

# THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## GUIDELINES FOR EMPANELMENT OF ADVOCATES AND PAYMENT OF FEES.

1. (1) **Short title, application and commencement.** - These Guidelines may be called the Guidelines for Empanelment of Advocates by the Insolvency and Bankruptcy Board of India.

(2) These Guidelines shall apply in relation to empanelment of advocates to represent and appear for and on behalf of the Board in any court or tribunal in India or for rendering legal advice or opinion to the Board as and when asked by it.

(3) These Guidelines have been issued in supersession of the earlier 'Guidelines for Empanelment of Advocates by the Insolvency and Bankruptcy Board of India' issued on November 1, 2018. These Guidelines shall come into effect for Empanelment of Advocates with effect from March 2022.

2. **Definitions.** -For the purposes of these Guidelines, -

(a) "advocate" means an advocate for the time being entered in the roll of advocates of a State Bar Council under the provisions of the Advocates Act, 1961 (25 of 1961) and includes senior designated advocate, advocate-on-record and advocate appointed or engaged by the Central or a State Government;

(b) "Board" means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 188 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(c) "Code" means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(d) "competent authority" means any officer authorised by the Board;

(e) "effective hearing" includes a hearing in which either one or more of the parties involved in a case or matter is or are specifically heard by the Court but does not include where the case or matter is only mentioned or passed over or adjourned or a notice is issued or a judgment or order is pronounced;

(f) "empaneled advocate" means an advocate for the time being empaneled with the Board under these Guidelines;

(g) "empanelment committee" means a committee of officers of the Board headed by the Executive Director for approving the panel of advocates;

(h) "Schedule" means the Schedule appended to these Guidelines containing fee and expenses payable to an empaneled advocate;

## PART -A- EMPANELMENT

**3. Types of panels.** – (1) The empanelment committee shall prepare two panels for the purpose of assigning cases, namely, senior panel and junior panel of advocates.

(2) There shall not be any fixed size of the panel and the number of advocates in each panel shall be determined by the competent authority from time to time based on the requirement and quantum of cases or matter in any Court or where a legal advice is or may be sought in any case or matter.

(3) The competent authority may utilise the services of the panel of advocates approved by the Ministry of Law and Justice, Department of Legal Affairs for courts/ tribunals situated at such places where an empaneled Advocate of Board is not present and the fees shall be processed as per these Guidelines.

(4) Where required and considered appropriate by the competent authority, the Attorney General for India, Solicitor-General, Additional Solicitor General, Assistant Solicitor General, Advocate General, designated senior advocate or any other advocate for the time being empaneled or engaged by the Central or a State Government, as the case may be, or by any authority constituted or established by a statutory body, may be engaged by the competent authority to argue or conduct a case or matter on behalf of the Board, keeping in view the urgency and importance of a particular matter.

**4. Experience.** - (1) An advocate to be eligible for empanelment should have active practice–

(a) for at least ten years - for empanelment in the senior panel.

(b) for at least five years- for empanelment in the junior panel.

(2) The period of experience should include the period of experience at the Bar as well as the period experience as a legal officer/ research associate in legal wing of Government Organisations, Banks, Financial Institutions, Regulators, Statutory Organisations, Courts, other Government bodies, etc.

(3) With regard to empanelment of a solicitors firm, the experience of the partner/s, the reputation of the firm experience in relevant area and its infrastructural facilities will be taken into account.

(4) Subject to approval of ED, the required experience may be relaxed, in deserving cases after examining the expertise and knowledge of an advocate in the field of insolvency law.

(5) For considering empanelment for the Supreme Court, generally an advocate who is regularly practicing in the Supreme Court including Advocate-on-Record shall be considered, if she is otherwise found to be competent and suitable by the competent authority.

**5. Disqualification for empanelment.-** A person shall be disqualified from applying for empanelment as advocate or solicitors firm or continue in the panel as such, if she or the partner/s, as the case may be-

- (a) is an undischarged bankrupt;
- (b) is physically or mentally incapable of acting as an advocate;
- (c) has been convicted of an offence, which in the opinion of the competent authority involves moral turpitude;
- (d) has any conflict of interest;
- (e) has been subject to any professional disqualification by the Bar Council;
- (f) has, so abused her position as an advocate as to render her empanelment or continuation in the panel detrimental to the interests of the Board.

**6. Procedure for empanelment.** – (1) The Division/Department handling court matters in Board shall examine fresh applications or review existing panel after examination of qualification/experience of applicant advocates and performance of the already empaneled regularly every year and place the panel for approval of empanelment committee for approval.

(2) The empanelment committee shall comprise of the following officers of the Board in handling matters of court proceedings and legal affairs:

- (a) Executive Director;
- (b) Chief General Manager/ General Manager/ Deputy General Manager of Legal Affairs Department; and
- (c) Chief General Manager/ General Manager/Deputy General Manager of Prosecution Department.

(3) The advocate/solicitor shall meet the criteria, as provided in these Guidelines including but not limited to:

- i. requisite experience;
- ii. length of practice,
- iii. specialisation, if any, in the area of insolvency and bankruptcy;
- iv. nature of cases dealt with or being dealt with by the advocate;
- v. track record;
- vi. status of empanelment with other regulators/ statutory bodies

**7. Communication of empanelment.** - The intimation of empanelment will be communicated to advocate along with the terms and conditions as per these Guidelines.

**8. Engagement of Government Law Officers-** (1) Designated Senior Counsels/ Senior Advocates, Government Law Officers namely, Attorney General, Solicitor General, Advocate Generals Additional Solicitor Generals, etc. may be engaged without requirement of them being in the either of the panels, considering importance of the case or complexities involved in the matter.

(2) In cases, where Union of India is also respondent apart from Board, the advocate engaged by Ministry of Law and Justice will represent Board also and, in such matter, no separate advocate will be engaged by the Board from any of the panel.

**9. Terms of Empanelment.** – (1) The empanelment of advocate shall always be subject to

following terms and conditions:

- (a) mere empanelment of advocate shall not bind the Board to allot her any particular case or matter or obtaining any service from her.
- (b) the allotment of a case or matter to the empaneled advocate shall be solely at the discretion of the competent authority.
- (c) the Board shall be free to engage any advocate of its choice including any advocate who has not been empaneled, in a particular case and the empaneled advocate shall not raise any dispute regarding the same.
- (d) upon termination, suspension or non-renewal of empanelment, as the case may be, the empaneled advocate shall return the case file or matter forthwith to the competent authority along with all documents and records connected thereto duly marked and flagged with her no objection certificate.
- (e) an empaneled advocate shall not take up, contest, conduct any case or advice any person in any case or matter against the interests of the Board or any of its officer or employee or representative.
- (f) the empaneled advocate shall not delegate any case, brief or assignment given to her to any other advocate and shall deal with the case or matter herself.
- (g) an empaneled advocate shall coordinate or cooperate with any other advocate in any case or matter assigned to her by the competent authority, where necessary, and as instructed by the competent authority.
- (h) the empaneled advocate shall maintain absolute secrecy and confidentiality about the case or matter of the Board.
- (i) cases involving similar issues or matters or otherwise interlinked or clubbed maybe entrusted to the same empaneled advocate as far as possible, unless otherwise found necessary, while care shall be taken by the competent authority to avoid concentration of cases in the hands of one or few empaneled advocates.
- (j) the empaneled advocate shall not necessarily be for a particular Court and shall accept any case or matter assigned to her and shall not refuse to accept any professional task without reasonable cause.
- (k) the empaneled advocate shall not refuse to accept any assignment otherwise than on grounds of ill health, conflict of interest or any other reason to the satisfaction of the competent authority.
- (l) the engagement or allotment of cases or matters to the empaneled advocate shall be at the sole discretion of the competent authority. However, the allotment shall be done in an equitable manner without prejudice or bias; but regard shall be had for the nature of the case or matter, subject under challenge, experience, merit, performance and competence of the advocate.
- (m) during the term of the empanelment and thereafter, any confidential information relating to the Board, any officer, employee or representative of the Board obtained by the empaneled advocate, under or by virtue of the empanelment, shall be maintained as professional communication within the meaning of section 126 of the Indian Evidence Act, 1872 (1 of 1872) and she shall not disclose the information to any person without the prior written consent of the competent authority, unless such information is required to be disclosed in pursuance of order of any competent court, tribunal exercising

jurisdiction, in which case the empaneled advocate shall promptly notify the Board in writing of such disclosure.

- (n) An empaneled advocate shall have the right to represent for and on behalf of any other client in any case or matter, which shall not, however, interfere with or be in conflict with the efficient discharge of her professional duties towards the Board or any of its officers or employees.
- (o) An empaneled advocate shall not advise any party or accept any case or matter against the Board, any member or its officers or employees, or any case or matter in which he has appeared or is likely to be called upon to appear or advise, in which event he shall be liable to be removed from the panel.
- (p) If the empaneled advocate, at any relevant period, is a partner of a firm of lawyers or solicitors, which takes up or advises a person or a party who is or is likely to be moving against the interests of the Board, it shall be incumbent upon the empaneled advocate to disclose the same and a decision to withdraw a case or matter from such empaneled advocate shall be taken by the competent authority; however, non-disclosure of such information shall liable the empaneled advocate to be removed from the panel.
- (q) The empaneled advocate shall not take up any case or matter or advice any person or party against the interests of the Board, the Central or a State Government, any public sector bank or any authority, constituted or established under any Central or State law, which in the opinion of the competent authority, amounts to conflict of interest, prejudice or bias affecting the case or matter entrusted to her or advice sought by the Board from her.

(2) Notwithstanding anything contained in the foregoing, the Board reserves the right to postpone, suspend, terminate, remove or cancel the empanelment of an advocate for reasons to be recorded in writing.

**10. Performance review of empaneled advocate.** - The empanelment committee shall review the performance of empaneled advocate regarding conduct of any case or matter pertaining to the Board every six months and where committee believes that the performance of empaneled advocate is not satisfactory, her name may be removed from the panel for reasons to be recorded in writing by the competent authority.

**11. Removal from empanelment.** – An empaneled advocate /solicitor firm may be removed from the panel on her request or occurrence of any event which makes her ineligible to practice law or professional misconduct or conduct against professional ethics or disobeys the terms and conditions of empanelment or dissolution of solicitor firm.

## **PART -B- PAYMENT OF FEES**

**12. Payment of fee.** – (1) The fee payable to the empaneled advocate shall be governed by the Schedule as amended from time to time.

(2) Where the empaneled advocate is authorised to represent two or more cases involving substantially identical or similar questions of law or facts, one of such cases shall be treated

as a lead case and others as similar or identical or connected cases and she shall be paid full fee for the lead case and ten per cent. of the fee of the lead case shall be paid for each of the similar or identical or connected case, subject to a maximum of ten such cases.

(3) In batch matters/ tagged court matters, involving similar issues, the advocate engaged may be allowed to claim 1/10<sup>th</sup> of the eligible fee for the matters other than the main matter.

(4) No fee shall be paid for non-appearance in a Court by the empaneled advocate where she seeks adjournment without any instruction for adjournment from the competent authority or on account of her personal reason or where adjournment is effected due to no-sitting of the Court.

(5) Only one set of fees shall be payable to the empaneled advocate where more party than one on behalf of the Board are parties.

(6) If any designated senior advocate is engaged for a matter representing the Board, her fee and charges shall be determined as per the Schedule.

(7) Where the empaneled advocate is required to visit any Court situated outside her ordinary place of practice in connection with any case or matter, he shall be entitled to claim expenses as per **Annexure – B** of the Schedule.

(8) No retainer fee shall be paid to any empaneled advocate.

(9) Miscellaneous expenses/ out of pocket expenses can be claimed by the empaneled advocate on production of corresponding bills for expenses, wherever possible.

(10) **Board as Pro- forma respondent** –Where Board is a *pro-forma* party or no relief has been claimed against it, a junior panel advocate may be engaged for making prayer before the Court/ tribunal for deletion of the name of the Board from the proceedings. She shall be paid fees as under: -

(a) If name of Board is deleted by mentioning a consolidated fee of Rs. 10,000/- will be payable to such advocate.

(b) Where the advocate is required to file an application for deletion of name of the Board from the list of parties, she may be paid fees as entitled for filing Miscellaneous Application.

(c) If the competent authority is satisfied that arguments were made by the advocate on any issue, the advocate may be paid fees chargeable for effective hearing.

**13. Method of Payment of fee.** - (1) The empaneled advocate shall submit the professional fee bills to the Board her along with the gist of proceedings and certified copy of order or judgment where the bill relates to a claim for appearance fee and where, the bill relates to legal opinion or other reference, the copy of the request or reference sought by the competent authority may be enclosed.

(2) The claim for reimbursement of expenses or expenditures for outstation conveyance,

boarding and lodging shall be claimed by producing necessary voucher or bill or undertaking to the satisfaction of the competent authority or any officer, employee or representative authorised by her in her behalf.

(3) The competent authority shall process payment of bill within a period of one month from the date of submission if the claim is complete in all respects.

(4) The payments shall be subject to tax deduction at source, goods and service tax or such other taxes as applicable from time to time.

**14. Termination.** - (1) The empaneled advocate shall be at liberty to terminate the empanelment by giving at least one months' notice in writing to the Board, within which every case file and every other document relating to the case or matter entrusted to her shall be returned to the competent authority or any officer or representative authorised by her.

(2) Without prejudice to the foregoing provisions, the competent authority or the Board reserves the right to terminate the empanelment by giving notice to the empaneled advocate at any time he fails to discharge her obligation under these Guidelines or is found to be negligent, careless, inefficient or has committed fraud, mischief, misappropriation, or any misconduct to the satisfaction of the competent authority or the Board, as the case may be.

(3) Any pending or unresolved operational issues, performance, unpaid fees or any other remedy to the empaneled advocate may be settled or resolved even after the advocate is removed or her empanelment is terminated.

**15. Removal of difficulty.** - If any difficulty arises in the implementation of these Guidelines or any doubt regarding the interpretation of any of the clauses of these Guidelines, the same shall be placed before the Whole Time Member and her decision in the matter shall be final.

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## **SCHEDULE**

### **A. Fee for Attorney General/Solicitor General/Advocate General/ Additional Solicitor General/ Senior Designated Advocates**

Category of Advocate	Category of the Service	Fee*	
		Supreme Court	High Court/NCLAT/NCLT
Attorney General/ Solicitor General/ Additional Solicitor General/ Assistant Solicitor General and Senior Advocates.	(i) For effective hearing/appearance	Rs. 2.00 Lakh	Rs. 1.75 Lakh
	(ii) Non-effective hearing/appearance	Rs. 50, 000/-	Rs. 30, 000/-
	(iii) Conference Fee	Not more than Rs. 40,000/- per Conference	Not more than Rs. 30,000/- per Conference
	(iv) Settling of Replies	Rs. 25,000/-	Rs. 25,000/-
	(v) Legal opinion	Rs. 25,000/-	Rs. 25,000/-
	(vi) Clerkage	Up to 10% of the fee	

\* No fee shall be payable to the advocate if case is adjourned without being taken up.



**B. Fee for Senior Panel of Advocates**

Category of Service	Supreme Court	High Court	NCLAT	NCLT	Special Court/ Other Courts
(i) *For effective hearing/argument	Up to Rs. 50, 000/-	Up to Rs. 40, 000/-	Up to Rs. 30, 000/-	Up to Rs. 25, 000/-	Up to Rs. 20, 000/-
(ii) Conference Fee	Up to Rs. 20, 000/-	Up to Rs. 20, 000/-	Up to Rs. 15, 000/-	Up to Rs. 10, 000/-	Up to Rs. 5, 000/-
(iii) Drafting/Vetting Charges	Up to Rs. 40, 000/-	Up to Rs. 30, 000/-	Up to Rs. 25, 000/-	Up to Rs. 20, 000/-	Up to Rs. 10, 000/-
(a) Drafting/Vetting of Reply/ Affidavit / Counter	Up to Rs. 25, 000/-	Up to Rs. 20, 000/-	Up to Rs. 15, 000/-	Up to Rs. 10, 000/-	Up to Rs. 5, 000/-
(b) Misc. Application/ Misc Affidavit etc.	Up to Rs. 25, 000/-	Up to Rs. 20, 000/-	Up to Rs. 15, 000/-	Up to Rs. 10, 000/-	Up to Rs. 5, 000/-
(iv) Clerkage	10% of fee.				

\* No fee shall be payable to the empaneled advocate if case is adjourned without being taken up.

### C. Fee for Junior Panel of Advocates

Category of Service	Supreme Court	High Court	NCLAT	NCLT	Special Court/ Other Courts
(i) *For effective hearing and argument on behalf of the Board	Up to Rs. 40,000/-	Up to Rs. 35,000/-	Up to Rs. 30,000/-	Up to Rs. 20,000/-	Up to Rs. 10,000/-
(ii) Conference Fee	Up to Rs. 15,000/-	Up to Rs. 10,000/-	Up to Rs. 10,000/-	Up to Rs. 10,000/-	Up to Rs. 5,000/-
(iii) Drafting/Vetting Charges	Up to Rs. 30,000/-	Up to Rs. 25,000/-	Up to Rs. 20,000/-	Up to Rs. 15,000/-	Up to Rs. 10,000/-
(c) Drafting/Vetting of reply Affidavit / Counter	Up to Rs. 20,000/-	Up to Rs. 15,000/-	Up to Rs. 10,000/-	Up to Rs. 10,000/-	Up to Rs. 5,000/-
(d) Misc. Application/ Misc Affidavit etc.	Up to Rs. 20,000/-	Up to Rs. 15,000/-	Up to Rs. 15,000/-	Up to Rs. 10,000/-	Up to Rs. 5,000/-
(iv) Clerkage	Up to 10% of fee				

\* No fee shall be payable to the empaneled advocate if case is adjourned without being taken up.

#### **D. Fees for Legal Opinion**

For seeking written legal opinion on various issues related to the Board, including disciplinary matters related to employees and members of the Board an amount of Rs. 10,000/- will be paid for each of the opinion(s) in addition to typing charges on ad-hoc basis. In exceptional cases, the fee for providing legal opinion shall be on the mutually agreed professional charges with the approval of the competent authority of the Insolvency and Bankruptcy Board of India.

#### **E. Outstation charges**

Outstation charges relating to travel and accommodation charges shall be payable to the empaneled advocate and Designated Senior Counsels/ Senior Advocates, Government Law Officers namely, Attorney General, Solicitor General, Advocate Generals Additional Solicitor Generals.

#### **ANNEXURE – B**

<b>Particulars</b>	<b>Government Law Officers and Designated Senior Advocates</b>	<b>Panel Advocates</b>
Boarding and Lodging (inclusive of food)*	Metro cities: Rs. 25,000/day Non-Metro cities: Rs. 20,000/day	Metro cities: Rs. 15,000/day Non-Metro cities: 10,000/day
Conveyance*	By Air: Business/Executive By Train: First Class A/c By Taxi: Air-Conditioned Cab	By Air: Economy Class By Train: Two Tier A/c Air-Conditioned Cab

\*The aforesaid amounts are exclusive of all applicable taxes. Further, Advocate on Record having 15 years of experience will be reimbursed conveyance expenses as applicable to senior designated Advocate.