

Pro Bono Practices and Opportunities in China

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

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In the last thirty years, China has implemented a number of legal and economic reforms and legal services are playing an increasingly important role in protecting citizens' rights and interests.¹ In 1982, China began the process of privatizing the practice of law after the legal profession had been reduced nearly to nonexistence during the Anti-Rightist Movement and the Cultural Revolution. In 2004, there were over 120,000 lawyers in China.² Since 1994, China has also been building a legal aid system which includes a variety of local adaptations for those who cannot otherwise afford legal services. The Chinese approach is similar to the U.S. mixed system which includes the judiciary and salaried lawyers models, with local variations.³ The Department of Legal Aid of the Ministry of Justice, PRC has been established to: guide and conform the development of legal aid laws and regulations as well as to execute legal aid policies; plan for the development of legal aid work; manage legal aid institutions and legal aid practitioners; and provide guidance to social organizations and voluntary organizations in their developing legal aid work.⁴

The development of legal aid services in the PRC has been making steady progress. According to a speech delivered by the Minister of Justice in the fifth nationwide legal work meeting held on June 9, 2009, the number of legal aid cases has grown by 30% each year since 2004. As of 2008, nearly 550,000 legal aid cases have been handled and over 4.3 million people have received legal aid consultation services. Twenty-five provinces (i.e., regional districts and cities) have enacted local rules and regulations which will facilitate the management and quality of the legal aid work. By the end of 2008, 3,268 legal aid institutions have been established nationwide and the total number of people assisting legal aid institutions reached 12,778.⁵ In 2009, 641,065 legal aid cases were handled by the legal aid institutions nationwide and over 4.8 million people received legal aid consultation services.⁶

In addition, in June 2009, the Ministry of Justice organized activities in order to promote "legal aid services for the convenience of the people" and promoted ten measures nationwide to help ordinary people with legal affairs. The coverage of legal aid has been expanded throughout the country, and issues which are closely related to the citizens' well-being have been

¹ See generally Francis Regan, *How and Why is Pro Bono Flourishing: A Comparison of Recent Developments in Sweden and China*, (archived at Flinders University), available at: <http://dspace.flinders.edu.au/dspace/bitstream/2328/1034/1/ProbonoComparison.pdf>.

² Ge Wu, *Private Lawyer, Government Lawyer, and Public Interest Lawyer*, available at: <http://www.chineselawyer.com.cn/pages/2004-11-19/s25126.html>

³ Allen C. Choate, *Legal Aid in China*, The Asia Foundation Working Paper Series, Working Paper #12, p. 6 (April 2000), available at: <http://www.asiafoundation.com/pdf/wp12.pdf>.

⁴ The major functions of the Department of Legal Aid, Ministry of Justice, PRC, are pursuant to "Notice of the State Council about the Publishing of the Internal Institutions with Major Duties and Personnel of the Ministry of Justice" (GuoBanFa [2008] No. 64), available at: http://www.moj.gov.cn/flyzs/content/2009-04/08/content_1066853.htm?node=7851

⁵ The speech delivered by Ms. Wu Oiyong, the Minister of the Ministry of Justice in the 5th meeting of legal aid work dated June 9, 2010, available at: http://www.moj.gov.cn/flyzs/content/2009-06/22/content_1111680.htm?node=7673

⁶ "Overview of Legal Aid Work in China 2009," available at: http://www.chinalaiald.gov.cn/China_laiald/content/2010-08/26/content_2260721.htm?node=24953

incorporated as supplements into the coverage of legal aid for the protection of citizens' rights and interests.⁷

However, because the current laws regulating lawyers and the representative offices of foreign law firms in China strictly limit the offices' practice to foreign legal services, there is almost no room for foreign law firms to engage in any *pro bono* representation of Chinese nationals.

I. Legal Services and the Legal Profession in China

Chinese law recognizes that the government has a responsibility to provide legal aid to its citizens.⁸ The legal aid system was first proposed by the Ministry of Justice in 1994, and in 1996 the Ministry established the Legal Aid Center ("LAC") to monitor and promote the development of legal aid bodies nationwide, and the China Legal Aid Foundation ("CLAF")⁹ to raise funds for legal aid.¹⁰ The system is guided and coordinated by legal aid institutions, lawyers, notary clerks, and paralegals who are "required to provide free or rate-reduced legal services for clients who encounter financial difficulties or for special cases."¹¹ A "China Legal Aid" website has been launched and is maintained by the LAC.¹²

The legal aid institutions supervised by LAC include national, provincial, regional (municipality or prefecture), and county or district legal aid centers.¹³ The national and provincial centers are tasked with policy-making and management rather than handling actual cases.¹⁴ Legal aid cases are generally handled directly by municipal and county legal aid centers.¹⁵ These local legal aid centers, which provide legal services for civil, criminal and administrative proceedings and other non-litigation matters such as legal consultation, mediation and notary services, are responsible for accepting and examining legal aid applications and for arranging for personnel to provide legal aid to qualified citizens.¹⁶ While local legal aid institutions do occasionally handle

⁷ *Legal Aid in China*, The Ministry of Justice of the PRC, available at: http://english.moj.gov.cn/Legal-Aid/content/2010-01/25/content_2035688.htm?node=7619.

⁸ Regulation on Legal Aid (No. 385) (promulgated by the State Council, July 16, 2003; effective September 1, 2003) available at: http://www.chinalegalaid.gov.cn/China_legalaid/content/2010-08/25/content_2259022.htm?node=24970. The rate of subsidy is determined by the judicial administrative department and the department of public finance for each provincial government. The subsidy usually only covers the expenses incurred by the law firm in handling the case. Court fees are the responsibility of the legal aid recipient, not the law firm which provides legal aid, but courts may waive the court fees for qualified legal aid recipients.

⁹ See <http://www.claf.com.cn/>.

¹⁰ Some major cities, such as Beijing, Guangzhou, Shanghai and Wuhan, set up municipal legal aid centers and legal aid foundations as pilot projects in 1994 and 1995. See Wong Kai-shing, *China: Legal Aid in China*, available at: <http://www.hrsolidarity.net/mainfile.php/1999vol09no11/1949>.

¹¹ Notice Regarding Development of Legal Aid Work (promulgated by the Ministry of Justice, May 1997), available at: www.asiafoundation.com/pdf/wp12.pdf; Allen C. Choate, "Legal Aid in China," The Asia Foundation Working Paper Series, Working Paper #12 (April 2000).

¹² Available at: <http://www.chinalegalaid.gov.cn>.

¹³ Choate, *supra* note 3.

¹⁴ Choate, *supra* note 3, at 14.

¹⁵ *Id.*

¹⁶ Regulation on Legal Aid, *supra* note 8, art. 5. If an application is rejected by the legal aid center, the applicant may appeal the decision to the supervising judicial administrative department.

cases with their own staff attorneys, most cases are referred to outside private attorneys practicing at law firms.¹⁷ It is illegal for an attorney who provides legal aid service to receive any money or articles of value as compensation.¹⁸ Attorneys who provide legal aid service will receive subsidies via the legal aid institutions.¹⁹ Private attorneys providing legal aid services remain under the direction and supervision of the judicial administrative departments, national or local lawyers' associations, legal aid institutions, and legal aid recipients.²⁰

China's legal aid institutions are supported by government funds, private donations and lawyers' free services.²¹ Government funding supports the legal aid centers' operations and provides subsidies to the assigned private lawyers.²² Private donations raised by the legal aid foundations are another important source of income.²³

Legal aid volunteers have also become an important part of the legal aid system in China.²⁴ These individuals volunteer with local legal aid centers and generally fall into three categories: (1) lawyers, notaries, grassroots community legal service workers, law school students, non-practicing lawyers and retired legal workers; (2) journalists who report legal news and have the responsibility of publicizing the national legal aid system; and (3) social activists who are able to donate or raise funds for legal aid.²⁵

¹⁷ Choate, *supra* note 3, at 14. In staffing, the centers usually consider their own financial resources and availability of professional legal personnel. The number of cases assigned to private attorneys varies by center. *See also The Interim Measures on Administration of Carrying Out Legal Aid Services by Lawyers and People Who Provide Legal Service at the Local Level* (promulgated by the Ministry of Justice, September 8, 2004, effective September 8, 2004), art. 3, available at: <http://law.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=55203>.

¹⁸ Rule 28 of the Regulation on Legal Aid (No. 385) (promulgated by the State Council, July 16, 2003; effective September 1, 2003). If the attorney has infringed Rule 28(2) which renders as an illegal act, the administrative department of the Ministry of Justice shall order the attorney to return the money and the articles of value. The attorney will be subject to a penalty in the amount of between greater than one time and less than three times the value of the money and articles that had been received by him or her.

¹⁹ Rule 24 of the Regulation on Legal Aid (No. 385) stipulates that "For the attorney who has been assigned with legal aid cases or the personnel who serves at that social organization which provides the legal aid service, when legal aid case comes to an end, they shall submit the materials, such as the duplicate or photo copies of the relevant legal documents or case report, to the legal aid institutions. After the legal aid institutions have received the materials, subsidy shall be awarded to the attorney who has been assigned with legal aid cases or the personnel who serves at that social organization. The standard for the amount of subsidy awarded is determined by the department of administration and justice of the people's government of the provinces, autonomous regions and municipalities and the finance department at the same level according to the local economic development level and making reference to the average cost for the legal aid institutions to undertake various types of legal aid cases, etc., and adjustments shall be made according to the needs."

²⁰ The judicial administrative departments have the power to suspend the lawyer's license if he or she is not in compliance with the relevant regulations. Law firms who handle legal aid cases are subject to the review of the legal aid centers. The legal aid recipients can also file complaints with relevant judicial administrative departments, legal aid centers and lawyers associations if they are not satisfied with the attorney handling the case. *See Interim Measures*, *supra* note 17, at art. 4.

²¹ Xinhua News Agency, "Ordinary Chinese Citizens Access More Legal Aid," available at: http://www.chinadaily.com.cn/english/doc/2004-10/01/content_379270.htm.

²² Regulation on Legal Aid, *supra* note 8, article 24.

²³ Regulation on Legal Aid, *supra* note 8.

²⁴ *Id.*

²⁵ *Id.*

A. Eligibility for Legal Aid

In criminal proceedings, citizens can either apply for legal aid or be assigned legal aid lawyers by the People's Courts. All criminal defendants can apply for legal aid if they meet the standard for "financial hardship."²⁶ Courts may also appoint defense counsel for a defendant who is blind, deaf, mute, or if he is a minor, or is prosecuted for a capital crime.²⁷ The Joint Notice of the Supreme People's Court and the Ministry of Justice regarding Legal Aid Work in Criminal Cases issued in April 1997 provides that legal aid may be provided to the defendant if (i) he or she is an indigent defendant, and his or her economic situation is not known; (ii) the defendant's family repeatedly refuses to pay legal cost; (iii) other co-defendants in a conspiracy case have legal counsel; (iv) he or she is a foreigner without counsel; and (v) the case is "of great social significance." Whether free legal aid will be assigned will be subject to the court's discretion.²⁸

In civil or administrative proceedings, citizens meeting "financial hardship" criteria can apply to legal aid centers either for assistance in litigation or for legal consultation services.²⁹ Legal aid is available for state compensation claims, claims for social security payments or minimum living guarantee payments, pensions for the disabled or bereaved, parental or child support or alimony, labor remuneration, and for disputes arising as a result of actions taken "in the interest of justice."³⁰

II. *Pro Bono Opportunities in China*

Currently, private attorneys in China are required to fulfill legal aid obligations imposed by the state.³¹ The All-China Lawyers Association and local lawyers associations also require

²⁶ Provisions on Legal Aid Work in Criminal Litigation (promulgated by the Supreme People's Court, the Supreme People's Protectorate, Ministry of Public Security and Ministry of Justice, September 28, 2005, effective December 1, 2005), art. 4, *available at*: <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=30912#id30912>.

See also Guidance on Legal Aid, published by the China Legal Aid Center on June 1, 2007, *available at*: http://www.chinalegalaid.gov.cn/China_legalaid/content/2010-08/10/content_2235284.htm?node=24966.

²⁷ Legal Aid in China, Ministry of Justice of the PRC, *available at*: http://www.legalinfo.gov.cn/english/Legal-Aid/node_7622.htm;

Article 34 of the Criminal Procedure Law of the PRC (amended in accordance with the Decision on Revising the Criminal Procedure Law of the People's Republic of China adopted at the Forth Session of the Eighth National People's Congress on March 17, 1996), *available at*: <http://www.china.org.cn/english/government/207332.htm>.

²⁸ *See* <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan017813.pdf>.

²⁹ Regulation on Legal Aid, *supra* note 8, art. 10.

³⁰ *Id.* Provincial governments may also adopt supplementary provisions governing legal aid in cases other than those provided for by law. In fact, the local rules and regulations often provide a broader scope of legal aid services than the national regulations. For example, in Shanghai, legal aid institutions also provide legal aid in labor contract disputes, claims for damages for work-related injuries, automobile accidents, or medical malpractice, and for domestic violence and child neglect. *See* Provisional Measures on Legal Aid (promulgated by the executive comm. of the Shanghai People's Cong., April 26, 2006, effective July 1, 2006), art. 5, *available at*: http://www.law-lib.com/law/law_view.asp?id=166365.

³¹ According to the law governing lawyers, every lawyer is obligated to perform a certain amount of legal aid work assigned by the legal aid institutions and lawyers associations. Law on Lawyers (promulgated by the Standing Committee of the National People's Congress, May 15, 1996, amended October 28, 2007, effective June 1, 2008), art.42, *available at*: http://www.chinacourt.org/flwk/show.php?file_id=122226. The number of legal aid cases and the amount of service a lawyer is obligated to provide vary from province to province.

their members to participate in legal aid services.³² The emphasis on legal aid is due to the fact that Chinese attorneys have historically been designated as “legal workers of the State” and the privatization of the legal profession is a relatively new occurrence. Attorneys shall be subject to a fine or suspension from practice for three months if they refuse to discharge their legal aid duties. Given the relative size and youth of the legal profession in China this means that it is more practical for the state to assign cases to lawyers through the legal aid institutions.

A growing number of nongovernmental legal aid bodies in China are also providing legal *pro bono* services, including labor unions, the Communist Youth Community, women’s organizations and disabled persons’ groups.³³ Among these, law centers of universities in China are active and are playing a role in the provision of *pro bono* legal assistance by taking on high profile cases with significant social importance.³⁴

As foreign law firms and lawyers are limited under Chinese law to providing advice only in the sphere of foreign law, there has not been a demand by Chinese individuals or NGOs for legal services from foreign and international lawyers. However, foreign international law firms with expertise in foreign laws and practice could act as a resource to the clinics by introducing students to international practice and legal concepts, and by providing guidance in developing the clinics’ practice. Another possibility for foreign firms to do *pro bono* work in China under the current laws and regulations is to advise Chinese clients on foreign laws and international laws. However, with the development of Chinese NGOs and the increasing number of international treaties to which China has become a party, foreign law firms may have the opportunity to represent Chinese NGOs in the countries where they are allowed to practice or before an international tribunal. A foreign law firm might also be able to partner with local counsel to advise NGOs on legal issues they might face which have an international dimension, such as contracts with multinational aspects or intellectual property issues.

The Chinese government has been very cautious in permitting international or foreign NGOs to enter the country. However, many international NGOs such as Greenpeace and the Red Cross have successfully opened branch organizations in China. In the event of a relaxation of the historically strict governmental policy towards international NGOs, foreign lawyers should have more opportunities to assist these organizations with the legal issues they encounter in China. Although current law prohibits foreign lawyers from representing organizations directly, they can

³² Law on Lawyers, art. 42.

³³ Opinion on Implementation of “Regulation on Legal Aid,” *Promotion and Formalization of Legal Aid* (promulgated by Ministry of Justice, September 12, 2003, effective September 12, 2003), art. 11, available at: <http://www.jincao.com/fa/22/law22.s15.htm>.

³⁴ The Center for the Protection of the Rights of Disadvantaged Citizens at Wuhan University Law School, available at: <http://www.cprdc.org/web/>, Constitutional and Civil Rights Center at Qinghua University Law School; Center for Women’s Law Studies and Legal Aid Society of the Beijing University, available at: <http://laa.lawpku.org/> are among the most established law school clinics in China. See, e.g., *Skeletal Legal Aid Requires Flesh and Muscle*, China Development Brief, available at: <http://www.chinadevelopmentbrief.com/node/307>.

See also South-Central University for Nationalities Clinical Legal Education and South-Central University for Nationalities Legal Aid Centre, available at: http://www.scuec.edu.cn/flyz/introduce/zhensuo_introduce.htm?node=24974

See also Chinese universities students online, Zhongnan Economics, Law and Politics University, available at: <http://lac.univs.cn/index.jsp>

“provide information on the impact of the Chinese legal environment” which may enable foreign lawyers to provide meaningful services to Chinese organizations.³⁵

A. Barriers to *Pro Bono* Practice for Foreign Law Firms

Only attorneys licensed in China may appear in court and advise on questions of Chinese law.³⁶ Foreign lawyers cannot qualify to practice Chinese law, and foreign law firms cannot form joint ventures with Chinese lawyers.³⁷ In addition, the rules of the Ministry of Justice specify that representative offices acting in the capacity of a lawyer cannot: represent parties in a litigation; give legal opinions or certifications on specific issues with respect to the application of Chinese law in contracts, agreements, or arbitration; or file applications on behalf of clients before Chinese administrative authorities.³⁸ The legal aid cases currently permitted under the legal aid regulations are well within the scope of “Chinese legal affairs” in which foreign law firms cannot participate. Under this system, it is effectively impossible for foreign lawyers in China to take on the legal aid cases or initiate their own *pro bono* cases involving any Chinese law matters. Therefore, foreign law firms are currently limited in their opportunities to do *pro bono* work within China.

Strict practice rules also apply to Chinese lawyers who choose to work at foreign law firms and these rules restrict their ability to provide *pro bono* services. When a PRC-qualified lawyer is hired by a foreign law firm, the lawyer’s practicing license in China is suspended for as long as he or she is employed by the foreign firm.³⁹ Even though the Lawyers Law requires all Chinese lawyers to take legal aid cases, “lawyer” is defined as “a practitioner who has acquired a lawyer’s practicing certificate pursuant to law and provides legal services to the public.”⁴⁰ Once suspended from practicing Chinese law, a lawyer can no longer “provide legal service to the public” and is therefore no longer assigned legal aid cases by his or her local lawyers association. In addition, the legal aid regulations require that legal aid cases be assigned to law firms instead of individual lawyers.⁴¹ Therefore, resident attorneys at the foreign firms’ offices in China cannot accept legal aid cases in their own names even if they are qualified in China and are allowed to keep their practicing licenses active. These rules effectively prevent Chinese-qualified attorneys at foreign law firms from providing legal aid.

³⁵ Legal Services, The American Chamber of Commerce in Shanghai, *available at*: <http://www.amcham-shanghai.org/AmChamPortal/MCMS/Presentation/Publication/WhitePaper/WhitePaperDetail.aspx?Guid={41DB3F40-2CB1-49E6-848A-9FA41CE5F95F}>.

³⁶ China Business Law Handbook, USA International Business Publications, 2007, p. 68.

³⁷ How to practice in China, The Law Society of England and Wales, *available at*: <http://www.international.lawsociety.org.uk/ip/asia/586/practice>.

³⁸ *See Implementing the Administration of Representative Offices of Foreign Law Firm in China Regulations* (promulgated by the Ministry of Justice, July 4, 2002, effective September 1, 2002), art. 33, *available at*: http://www.gov.cn/english/laws/2005-08/24/content_25816.htm

³⁹ Legal Services, The American Chamber of Commerce in Shanghai, *available at*: <http://www.amcham-shanghai.org/AmChamPortal/MCMS/Presentation/Publication/WhitePaper/WhitePaperDetail.aspx?Guid={41DB3F40-2CB1-49E6-848A-9FA41CE5F95F}>.

⁴⁰ *Id.*

⁴¹ Interim Measures, *supra* note 136.

III. Conclusion

The current laws and regulations prohibiting foreign law firms from practicing Chinese law greatly limit their ability to provide *pro bono* legal services in China. However, there may still be opportunities for foreign firms to engage in *pro bono* legal work by developing partnerships with NGOs that provide *pro bono* services or law school legal clinics. For resourceful law firms and practitioners, there may even be opportunities to facilitate legal reform and the development of *pro bono* in the legal profession by providing consulting and information-based services to the Chinese government, NGOs, and law schools.