

# THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

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## GUIDELINES FOR EMPANELMENT OF ADVOCATES

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

**(2) Application.** – These Guidelines shall apply in relation to empanelment of advocates to represent and appear for and on behalf of the Insolvency and Bankruptcy Board of India in matters arising out of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the rules, regulations, guidelines, circulars, orders issued thereunder or any other law for the time being in force in which the Board is interested in or is made a party to any case or matter or in relation to rendering legal advice or providing legal support or defending the Board, in any case or matter generally or specifically arising out of any question of law or fact, in any Court in India.

**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) having requisite educational qualification, 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) “Court” means and includes the Supreme Court, a High Court, Tribunal, Adjudicating Authority or the Special Court referred to in sub-section (1) of section 236 of the Code;

(e) “competent authority” means any officer authorised by the Board;

(f) “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 only a direction is given or a judgment or order is pronounced;

(g) “empanelled advocate” means an advocate for the time being empanelled with the Board under these Guidelines;

(h) “empanelment committee” means a committee of officers of the Board headed by the Executive Director (Law) for approving the panel of advocates;

(i) “Schedule” means the Schedule appended to these Guidelines containing fee and expenses payable to an empanelled advocate;

(j) words and expressions used but not defined in these Guidelines but defined in the Advocates Act, 1961 (25 of 1961), the Code, the rules, regulations, circulars or orders issued thereunder shall have the respective meanings assigned to them in the said Act, Code, rules, regulations, circulars or orders made thereunder;

**3. Types of panel.** – (1) The competent authority 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 shall, as far as possible, make use of the services of the panel of advocates approved by the Ministry of Law and Justice, Department of Legal Affairs and while their services are utilised, they shall be deemed to have been empanelled under 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 empanelled 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, and the empanelled advocate shall conduct any case or matter in any Court in consultation, coordination and cooperation with the said law officers.

(5) Notwithstanding anything contained in sub-clause (4), where before formulation of these Guidelines, if any advocate has been engaged by the Board, such advocate may be considered for empanelment.

**4. Experience.** - (1) An advocate to be eligible for empanelment in the senior panel shall have active practice in the respective Courts for at least fifteen years at the bar;

(2) An advocate to be eligible for empanelment in the junior panel shall have active practice in the respective Court for at least five years at the bar;

**5. Disqualification for applying for empanelment.** - A person shall be disqualified for apply to be an empanelled advocate, if he-

(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 his position as an advocate as to render his empanelment or continuation in the panel detrimental to the interests of the Board.

**6. Procedure for empanelment.** – (1) The empanelment committee shall comprise of the following officers of the Board:

- (a) Executive Director (Law);
- (b) Chief General Manager; and
- (c) Deputy General Manager (Law) / Assistant General Manager (Law).

(2) The empanelment committee shall consider the following criteria for empanelment of an advocate-

- (i) experience mentioned in clause 4;
- (ii) length of practice,
- (iii) specialisation, if any, in the area of insolvency and bankruptcy of corporate persons and individuals;
- (iv) nature of cases dealt with or being dealt with by the advocate;
- (v) two preceding annual income-tax returns;
- (vi) track record and integrity.

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

(4) For the purposes of seeking interest of advocates to handle matters relating to the Code and other matter in different courts, these Guidelines shall be uploaded on the website of the Board.

(5) Where considered necessary, the empanelment committee may conduct an inquiry and check background of the advocate with the respective Bar Council or Bar Association or otherwise about the claims, conduct and antecedents of the advocate at any time during empanelment to verify his credentials. In this regard, empanelment committee may require an advocate to make available self-attested copies of the following documents and may also require the originals for verification at any time during empanelment-

- (i) school leaving or any other certificate in support of age;
- (ii) certificates in support of educational and other qualifications;
- (iii) registration with the State Bar Council;
- (iv) identity card issued by Bar Association or State Bar Council;
- (v) details of empanelment with other organisations;
- (vi) list of major clients;
- (vii) an undertaking to the effect that all information furnished by him is correct and that no disciplinary proceeding is pending against him by the Bar Council and also that he shall not take up any case or matter against the Board or its officers, employees or representatives or advice any client against the interest of the Board or the Central or State Government;

(viii) an undertaking from the advocate to the effect that the empanelment shall be subject to these Guidelines.

- (6) If the advocate is empanelled by other regulators, statutory organisations, opinion of the regulators or organisations may also be obtained, where necessary.
- (7) The empanelment committee may require the advocate to submit documentary proof of any suitability claim that may be made by him at any time during empanelment.
- (8) The empanelment committee may call the Advocate to present before it for discussion to check his suitability for empanelment.
- (8) After satisfying the suitability for empanelment, the committee may approve the name of advocate for empanelment with Board.

**7. Communication of empanelment.** - No communication in writing regarding empanelment with the Board or any certificate to this effect shall be made or given to the advocate.

**8. Terms of Empanelment.** – (1) Following are terms and conditions of empanelment of advocate with IBBI, which shall be complied with by empanelled advocate:

- (a) mere empanelment of advocate shall not bind the Board, the empanelment committee or the competent authority to necessarily to assure him any particular case or matter or obtaining any service from him or to pay any fee or charges therefor.
- (b) the allotment of a case or matter to the empanelled advocate shall be solely at the discretion of the Board or the competent authority, as the case may be.
- (c) upon termination, suspension or non-renewal of empanelment, as the case may be, the empanelled 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 his no objection certificate.
- (d) an empanelled 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.
- (e) the empanelled advocate shall not delegate any case, brief or assignment given to him to any other advocate and shall deal with the case or matter himself.
- (f) an empanelled advocate shall coordinate or cooperate with any other advocate in any case or matter assigned to him by the competent authority, where necessary, and as instructed by the competent authority.
- (g) the empanelled advocate shall maintain absolute secrecy and confidentiality about the case or matter of the Board.
- (h) the empanelled advocate shall accept such other terms and conditions of the empanelment as may be determined by the competent authority from time to time.
- (i) the volume of task shall be assessed by the competent authority on the basis of the pending cases or matters in the preceding months and any fresh case or matter is likely to be added in the succeeding months.
- (j) the empanelled advocate shall be familiar with various branches of law and keep him updated especially those concerning constitutional, insolvency and bankruptcy law, labour law, contract law, commercial law, criminal law, civil law, property laws, corporate law, banking law, taxation or such other branch of law as the competent authority may deem fit.
- (k) cases involving similar issues or matters or otherwise interlinked or clubbed may be entrusted to the same empanelled 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 empanelled advocates.

- (l) the empanelled advocate shall not necessarily be for a particular Court and shall accept any case or matter assigned to him and shall not refuse to accept any professional task without reasonable cause.
- (m) the empanelled 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.
- (n) the engagement or allotment of cases or matters to the empanelled 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 person or such other circumstance of winnability of the case or matter.
- (o) 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 empanelled 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 he shall not disclose the information to any person without the prior written consent of the Board, unless such information is required to be disclosed in pursuance of order of any competent court, tribunal exercising jurisdiction, in which case the empanelled advocate shall promptly notify the Board in writing of such disclosure.

(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.

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

**10. Right to Practice. –** (1) An empanelled 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 his professional duties towards the Board or any of its officers or employees.

(2) An empanelled 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.

(3) If the empanelled 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 empanelled advocate to disclose the same and a decision to withdraw a case or matter from such empanelled advocate shall be taken by the competent authority; however, non-disclosure of such information shall liable the empanelled advocate to be removed from the panel.

(4) The empanelled 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 him or advice sought by the Board from him.

**11. Removal from empanelment.** – (1) Where the competent authority is satisfied that an empanelled advocate has committed or attempted to commit any of the following acts he may be removed or suspended from the panel, namely:-

- (a) failing to attend the hearing of the case without sufficient reason and without prior intimation to the competent authority;
- (b) handing over the case or matter to another advocate without prior written permission of the competent authority;
- (c) not acting as per the instructions or acting against any general or specific instructions of the competent authority;
- (d) not returning the brief or matter or no-objection when demanded by the competent authority or not allowing or evading to allow the inspection of case records on demand;
- (e) misappropriation of any money or property of the Board or earmarking or using or appropriating the same towards his fees without the permission of the Board;
- (f) threatening, intimidating, abusing any employee, officer or representative of the Board or in any manner misbehaving with him;
- (g) making or allowing any of his associates or juniors to appear on behalf of any opposite party in any case or matter against the interests of the Board;
- (h) committing an act that tantamount to contempt of court or professional misconduct;

- (i) arrest or detention or disbarment by the Bar Council;
- (j) directly or indirectly passing on any secret or other information relating to the Board or any case or matter to the opposite party or the opposite or other advocate which causes or likely to cause damage to the Board's interests;
- (k) giving false or misleading information to the Board or to any officer or employee or representative of the Board relating to the proceedings of the case or matter;
- (l) not objecting the adjournment moved by any party to a case or matter without any sufficient reason;
- (m) if at any time during the period of empanelment the empanelled advocate has engaged in any fraudulent activities, misrepresentation, misappropriation etc.; or
- (n) violating any of the provisions contained in paragraphs 8, 9 or 10 of these Guidelines.

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

- (2) Where the empanelled 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 he 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 five such cases.
- (3) No fee shall be paid for non-appearance in a Court by the empanelled advocate where he seeks adjournment without any instruction for adjournment from the competent authority or on account of his personal reason or where adjournment is effected due to no-sitting of the Court.
- (4) Only one set of fee shall be payable to the empanelled advocate where more party than one on behalf of the Board are in the party array.
- (5) If any senior advocate is engaged for a matter representing the Board, his fee and charges shall be determined as per the Schedule under prior intimation of the Board.
- (6) Where more than one advocate (excluding senior advocate) is engaged in any case or matter, the lead advocate shall be entitled to the fee and charges as per the Schedule and the other advocate assisting the lead advocate shall be paid at the rate of fifty per cent. of the fee paid to the lead advocate.
- (7) Where the empanelled advocate is required to visit any Court situated outside his 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 empanelled advocate.

**13. Method of Payment of fee.** - (1) The empanelled advocate shall submit the professional fee bills to the competent authority or any officer or employee authorised by him in triplicate 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 him in this 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 empanelled 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 him shall be returned to the competent authority or any officer or representative authorised by him.

(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 empanelled advocate at any time he fails to discharge his 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 empanelled advocate may be settled or resolved even after the advocate is removed or his 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 Chairperson and his decision in the matter shall be final.



## SCHEDULE

### A. Fee for Attorney General/Solicitor 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 in the matters before the Supreme Court.	Rs. 2.00 Lakh	Rs. 1.75 Lakh
	(i) Non-effective hearing/appearance	Rs. 50, 000/-	Rs. 30, 000/-
	(ii) Conference Fee	Not more than Rs. 40,000/- per Conference	Not more than Rs. 30,000/- per Conference
	(iii) Clerkage	Up to 10% of the fee	

\* No fee shall be payable to the empanelled advocate if case is adjourned without hearing.

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

Category of Service	Supreme Court	High Court	NCLAT	NCLT	Special Court
(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 empanelled advocate if case is adjourned without hearing.

### C. Fee for Junior Panel of Advocates

Category of Service	Supreme Court	High Court	NCLAT	NCLT	Special Court
(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 empanelled advocate if case is adjourned without hearing.

#### **D. Fee 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 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.

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

Outstation charges relating to travel and accommodation charges shall be payable to the empanelled advocate depending on the

#### **ANNEXURE – B**

<b>Particulars</b>	<b>Senior Designated Advocates and Senior Panel Advocate/Advocate -on-Record</b>	<b>Junior Panel Advocates</b>
Accommodation*	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.