

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

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

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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

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

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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 ITALY

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. Instead, *pro bono* activities are primarily restricted to (i) the state provision of free legal aid to those unable to afford a lawyer in judicial matters, and (ii) legal assistance based on ethical and social motivations of nonprofit entities or individuals who cannot pay for legal services, as determined by scholarly and case law interpretation of the applicable rules to legal activity in Italy.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN ITALY

A. The Legal Profession

In Italy the number of lawyers (approximately 210,000) is impressively high with respect to the total population of the country (approximately 60 million). Lawyers are largely located in the main Italian business centers, such as Rome, Milan and Turin and also in industrial cities located 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 business law to banks, funds and corporations, and are mainly located in Milan and Rome. However, generally speaking, the Italian legal market is still mainly composed of sole practitioners or small-size firms.

With reference to the Italian judicial system, there are different categories of jurisdiction: (i) the constitutional court; (ii) ordinary courts; and (iii) special courts. Each of these courts has different competences and functions:

- The constitutional Court is competent for: (a) 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 by judges competent for 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:
 - The Court of First Instance (*Tribunale*)
 - The Court of Appeal (*Corte di Appello*), having competence over appeals against the decisions of the Courts of First Instance
 - Court of Cassation (*Corte di Cassazione*), located in Rome, which is the highest court in Italy, having competence 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
- Special courts have jurisdiction in the following matters:
 - Regional Administrative Courts for the 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

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 articles 2229 and following of the Italian Civil Code ("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 a case of willing misconduct or serious negligence.

In addition, lawyers' activity shall be carried out in compliance with the provisions of the Italian Code of Professional Conduct and Ethics (“**Professional Rules**”), which, *inter alia*, provides for the duties of integrity, dignity, honesty and fairness, as well as the prohibition of poaching of clients and requesting compensation not comparable with the legal assistance effectively rendered.

The Professional Rules were 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 over appeals from the disciplinary decisions against lawyers issued by local Bar Associations.

The above-mentioned local Bar Associations are located in any city where a Court of First Instance is present and are 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 to update attorneys in their profession.

B. Legal Aid

Section 24(3) of the Italian Constitution guarantees the fundamental right to proper representation in court.¹ In the past, the protection of the right enshrined in Section 24(3) of the Constitution was ensured by a system of “free legal representation” (*gratuito patrocinio*).² 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.³ Under the law, free legal representation of indigents was considered an attorney’s “honorary and mandatory task.”

However, the system did not work properly: indigents often received inadequate and inferior legal services from lawyers who lacked commitment to their cases. The need for reform became apparent, and in 1973 a new system of legal aid was introduced. Under the new system, entitled “*patrocinio a spese dello stato*,” the state bore the cost of the legal representation of indigents and marked the end of the older system of *gratuito patrocinio*.

Legal aid is available only in litigation. Aid is available in all phases of litigation and before any court, and is available to Italian citizens, non-Italian citizens, and stateless individuals who satisfy specific objective requirements of the law.⁴ In criminal cases, legal aid is available to noncitizens regardless of whether they are regularly present in Italy; in civil and administrative cases, residency in the country is required.⁵ Nonprofit associations and entities that do not carry out economic activity are also entitled to legal aid, but only in civil and administrative cases.

In order to qualify for legal aid, an individual’s annual income must be below certain thresholds set every two years by a decree of the Ministry of Justice. The thresholds vary in accordance with the consumer price index for employees and workers ascertained by the Italian National Institute of Statistics (“**ISTAT**”).⁶ In both civil and criminal proceedings, the court will also take into account the income earned by family members. In civil, administrative and tax law proceedings, applicants for legal aid must also show that their claims are not manifestly unfounded.

In criminal cases, applications for legal aid are addressed to 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.

Once granted legal aid, the beneficiary can appoint the attorney of his or her choice, with one limitation; the attorney must have registered for legal aid with the Court of Appeals in the district in which the

¹ Pursuant to Section 24(3) of the Constitution, “[i]ndigents shall be entitled, through special legislation, to proper means for action or defense before any court.”

² See Royal Decree No. 3282 of Dec. 23, 1923.

³ In civil and commercial matters, these specific commissions are composed of two judges and the president of the local bar; in criminal matters, it is the president of the competent court.

⁴ Judgment No. 219 of Jun. 1, 1995 of the Constitutional Court.

⁵ See Judgments No. 2684 of Mar. 10, 2003 of the Supreme Civil Court and No. 144 of May 14, 2004 of the Constitutional Court.

⁶ Section 77 of the Decree of the President of the Republic No. 115 of May 30, 2002.

court hearing the case is located. Registration is conditional upon meeting certain requirements, including membership in the Bar for at least two years.⁷

The fees paid to the attorney providing legal aid are determined by a ruling of the court that decided the case. Such fees may not exceed the average of those set by ministerial decree for the type of work done. In civil, administrative and tax law proceedings, if the legal aid beneficiary wins the case, the court may order the other party to refund to the state the fees paid to the attorney representing the indigent party.

II. *PRO BONO* IN ITALY: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *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 alios*, Latham & Watkins, Linklaters, Clifford Chance and Gianni Origoni Grippo Capelli).

Pro bono legal services can also be offered to nonprofit associations pursuing social objectives, nongovernmental organizations, charity organizations, and foundations for nonjudicial matters, *provided that pro bono* work is carried out in accordance with the above-mentioned Professional Rules governing the legal profession in Italy.

B. Barriers To *Pro Bono* Work And Other Considerations

There are several barriers to, and other considerations regarding, *pro bono* work under Italian law and Professional Rules.

On August 2, 2006, Law decree No. 223 (the so-called "**Bersani Decree**") became law. The *Bersani Decree* was designed to address competition concerns within the Italian legal market.

Specifically, the *Bersani Decree*: (1) abolished statutorily fixed and minimum attorneys' fees; (2) lifted the prohibition on contingency fees;⁸ and (3) permitted lawyers to advertise their title, professional specialization, the characteristics of their services, and the costs of their professional services.⁹ 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.¹⁰ Still, 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.¹¹

⁷ 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 Feb. 24, 2005.

⁸ 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.

⁹ 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, 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.

¹⁰ 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).

¹¹ 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 anticompetitive 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

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 barriers preventing the free competition in the Italian legal services market and ensure transparency regarding the chargeable fees to clients. In particular, the *Liberalizzazioni Decree*: (1) entirely abolished the statutory attorneys’ fees; and (2) expressly stated the principle of freedom of the parties in determining the applicable fees on 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. Failing to indicate such costs, it should be pointed out that any different agreement regarding the applicable fees is null and void.

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 the legal activity in Italy provided by the Professional Rules, lawyers cannot carry out any conduct directly to the acquisition of clients’ relationships by means not conforming to principles of propriety and decorum (including the offer of legal services free of charge in breach of principle 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 limited to nonprofit organizations, nongovernmental organizations, charity organizations and foundations unable to pay for legal services, in order to realize their ethical and social purposes.

In Italy, services supplied by professionals (such as lawyers) without consideration are not taxable under Italian VAT law.¹² This law has been interpreted to exclude tax services provided by professionals free of charge from the VAT. This conclusion (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.

Taken together, national laws and the Professional Rules 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 practicing law.

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 Professional Rules setting forth *inter alia* limits for advertising the activity of attorneys, which accordingly restrain the size of *pro bono* work carried out in Italy.

Finally, it is generally difficult for Italian lawyers who intend to provide *pro bono* legal services to establish a professional relationship with nonprofit entities due to the fact that such organizations primarily focus on social activities, with a secondary focus on legal matters.

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 noncompliance 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 European Union regulation.

¹² See Article 3 of the Presidential Decree 26 Oct. 1972, No. 633.

C. *Pro Bono Resources*

- Italian Bar Association (www.consiglionazionaleforense.it); and for cities where legal services are mostly provided:
- Milan Bar Association
 - Address: Via Carlo Freguglia 1
20122 Milan, Italy
Phone: +2.54.92.92
Website: www.ordineavvocatimilano.it
- Rome Bar Association
 - Website: www.ordineavvocati.roma.it
Email: consiglio@ordineavvocatiroma.org
- Turin Bar Association
 - Website: www.ordineavvocatitorino.it

III. 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 nonprofit entities for deserving projects in nonjudicial 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/sponsor *pro bono* work.

Finally, it remains to be seen whether the new EU regulations will effectively create a *pro bono* obligation for lawyers practicing 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.

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Pro Bono Practices and Opportunities in Italy

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