive provisions covering the free movement of lawyers from EEA countries and Switzerland. Collectively these permit EEA lawyers to provide services freely cross border within the EEA, to establish and provide legal services in host as well as home country and international law and to requalify as a host country lawyer.</p> <p>The Maltese legislation makes no mention of foreign legal consultancy licenses for non-EEA nationals and only covers the requirements which implement the European Establishment Directive. An EEA lawyer who has established in Malta must register with the Chamber of Advocates, adhere to the Maltese code of conduct and practice under their home title.</p> <p>EEA lawyers may appear in court provided they do so in association with a local lawyer. Other nationals do not have the right to appear.</p> <p>A European lawyer who wishes to requalify as a Maltese lawyer may do so but must have been established as a Registered European Lawyer in Malta for a minimum of three years and have obtained experience in local law. Lawyers from other EU or EFTA member states or from Switzerland, who do not have three years' experience and residency in Malta may sit an aptitude test. Lawyers from outside the EEA may</p>

⁸ See <https://aditus.org.mt/> (last visited on May 1, 2019).

	<p>apply to the Attorney General for special consideration.⁹</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>There is no requirement in Malta for lawyers to have professional indemnity legal insurance cover for any pro bono legal services that they provide.</p>
<p>4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?</p>	<p>The Chamber of Advocates’ Guidelines for Advertising¹⁰ are relatively strict and limit the content of such advertising to the dissemination of essential information concerning the advocates’ practice. The advertising may include the following information:</p> <ul style="list-style-type: none"> (a) Name of partners including academic qualifications; and name of firm (if applicable). (b) Office address and hours (if applicable). (c) Telephone, facsimile and electronic contact numbers. (d) Listing of Practice Areas. (e) Basis or method for charging. <p>The advertising material shall not include:</p> <ul style="list-style-type: none"> (a) statements of comparison with other practitioners, local or overseas, including by reference to size, number of quantity of clients, turnover and success rate. (b) descriptions of practice areas by reference to “expert”, “specialist” or similar terminology. (c) Identifications or description of clients. (d) Reference to any public or judicial office held or previously held by practitioners. <p>These advertising standards apply regardless of whether the work done is pro bono or on a commercial basis.</p>

⁹ See https://www.ibanet.org/ppid/constituent/bar_issues_commission/itils_malta.aspx (last visited on May 1, 2019).

¹⁰ See <http://avukati.org/wp-content/uploads/2017/08/GUIDELINES-FOR-ADVERTISING-30.09.2015.pdf> (last visited on May 1, 2019).

		We understand that the Chamber of Advocates is undertaking a discussion to revise these rules over the coming months, allowing a more flexible approach to advertising but maintaining the high ethical standards expected from advocates when publicizing their practice.
	5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?	Lawyers in Malta do not receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked.
(d)	Sources of Pro Bono Opportunities and Key Contacts	
	1. Describe any governmental sources of pro bono and/or other legal services in Malta.	<p>Legal aid is provided by the Maltese state and administered by the Legal Aid Agency¹¹. The Legal Aid Agency provides administrative support in respect of procedures or measures on legal aid, advocates for legal aid and curators.</p> <p>A separate entity, the Third Country Nationals Unit within the Ministry for Home Affairs and National Security¹², administers the provision of legal aid to asylum-seekers at appeal stage, and in order to challenge their administrative detention.</p> <p>Criminal Proceedings</p> <p>The right to legal aid in criminal proceedings is a constitutionally protected right and starts from the moment a person becomes a suspect. This right is also reflected in the Criminal Code.</p> <p>The Legal Aid Agency states that no means test is applied in criminal cases from the time when the person is held in police custody up until trial. However, in 2016, a charter published by the Courts of Justice Department within the Ministry of Justice, Culture and Local Government¹³ stated that a party would be entitled to legal aid “if the party lacks funds for legal representation”. The absolute right to a legal aid lawyer without a means test is therefore unclear.</p> <p>Civil Proceedings</p> <p>The COCP contains provisions that regulate the right to and the procedure for the provision of legal</p>

¹¹ Legal Aid Agency (Establishment) Order, S.L. 497.11 of the Laws of Malta

¹² See <https://homeaffairs.gov.mt/en/The-Ministry/Permanent-Secretariat/Pages/Third-Country-Nationals.aspx> (last visited on May 1, 2019).

¹³ Ministry for Justice, Culture and Local Government, Courts of Justice Citizens’ Charter, Courts of Justice Department, 28 July 2016, http://www.justiceservices.gov.mt/CourtServices/Courts_of_Justice_EN.pdf (last visited on May 1, 2019).

		<p>aid in civil proceedings. The law states that legal aid may be granted to any person: (a) who is a party to a civil dispute or who has good grounds for commencing civil legal action; and (b) whose maximum income did not exceed the national minimum wage and total assets did not exceed €6,988.12¹⁴. The general legal aid provided in civil proceedings does not apply to bringing an action for the correction or cancellation of any registration, or for the registration, of any act of birth, marriage or death.</p> <p>Other</p> <p>A number of specialized laws also guarantee the right to legal aid. For example:</p> <ul style="list-style-type: none"> • The victims of crime have the right to request a legal aid lawyer to assist them during criminal proceedings¹⁵; and • Persons who wish to appeal from the first instance decision of the Refugee Commissioner have the right to free legal assistance under the same conditions as Maltese nationals¹⁶. <p>Maltese law specifically states that a company registered under the Companies Act is not entitled to legal aid under any circumstance¹⁷.</p>
	<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Malta.</p>	<p>Private lawyers provide pro bono legal services to indigent clients. However, there is no structure in place for this and much of the contribution goes unnoticed. The following firms are active in this space: GVZH Advocates¹⁸; Ganado Advocates¹⁹; and Fenech & Fenech Advocates²⁰.</p> <p>Many freelance or smaller law firms provide pro bono advice, although it may not always be referred to in this way.</p> <p>A number of NGOs provide free legal advice to clients. These include the Jesuit Refugee Service²¹, Aditus Foundation²², and the UN Refugee Agency's</p>

¹⁴ Article 912 COCP

¹⁵ Article 10, Victim of Crime Act, Cap. 539 of the Laws of Malta

¹⁶ Article 7(5) Refugees Act, Cap. 420 of the Laws of Malta

¹⁷ Article 926 COCP

¹⁸ See <https://www.gvzh.com.mt/about-us/social-responsibility/> (last visited on May 1, 2019).

¹⁹ See <https://www.ganadoadvocates.com/about/corporate-responsibility/pro-bono/> (last visited on May 1, 2019).

²⁰ See <https://fenechlaw.com/about-us/pro-bono-and-csr/> (last visited on May 1, 2019).

²¹ See <http://jrusa.org> (last visited on May 1, 2019).

²² See Malta Pro Bono Directory <http://www.refugeelaidinformation.org/malta-pro-bono-directory>

		refugee services ²³ . NGOs also refer pro bono clients to individual lawyers and law firms.
	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?	There is no public or private organization with which a local or foreign attorney can register to be made aware of pro bono opportunities.

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²³ See The UN Refugee Agency in Malta <http://www.unhcr.org.mt/> (last visited on May 1, 2019).