



PRO BONO LEGAL WORK IN HONG KONG

A GUIDE FOR IN-HOUSE COUNSEL



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This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be legal advice, and should not be used as a substitute for taking legal advice in any specific situation. The authors will accept no responsibility for any actions taken or not taken on the basis of this publication.

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FOREWORD

Article 35 of the Basic Law of the Hong Kong Special Administrative Region guarantees, among other things, that Hong Kong residents shall have the right to confidential legal advice and choice of lawyers for timely protection of their lawful rights and interests. But such constitutionally protected rights to legal advice can be expensive (sometimes prohibitively so) and it is stating the obvious to say that not everyone who needs legal advice is able to secure the services of a suitable lawyer. This fact is brought home by the frequent appearance in our courts of litigants acting in person. This is neither in their best interests nor those of the courts themselves. And it is not just in litigious matters that parties are disadvantaged by not having legal advice or representation. There are many other facets of life in which legal services are an advantage that many take for granted but others simply cannot afford or are otherwise unable to access.

Fortunately, it has long been a tradition amongst many of those in the legal profession in Hong Kong and elsewhere to give back to their respective communities by acting for others on a gratuitous or pro bono basis: as, for example, in *Designing Hong Kong Ltd v Town Planning Board* (2018) 21 HKCFAR 237 (see paragraphs [9] and [65]). Their altruism should be applauded, encouraged and emulated. Not only is it a benefit to the otherwise unrepresented client, it is also a benefit to society as a whole; for it is worth remembering that the expression *pro bono* is an abbreviation for the phrase *pro bono publico* meaning “for the public good”. From the perspective of our legal system as a whole, we are better off in the long run if those who have need of legal advice or representation have it, since this will contribute to the system working as it should and arriving at fair and just resolutions unaffected by an inequality of arms. For a recent example of the utility of *pro bono* representation in the context of criminal proceedings, see *HKSAR v Law Yat Ting (No.2)* (2015) 18 HKCFAR 420.

This guide on *Pro Bono Legal Work in Hong Kong* admirably summarises the regulatory framework in which *pro bono* services may be provided in this jurisdiction. It is practical, informative and straightforward. It is written as a guide for in-house counsel in particular, a growing and significant sector of the legal professional services industry here in Hong Kong as elsewhere. As Patron of the Association of Corporate Counsel Hong Kong (formerly the Hong Kong Corporate Counsel Association), I am delighted to see members of the Association so proactively supporting this laudable initiative. Sharyn Ch’ang and Davyd Wong (who together co-chair the ACC Hong Kong Pro Bono Legal Services Committee) and all those whose contributions are mentioned in the Acknowledgements section of this guide are to be congratulated for bringing this guide into being and I wish them much success in their efforts to assist and encourage others to follow their worthy examples.

Joseph Fok
Permanent Judge
Court of Final Appeal
Hong Kong
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Last, but not least, we wish to thank our members who have not only generously contributed their expert knowledge and skills to this project, but also that most precious resource, their time. In particular we wish to acknowledge the following ACC HK members below.

We hope this Guide will be a useful resource for all Hong Kong in-house counsel, and encourage your active participation to support the wider local community leveraging your legal skills and experience to assist those in need. Your feedback for future editions is most welcome.

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With many thanks

Sharyn Ch'ang and Davyd Wong

Directors of ACC HK and Co-Chairs, Pro Bono Legal Services Committee



The Inaugural ACC Hong Kong Pro Bono Legal Services Stakeholders Summit, 27 March 2018.

GLOSSARY

ACC HK	Hong Kong Corporate Counsel Association Limited, known as the Association of Corporate Counsel, Hong Kong, a chapter of the Association of Corporate Counsel
Australian Scheme	National Pro Bono Professional Indemnity Insurance Scheme, Australia
Centre	Australian Pro Bono Centre
Circular	Law Society of Hong Kong Circular 16-609
CLAS	Criminal Legal Aid Scheme
CSR	Corporate social responsibility
FLR Rules	Foreign Lawyers Registration Rules
Law Society	Law Society of Hong Kong
Legal Advice	Legal advice and direct client representation
NGO	Non-governmental organisation
PBSO	Singapore's Pro Bono Services Office
PI	Professional Indemnity
Pro Bono Services	Legal advice and professional assistance
Professional Assistance	Legal work that is not legal advice, but that draws on a lawyer's legal and professional knowledge such as providing legal information, legal research, training on legal issues, policy and advocacy work
Professional Conduct Guide	The Hong Kong Guide to Professional Conduct
RFL	Registered Foreign Lawyer in Hong Kong
Rule 7 Exemption	Exemption sought by a Hong Kong qualified Solicitor, pursuant to Rule 7 of the Solicitors (Professional Indemnity) Rules (Cap 169M), from having to maintain indemnity in accordance with Rule 6 of the Solicitors (Professional Indemnity) Rules
Solicitors	Hong Kong qualified solicitors regulated under the Legal Practitioners Ordinance (Cap 159)

1. INTRODUCTION

In-house counsel are a valuable but underutilised pro bono resource to the Hong Kong community, including charity organisations, NGOs and disadvantaged and marginalised individuals who have legal support needs. In addition to general drafting, legal research, commercial and presentation skills, in-house counsel often have expertise in such specialities as contract law, employment arrangements, legal and business structures, property and leasing, risk management, insurance and intellectual property, all of which are potentially in-demand services for charities and NGOs.

While there are no definitive statistics in Hong Kong about the total number of in-house counsel, ACC HK's membership is close to 1,000 in-house counsel and continues to grow. Even a percentage of this number represents a significant legal firepower that could be applied to support worthy causes and under-privileged individuals unable to access justice via normal channels. The benefit is also two-way, as participation in well-managed pro bono programs and clinics can also broaden and enhance an in-house counsel's skills and expertise in new areas of law and practice.

2. WHAT ARE PRO BONO SERVICES?

'Pro bono' comes from the Latin phrase 'pro bono publico' which means 'for the public good'. In the legal context it generally means the provision of free legal services to those who would not otherwise be able to access legal assistance or representation, or whose matter raises an issue of public interest. This typically means providing legal advice to individuals or organisations directly or via legal clinics, and/or court representation. However pro bono can also encompass a broader set of legally related services including the provision of legal education, legal research, and writing policy or position papers on pertinent public interest topics or law reform.

In this Guide a distinction is made between legal advice and representation of clients ("**Legal Advice**"), and that of a broader set of work that draws on a lawyer's legal and professional knowledge such as providing legal information, legal research, training on legal issues, policy and advocacy work ("**Professional Assistance**"). This distinction is important because of Hong Kong's regulatory regime that applies to the provision of Legal Advice by lawyers.

In this Guide, **Pro Bono Services** means both Legal Advice and Professional Assistance in a general sense, but as discussed below, given the current Hong Kong regulatory regime, in-house counsel cannot provide Legal Advice directly to clients (other than their employers) on their own account.

Fortunately, notwithstanding Hong Kong's regulatory challenges, there are various ways that in-house counsel can get involved in providing Professional Assistance on a pro bono basis. The scope of those services and the regulatory barriers to in-house counsel providing Legal Advice, are addressed in detail in sections 4 and 5 of this Guide.

3. WHY ESTABLISH AN IN-HOUSE PRO BONO PROGRAM?

There are four compelling reasons why an organisation may wish to establish an in-house pro bono program:

3.1 To support the professional responsibility of its lawyers

A primary reason for undertaking pro bono services is the individual ethical and professional responsibility that each lawyer has to ensure equal access to justice, given their privileged position as a member of the profession having the exclusive right to practise law.

This was reflected in the Honourable Rimsky Yuen's speech¹ (the then Secretary for Justice) at the Law Society Pro Bono and Community Work Award Ceremony in 2014, where he commented that:

"While we stress that the rule of law is a fundamental core value of our society as well as the bedrock of Hong Kong's success, it is of the utmost importance to remind ourselves that access to justice is an indispensable element of the rule of law. The provision of pro bono services brings immense benefits not only to those who require assistance, but also the community as a whole as such services enhance access to justice".

"The Hong Kong SAR Government encourages and supports pro bono legal services."

A key way in which an organisation can contribute to the community is to facilitate greater access to justice through the development of a structured in-house pro bono program, which will enable its lawyers to provide valuable pro bono assistance utilising their specialist skill sets.

¹ <https://www.doj.gov.hk/eng/public/pdf/2014/sj20141205e.pdf>

3.2 To strengthen and complement its corporate social responsibility program

Most organisations place importance on giving back to their communities as a good corporate citizen. CSR strategies usually address the organisation's relationship with the community with regard to volunteering, charitable giving, diversity and sustainability.

Through a structured in-house pro bono program, the legal team can assist individuals and not-for-profit organisations within the organisation's CSR community or priority areas, providing pro bono legal services to the beneficiaries of the organisation's CSR program. Alignment can be achieved by the organisation identifying projects or priority areas that support, or are consistent with, the focus of its existing CSR program. It is possible for in-house counsel to also partner with other staff within the organisation to work together on skills-based volunteer projects.

The in-house legal team's contribution to the organisation's CSR goals reinforces, and acts as a clear demonstration of, the organisation's values.

3.3 It makes good business sense

An in-house pro bono program for lawyers can also have a positive impact on an organisation's business operations.

Some of the benefits that a pro bono program can have for an organisation include:²

- a) making the legal team more attractive to high quality legal recruits;
- b) enhancing staff morale, loyalty, and the retention of valued employees; and
- c) demonstrating the organisation's commitment to the principles outlined in its CSR policies.

3.4 Direct benefits for the lawyers who participate, which in turn benefits the organisation

These include:³

- a) the development of professional skills and confidence, and a broader perspective, which can then be applied to in-house legal work;
- b) variety in work, as often pro bono assistance calls on a broader range of legal skill sets and in a different context to those usually encountered in a commercial or in-house environment; and

- c) strengthening the in-house legal team's relationships with:
 - i. internal clients, particularly when the legal team's work complements the charitable or volunteer activities of other teams;
 - ii. each other, as it is an activity done outside of each team member's 'day job'; and
 - iii. law firms, barristers and other external groups or parties, when they undertake pro bono legal projects together.

4. WHAT REGULATORY AND INSURANCE ISSUES APPLY TO PRO BONO SERVICES IN HONG KONG?

There are several issues in-house counsel must consider before engaging in Pro Bono Services in Hong Kong, particularly around the provision of Legal Advice. These issues must be understood and ideally addressed in your organisational pro bono policy to enable appropriate decisions to be made about which projects or work to take on. The primary factors to consider are the regulatory and insurance requirements applicable in Hong Kong to legal practitioners, and the restrictions on the giving of Legal Advice, including professional obligations and ethics.

Bearing in mind that in-house counsel in Hong Kong are not required to be admitted to practice as solicitors or barristers in Hong Kong, or to hold local practising certificates, this also has implications for the type of Pro Bono Services which in-house counsel can offer to external clients.

4.1 Practising Certificates

The scope of Pro Bono Services an in-house counsel can provide will differ depending on whether the in-house counsel is a Hong Kong qualified solicitor ("**Solicitor**") or a foreign qualified lawyer ("**Foreign Lawyer**").

Hong Kong qualified solicitors

An in-house counsel who is a Solicitor is known as an "employed solicitor".⁴ Under Hong Kong law, and in broad terms, only four groups of people can practice Hong Kong law. Solicitors in Hong Kong law firms or private practice, barristers admitted to the Hong Kong Bar, government lawyers and employed solicitors, that is, in-house counsel.

² See E Lardent, The Business Case for In-house Pro Bono, 2006 at http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac_2012/06-1_preventing_runaway_arbitration.authcheckdam.pdf

³ As above.

⁴ Practice Direction N – Employed Solicitors. http://www.hklawsoc.org.hk/pub_e/professionalguide/volume2/default.asp?cap=24.15

Section 7 of the *Legal Practitioners Ordinance*, requires that in order to practice Hong Kong law, all Solicitors, including an employed solicitor, must be on the roll of solicitors, not be suspended from practice, have a current practising certificate, and comply with the indemnity rules.

In the case of employed solicitors, they are **only** allowed to work for their employer,⁵ and as a result they are exempt from compliance with the Law Society's indemnity rules with which they would otherwise have to comply like Solicitors in law firms or in private practice. This means that employed solicitors are not covered by the Law Society's Indemnity Scheme, and it is left to the discretion of the employer as to whether to purchase its own Professional Indemnity ("**PI**") cover in respect of the employed solicitor's work. Given the circumstances, there is a requirement that an employed solicitor inform other parties involved in a matter, where he or she is acting as a Solicitor, that he or she is not covered by the Law Society's Indemnity Scheme.⁶

Aside from the restriction of who they can work for and the PI issue above, an employed solicitor acting in the course of their employment for their employer is in the same position as a private practice solicitor acting for a client in every other aspect in so far as having to comply with their professional and ethical obligations as Solicitors. Accordingly, Principle 2.08 of *The Hong Kong Guide to Professional Conduct* ("**Professional Conduct Guide**") states that a Solicitor who works for a non-solicitor employer must comply with the *Solicitor's Practice Rules (Cap159H)*, Practice Directions and the rules and principles of professional conduct.

The implications of these restrictions for employed solicitors who wish to provide Pro Bono Services is that they cannot provide Legal Advice to the public unless they obtain an exemption from the Law Society Council under Rule 7 of the Solicitors (Professional Indemnity) Rules ("**Rule 7 Exemption**"). This is addressed further at section 4.3 below, and it means that in-house counsel should not provide Legal Advice directly to the public unless they have obtained the Rule 7 Exemption.

Foreign Qualified Lawyers

If a Foreign Lawyer wishes to provide legal advice to the **public** (and not their employer), as a practitioner of foreign law then he or she must register with the Law Society of Hong Kong ("**Law Society**") as a Registered Foreign Lawyer ("**RFL**"). However, Foreign Lawyers employed as in-house counsel are unable to register as an RFL with the Law Society. Section 4 of the *Foreign Lawyers Registration Rules* ("**FLR Rules**") requires that the lawyer prove that he or she will be appropriately covered by PI insurance. Section 6 of the FLR Rules defines this as being covered in a manner and to the extent similar to the indemnity provided to a Solicitor under the fund established under section 3 of the *Solicitors (Professional Indemnity) Rules (Cap. 159 sub. Leg.)*.⁷ As non-law firms are unable to participate in the Law Society's indemnity program, it is impossible to fulfil this requirement. Therefore, Foreign Lawyers working as in-house counsel are unable to offer Legal Advice to the public and only RFLs are able to do so.

Furthermore, section 12 of the FLR Rules, prohibits all Foreign Lawyers, whether registered or not, from advising on Hong Kong law.⁸ This can impose limitations on the Pro Bono Services that foreign lawyers can engage in, as often considering or advising on Hong Kong law is involved. However, the unregistered Foreign Lawyer can still meaningfully engage in pro bono work by assisting or partnering with Hong Kong qualified lawyers such that all Hong Kong law-related work is done by a Hong Kong Solicitor (either within the in-house legal team or by an external law firm partnering with the corporation on pro bono services). Care must be taken to ensure that the unregistered Foreign Lawyer does not effectively offer legal services to the public as this will be in breach of the FLR Rules.

4.2 Professional Indemnity Insurance

Prior to undertaking any pro bono services which would be Legal Advice, in-house counsel should ensure they have appropriate PI cover in place through the means described in this section. This is important because every solicitor must have compulsory indemnity as a

⁵ Lord Denning MR in *Alfred Crompton Amusement Machines Ltd v Commissioners of Customs Excise (No.2)* [1972] 2 All ER 373 (CA) at 376, commented in relation to in-house lawyers: "In every case these legal advisers do legal work for their employer and for no one else. They are paid, not by fees for each piece of work, but by a fixed annual salary. They are, no doubt servants or agents of the employer: . . . they act for one client only".

⁶ Practice Direction N – Employed Solicitors.

⁷ In practice this requires the applicant to provide a "certified copy of the insurance policy that the firm subscribes. Confirmation from the firm specifying that you are covered by the insurance policy (if only the firm's name but not your name appears on the policy) is required." See the Law Society of Hong Kong's Information for Registration as a Foreign Lawyer, Section C, Notes For Completing The Application Form (Form FL) For Registration As A Foreign Lawyer http://www.hklawsoc.org.hk/pub_e/admission/Foreignlawyers/pdf/fl-info.pdf

⁸ Although Registered Foreign Lawyers are able to advise on Hong Kong law if supervised by a Hong Kong qualified lawyer with a current practising certificate.

matter of Hong Kong law, and it is therefore a regulatory requirement. Importantly, even if in-house counsel are not providing Legal Advice and are only providing general assistance on a pro bono basis, you must provide your client with comfort that you are insured for the services being provided, whether or not that is Legal Advice or other Professional Services.

For solicitors, rule 6(1) of the *Solicitors (Professional Indemnity) Rules (Cap 159M)*, requires that every solicitor who is, or is held out to the public as, a solicitor in the business of practising as a solicitor, in Hong Kong shall be required to have and maintain indemnity, subject to the Rule 7 Exemption.

Indemnity in this context refers to the PI Scheme provided by the Law Society of Hong Kong which provides indemnity against loss arising from claims in respect of any civil liability incurred by a solicitor in connection with his or her practice.⁹ The coverage required is up to HK\$10 million per claim inclusive of costs. This mandatory scheme only applies to law firms; corporate in-house legal teams or corporations are not able to participate and as a result they are not covered.

So while law firms in Hong Kong are required to have PI insurance in place for all services, including pro bono services, as discussed above, the same requirement does not apply to employed solicitors. While employers of in-house counsel can obtain a private policy to cover the legal work done by their in-house counsel, this is (as far as we understand) not common practice. Therefore, in the majority of cases, in-house counsel do not have PI insurance coverage in Hong Kong.

Even where an employer of an in-house lawyer chooses to purchase PI cover, this will generally only cover work which that lawyer conducts on behalf of the corporation, and generally not to Legal Services or Professional Assistance provided to pro bono clients.

This means that any in-house counsel wanting to offer services to external clients (i.e. not their employer) should first check their corporation's own insurance policy and the scope of that coverage. If it does not cover external clients or the kind of services they wish to provide on a pro bono basis, then they should obtain a separate policy or extra coverage under their existing policy.

In the absence of that, there are other limited options available such as partnering with a law firm on the pro bono project or matter, and request that the law firm's PI cover extend to cover the work of in-house counsel, and all work will be done under the supervision of the law firm (or subject to whatever other restrictions may apply under the firm's policy).

In very limited circumstances, where you are providing Professional Assistance to an NGO that has its own insurance, you may also consider whether it is possible to have their policy extended to the in-house legal team, as some policies cover volunteers. Importantly, this should be explored and documented prior to providing any pro bono services.

4.3 Applying for a Rule 7 Exemption and Circular 16-609

As noted above, Rule 6 of the *Solicitors (Professional Indemnity) Rules (Cap 169M)* requires all solicitors in practice to maintain indemnity. The Council of the Law Society can however grant, on such terms as it sees fit, an exemption to the compulsory requirement to maintain indemnity under Rule 7 of those rules (that is, the Rule 7 Exemption). In 2016, the Law Society issued Circular 16-609 ("**Circular**") introducing a new procedure for obtaining a Rule 7 Exemption.

The Circular states that if "*a solicitor is held out to the public as providing pro bono services and does so with some degree of formality and regularity, as opposed to an informal one-off basis*" and "*if the pro bono legal services are offered in the solicitor's personal capacity and not as part of the practice of his or her law firm*" then this equates to the solicitor carrying on practice within scope of Rule 6 of the Professional Indemnity Rules. Therefore, such services cannot be provided unless covered by the Law Society's Professional Indemnity Scheme. As discussed above, this causes an issue for in-house counsel who are generally working for organisations who cannot participate in the Law Society's Professional Indemnity Scheme, and consequently they cannot meet the requirements of Rule 6.

Accordingly, the only way for in-house counsel who are Solicitors to provide legal advice to the public on a pro bono basis on a regular and formal basis, is to obtain an exemption from the Law Society Council. The Rule 7 Exemption allows a Solicitor to provide pro bono legal services without having to be covered by the Law Society's Professional Indemnity Scheme, but as one of the conditions to obtaining the exemption, the Solicitor will be required to have PI insurance which is equivalent to the coverage provided by the Law Society's Professional Indemnity Scheme.

This provides flexibility for a Solicitor, and in particular in-house counsel, wanting to provide Pro Bono Services. However, the reference to 'Solicitor' in this context means a Hong Kong qualified lawyer and not a Registered Foreign Lawyer. Therefore the exemption will only apply to in-house counsel, who are also Hong Kong qualified lawyers.

⁹ Section 73A, Legal Practitioners Ordinance (Cap 159).

The process to apply for a Rule 7 Exemption involves the following:

- The applicant must complete a prescribed application form, available at the Law Society Registry;
- Pay HK\$1,000 per organisation that he or she does pro bono work for;¹⁰
- Provide a certified copy of the full set of professional indemnity insurance policy of the organisation;
- Provide a Statutory Declaration declaring that PI insurance of the organisation is in a manner and to an extent similar to that provided by the Professional Indemnity Rules; and
- Submit the above to the Consents Committee of the Law Society.

According to the Circular, the Law Society will consider the following when assessing an application for exemption:

- Whether the pro bono work breaches any laws, rules and regulations;
- Whether the organisation has a “system” in place which is acceptable to the Law Society. On this point the Law Society will take into account whether the organisation has mechanisms in place to assist the applicant to comply with applicable professional requirements, including policies in relation to confidentiality, conflicts of interest and record keeping; and
- Whether the organisation charges the public a fee for the pro bono services and whether the applicant provides his or her services for free.

To obtain the Rule 7 Exemption, a Solicitor must apply to the Consents Committee of the Law Society, and once granted, the exemption will be valid for one year only, to be reassessed on a yearly basis.

The Rule 7 Exemption is a useful new development, but it still presents formidable challenges to in-house counsel wishing to provide legal advice directly to the public, given the conditions required to be fulfilled and maintained to obtain the exemption. The exemption, if granted, only allows the solicitor in their personal capacity to provide pro bono services, but there is still a burden on the organisation through which the in-house counsel is providing services (e.g. an NGO, where the recipient of legal services is the NGOs “client”) to obtain PI insurance and put the required “systems” in place, which can be a heavy and costly burden. It is also something which is not entirely within the control of the in-house counsel. Further, as noted above, only Hong Kong qualified lawyers are able to apply.

There are insurance providers in the Hong Kong market who sell insurance products that could fulfil the requirements of the Law Society. Interested parties should contact their usual insurance broker,¹¹ the ACC HK’s Pro Bono Legal Services Committee, or the Hong Kong Centre for Pro Bono Service Limited for further information.

At the time of publication, no Rule 7 Exemption application has been granted by the Law Society, although some applications are pending.

Table 1: Summary of how pro bono services may be provided and by whom

	In-House Counsel – Employed Solicitors	In-House Counsel – Foreign Lawyer
Direct provision of Legal Advice to public	YES, with Rule 7 Exemption	NO
Partnering up with a law firm or barrister¹² to provide Legal Advice	YES, partnering with a Hong Kong law firm	YES, partnering with a law firm which is competent to supervise the foreign law jurisdiction where the foreign lawyer is qualified
Other activities such as Professional Assistance, that is not the provision of Legal Advice	YES	YES

¹⁰ At the time of writing, it is unclear whether the Law Society Council will only grant a Rule 7 Exemption for solicitors who are doing pro bono services through an organisation. Though as we discuss in section 5 below, as a matter of practice, this would be a preferable course in any event.

¹¹ We understand that Aon is one insurer who is able to provide this cover, but there may be others. In-house counsel should make their own enquiries through their usual broker as to what other products and options may be available to best suit their needs and circumstances.

¹² Please note that barristers are subject to separate professional rules to solicitors, including in respect of pro bono work. <https://www.hkba.org/content/rules-regulations>

5. WHAT ARE THE POSSIBLE MODELS OF IN-HOUSE PRO BONO?

Whilst there are regulatory challenges to in-house counsel providing pro bono Legal Advice directly to the public in Hong Kong, there are still several ways for in-house counsel to assist the community by providing Pro Bono Services even if the members of the in-house legal team have not obtained a Rule 7 Exemption.

We outline some models below, and a combination of these may be used as part of a corporation's broader pro bono initiative, or an in-house legal team may decide to only use and permit one of these models. Factors such as risk appetite, subject matter expertise or even lack of resources in a certain area of law should be considered. Any such decision should be documented in the corporation's pro bono policy.

When deciding to adopt any of these models, the in-house legal team will need to consider whether the type of work requires PI insurance coverage and how that will be facilitated.

In all instances, if the in-house legal team will be working in an area of law which is unfamiliar to their given expertise, then training or additional assistance should be undertaken (e.g. from a partnering law firm or with a barrister) and internal approval obtained to confirm that appropriate supervision or vetting of advice is in place.

Models of in-house pro bono participation can be broadly categorised as:

a) Partnering with a not-for-profit organisation, which could be an existing CSR partner organisation

The scope of the pro bono services cannot extend to providing Legal Advice to the NGO directly or to its clients, unless the in-house legal counsel has obtained a Rule 7 Exemption.

Some examples:

- Providing training to the staff of an NGO on a particular legal issue or area of law, or providing training or an information session to clients of the NGO on a particular issue (e.g. how to complete a visa application form in accordance with instructions). All training must carry an appropriate disclaimer that the training is not the provision of Legal Advice.
- Assisting the NGO with a research project to investigate the current legal position on a particular issue impacting the broader Hong Kong community as part of the NGOs advocacy or policy work.

Certain NGOs in Hong Kong run regular "advice nights" that are open to the public, or provide services similar to free legal clinics. In-house counsel need to use caution if they are involved in these clinics as they cannot provide Legal Advice without a Rule 7 Exemption.

Appendix A, *Current Opportunities: Hong Kong NGOs and charities in need of pro bono support*, contains a list of NGOs in Hong Kong who are seeking to partner with in-house counsel for legal support. For an up-to-date list, see the ACC HK website.

b) Partnering with one or more law firms to work on a joint project

For example, an in-house legal team could partner with a law firm to assist with a legal application to appeal an unjust Court ruling against a disadvantaged individual or act on a matter which involves the public interest. The law firm would need to agree to extend their PI insurance to cover the in-house legal team, and a suitable division of labour could be agreed. Those aspects of the work involving direct provision of legal advice or representation could only be handled by the law firm lawyers or a barrister (e.g. appearing in Court).

The advantage of this option is that it broadens the projects which in-house counsel can be involved in, by ensuring PI coverage through the law firm's cover, potential for training on unfamiliar areas of law, external supervision by the law firm or barrister, and providing other practical resources which may not be available to a small in-house legal team. It also offers an opportunity for in-house counsel to work on different projects with the law firm or barrister, outside the normal commercial matters that the legal team may work on a day-to-day basis.

c) Membership of a pro bono referral organisation

For example, assisting or joining TrustLaw, or PILnet's Hong Kong Pro Bono Clearinghouse, which regularly alerts subscribers of current pro bono opportunities with various NGOs and other organisations. These range from opportunities that require partnering with a law firm (for example, establishing a regular legal advice night for an NGO), to those which in-house counsel could do independently (such as being a legal mentor for a university student competition). Please refer to Appendix A for information on some NGOs and pro bono opportunities.

d) Seconding in-house counsel to work with community or not-for-profit organisations

While this is not common in Hong Kong, it may be possible to second an in-house lawyer into an NGO or other organisation,¹³ where the lawyer provides legal services to the NGO as its own in-house lawyer. For example, to assist with ensuring their corporate compliance has been properly put in place and managed (this could include drafting Articles of Association, checking board structure etc). Bear in mind that as in-house counsel for the NGO, the lawyer is unable to provide Legal Services to the general public, such as the clients of the NGO (for example through any legal clinic run by the NGO), unless the in-house lawyer has obtained a Rule 7 Exemption.

Any secondment would need to be carefully and properly documented to ensure that conflicts of interest and exposure for negligence and professional indemnity are addressed.

e) Developing legal education resources and training

Training and the development of legal resources can be a valuable way of making an impact. For example, developing training on a legal issue to be delivered directly to individuals affected by the issue, or to an NGO or other organisation providing services. In providing training and developing legally related resources care must be taken to make it clear that no Legal Advice is being provided, and appropriate steps taken, such as including disclaimers. Participants in the training, and users of resources created, should obtain their own Legal Advice on the issues if they have questions with respect to their own personal circumstances.

f) Producing research or position papers on pro bono related issues

Conducting research and producing findings, or creating a position paper on an area of law, policy, or possible law reform which does not include the provision of Legal Advice can be undertaken by in-house counsel without having to obtain a Rule 7 Exemption.

However, consideration needs to be given as to whether it may be appropriate to partner with a law firm on such projects. This will depend on the nature of the project, including if the area of law involved is unfamiliar to the in-house counsel, crosses multiple jurisdictions, or it involves discussing Hong Kong law (if in-house counsel is not a Solicitor) or involves a topic which is sensitive

and will attract intense media attention (in which case a united voice among many organisations may be beneficial¹⁴).

g) If a Rule 7 Exemption is obtained, direct legal assistance to the public through an NGO

If a Rule 7 Exemption has been obtained, then in-house counsel will be able to provide Legal Advice to the public. But due to the requirement that Solicitors must still comply with their professional obligations, such as conflicts of interest, confidentiality and record keeping, it is most practical to undertake such work through an established NGO. The in-house lawyer can give legal advice through a clinic to the NGO or its clients directly. However, in each case, in-house counsel should still consider factors such as capacity, qualifications to do the particular work and how or what systems are in place to ensure that their professional obligations are maintained and complied with while doing this work. Contacting an experienced body such as the Hong Kong Centre for Pro Bono Services Ltd to learn more is a good starting point.

6. HOW TO ESTABLISH A PRO BONO PROGRAM?

The key steps for establishing an in-house pro bono program are outlined below, and must be prepared in light of the regulatory issues, outlined in Section 4 above.

The time and resources invested in each step will depend in large part on the size and culture of the organisation and its legal team. For example, it might be a relatively quick process to reach the stage of preparing a proposal for the program or project if an in-house legal team is partnering with another organisation, or if a member of the legal team has identified a suitable project already.

Whilst it is ideal to establish a formal pro bono program for the reasons above, lawyers within an organisation can still undertake pro bono services independently on an informal basis subject to compliance with applicable organisational policies or controls on volunteer work and the regulatory requirements in Hong Kong.

Key steps for establishing an in-house pro bono program:

- Establish organisational support;
- Scope the proposed program;
- Prepare a proposal;
- Develop a draft pro bono policy;

¹³ We have not seen this example used in practice yet in Hong Kong.

¹⁴ For example the recent case in Hong Kong of *QT v Director of Immigration* that involved over 30 banks and law firms coming together to support the applicant in a landmark discrimination case which resulted in the Hong Kong Court of Final Appeal deciding that the Director of Immigration acted unlawfully by excluding a same-sex couple from his policy of granting dependant visas to the spouses of employment visa holders.

- Obtain approval for the proposal and pro bono policy; and
- Provide pro bono legal assistance.

Each of these items is discussed in turn, below.

6.1 Establish organisational support

Before a pro bono program can be established, there should ideally be organisational support for the initiative from key individuals including the Chief Executive Officer, General Counsel, Head of Legal and others such as the Head of CSR. Support at the highest levels of an organisation is critical to ensure there is enthusiasm for, and encouragement of, pro bono work, particularly in global organisations.

If there is a lack of organisational support for the program, support could be harnessed by developing a program proposal that takes into account any concerns raised, or identifying a senior member of the team to champion the program or trying to link the program with the wider CSR initiatives.

Organizational support will also be beneficial if or when lawyers need to juggle priorities between their daily work duties of supporting their in-house clients, and those required by their pro bono projects, even if only for one day or morning. Consideration should also be given by the in-house team on how to manage the demands of their employer and colleagues and the demands of any pro bono projects.

6.2 Scope the proposed program

To develop a program proposal, start by learning more about the pro bono services that the in-house legal team may be interested in, and capable of, undertaking and sourcing views from key stakeholders in the business. Below are some suggestions about how a program could be scoped. It is not necessary to take all of these steps and, if an idea has already been presented which has general interest, only minimal scoping may be required.

The program could be scoped by:

- Surveying the legal team to find out:
 - Whether they undertake pro bono services on an individual basis, and if so whether they would be interested in partnering with the team on that or other projects;
 - If they have any suggestions for the program;
 - What they are interested in;
 - What CSR programs and projects are already supported by the organisation and whether the legal team could add to or build on those by providing pro bono services;

- What pro bono programs or projects do the law firms which the in-house legal team regularly instruct already have (and also what law firms could be canvassed to suggest pro bono partnership opportunities); and

- Identifying the legal skills and areas of expertise that exist within the in-house legal team and considering how they might be used in a pro bono context.

This does not have to be a formal survey, but could take the form of short discussions or even comprise part of a team meeting.

- Requesting ideas for the program from other groups within the organisation, including the CSR team (to identify existing community relationships that might be strengthened by the offer of legal assistance);
- Discussing opportunities for partnering with pro bono coordinators from external panel law firms;
- Discussing opportunities for partnering with organisations in the legal assistance sector, such as pro bono referral organisations or working with already established projects; and
- Talking to other in-house legal teams, the ACC HK Pro Bono Legal Services Committee, and others who have established pro bono programs.

6.3 Prepare a proposal

The step after the scoping phase is to develop a program proposal to submit to the General Counsel, CEO and/or the Board. Ideally, support would have already been received from the General Counsel, Board members and other stakeholders during the scoping phase. But if this is still unclear, the proposal could be framed as a pilot. This can help build support and interest.

The proposal should:

- explain the role of pro bono services in the context of the organisation's commercial objectives and CSR policy;
- outline the benefits of an in-house pro bono program for the organisation and the organisation's lawyers;
- describe the pro bono services that will be undertaken as part of the pro bono program;
- include measurable objectives for the program, such as team member participation rates, perhaps escalating over a period or subject to regular review;
- address the resource commitment associated with the proposal;
- indicate that regulatory requirements have been considered and that a Pro Bono Policy has been drafted to support the program and ensure any regulatory requirements are met and addressed in the policy; and

- g) any other issues that are relevant to the organisation, or the industry in which it operates. For example, any reputational risk issues or conflicts of interest etc. This will vary depending on the industry which the organisation operates in.

6.4 Develop a draft Pro Bono Policy

A draft Pro Bono Policy can be developed in conjunction with the program proposal. See Appendix B, *Precedent Pro Bono Policy* for a sample policy.

An in-house Pro Bono Policy should include:

- a) an outline of why the organisation should have a pro bono program, its objectives, and how it complements the organisation's broader CSR policy;
- b) a description of the program, including key projects, priorities or focus areas;
- c) statements that confirm the organisation's expectations of lawyers participating in the pro bono program. For example, that pro bono services should be performed to the same standard as in-house legal work;
- d) a definition of 'pro bono services', which may include limitations on what the organisation is comfortable doing and not doing and accommodate the various distinctions arising from the regulatory issues discussed in section 4 above;
- e) a framework for coordinating the program;
- f) the aspirational participation rate for team members, if set;
- g) an approval/rejection process for requests for assistance, including identifying potential conflicts or business and reputational risks;
- h) protocols for ensuring that any regulatory requirements are met and addressing issues of insurance and risk mitigation;
- i) record keeping and file management processes;
- j) guidelines about spending time on pro bono services during normal office hours, or otherwise taking time away from supporting the in-house client;
- k) any reporting and governance obligations; and
- l) a mechanism for tracking and measuring the impact (internally and externally) of the organisation's pro bono services, which may be helpful in demonstrating the case for investing time in pro bono activities.

6.5 Obtain approval for the proposal and Pro Bono Policy

Once the proposal and draft Pro Bono Policy have been prepared they should be submitted to the General Counsel/CEO and then the Board (where required) for approval.

The Pro Bono Policy should then be formalised in line with the organisation's usual processes.

6.6 Provide pro bono legal assistance

Once the proposal and Pro Bono Policy have been approved, any necessary internal systems should be established (e.g. nominating a pro bono coordinator, promoting the policy internally etc.) and any regulatory requirements met, the in-house legal team can begin looking for suitable opportunities to provide pro bono legal assistance.

7. PROFESSIONAL RULES AND OBLIGATIONS IN PROVIDING THE PRO BONO SERVICES

Delivery of Pro Bono Services should be treated the same as any other legal work and the same professional obligations apply. Several key issues are noted below.

7.1 Competence and Quality Service

All pro bono services must be delivered to clients at the same quality and standard that in-house counsel would deliver legal services to their employers. This includes in compliance with the applicable professional rules and regulations which apply to the in-house counsel.

Rule 6.01 of the Professional Conduct Guide imposes a duty on solicitors to act competently. Most other jurisdictions across the world have a similar requirement and it forms part of a lawyer's inherent fiduciary duty to their client, therefore foreign qualified lawyers would similarly be subject to this requirement. This duty includes acting only where the lawyer has the knowledge and skill to perform the services to the high standard a client would expect of a competent solicitor, to only undertake work which the lawyer has adequate time to complete, and to keep the client informed of the progress of the matter.

In some circumstances, in order to provide competent advice, the in-house counsel will need to obtain tailored training or to seek assistance from a law firm or barrister who has specialist knowledge on the relevant area of law. Pro Bono Services should never be undertaken where in-house counsel is (i) unfamiliar with the area of law, (ii) does not have the capacity to do the job satisfactorily or is not sufficiently qualified or experienced to do it, or (ii) cannot be delivered to the standard required by the applicable professional rules and regulations.

7.2 Champerty and Maintenance

Whilst pro bono legal advice is generally done for no payment, there are circumstances where such work may constitute a contingency fee arrangement or a success fee arrangement. Such arrangements fall under the umbrella of champerty and maintenance, which is both a tort and a criminal offence, punishable with imprisonment, in Hong Kong.

These types of arrangements will generally be irrelevant for most of the pro bono services which in-house counsel are able to assist with, particularly as in-house counsel are not looking to generate fees from the provision of legal services in the way that private practice solicitors do. However, it is important to understand the restrictions and to use caution, if the partner law firm or barrister you are working with on pro bono services is considering such an arrangement with the client.

Rule 4.17 of the Professional Conduct Guide prohibits solicitors from entering into contingency fee agreements in contentious matters which involve instituting legal proceedings.

A contingency fee agreement is defined in the Professional Conduct Guide as *“any arrangement whereby a solicitor is to be rewarded only in the event of success in litigation by the payment of any sum (whether fixed, or calculated either as a percentage of the proceeds or otherwise). This is so, even if the agreement further stipulates a minimum fee in any case, win or lose.”*¹⁵

However, if a Solicitor instructs a foreign lawyer in proceedings in a foreign jurisdiction, it is permissible to agree to pay that foreign lawyer’s fees on a contingency basis.

It is possible to enter into contingency fee arrangements in matters which do not involve litigation. However, the case law only refers to recovering fees actually incurred. The Courts have not looked favourably on solicitors who claimed a fee calculated as a percentage of a settlement sum, seeing this as taking advantage of a client.

In relation to pro bono matters, even if there are no charges for professional fees, it is generally accepted practice to claim disbursements from the client. Although, the client should be made aware of what these are at the outset of the matter and be documented in the engagement letter.

7.3 Letters of engagement

When an in-house lawyer is directly engaged by a pro bono client, it is important to enter into an agreement setting out the terms on which Legal Advice and/or representation will be provided, or what other services are to be provided.¹⁶ This agreement will usually take the form of a letter of engagement. The letter must comply with the regulatory requirements in Hong Kong under the Professional Conduct Guide.

An engagement letter is important to not only scope the work which will be done for the pro bono client, but also to make clear the areas which are excluded from the scope of services to be provided. Therefore it is also critical even if providing professional assistance and not legal advice under the definition of the Professional Conduct Guide, or where foreign qualified lawyers are involved and it must be made clear that Hong Kong law advice cannot be provided. The engagement letter should also address the issue of costs and how disbursements will be treated.

Imposing a limit on liability in the engagement letter may also be a useful way of managing risk with respect to pro bono services that relate to non-legal assistance where the risk cannot be easily insured (e.g. research, legal education and training).

If an in-house legal team is partnering with a law firm, for example as part of a clinic, the partner law firm will generally arrange the necessary letter of engagement. The letter needs to cover the scope of work being provided by the in-house legal team as well as the law firm, and a copy should be provided to the in-house counsel for their records.

If an in-house legal team is collaborating with a law firm on one of its projects, the firm may prepare a basic term sheet agreement or memorandum of understanding that sets out the obligations and responsibilities of the firm and the in-house counsel, so that the work that each is undertaking is clear.

A sample precedent letter of engagement can be found in Appendix D as a starting point, but will need careful tailoring to fit your own particular circumstances and projects.

¹⁵ Rule 4.17, The Hong Kong Solicitors Guide to Professional Conduct, Commentary note 1.

¹⁶ That is, for legal advice and/or representation, only where an employed solicitor has received an exemption under Rule 7. Please refer to section 4.3 above.

7.4 Conflicts of Interest

In-house counsel need to ensure that any pro bono services they provide do not create a potential or actual conflict of interest either with their employer or with their own interests. Chapter 9 of the Professional Conduct Guide outlines the requirements for Hong Kong qualified solicitors in relation to conflicts of interests and foreign qualified lawyers would be subject to similar requirements under their home jurisdiction rules and regulations. If there is a potential for conflicts, or an appearance of conflicts, these should be carefully examined, discussed and steps taken to mitigate the likely risks or depending on the circumstances, it may be better to err on the side of caution and to find other pro bono opportunities.

8. POTENTIAL FOR REGULATORY REFORM

Hong Kong's current regulatory requirements, which limit what in-house counsel can do in relation to pro bono work, are similar to restrictions that have existed in the past for other Common Law Countries. It is interesting to look at the positions in Australia and Singapore, to see what regulatory reform could be possible in Hong Kong and how this could change the opportunities available to in-house counsel in Hong Kong.

Australia

Prior to 2009, the position in Australia was similar to Hong Kong. In-house counsel found it difficult to provide legal services to anyone but their employer, because they lacked adequate PI insurance coverage.

In 2009, the Australian Pro Bono Centre (“**APB Centre**”) established the National Pro Bono Professional Indemnity Insurance Scheme (“**Scheme**”) to encourage in-house corporate and government lawyers to undertake pro bono legal work.¹⁷ The Scheme provides free professional indemnity insurance to lawyers and paralegals working on pro bono projects approved by the APB Centre and the lawyer needs to obtain approval from the centre prior to commencing the project.

The Scheme came about due to the support of the Law Society of New South Wales, LawCover and DLA Piper.

These changes resulted in in-house counsel being unrestricted in the legal services that they can provide to external pro bono clients, as long as approval under the Scheme is obtained.¹⁸

The National Pro Bono PI Insurance Scheme is currently available in: New South Wales; Victoria; Queensland; South Australia; the Australian Capital Territory; and in Western Australia, to holders of volunteer practising certificates only.

Therefore, lawyers who hold a practising certificate in any other State or Territory are not currently able to access the Scheme. However, the APB Centre continues to advocate for the Scheme to be expanded to other jurisdictions.

The Hong Kong Centre for Pro Bono Service Ltd is currently looking into establishing a similar scheme for in-house counsel in Hong Kong.

Case Study – Arts Law Centre of Australia

The Arts Law Centre in Australia gives legal advice to artists and arts organisations across all art forms on a wide range of arts-related legal and business matters. This includes contracts, copyright, moral rights, trademarks, business names and structures, defamation, insurance and employment. All advice provided is either free or at low cost. The centre offers a specific Document Review Service, which allows subscribers to the centre to ask for the legal implications of a contract or document to be explained to them. The in-house counsel of several international corporations with offices in Australia volunteer at this centre to review documents, and in many circumstances explain the document and answer any questions to the person who asked for assistance. The centre provides training to its volunteer lawyers and also ensures that they match the lawyer with appropriate matters depending on their skill set.

The program has been effective because often it involves short pieces of work that are easy for small in-house teams to manage, often overlaps with skills or knowledge which in-house counsel already have, and the majority of the allocation/review process is done online so the in-house counsel are able to do it from home or their office. The program allows the in-house counsel to provide services directly to the centre's clients without needing to be supervised by a law firm.

Singapore

Regulatory changes were introduced in Singapore in 2013 to broaden the pro bono work that in-house counsel can undertake. The types of pro bono work that in-house counsel can participate in depends on whether the lawyer is a Singapore qualified lawyer or a foreign

¹⁷ For more information see – <https://www.probonocentre.org.au/provide-pro-bono/pi-insurance-scheme/>

¹⁸ The Centre maintains a register of pro bono projects and matters approved under the Scheme which can be accessed here – <https://www.probonocentre.org.au/provide-pro-bono/pi-insurance-scheme/register/>

qualified lawyer. Lawyers qualified in Singapore who do not hold a current practising certificate can now provide pro bono legal services under limited circumstances.

Previously, Singapore qualified lawyers without a practising certificate (which included many in-house counsel), were limited in their ability to provide legal advice or representation on a pro bono basis. Their participation in pro bono was limited to supporting a Singapore qualified lawyer or conducting research or legal education activities.

In 2013 the *Legal Profession Act (Chapter 161)* was amended to allow for rules to be made to allow persons without a practising certificate to provide legal advice in certain circumstances. These rules were enacted by the Minister for Law through the *Legal Profession (Pro Bono Legal Services) Rules 2013*. The amendments allow Singapore qualified lawyers who do not hold a practising certificate to provide pro bono advice and representation in certain circumstances, including where involved in a scheme administered by the Law Society of Singapore or the subordinate Courts or for the benefit of a charity, an institution of a public character or a welfare organisation.

These changes do not extend to foreign qualified lawyers, who are limited to participating in pro bono activities through research projects, legal education, or assisting locally qualified lawyers.

The key feature of the regulatory change in Singapore is that the Law Society of Singapore is able to extend its PI insurance cover to any natural person acting in a voluntary capacity on behalf of the Law Society and at the specific direction of the Law Society. Therefore, where services are provided through a pro bono scheme administered by the Law Society, in-house counsel can be covered by the Law Society's insurance.

Singapore Case Study – CLAS

An international technology company, with a small in-house legal team of locally qualified lawyers based in Singapore, was interested in finding an appropriate pro bono program to be involved in, as part of the company's broader pro bono initiative. There was a concern around the lack of practising certificates held by their in-house counsel in that region, and being involved in areas of Singapore law which the team had no experience in. The team sought advice from the Law Society of Singapore's Pro Bono Services office (PBSO). The PBSO, suggested various projects which the legal team could participate in. The Criminal Legal Aid Scheme (CLAS) was identified by a member of the in-house legal team as a potential project. A member of the in-house legal team attended

a CLAS interview to understand if it could meet the requirements and interest of the legal team. The findings were reported back to the in-house legal team, and they agreed to pursue it. It has been a very popular and rewarding project for the in-house legal team to be involved in. Training was provided to the in-house legal team as part of the scheme as it was an unfamiliar area of law and the team enjoyed being involved in a totally different area of law. The in-house counsel were able to participate in this scheme, despite not having a current Singapore practising certificate, as the Law Society's insurance was extended to cover them given that CLAS is a Law Society scheme.

9. HONG KONG CASE STUDIES

9.1 Making a difference – personal passion and a supportive employer

Serving the Society for Community Organisation, through the Hong Kong Centre for Pro Bono Service

Since May 2017, the Hong Kong Centre for Pro Bono Service Limited (“**Centre**”) has run a pilot community legal clinic in conjunction with a local social welfare organisation, the Society for Community Organisation (“**SoCO**”)¹⁹ to serve SoCO's clients in Sham Shui Po, Kowloon.

The Centre provides free legal advice and assistance to SoCO's clients through volunteer lawyers from private practice. In general, SoCO's clients are residents of Sham Shui Po, which has a large numbers of new immigrants, ethnic minorities and the elderly. It unfortunately also has the highest poverty rate of any district in Hong Kong.

Dave Fan, ACC HK Member and In-house Counsel, Greater China for eBay, has the crucial part-time task of co-ordinating the monthly clinic, which involves helping SoCO with screening and assigning the legal cases, ensuring everything runs smoothly at the clinic and providing a helping hand to the volunteer solicitors and other volunteers.

About the Sham Shui Po community legal clinic

Since its inception, the clinic has handled over 50 cases, covering a wide array of legal issues from criminal appeals, child custody issues, tenancy disputes, sham marriages and deportation orders to medical negligence claims. Dave finds the works deeply stimulating and he is inspired by how the clinic is operated and the types of pro bono services the clinic is providing. The clinic is

¹⁹ See Appendix for more information about these organisations.

at the forefront of meeting the legal needs of those who cannot afford private legal assistance, and he believes that the clinic fills the gap between those who qualify for Government-supported legal aid, and those who do not. Indeed he feels the legal issues of the marginalized class very often involve areas of intrinsic need, and an inability to obtain legal advice can have dire consequences.

A passion for meaningful volunteer service

Dave got involved by reaching out to the Centre via its website after attending a pro bono legal services seminar hosted by ACC HK in 2016. He was looking for meaningful volunteering opportunities. The legal clinic project was particularly appealing to Dave because he had a close personal connection to Sham Shui Po where he spent his childhood living in a partitioned flat with his family. Dave still keeps his ties with this community as he currently serves as an organist in a local church there, and helps out with its charitable services. In addition to his understanding of the demand for pro bono legal services, this has given him a good sense of the primary needs of the community and people in Sham Shui Po.

Dave said: “I’m glad to meet a group of dedicated professionals at the Centre who are eager to devote a significant amount of their energy and time to do pro bono work. As lawyers, we possess valuable and unique skills that can make a real difference to people in need. Community service is rewarding and can provide a great deal of personal satisfaction, particularly when you work in an area that you really care about”.

The important role of a supportive employer – eBay

Dave’s approach to service also aligns well with eBay’s core value of social responsibility, which is integral to the way it conducts its business. While eBay has its own CSR committee to take on various public interest works (e.g. fundraising, community outreach, pro bono services to non-profits), eBay believes that their employees can leverage their skills to make a positive impact on society. Consequently eBay is very supportive of Dave and other employees collaborating with external organizations to provide a range of pro bono services.

Leveraging legal skills, not providing Legal Advice

At the moment, restrictions on the way Solicitors are regulated in Hong Kong, preclude corporate counsel like Dave from providing Legal Advice to, or representing clients. Although these tasks must be left to volunteer private practice lawyers, Dave can still apply his legal skills to important and essential work such as reviewing and updating the Centre’s policies and engagement letters, and providing general legal information and training to SoCO. In-house counsel can also utilize a range of transferrable and generic skills including legal

research, their ability to recognize legal issues and facts analysis, counselling and negotiation skills to assist the community organizations.

Call to action – more support is needed

Currently, the Centre does not have any full-time pro bono coordinators or volunteers. Everyone works on a part-time basis and more help is needed and welcome. The Centre runs regular clinic services, but it is not always easy to lock down the volunteering lawyers’ schedule as everyone is stretched so thin already. If you are interested in volunteering to support the Sham Shui Po clinic or the Centre, which in turn serve SoCo’s clients, please contact: ask@probono.org.hk



Dave Fan and Richard Tsoi, SoCO

9.2 UBS Case Study

Establishing a corporate pro bono program – the UBS AG Hong Kong in-house framework

Aligning corporate and in-house community service vision

Skills-based volunteering is a key component of the UBS Hong Kong Community Affairs (CSR) program. It was envisioned that Pro Bono Services could be a complementary offering to the CSR program as a skills-based platform for in-house lawyers and colleagues with legal training to apply their unique and technical competencies to community service.

Securing internal senior management support

Given this aligned vision, the proposal was enthusiastically endorsed by CSR senior management on all levels (business, CSR, legal and compliance and at the local and global level). Upon receiving the internal support, internal guidelines were developed for the type of pro bono services that would be provided in line with UBS’ CSR objectives, including recognition of the volunteer hours.

Partnering with a law firm and local not-for-profits for a successful launch

Many colleagues were not aware of the opportunities (or even the ability) of in-house lawyers in Hong Kong to provide pro bono services. The pro bono coordinators therefore partnered with a law firm to ensure that the Law Society requirements could be met. The initiative was launched with a Lunch and Learn session to explain what in-house lawyers are permitted to do.

The Lunch and Learn Session also benefited from presentations from HELP for Domestic Workers and Justice Centre who shared about the types of support they look for and provided inspiration to in-house counsel to become involved. UBS' law firm partner will continue to assist to identify pro bono opportunities and provide training on the areas of law that would be outside the scope of the day to day legal expertise of many in-house counsel (e.g. employment, immigration, human rights).

Learning from overseas experience

As part of the journey of creating this in-house pro bono framework, the UBS pro bono coordinators also learned more about established programs in some of the other UBS offices, such as in the United States. It was also encouraging to hear that colleagues in other locations were interested to pursue similar opportunities for their offices.

10. USEFUL RESOURCES

The following overseas resources may be of assistance as reference materials:

- a) Australian Pro Bono Centre (<https://www.probonocentre.org.au/>)
- b) The Pro Bono Institute (U.S.A) (<http://www.probonoinst.org/>)
- c) The American Bar Association (https://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/pro_bono_resources.html)
- d) Corporate Pro Bono, a joint initiative of the ACC and Pro Bono Institute (www.cpbo.org) The Association of Pro Bono Counsel (<https://www.apbco.org/>)
- e) The Law Society of the England and Wales, October 2015, Developing a Pro Bono Program – Toolkit. (<https://www.lawsociety.org.uk/Support-services/Practice-management/Pro-bono/pro-bono-toolkit/>)

APPENDIX A:

PRO BONO OPPORTUNITIES: HONG KONG NGOs AND CHARITIES IN NEED OF PRO BONO SERVICES

The information in this Appendix has been provided by the relevant organisation. It is included in this Guide to raise awareness of some Hong Kong organisations that are in need of Pro Bono Services, and advise how you can contact them.

The opportunities described below must be considered in light of the regulatory restrictions outlined in section 4 of the Guide. The listing of any opportunity in this Appendix does not imply or suggest that it will be permissible for all in-house counsel to work on the described projects and initiatives. In-house counsel will need to make their own assessment of their circumstances and regulatory obligations, to determine whether it is appropriate for them to take on any opportunity outlined below.

HELP FOR DOMESTIC WORKERS

HELP for Domestic Workers (“HELP”) is a non-profit organisation that provides free advice and assistance on employment, immigration and human rights issues to domestic workers in Hong Kong. This includes guidance and support for domestic workers in pursuing their legal rights, and obtaining assistance in preparing documents required in legal proceedings. HELP believes that every domestic worker irrespective of race or nationality, should have access to justice and receive equal and fair treatment before the law.

General areas of law in which HELP has an interest include: Criminal Law, Employment, Immigration, Sex and Disability Discrimination, Human Rights, Racial & Ethnic Justice and Women.

Other areas of pro bono community or welfare-related services include: Policy advocacy to Government and community education.

Ways in-house counsel can volunteer to help:

If in-house counsel would like to work with or support HELP in a pro bono capacity, you can do the following:

- Legal research (case law / precedent work)
- Comparative study of relevant legislation with other jurisdictions
- Drafting submissions to the Legislative Council on legislative and policy reforms
- Submissions to international treaty bodies such as the UN and ILO in relation to migrant workers and labour rights issues
- Drafting letters and statements
- Accompanying clients to conciliation meetings
- Organising talks
- Supporting fundraising events and seeking sponsorships.

CONTACT DETAILS:

HELP for Domestic Workers
G/F, St. John's Cathedral, 4-8 Garden Road,
Central, Hong Kong
T + 852 2523 4020
F + 852 2523 2021
helpfordomesticworkers.org
Info@helpfordomesticworkers.org /
h.allan@helpfordomesticworkers.org



HER FUND

HER Fund is a non-profit organisation and Hong Kong registered charity.

HER Fund believes in the wisdom and capacity of women to determine their needs and aspirations and to develop strategies to achieve them. HER Fund envisions a society that will secure and promote the human rights for all, without discrimination on any grounds, and in all areas of life and work. HER Fund mobilises resources and invests in empowering women and girls to create change in communities for gender equality, advancing women and girls' rights through grant-making, capacity building and resource development. HER Fund prioritises its support and provides financial grants to improve the situation and protect the human rights of marginalised and grassroots women especially in four areas:

- Freedom from Discrimination;
- Freedom from Violence;
- Freedom from Poverty; and
- Promotion of Women's Civil Participation.

General areas of law in which HER Fund has an interest include: Labour law, Gender Recognition Ordinance, Immigration law for new Chinese immigrants, and Charity law.

Other areas of pro bono community or welfare related services include: Legal entity formation and registration, assisting with opening bank accounts.

Ways in-house counsel can volunteer to help:

- Assist recipient organizations and clients with training on legal entity structuring governance and registration.

Case related work

- Assisting recipient organizations and clients with cases, including if possible, provision of Legal Advice;
- Conducting research relevant to specific cases or groups of similar-fact cases.

Policy and advocacy addressing systemic (law, policy, practice) gaps to address root causes

- Conducting research to inform public submissions and/or drafting public submissions.

Our institutional needs

- Assisting with institutional corporate and governance work: policy development; contract/MOU/lease reviews/drafting; access to information requests; compliance and risk management; insurance and compliance matters.

Other ways to help

- Network referrals, identification of local funders/grant makers/foundations and running fundraising campaigns; being a corporate ambassador.

CONTACT DETAILS:

HER Fund

Mailing address: P.O. Box No. 79890, Mong Kok Post Office, Hong Kong

Office: 10/F, Ngai Wong Commercial Building, 11 Mong Kok Road

T + 852 2794 1100

www.herfund.org.hk

E: info@herfund.org.hk / judy.kan@herfund.org.hk



JUSTICE CENTRE HONG KONG

Justice Centre Hong Kong is the leading non-profit organisation directly assisting asylum seekers, refugees, victims of torture, and victims of trafficking and forced labour since 2007. In 2017, we assisted over 370 refugees and asylum seekers from over 35 countries. As of January 2018, we have a total of 61 cases at the appeal and judicial review stage, some still requiring representation.

Justice Centre provides pro bono legal services collaboratively with duty lawyers, barristers and pro bono law firm partners. We provide basic legal information to all individuals who are in need of protection. Justice Centre screens and provides individualised assistance based on our capacity and those we determine are most in need – often representing clients in strategic litigation involving unlawful detention, appeals and judicial reviews. Our law firm partners contribute both their time and funding each year and in return, value working alongside Justice Centre’s experienced specialist caseworkers on cases like *Md Nazir Ahmed Sarkar vs Torture Claims Appeal Board*.

General areas of law in which Justice Centre has an interest include: Human Rights Law; Refugee Law; Children’s Rights; Gender Based Violence and Torture.

Other areas of pro bono community or welfare related services include: As part of Justice Centre’s direct client services, in addition to legal services, clients are provided with psychosocial assistance. Justice Centre also advocates for systemic change through ground-breaking research, policy and advocacy services – publishing studies of trafficking among migrant domestic workers in the *Coming Clean* report or among refugees in the *Asylum Trafficking Nexus* report.

Ways in-house counsel can volunteer to help:

Justice Centre greatly values its partnerships with law firms and in-house counsel. It does not receive Government funding, Community Chest or Jockey Club funding because refugees do not hold Hong Kong Identity Cards. Currently, Justice Centre is able to work with in-house counsel through an annual financial contribution to overcome the barriers for providing access to justice to those seeking protection.

CONTACT DETAILS:

Isaac Shaffer
Head of Legal Services
Justice Centre Hong Kong
Eaton Workshop (1/F, 380 Nathan Road, Kowloon)
T +852 3109 7359
<http://www.justicecentre.org.hk/>
info@justicecentre.org.hk



PATHFINDERS LIMITED

PathFinders Limited (“**PathFinders**”) is a Hong Kong charity with tax-exempt status and, since August 2017, is an organisation in Special Consultative Status with the United Nations Economic and Social Council. PathFinders’ mission is to ensure that the most vulnerable children in Hong Kong, and their migrant mothers, are respected and protected. PathFinders believes that every child deserves a fair start in life. Its core service programmes are: Social Welfare, Shelter & Supplies; Access to Healthcare; Access to Justice; and Community Education & Outreach.

PathFinders’ Access to Justice Programme provides legal support to migrant women and babies, by providing information, case management support, education for team, clients & community, referrals to lawyers, and accompanying clients to meet with lawyers, government departments, tribunals and courts. PathFinders holds a weekly open legal clinic and hires between 4-6 local and international interns annually. Resources permitting, it participates in on-mission development law-related roundtables, academic research and public consultations both at LegCo and UN levels (see its public submissions at <http://www.pathfinders.org.hk/public/policy-submissions/>).

Areas of law PathFinders provides support with: Employment & Discrimination Law; Family Law, Domestic Violence, Sexual Violence; Immigration Law; Refugee Law; Human Trafficking; Health Law; Children and the Law; Criminal Law.

Other areas of pro bono community or welfare-related services include: Humanitarian support (food, shelter, clothing); Hotline and counselling; Healthcare clinic, referrals & education; Community education & outreach; Long-term planning and home country integration support; Supporting on-mission policy, practice and legislative changes.

Ways in-house counsel can assist: Please note that some of the following require the volunteer lawyer to hold a current Hong Kong practising certificate, have professional indemnity insurance and hold or be eligible to obtain any other permissions or consents to provide

pro bono legal advice.²⁰ It is the in-house counsel’s responsibility to ensure that they are professionally permitted to provide the relevant services.

Legal opportunities: cases

- Advising clients on their cases;
- Conducting research relevant to specific cases or groups of similar-fact cases; and
- Creating and presenting legal education classes and draft education material.

Legal opportunities: addressing systemic (law, policy, practice) gaps to address root causes

- Conducting research to inform public submissions and/or drafting public submissions.

Legal opportunities: institutional

- Assisting PathFinders with institutional corporate and governance work: policy development; drafting or review of its contracts/MOUs/leases; access to information requests; compliance and risk management; insurance and compliance matters.

Other ways to help:

- Assisting with business development: Operations & Administration; Finance, Technology; Human Resources and related processes; Training & Teambuilding; Project Management; Communications.
- Attending outreach events; running supplies & fundraising campaigns; being a corporate ambassador; being a school ambassador.

CONTACT DETAILS:

PathFinders Limited
IIC Worldwide Centre,
123 Tung Chau Street,
Tai Kok Tsui, Kowloon, Hong Kong
T +852 5500 5486
F +852 2393 2422
pathfinders.org.hk
info@pathfinders.org.hk

²⁰ Refer to section 4 of the Guide for the regulatory requirements in Hong Kong.



SOCIETY FOR COMMUNITY ORGANISATION

Society for Community Organisation (“SoCO”) is a non-profit organisation and a Hong Kong registered charity. SoCO serves those in Hong Kong’s under-privileged community, in particular through advocating for the rights of the poor and the marginalised. SoCO’s advocacy is based on solid research and policy recommendations. SoCO does not provide direct legal advice to its clients, but partners closely with the Hong Kong Centre for Pro Bono Services to run a community legal clinic with law firm volunteers.

Other areas of pro bono community or welfare related services include:

Policy advocacy to Government; using the judicial review mechanism; organising policy and advocacy for under-privileged and poor people in Hong Kong to provide services to them.

Ways in-house counsel can volunteer to help:

If in-house counsel would like to work with or support SoCO in a pro bono capacity, you can do the following:

- Contact SoCO directly through email expressing interest to assist with its grassroots, community or human rights policy or advocacy work
- Volunteer to assist SoCO and the Hong Kong Centre for Pro Bono Service’s Community Legal Clinic
- Donate to SoCO’s work (please visit SoCO’s website for details)

CONTACT DETAILS:

Society for Community Organisation
3/F, 52 Princess Margaret Road
Ho Man Tin, Kowloon
T +852 2713 9165
F +852 2761 3326
www.soco.org.hk
soco.hk@gmail.com
soco@pacific.net.hk



Jennifer Cheung, Dave Fan, Richard Tsoi and Davyd Wong

APPENDIX B:

PROFESSIONAL ORGANISATIONS: PROMOTING OR SUPPORTING THE DELIVERY OF PRO BONO SERVICES IN HONG KONG

The information in this Appendix has been provided by the relevant organisation. It is included in this Guide to raise awareness of Hong Kong organisations that advocate, support and/or currently deliver pro bono legal advice or professional assistance via various channels. As outlined in the Guide, for regulatory reasons in-house counsel may be precluded from offering certain services. Those lawyers that are currently engaged in the delivery of pro bono legal advice via the organisations referenced in this Appendix include Hong Kong qualified law firm solicitors, and barristers.

ACC HK PRO BONO LEGAL SERVICES COMMITTEE

ACC HK Pro Bono Legal Services Committee aims to encourage and assist our members who wish to provide Pro Bono Services to needy institutions, individuals and not-for-profit enterprises. The Committee's objectives are:

1. To understand the status quo for in-house counsel to provide Pro Bono Services in Hong Kong;
2. To communicate that knowledge to members and facilitate participation via production of guidance materials, resources, and delivery of educational seminars, with relevant information made available on the ACC HK website;
3. To try to connect members who are keen to provide Pro Bono Services with those who have little or no means to afford legal services; and
4. To serve as a voice for members on policy and law reform issues that affect in-house counsels' ability to provide Pro Bono Services.

Ways in-house counsel can volunteer to help:

If in-house counsel would like to find out more information about the Committee or if ACC HK members please see the contact details listed below.

CONTACT DETAILS:

Sharyn Ch'ang/Davyd Wong
Association of Corporate Counsel Hong Kong
GPO Box 895, Hong Kong
T (+852) 2516 7007
info@hkcca.net
<https://www.hkcca.net/Subcommittees>



ACC Hong Kong Pro Bono Legal Services Stakeholders Summit Dinner with Mr P. Dykes SC, Chairman of the Hong Kong Bar Association and Ms S. Chan, Council Member and Chairlady of Pro Bono Committee, Law Society of Hong Kong, 27 March 2018.



HONG KONG BAR ASSOCIATION

Hong Kong Bar Association is the organisation which regulates barristers in Hong Kong. Barristers are self-employed independent legal practitioners. They tend to offer specialisations in areas of law, such as crime, family law, commercial law, administrative law, intellectual property, arbitration and many other areas. Nearly all barristers are specialised advocates, able to exercise rights of audience at all court levels. They provide legal services to the public upon referral by solicitors and through other bodies as permitted under the Bar's Code of Conduct.

Hong Kong Bar Association works collaboratively with pro bono and Legal Aid solicitors to provide legal advice and legal representation.

Bar Free Legal Service Scheme

The Hong Kong Bar Association operates the Bar Free Legal Service Scheme (“**BFLSS**”). Only applicants whose applications to the Legal Aid Department have formally been rejected are eligible to approach the Scheme. The Scheme has been established to provide 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 where assistance should be given.

The BFLSS is staffed by a part-time Coordinator. If you wish to contact the Service, please do so by letter or e-mail to bflls@hkba.org or telephone no. 2137-9107. Further information can be found at: <http://www.hkba.org/content/bar-free-legal-services-scheme>.

Barristers who have volunteered to help the BFLSS are placed on a panel. The panel comprises barristers with a range of experience and specialisations. Each of them has offered their services free of charge for 3 days or 20 hours each year. However no barrister is obliged to take on a particular case under the BFLSS. The services of a particular barrister cannot be requested nor can a list of Panel members be provided.

Other areas of pro bono community or welfare related services include: Policy advocacy to Government.

CONTACT DETAILS:

Hong Kong Bar Association
LG2, High Court
T +852 2869 0210
F +852 2869 0189
www.hkba.org
info@hkba.org



HONG KONG CENTRE FOR PRO BONO SERVICES LIMITED

The Hong Kong Centre for Pro Bono Services (“**Centre**”) is a non-profit organisation and Hong Kong registered charity. The Centre’s mission is to assist and empower the impoverished, distressed and vulnerable through policy changes and direct legal assistance. Since the Centre relies heavily on volunteers, its capacity to run projects is limited. One of its key roles is to assist, facilitate and support the legal profession in the delivery of pro bono services. Currently, the Centre has two main programs:

Hong Kong Domestic Workers Roundtable

The Domestic Workers Roundtable (“**DWRT**”) comprises a wide range of stakeholders working to support the rights of Domestic Workers in Hong Kong. Members include commercial lawyers, NGOs, unions and worker’s representatives, academics, representatives of the private sector and politicians.

DWRT engages the government on policy issues, and holds policy dialogues with a range of stakeholders focused on defined outcomes. We also refer Domestic Workers in need of legal assistance to the Centre’s Legal Clinic.

Legal Clinic in Sham Shui Po

The Legal Clinic (“**Clinic**”) in Sham Shui Po is in partnership with the Society for Community Organisation (“**SoCO**”), a local human rights and social welfare organisation. The Clinic, through its volunteer pro bono lawyers and coordinators, provides legal advice and assistance to SoCO’s clients and, as capacity permits, other community referrals.

The clinic gives advice and assistance in several areas of law, for example Criminal Law, Employment, Family & Domestic Violence, Homelessness & Poverty, Human Rights, Immigration, Residency and Women’s rights.

Ways in-house counsel can volunteer to help:

If in-house counsel would like to work with or support the Centre in a pro bono capacity, you can do the following:

- Assist with the initiatives, special projects and case work for the DWRT
- Provide assistance with capacity building of the Centre’s initiatives
- Assist with research and policy work in respect of advancing community legal centres and improving access to justice in Hong Kong
- Assist with the coordination and administrative process in the Clinic

The Centre also has a pipeline of other projects that require the assistance of motivated, legally skilled professionals and advocates, such as preparing research work, training and capacity building, resource development and policy White Papers to assist and empower marginalised people who cannot adequately protect, advance or represent their own rights and interests. Please do reach out to the Centre, and find out how you can get involved in making a difference in our community.

CONTACT DETAILS:

Hong Kong Centre for Pro Bono Services Limited
Unit 1213, 12/F, Wing On Plaza, 62 Mody Road
Tsim Sha Tsui East, Kowloon
T +852 2153 6595
www.probono.org.hk
ask@probono.org.hk



HONG KONG PRO BONO ROUNDTABLE

The Hong Kong Pro Bono Roundtable is comprised of representatives from a number of law firms, in-house legal teams, NGOs and academics, who meet on an ad hoc basis to discuss and share information about topical pro bono practice issues. The group itself does not provide legal services, but acts as a forum for information sharing and collaboration directed to increasing access to justice.

Ways in-house counsel can volunteer to help:

If in-house counsel would like to participate in the Roundtable or partner with law firms to collaborate on pro bono opportunities, please contact a member of the Steering Committee for more information.

CONTACT DETAILS:

Hong Kong Pro Bono Roundtable Steering Committee:

Annette Bain, DLA Piper
annette.bain@dlapiper.com

Jonathan Chang, Davis Polk & Wardwell
jonathan.chang@davispolk.com

Leontine Chuang, PILnet
lchuang@pilnet.org

Andrew Dale, Ropes & Gray
andrew.dale@ropesgray.com

Angela Li, Chow Tai Fook
liangela@chowtaifook.com

Alan Schiffman, Retired Partner, Skadden
alan.schiffman@skadden.com

Davyd Wong, Director, ACC HK
The Hong Kong Centre for Pro Bono Service Ltd.
davyd@probono.org.hk



PILNET: THE GLOBAL NETWORK FOR PUBLIC INTEREST

PILnet is a non-profit organisation and Hong Kong registered charity. PILnet does not provide legal services directly, but serves as a clearinghouse for pro bono legal opportunities for lawyers in private and in-house practice.

The general areas of legal support covered through the PILnet clearinghouse: All / generalist.

Other areas of pro bono community or welfare-related services include: Legal capacity building for NGOs, community legal services, legal education in the community, legal workshops for NGOs and pro bono lawyers, public interest law projects in law schools.

Ways in-house counsel can volunteer to help

PILnet: If in-house counsel would like to work with or support PILnet in a pro bono capacity, you can do the following:

- Volunteer to provide assistance on specific legal projects to NGOs via PILnet's Clearinghouse matchmaking system. If you are interested in joining the Clearinghouse list to receive pro bono legal opportunities every month, please contact PILnet.
- Volunteer to run workshops for NGOs and other pro bono lawyers. Workshops run in the past include corporate governance workshops, data privacy workshops, legal issues for start-up social enterprises, and employment law.
- Volunteer to support PILnet's policy and advocacy efforts to improve community legal services to the low income and vulnerable community in Hong Kong.
- Volunteer to work with law students in designing and delivering legal education workshops for the local community.
- Volunteer to serve as legal mentors to law students designing public interest law projects to address access to justice issues in the local community in a student competition. The winner of the student competition will receive HKD\$50,000 from PILnet to implement their project in the community.

CONTACT DETAILS:

PILnet,
21/F Chun Wo Commercial Centre,
23-29 Wing Wo Street, Central, Hong Kong
T +852 6106 0892
www.pilnet.org
hkprobono@pilnet.org



WOMEN IN LAW HONG KONG

Women in Law Hong Kong (“**WILHK**”) is a legal community that provides a networking platform for private practice lawyers, in-house counsel and other legal professionals in Hong Kong. Membership is free to both men and women to encourage a diverse exchange of ideas and collaboration toward the development of women in the legal industry. WILHK is one of the first networks established to integrate women in all legal sectors, operating as an umbrella network for women engaged in the Hong Kong legal profession.

WILHK recognises the value in supporting pro bono legal initiatives in Hong Kong and wishes to raise awareness about the legal pro bono landscape. WILHK supports NGOs and pro bono initiatives and has hosted roundtables for Hong Kong lawyers interested in increasing their pro bono work, as well as capacity building events for NGOs. In addition, WILHK has sought to match appropriate legal teams to NGOs in need of support on particular projects via matchmaking events and initiatives.

General areas of law in which WILHK has an interest include: All / Generalist (capacity building).

Ways in-house counsel can volunteer to help:

WILHK has formed its own pro bono roundtable group, comprising in-house and private practice members to discuss:

- Issues faced by law firms and in-house counsel in Hong Kong from a legal/regulatory and organisational perspective;
- Best-practice/lessons learned from setting up pro bono systems and particular projects; and
- Organising information sharing events for the Hong Kong legal community bringing together charitable organisations seeking pro bono advice and in-house and private practice pro bono teams/interested parties.

If you wish to get involved in the WILHK pro bono roundtable, capacity-building initiatives or other pro bono activities see the contact details below.

CONTACT DETAILS:

Women in Law Hong Kong
<http://www.wilhk.com>
info@wilhk.com



TRUSTLAW – THOMSON REUTERS FOUNDATION

The Thomson Reuters Foundation is the philanthropic arm of Thomson Reuters, the world's biggest news and information provider and its aim is to inform, connect and empower people around the world. It is an independent charity, registered both in the UK and in the USA and leverages the reach and reputation of Thomson Reuters to run free programmes that promote the highest standards in journalism and spread excellence in the practice of legal pro bono work.

TrustLaw, the Thomson Reuters Foundation's global pro bono legal programme, is the world's largest legal pro bono platform, which works with the best law firms and in-house counsel teams to provide free legal assistance and ground-breaking research to social enterprises and NGOs in 175 countries. By connecting our social sector community of almost 4,000 organizations with over 120,000 pro bono lawyers, TrustLaw strengthens civil society, creates sustainable impact and improves the lives of the world's most vulnerable people.

AREAS OF LAW TRUSTLAW PROVIDES SUPPORT WITH:

Lawyers and in-house counsels can support both international and local NGOs and social enterprises with their day-to-day legal needs including but not limited to: establishing new legal entities and structuring advice, drafting employment contracts, giving intellectual property advice, registering trademarks, and drafting corporate and commercial agreements.

OTHER AREAS OF PRO BONO COMMUNITY OR WELFARE-RELATED SERVICES INCLUDE:

TrustLaw produces groundbreaking, multi-jurisdictional legal research tools that focus on social or policy issues – such as social innovation, modern

slavery, legal empowerment or women's rights to support organizations' policy and advocacy agendas. These programmes often involve several law firms or in-house legal teams working together across borders. It also offers support by offering bespoke clinics, events and trainings and innovative projects aimed at capacity-building, awareness-raising and networking.

WAYS IN-HOUSE COUNSEL CAN ASSIST:

TrustLaw works with corporate in-house legal departments to build, strengthen and expand their pro bono programmes, and TrustLaw can help in-house legal departments to:

- Identify pro bono best practices;
- Forge partnerships with law firms;
- Navigate regulatory and licensing requirements that apply to their lawyers wherever they may be;
- Have access to high quality pro bono work for organisations at the forefront of social change; and
- Participate in delivering in-person and TrustLaw workshops, and other capacity-building initiatives that provide practical legal education to NGOs and social enterprises.

For more information on TrustLaw's Global Corporate Pro Bono initiative and to access our dedicated pro bono resources for in-house counsel teams see:

<https://tmsnrt.rs/2MqiR8v>

CONTACT DETAILS:

TrustLaw, Thomson Reuters Foundation
<http://www.trust.org/trustlaw/>
trustlaw@thomsonreuters.com

APPENDIX C:

PRECEDENT PRO BONO POLICY

Note: This document is a generic sample only, provided to assist in-house counsel wishing to develop a pro bono policy. You must carefully consider whether you need to amend this document to fit the regulatory requirements which apply to your organisation, including consideration of the qualifications held by your in-house legal team.

1. OBJECTIVES

- 1.1 [Organisation name] operates within the broader community and recognises the importance of supporting this community in a variety of ways, consistent with its corporate social responsibility policy (outlined separately in policy [insert]).
- 1.2 A key way in which [organisation name] can contribute to the community is to facilitate greater access to justice through the development of a program that facilitates participation by its legal team in pro bono legal work, the scope of which is outlined in this Pro Bono Policy.
- 1.3 Lawyers have an ethical and professional responsibility to provide legal assistance to those who would not otherwise be able to access justice. This is a service that lawyers are uniquely positioned to provide.
- 1.4 [Organisation name] strongly encourages members of its legal team to participate in the pro bono program, although participation is not mandatory.
- 1.5 [As part of its role in supporting and facilitating the performance of pro bono legal work by members of its legal team, [organisation name] seeks to meet a target of at least [X] percent of the members of its legal team undertaking pro bono work through the pro bono program each year – if applicable].
- 1.6 [Organisation name]’s role in [industry] and our commitment to [insert area of need] as part of our broader corporate social responsibility strategy, means that pro bono legal work which provides assistance to [insert description] or Approved Project Partners will be given priority.
- 1.7 **Approved Project Partners** include [insert names of organisations that are pre-approved as recipients of pro bono legal assistance through the pro bono program.]

2. ‘PRO BONO LEGAL WORK’ DEFINED

- 2.1 For the purpose of [organisation name]’s pro bono program ‘pro bono legal work’ is defined as: [To be determined internally, to include within scope the type of projects envisaged]
 - 2.1.1 Legal advice or representation provided by lawyers in the public interest including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public funding is not available.
 - 2.1.2 Developing and delivering legal education seminars, undertaking research and report writing in relation to areas of law affecting poor and marginalised groups.
 - 2.1.3 Conducting law reform and policy work on issues affecting poor and marginalised members of the community.
 - 2.1.4 Projects and other initiatives which increase and facilitate access to justice.
 - 2.1.5 The services provided must be free to the client, without payment to the lawyer regardless of the outcome of the matter.

3. COORDINATION OF THE PROGRAM – PRO BONO COORDINATOR

- 3.1 [Organisation name]’s pro bono program is coordinated and administered by the Pro Bono Coordinator, as appointed by the General Counsel.
- 3.2 It is the Pro Bono Coordinator’s role to:
 - 3.2.1 manage the day to day operation of the pro bono program, including:
 - 3.2.1.1 sourcing pro bono legal work;
 - 3.2.1.2 approving and allocating matters;



- 3.2.1.3 drafting memoranda of understanding, secondment agreements and other partnership agreements for review by the General Counsel;
- 3.2.1.4 developing and implementing processes to support the efficient and effective operation of the program; and
- 3.2.1.5 determining whether there is sufficient capacity at any time to take on the work;
- 3.2.2 [promote participation in the pro bono program, in line with [organisation name]'s goal of at least [X] percent of the members of its legal team undertaking pro bono legal work each year – if applicable];
- 3.2.3 foster and develop relationships between [organisation name] and its referrers [and Approved Project Partners];
- 3.2.4 confirm that professional indemnity insurance is in place for the pro bono legal work undertaken as part of the program, if required;
- 3.2.5 confirm that lawyers participating in the program hold an appropriate practising certificate for the type of pro bono work to be undertaken;
- 3.2.6 confirm that, where appropriate, a letter of engagement has been sent to the pro bono client;
- 3.2.7 arrange appropriate training;
- 3.2.8 track, measure and report on the pro bono legal work undertaken as part of the pro bono program; and
- 3.2.9 keep the General Counsel informed of the work of the pro bono program.

4. ASSESSMENT OF REQUESTS FOR PRO BONO ASSISTANCE

- 4.1 It is the Pro Bono Coordinator's role to assess requests for pro bono assistance, with support from the General Counsel as required.

- 4.2 The Pro Bono Coordinator is responsible for:
 - 4.2.1 being the contact point for community and/or law firm partners in relation to [organisation's name]'s pro bono program;
 - 4.2.2 assessing any requests for assistance against the definition of 'pro bono legal work' adopted in this Policy, [together with the organisation's key focus areas];
 - 4.2.3 confirming that the proposed work does not create a conflict of interest and seeking advice when necessary;
 - 4.2.4 identifying a lawyer (or lawyers) and a supervising lawyer in the team to work on each approved pro bono matter, taking into account capacity, expertise, and any necessary training;
 - 4.2.5 ensuring that the lawyers working on a matter are aware of their practising certificate and professional indemnity insurance obligations;
 - 4.2.6 confirming with the pro bono client that assistance can be provided through the program, or communicating why the request for assistance has been declined;
 - 4.2.7 providing the pro bono client with their lawyer's contact details; and
 - 4.2.8 where appropriate, asking the lawyer responsible for the matter to prepare an engagement letter, including outlining the approach to any costs and disbursements, and ensuring that this occurs.

5. PRO BONO LEGAL WORK AND SERVICE STANDARDS

- 5.1 Pro bono legal work undertaken as part of the pro bono program can be carried out during normal business hours.
- 5.2 Pro bono legal work is to be carried out in the same way, and with the same diligence, as other legal work carried out by the team.
- 5.3 Pro bono legal work will be credited and recognised in accordance with the organisation's legal time recording policy [if applicable].



6. PROFESSIONAL INDEMNITY INSURANCE

- 6.1 Before a lawyer commences pro bono legal work as part of [Organisation name] pro bono program, professional indemnity insurance must be in place, unless the Pro Bono Coordinator has confirmed that the type of pro bono work being engaged in does not require professional indemnity insurance.
- 6.2 Where the pro bono legal work is part of a partnership with another organisation that carries its own professional indemnity insurance (for example, a law firm) the partner's policy is likely to provide coverage and this should be requested. This coverage should be confirmed in writing prior to any work being undertaken.

7. PRACTISING CERTIFICATES

- 7.1 Before commencing any pro bono legal work each lawyer must confirm that their practising certificate permits this work or alternatively that the work being undertaken does not require a practising certificate/qualified lawyer.

8. LETTER OF ENGAGEMENT OR MEMORANDUM OF UNDERSTANDING

- 8.1 Before commencing any pro bono legal work, the lawyer responsible for the work should determine if a letter of engagement or memorandum of understanding is required.
- 8.2 If a letter of engagement is required, the lawyer responsible for the work should prepare the letter and send it to the client. Or if partnering with a law firm, you must ensure the law firm sends the engagement letter and provides you with a copy.
- 8.3 If a memorandum of understanding is required, the lawyer responsible for the work should prepare the memorandum and send it to the partner organisation, ensuring a final copy is on file.

9. USE OF ORGANISATION RESOURCES

- 9.1 Lawyers participating in the pro bono program are permitted to use the organisation's resources in the same manner as they would for any other legal work being undertaken by [Organisation name]. In this regard policy [insert Resources Policy number or similar, if any] applies.

10. REPORTING

- 10.1 All lawyers participating in the pro bono program must report the hours of pro bono legal work they have undertaken per matter to the Pro Bono Coordinator every six months, or as otherwise required.
- 10.2 The Pro Bono Coordinator will provide the General Counsel with a summary of the hours of pro bono legal work undertaken as part of the pro bono program every six months, or as otherwise required.

11. ORGANISATION AFFILIATION

- 11.1 Although [Organisation name] strongly endorses participation in the pro bono program, lawyers who participate in the program are not acting in their capacity as a lawyer for the organisation. They are acting in their personal capacity with support from the organisation.
- 11.2 It must be made clear to pro bono clients assisted through the [Organisation name] pro bono program, that the [Organisation name] lawyer is not covered by professional indemnity insurance in relation to the project, where such project does not require the lawyer to have professional indemnity insurance in place.
- 11.3 Where the project or work is being insured through some other means, this must be made clear to the pro bono client.
- 11.4 Lawyers should discuss with the Pro Bono Coordinator, the appropriate wording to include in any client correspondence regarding [Organisation name] affiliation and pro bono services support.

APPENDIX D:

SAMPLE PRECEDENT PRO BONO ENGAGEMENT LETTER AND TERMS

Note: This letter is intended as a sample only. We recommend that you carefully consider whether you need to amend this document to fit the unique regulatory requirements which will apply to your organisation which will include consideration of the qualifications held by the in-house legal team and the type of pro bono work the in-house team want to engage in.

If in-house counsel are partnering with a law firm to provide Legal Advice or Professional Assistance, then general practice is that the law firm will provide you with a form of engagement letter to sign. This will be required where the law firm has agreed to cover the PI insurance of the in-house counsel. You should review this letter carefully to ensure it scopes the work your team is performing and extends PI cover to you.

CONFIDENTIAL

Our ref:

Your ref:

Date:

Address details:

Dear [Name]:

ENGAGEMENT LETTER: [DESCRIBE MATTER]

Thank you for your instructions [state how/when instructions received]. We are pleased to be able to assist you in this matter.

At the outset, we need to enter into an Engagement Letter with you setting out the terms on which we will assist you.

This letter, [if there are attachments insert details] and the enclosed Pro Bono Standard Conditions form the terms upon which we will act for you on this matter (“**Terms**”). If there are any inconsistencies between the terms in this letter and those in the enclosed Pro Bono Standard Conditions, the terms stated in this letter will prevail to the extent of any difference.

Please read these documents carefully.

- If they are acceptable to you, please sign and return the enclosed copy of this letter.
- If they are not acceptable to you, please contact me immediately.

If you do not return a signed copy of this letter, but continue to provide us with information and instructions on your matter, you will be deemed to have accepted our offer and the terms contained in these documents by your continued engagement with us.

CLIENT AND ADVISOR

Our client in this matter will be [enter full legal name of specific client entity or, if client is an individual, insert words such as ‘the person to whom the letter is addressed’] (You). Your advisor will be [enter full legal name] (We or Us).

SCOPE OF SERVICES

We will provide you with the following services in relation to your matter:

[Clearly set out the scope of the work so there is no dispute regarding the extent of our pro bono assistance. As a reminder this must be limited to Professional Assistance unless partnering with a law firm or Rule 7 Exemption has been obtained].

[If Professional Assistance (i.e. non-legal pro bono work):

The services to be provided do not fall under the definition of legal services, and we are not required to be insured under Rule 6 Solicitors (Professional Indemnity) Rules with respect to this work.^{21]}

²¹ Refer to Section 4.2 of the Guide for more information on the professional indemnity and insurance requirements. Consider whether detailing here any other insurance you feel is required to perform the non-legal work.

²² If you will be providing legal advice, assistance or representation. Otherwise, care should be taken to avoid holding yourself out as solicitors, if the intention is not to provide direct legal advice, assistance or representation in this engagement, a more neutral terms such as ‘team member’ or ‘professional’.



[If legal services to be provided:

Outline how professional insurance is being covered e.g. through partnering law firm, and how confidentiality and issues of privilege are managed.]

MATTERS OUTSIDE THE SCOPE OF SERVICES

We will not be providing advice on [list related issues/ matters which we will not be advising on].

[Specify whether Hong Kong law issues will be excluded, for example if foreign qualified lawyers will be delivering the work, though keep in mind requirements at paragraph 4.[above]]

TIMETABLE

We confirm that [tasks, due dates or time for completion – set out what has been agreed as to timetable]. If we become aware that this timetable is likely to change we will notify you as soon as possible.

OUR TEAM

[Name], [title], is the [legal practitioner²²] who will primarily perform the work. [First name]'s direct line is [number]. Please contact [first name] if you would like to discuss anything in relation to the matter. [Name], [title] will also supervise [first name] and assist as necessary.

Where appropriate, we will adopt a team approach to ensure that your work is performed as efficiently as possible. A senior lawyer²³ will always be responsible for your work. However, the senior lawyer may delegate tasks to other members of the team with the appropriate skill and experience.

[Clarify whether foreign lawyers will be involved, these cannot be referred to as "lawyers" and also state if Hong Kong Solicitors will need to supervise the work e.g. Hong Kong law issues are involved]

WHAT YOU HAVE TO PAY

We have agreed to act for you in this matter on a pro bono basis. This means that we will not charge you for our professional fees or for our [if not charging

third party disbursements insert standard charges or disbursements if charging third party disbursements insert standard charges].

[Delete the following paragraphs if not charging for third party disbursements]

We will charge you for disbursements. Disbursements are expenses we incur on your behalf for services supplied or payments charged by third parties. We will incur such disbursements as agent for you and will only recover from you the amount paid by us to the third party (inclusive of any VAT the third party has included in that amount).

Set out below is a list of the likely disbursements you will incur in this matter and an estimate of your total disbursements. However, this is only an estimate and is not binding on us. I will let you know if the estimate needs revising.

Disbursement Amount

[type of disbursement] \$[]

[type of disbursement] \$[]

[type of disbursement] \$[]

Estimated total disbursements \$[]

We will obtain your approval and consent before we incur any disbursements which are not listed in the table above, or where reasonably possible, if and when they exceed the amounts above. We will normally send you an account for disbursements monthly, but this may vary depending on the amount of disbursements incurred. [In certain circumstances we may request that you provide us with the funds for such disbursements up front. We will place this money in our trust account in your name. Once we have issued you with an account for disbursements we are entitled to withdraw that money to pay for them.]

Where possible, we will assist you to obtain funding for, or exemption from, third party disbursements. If we do receive any funding or are able to claim exemption from a disbursement incurred in your matter, and you have already paid us for the relevant disbursement, we will provide you with a refund up to the amount we have received or the amount of the exemption.

²³ See footnote 21 above, and adjust to fit the particular situation (eg where it is a partnership model).



FEEDBACK

[Set out any review processes that are proposed or agreed]

We pride ourselves on the provision of a high quality service to our clients at all times. If you would like to discuss our performance, please contact [name]. If that does not resolve the situation, you can contact me [or our Team Leader, [name]].

Once again thank you for instructing us. We look forward to working with you. If you have any queries about any aspect of this letter [if relevant insert, its attachments] and the Pro Bono Standard Conditions please do not hesitate to contact us. Otherwise, please confirm your acceptance by signing the enclosed copy letter and returning it to us as soon as possible.

[Signoff]

I agree to be bound by this letter [if relevant insert, its attachments] and the Pro Bono Standard Conditions.

Signed:

[Client's name]

Dated: ___/___/___

Attachments:

Pro Bono Standard Conditions

[List other attachments]

Copy of Client Agreement letter

SAMPLE - PRO BONO STANDARD CONDITIONS

See: www.hkcca.net





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