

OFFICE OF OFFICIAL LIQUIDATOR, HIGH COURT OF GUJARAT, AHMEDABAD

Ref.: OL/Estt./4618/2009

Date : 10.09.2009

**SCHEME FOR ENGAGEMENT OF COUNSEL/ADVOCATES IN THE OFFICE OF OFFICIAL LIQUIDATOR HIGH COURT OF GUJARAT, AHMEDABAD**

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In terms of the orders dated 25.08.2009 passed in Official Liquidator Report No. 93 of 2009 by the Hon'ble High Court of Gujarat.

Scheme containing terms & conditions for the engagement of Senior Standing Counsel, Additional Standing Counsel, Advocate on record, drafting counsel, Panel Advocates for the Official Liquidator attached to the Hon'ble High Court of Gujarat effective from 25.08.2009.

**I SCOPE OF THE SCHEME :**

- (1) The Scheme will be operative from the date of approval/orders of the Hon'ble High Court of Gujarat in respect of all the matters on behalf of the Official Liquidator as may be entrusted to the counsels and advocates to conduct before the Hon'ble Supreme Court of India, Hon'ble High Court of Gujarat and other High Courts, Subordinate Courts, Tribunals and other Foras.
- (2) **Incharge of litigation cases** - The Official Liquidator, Dy. Official Liquidator and Asstt. Official Liquidator will be incharge of the entire litigation work on behalf of the Official Liquidator before the Hon'ble Supreme Court of India, Hon'ble High Court of Gujarat and other High Courts, Subordinate Courts and other foras except such of the work for which separate arrangements are made.
- (3) **Allocation of the cases to the Counsel** - Allocation of cases to the Counsels shall be made by the Official Liquidator or any other officer authorised by him.

**II DEFINITIONS :**

- (1) For the purpose of this scheme, the expressions :
  - (a) 'Counsel' - Counsel will mean and include the Senior Standing Counsel, Additional Standing Counsel, Advocate on record, Drafting Counsel & Panel Advocate.
  - (b) 'Official Liquidator'-means the officer appointed U/s. 448 of the Companies Act, 1956 by the Central Government.
  - (c) 'Law Officer'- means and includes the Attorney General of India, the Solicitor General of India, Additional Solicitor General of India and Assistant Solicitor General of India.

III **PANEL FOR COUNSEL :**

- a) **Panel of Senior Standing Counsel** - There will be a panel consisting of Senior Standing Counsels to conduct the litigation cases on behalf of the Official Liquidator before Supreme Court of India, Gujarat High Court, other High Courts and Subordinate Courts & Tribunals. The strength of the Counsel empanelled may be determined by the Official Liquidator with the approval of the Hon'ble High Court of Gujarat from time to time.
- b) **Panel of Additional Standing Counsel** - There will be a panel consisting of Additional Standing Counsel to conduct the litigation cases on behalf of the Official Liquidator before Supreme Court of India, Gujarat High Court, other High Courts, Subordinate Courts & Tribunals. The strength of the Counsel empanelled may be determined by the Official Liquidator with the approval of the Hon'ble High Court of Gujarat from time to time.
- c) **Advocate on record in the Supreme Court of India** - Engagement of advocate on record/advocate in the Supreme Court of India as and when such litigation is filed against the Official Liquidator or is to be filed by the Official Liquidator, the Official Liquidator will file a separate report for approval of the engagement. The normal fees would be for such advocate at par with the fees fixed by the Central Govt./Central Agency, Ministry of Law for such advocate/counsel as the case may be, for Supreme Court matters.
- d) **Panel Advocate** - There will be a panel consisting of Panel Advocate to conduct the litigation cases on behalf of the Official Liquidator before Supreme Court of India, Gujarat High Court and other High Courts, Subordinate Courts & Tribunals & Foras. The strength of the Panel Advocate empanelled may be determined by the Official Liquidator with the approval of the Hon'ble High Court of Gujarat from time to time.
- e) **Drafting Counsel/Additional Drafting Counsel** - There will be a panel consisting of Drafting Counsel/Additional Drafting Counsel to draft the pleadings, petition, reply, etc. on behalf of Official Liquidator for the cases pending before Supreme Court of India, Gujarat High Court, other High Courts, Subordinate Courts & Tribunals & Foras. Such drafting Counsels may also be considered for appointment on behalf of Official Liquidator if required.
- f) **Special Arguing Counsel** - Notwithstanding anything contained hereinabove, for highly contested matters wherein complicated questions of law are involved and such other alike matters other than the company law/liquidation matter,

at the discretion of the Court and only with the prior sanction, approval and permission of the Court, the Official Liquidator may engage senior/senior designated advocates/senior law officers as special arguing counsel from case to case basis on such fee as are applicable to the Central Govt. Counsel/Senior Law Officers or as may be determined and sanction by the Company Court in individual case. In any case Official Liquidator shall not engage any Advocate, in any category, even as Special Arguing Counsel, without prior sanction, permission and approval of the Court unless his/her name is mentioned in the panel approved by the Court. (This clause is amended in terms of order dated 06.03.2012 passed by the Hon'ble High Court of Gujarat in Official Liquidator's Report No. 294 of 2011).

#### IV TERM OF ENGAGEMENT/EMPANELMENT :

- 1) Initial engagement/empanelment - The term of engagement/empanelment shall be for a period of two years or until further orders, whichever is earlier, whereafter extension/renewal may be considered by the Hon'ble High Court depending on the performance of the Counsel. However, no counsel will be eligible for renewal after completion of third term or completion of period of 6 years of engagement.
- 2) Termination of engagement/empanelment - The empanelment of the Counsel may be terminated by either side at any time without assigning any reason.

#### V HEADQUARTERS OF THE COUNSEL :

Headquarters at Gujarat/Ahmedabad - The Counsel may have his Headquarter during the period of his engagement/empanelment at Gujarat/Ahmedabad.

#### VI DUTIES :

The Counsel shall:

- i) Appear in Supreme Court of India, Gujarat High Court, other High Courts, Subordinate Courts & Tribunals & Foras in the cases assigned to him by the Official Liquidator or any other officer authorised by the Official Liquidator;
- ii) If so required, appear in the District and Subordinate Courts, Tribunals, Commissions of Inquiry, Committees constituted by the Hon'ble Court before the Arbitrators, umpires, etc. at the Headquarter/outside Headquarter;
- iii) Advise the Official Liquidator on law points and shall also, if required, furnish legal opinion for filing appeal on behalf of the Official Liquidator;

- iv) Render all assistance to the Law Officers, Senior Standing Counsel or Senior Designated Counsel, if required to do so, who may be engaged in a particular case before the Supreme Court of India, High Court(s), Tribunals, Commissions of inquiry, before the Arbitrators/Umpires etc.;
  - v) Keep the Official Liquidator informed of all the important developments in the case from time to time, particularly with regard to drafting, filing of papers, dates of hearing of the case, supplying copies of judgments, etc.
  - vi) Furnish to the Official Liquidator, periodical statements and reports. Returns, which may be called for by the Official Liquidator/Hon'ble Company Judge/Ministry of Corporate Affairs, Ministry of Law & Justice from time to time.
  - vii) Render detailed account of the advance if any taken in the form of out of pocket expenses from Official Liquidator.
  - viii) Perform such other duties of legal nature which may be assigned to him by the Official Liquidator from time to time.
- VII Eligibility for counsel conducting cases before the Hon'ble Supreme Court of India, Hon'ble High Court of Gujarat, other High Courts and other Forums.
- i. The advocate should be registered with the Bar Council of Gujarat and should be in active practice in Gujarat for the period as noted below against the position.
 

(i) Senior arguing counsel (s)	:-	Not less than 15 years.
(ii) Standing counsel	:-	Not less than 10 years.
(iii) Addl. Standing Counsels	:-	Not less than 07 years.
(iv) Panel Counsels	:-	Not less than 05 years.
(v) Drafting Counsels	:-	Not less than 03 years.
(vi) Counsels for title search	:-	Not less than 03 years.
  - ii. The applicants would be required to furnish details of their income in the last two years.
  - iii. The applicants would required to furnish recommendations of two practicing advocates having at least 15 years of practice.
  - iv. The applicants should furnish the areas in which they have been practicing and the courts they are attending.

#### VIII PROCEDURE FOR SELECTION OF PANEL ADVOCATES :

Notices inviting applications from the interested eligible advocates will be displayed on the notice boards of the Hon'ble High Court, notice board of Bar Council of Gujarat, notice board of other sub-ordinate Courts and Forums and

the notice board of the office of the Official Liquidator and also on the Website of the Hon'ble High Court of Gujarat. There will be a committee comprising Official Liquidator and Registrar General of the Hon'ble High Court or any other officer as may be nominated by the Registrar General. The committee shall examine the applications received and after short listing the names of eligible and suitable advocates for placing in the panel of advocates in the different categories, shall place such list before the Hon'ble Company Court for approving the panel of the advocates.

**IX SCHEDULE OF FEE OF ADVOCATES :**

The Counsel will be entitled to the payment of the monthly retainership fee and perquisites as Senior Standing Counsel, Additional Standing Counsel, Advocate on record, Panel Counsel, Drafting Counsel/Additional Drafting Counsel as under :

**(A)**

<b>Sr. No.</b>	<b>Category</b>	<b>Retainer Fee P.M. (Fixed)</b>
1.	Senior Standing Counsel	Rs.21,000/-
2.	Additional Senior Standing Counsel	Rs.18,000/-
3.	Additional Standing Counsel	Rs.15,000/-
4.	Panel Advocate	Rs.15,000/-
5.	Drafting Counsel/Additional Drafting Counsel	Rs.15,000/-
6.	Counsel for title search.	Rs. 5,000/- per case

The drafting counsel/additional drafting counsel will be required to draft at least thrice the number of working days in a month. The drafting counsel will have to undertake the work of drafting of at least three drafting on every working day or total drafting in a month will have to be three times the working days in such a month.

**(B) ADDITIONAL PROFESSIONAL FEE :**

<b>Category</b>	<b>Additional Professional fee</b>
Senior Standing Counsel and Additional Senior Standing Counsel.	Rs. 1,000/- per day in case the Counsel attends effective hearing of more than 5 cases in the Hon'ble High Court.
Additional Standing Counsel.	Rs. 1,000/- per day in case the Counsel attends effective hearing of more than 5 cases in the Hon'ble High Court.

The aforesaid additional professional fee shall be payable if the number of disposal of cases during the month for which feed is claimed, in any case, should not be less than 50% in a month for additional professional feed claimed. If the Counsel/Advocate has appeared on any day in the cases, more than five cases, where effective hearing has taken place, he/she would be entitled to additional professional fees only during that month the number of disposal of the cases, which were assigned to him/her exceeds half number of the working days of that month and not otherwise.

(C) **CLERKAGE :**

If any of the panel counsel do not use the staff of the Official Liquidator, they shall be entitled for 10 % clerkage.

In respect of the following, fees shall be fixed by the Hon'ble Court on case to case basis:

- i) Suits, Writ Petitions and Appeals including oral applications for leave to Appeal to Hon'ble Supreme Court of India in writ petition ;
- ii) Application for Leave to appeal to the Hon'ble Supreme Court of India other than in Writ Petitions.
- iii) Setting pleadings/ drafts other than regular pleadings/drafts.
- iv) Miscellaneous applications.
- v) Conference.

X **OUT OF HEADQUARTERS :**

(i) If the Counsel is required to go out of Headquarters in connection with Official Liquidator litigation e.g. for conference with a Law Office, or with Senior Counsel, appearance in Court outside the Headquarters, he will be entitled to a daily fee to be decided by the Official Liquidator with the approval of Hon'ble Company Court on the basis of absence from Headquarters including the days of departure from, but for intervening holidays and arrival back at the Headquarters, no fee will be paid for the day of departure if he leaves the Headquarters after Court hours or for the day of arrival if he arrives at the Headquarters before the Court hours.

(ii) **Travel/Hotel Expenses** - In addition to the daily fee the Counsel will also be entitled to travel expenses for travel by Air (economic class) or first class by train, road mileage for the journey from his Headquarters to the Airport/Railway Stations and vice-versa and from the Airport/Railway Stations to the place of his stay out of Headquarters and vice-versa at the rates

admissible to Group A/Class I Officer of the Central Govt. He will also be paid a lump sum amount of Rs. 600/- per day as conveyance charges for performing local journey while outside the Headquarters. He will also be entitled to reasonable actual expenses for stay in Hotel, subject to maximum of Rs. 3,500/- per day.

XI **OUT OF POCKET EXPENSES :**

The amount required for Court fees at the time of filing a case and other miscellaneous expenses should be obtained by the Counsel in advance from the Official Liquidator. Account of the expenses incurred should be rendered to the Official Liquidator while presenting the final fee bill.

XII **RIGHT TO PRACTICE AND RESTRICTION :**

1. The Counsel will have a right to private practice which should not, however, interfere with the efficient discharge of his duties as a Counsel for the Official Liquidator.
2. Counsel shall not advise any party in or accept any case against the Official Liquidator in which he has appeared or is likely to be called upon to appear for or advice or which is likely to affect or lead to litigation against the Official Liquidator.
3. If the Counsel happens to be an approvar of firm or Lawyer or Solicitor, it will be incumbent on the firm not to take up any case of the Official Liquidator or any case in High Court of Gujarat or any case arising in other courts out of these cases e.g. appeal and revisions in the High Court or the Supreme Court.

XIII. **GENERAL**

The various terms used in this scheme will have the following meaning :-

- a) **Effective Hearing** : The hearing in which either one or both the parties involved in a case are heard by the Court. If the case is mentioned and adjourned or only directions are given or judgment is delivered by the court, it would not constitute effective hearing but will be termed as non effective hearing.
- b) **Uncontested cases** : All suits and appeals are deemed to be 'uncontested', if these are withdrawn by the plaintiff/Appellant or are dismissed in limine or are otherwise decide by the Court ex-parte before the final hearing. No

Writ Petition/Revision Petition/ Second Appeal (including any interlocutory application connected therewith) will be considered as “uncontested” if it is decided by the Court on preliminary legal objections or is withdrawn by the petitioner/appellant at or during any stage of final hearing in the presence of the Official Liquidator or is withdrawn by the Official Liquidator at the time of its submission.

c) **Identical cases :**

- i) Two or more cases in which substantially identical questions of law or facts are involved and where the main difference is in the names addresses of the party concerned, amount of money involved etc. where the common or identical judgment are delivered are irrespective of the fact whether all the cases are heard together or not.
- ii) In all cases, effective appearance is necessary for Counsel to earn fee.
- iii) No fee will be payable in cases where no legal work is required to be done e.g. cases in which the interest of Official Liquidator are to be charged pending instructions, cases regarding submission of record to the Supreme Court, inspection of the court record, for ascertaining the position of the case or other information needed
- iv) No fee will be admissible for “preparation” but the Official Liquidator will get approval of Hon’ble Company Court and may consider payment of separate fee for preparation in special cases involving arduous work.
- v) If the Counsel appears at the instance of the Official Liquidator for parties other than the Official Liquidator whose case is not inconsistent with that of the Official Liquidator, he will be entitled to only one set of fee.
- vi) Appeals, revisions of petitions arising from one common judgment or order will be together considered as one case, if they are heard together.
- vii) When a case argued before the Hon’ble Court is referred to a Division Bench or to a Full Bench separate fee at the prescribed rates will be paid for appearance before each bench.
- viii) In uncontested cases, the fee shall be 1/3<sup>rd</sup> of the fees otherwise payable but if such case is later on restored and decided in contest, the remaining 2/3<sup>rd</sup> of the fee will be payable. The case shall be



regarded at uncontested when a decision is given without hearing arguments on both sides.

- ix) No fee will be payable to the Counsel if an advance notice about the adjournment has been issued and the adjournment of the case has been made at his request due to reasons personal to him.
- x) Where two or more cases (but not more than 10 cases) involving substantially identical question of law or facts, any one of such cases will be treated as main case and the others as connected cases and the fees in such cases will be regulated as under, Irrespective of the fact where all the cases are heard together or not;

a) When the counsel files separate material and different Affidavit, applications or grounds of appeals etc. in more than one case but the argument is heard in the main case and the other cases are decided accordingly, the Counsel shall be paid the full fee in the main cases and Rs. 1,000/- in each of the connected cases;

b) When the main case has been contested as in (a) above, but in the connected cases either Affidavit on grounds of any appeal or petitions similar to the one in the main case or nothing at all have been drafted by the counsel, he shall be paid the all fee in the main case or Rs. 500/- only in each of the connected cases.

c) When Substantially different Affidavit are in each connected case but all the cases are disposed of without contest Counsel shall get 1/3<sup>rd</sup> fees in the main case and Rs. 1000/- in each of the connected cases;

d) When the Counsel has drafted the Affidavit, Petition or grounds of appeal in the main case and has not drafted them in the connected cases or the drafts in the connected cases are substantially similar to the one in the main case and the cases are disposed of without contest, the Counsel shall get 1/3<sup>rd</sup> fee in the main case and Rs. 500/- in each of the connected cases;

- xi) The fee of the Counsel will be paid by the Official Liquidator, Gujarat High Court on presentation of stamped receipt and on submission of a copy of the document drafted, if it is a drafting fee and the submissions, or minutes or gist of proceedings, or a copy of order/judgment where it is necessary in case the claim is for appearance fee. The Counsel shall submit the fee bill within three

month from the date of his fee is accrued giving his bank name and bank account number so that amount of fee retainer ship fee etc. is transferred by electronic transfer fund mode through the banker of the Official Liquidator.

- xi) As regards admissibility and quantum of fee such cases the decision of the Official Liquidator and the Hon'ble Company Court shall be final.
- xii) In the event of any doubt or difference regarding the fees, the fees determined by the Hon'ble Company Court shall be final and binding Hon'ble Company Court can relax any of the provisions contained in this scheme.

**OFFICIAL LIQUIDATOR  
HIGH COURT OF GUJARAT**