

DETAILED GUIDELINE

Constitution of Panel Counsel

1. PROCEDURE FOR PREPARATION OF PANEL OF COUNSELS

- a) For the purpose of engagement, the SFIO shall call for application in Performa P1 either by advertisement in one national news paper and another in hindi/ regional language newspaper or from bar association. It should however, be ensured that the process of engagement is transparent and broad based.
- b) A five-member Screening committee headed by a Director, SFIO shall be informed (constituted) by the SFIO for the purpose of evaluation of applications / proposals received. The Screening Committee shall have representations from Prosecution Division, Law Division & Investigation unit and Representative of D/o Legal Affairs, Ministry of Law & Justice posted in SFIO. The Officer looking after Prosecution matters may work as a Member- Secretary of the Committee. The particulars of the applicants experience in handling criminal cases and their suitability to represent prosecution cases of the Department will be evaluated by Committee. It shall have interaction with the applicants to assess their suitability for the purpose of engagement.
- c) The First time Counsels are empaneled, who shall normally be for a period of 3 years. Such engagement will be renewable on receipt of recommendation of the committee constituted for renewal by the Director, along with the annual performance appraisal on completion of the empanelment as Panel Counsel for SFIO.

2. RENEWAL OF THE TERM OF EMPANELMENT / PERFORMANCE REVIEW

- a) The performance of the Panel Counsels shall be reviewed by the jurisdictional Regional Heads with their teams whose cases have been represented by the Panel Counsels, on an annual basis and a report in **Proforma-P2** shall be submitted to the Prosecution Division, SFIO, HQ Delhi before 31st May of the following year. The Prosecution Division, SFIO, HQ, Delhi shall place the annual performance of the Panel Counsels to the Director, SFIO for its perusal and necessary further instruction and with the permission shall be placed before Committee for renewal.
- b) The Prosecution Division, SFIO, HQ, Delhi shall place a proposal for renewal of period of engagement to the Committee constituted for renewal by the Director, SFIO at **least three months before expiry of the term**, if the performance of Panel Counsels is found

to be satisfactory. The performance appraisal should be set along with the proposal in **proforma –P3**. The renewal of the term shall normally be for a period of 3 years with review option yearly basis.

3. ALLOCATION OF CASES TO COUNSEL FROM THE PANEL

The Regional Heads shall be the overall in charge of administration of prosecution work in his Region. Work allocation amongst the Panel of Counsels in a region shall be done by the Regional Heads with the assurance the all the Counsels on Panel are distrusted equally. A copy of the list of Counsels on Panel and the cases assigned to them shall also be sent to Prosecution Division, SFIO, HQ, Delhi on monthly basis.

4. TERMINATION OF ENGAGEMENT / RESIGNATION / EXPIRY OF TERM

The empanelment of Counsels on Panel can be terminated through written intimation by either side without assigning any reason. The Director, SFIO is authorized to act on behalf of the SFIO for the purpose. On expiry of the term or termination or resignation, the Panel Counsel shall immediately handover the briefs and other related papers to the Concerned Officer of the SFIO or the other related papers to the Concerned Officer of the SFIO or the other Panel Counsel nominated by the SFIO for the purpose and the pending bills of Panel Counsels should be settled within three months of the end of the term.

5. DUTIES OF THE COUNSELS ON PANEL

Duties of the Panel Counsels shall include:

- (i) To represent the SFIO personally and effectively in conduct of trial for prosecution matters in the NCLTs/ Trial courts/ Courts of Session also in Disciplinary Matter before ICAI/ICSI/ICWAI/BCI.
- (ii) To give opinion when it is sought about the feasibility of filing a prosecution / case or any other prosecution matter i.e., NCLT matter, Disciplinary Matters before the Statutory bodies.
- (iii) To draft complaints, reply/rejoinder/supplementary & other miscellaneous applications and assist in compliance of the technical requirements.
- (iv) To intimate the criminal complaints number i.e. Cases on Number to the officer concerned/ complainant and Concerned Prosecution Department either at HQ or Regional Office.
- (v) To intimate the officer concerned about the outcome of each hearing and the date of next hearing, immediately after the hearing by E-mail/ LIMBS data base.

- (vi) To assist the witness of the SFIO before their evidences and guide them in facing cross examination. The Panel Counsel should prepare each witness and its statement in such a manner that there is consistency in the stand of the SFIO and to defend the Investigation Report of SFIO.
- (vii) To apply for the certified copy within 3 days of the judgment and deliver to it to the officer concerned within 10 days (excluding the time taken by the Courts).
- (viii) When a case represented by him/ her is decided against the SFIO, to apply for certified copy of the judgment within three working days of pronouncement and give his opinion regarding the advisability of filing an Appeal/ Revision against such a decision within seven days of talking delivery. In other cases, also, the same time limits shall be applicable, through opinion will not be required;
- (ix) To draft Appeal/ Revision/ Any other Petition, if required or to draft reply to the Appeal/ Revision/ Application or petition, if preferred by the accused.
- (x) To represent the SFIO in Appeal/ Revision matters before the court of Session.
- (xi) To furnish a statement of the cases handled to the Regional Office concerned, by 30th April of every year, indicating the performance in preceding financial year in 'P2'.
- (xii) To perform such other duties of legal nature as may be assigned to him/her by the SFIO either HQ or Regional Offices.

6. ASSISTANCE TO COUNSELS ON PANEL BY THE SFIO

- (i) The Investigating Officer having jurisdiction over the case or the Prosecution Division HQ/ Regional Offices, shall provide all assistance to the Panel Counsel such as providing original records; producing the Departmental Officers as witness, etc.

7. RIGHT TO PRIVATE PRACTICE

- (i) The Panel counsel will have the right to private practice, but he shall not appear in the matters against SFIO in any court or the cases where interest of SFIO is jeopardized.
- (ii) If the Panel Counsel happened to be a partner of any firm of lawyers or solicitors, it will be incumbent on the firm not to take prosecution case against SFIO in any court.

8. The counsel currently engaged by the SFIO through Ministry of Law & Justice shall be discontinued after empanelment of the Special Prosecutor/ Panel Counsel.

9. The eligible counsels from the panel shall be designated as Special Company Prosecutor on the requirement of the case as per law.

PROFORMA 'P1'

**Particulars to be furnished by an advocate applying for empanelment of Special Company
Prosecutor/ Panel Counsel.**

1. Name of the Person:
2. Permanent Account No.:
3. Father's name:
4. Date of Birth:
5. Address:- (i) Residence :
(ii) Office :
6. Telephone, Mobile Number and Email ID:
7. *Educational Qualification:
8. *Date of Enrolment as an Advocate in the State Bar Council and Registration No.:
9. If a partner in a firm, name(s) of the firm(s) and other partner:
10. Number of criminal cases dealt with during last five years as an Advocate:
11. Brief Particulars of experience in handling prosecution cases under Company Act and
Fiscal offences under Criminal Law:
12. Income from professional practice (copy of the latest IT return to be attached)

VERIFICATION

I _____, S/o/D/o/W/o/ _____ do hereby
declare that whatever has been stated in the above application is true to the best of knowledge
and belief.

Signature

DATE:

PLACE:

*** Applicant to submit documentary proof with respect to aforesaid items/ information.**

UNDERTAKING

I, _____ S/o/D/o/W/o/ _____ do hereby declare that if
engaged by the Department, I shall fully abide by the terms and conditions of the engagement.

Signature

DATE:

PLACE:

ANNUAL PERFORMANCE APPRAISAL OF SPECIAL COUNSEL & SPECIAL COMPANY PROSECUTOR/ PANEL COUNSEL FOR THE FINANCIAL YEAR		
PART-I		
Name of the Regional Office In-Charge		
Name of the Panel Counsel		
Date of Birth		
Date of Empanelment		
PART-II		
PERFORMANCE REPORT		
Complaints/Cases handled during the period under review		
1	No. of cases handled by the Panel Counsel (list of cases to be enclosed)	
2	Cases decided in favour of the Department	
3	Cases decided against the Department	
4	Complaints Quashed by the Hon'ble High Court	
5	Offences Compounded by the Department	
6	Cases closed by the Court	
7	Cases adjourned Sin-a-die	
PART-III		
Comments of the Regional Office In-Charge on the performance of the Panel Counsel		
REGIONAL OFFICE IN-CHARGE		
Comments on the performance assed by Regional Office In-Charge by the Joint/Additional Director, Prosecution Division, SFIO HQs		
ADDITIONAL/JOINT DIRECTOR, PROSECUTION DIVISION, SFIO HQ		
Whether the performance is found satisfactory		
Whether the performance is found satisfactory		YES/NO
DIRECTOR, SFIO		

NOTE:

Part-I and Part-II of the proforma are to be filled by the Panel Counsel. Part-II should be verified by the respective Regional Offices before offering their comments on the performance.

ANNUAL PERFORMANCE APPRAISAL SPECIAL COMPANY PROSECUTOR/ PANEL COUNSEL FOR THE PERIOD _____ (To be sent at the time of renewal of terms of engagement)		
PROFORMA		
PART-I		
1	Regional Offices	
2	Name of the Panel Counsel	
3	Date of Birth	
4	Date of First Engagement	
5	Date of expiry of existing Tenure (Engagement Reference No. by which last Renewal was sanctioned should be specified)	
PART-II		
PERFORMANCE REPORT		
1	No. of cases handled by the Panel Counsel	
2	Cases decided in favour of the SFIO	
3	Cases decided against the SFIO	
4	Complaints Quashed by the Hon'ble High Court	
5	Offences Compounded by the Department	
6	Cases closed by the Court	
7	Cases adjourned Sin-a-die	
PART-III		
1	Does the Panel Counsel take interest in his work and generally alert in the SFIO's interest in various litigation entrusted to him	
2	Specific comments should be given about the promptness in:	
	2.1 Informing the SFIO from time to time regarding hearing of Cases, supply of copies of Judgment etc.	
	2.2 Taking steps for Vacation/Variation of stay	
3	Whether the Additional /Joint Director Prosecution Division, SFIO HQs satisfied with the performance of the Panel Counsel? If no, the instances may be indicated.	
4	Whether continuance is recommended? If so, for what period?	

ADDITIONAL/JOINT DIRECTOR,
PROSECUTION DIVISION, SFIO HQ

BILLS FOR CLAIM OF PROFESSIONAL FEES BY PANEL COUNSELS (CASE WISE)
TO BE SUBMITTED TO THE REGIONAL OFFICE CONCERNED/SFIO HQ

1	Name of the Panel Counsel	
2	Regional Office concerned/ SFIO HQ	
3	Name of the Company	
4	Name of the Cause Title of the Case	
5	Court Case No. (including old numbers)	
6	Section(s) of the Act involved	
7	Claim for hearing dates/drafting of Pleadings	
8	Dates and amount of bills claimed in this case	

PART a (Bill for Drafting), as applicable

(Amount in Rs.)

1	Complaints	
2	Revisions, replies, written arguments etc.	
3	Written opinion	
Total		

PART B (Bill for appearance etc.), as applicable

(Amount in Rs.)

1	Substantial and effective (Whether Connected Case- Yes/No)	
2	Non-effective hearing	
3	Conference fees	
4	Clerkage @ 10%	
5	Out of pocket expenses (particulars to be given)	
6	For performing duties outside headquarters (as per para 3.4)	
Total		

Certified that the above information is correct and in accordance with the terms of engagement.
The above claims have not been made earlier.

Received Payment

Revenue
Stamp

Signature and Name of Panel Counsel

Mobile/Tel. No.

On Backside of the above Performa.

FOR OFFICE USE ONLY

Total Bill Claimed:	
Performa submitted by the officer Concerned verifying the Bill as per the present practice.	
Part A- Sanctioned amount	
Part B- Sanctioned amount	
Total Amount Sanctioned -	
Deductions, if any* (To be notified to the SPPs/Panel Counsel concerned)	
Amount passed & Released for payment sent to PAO	
Objections if any by PAO with date of receiving	
Removal of objections (if any) by PAO with date re-sent to PAO for payment	
Date of payment to the SPPs/Panel Counsel	

*The Panel Counsel shall be intimated of the deductions made before payment of the bill.

Signature and Name of the DDO.

ANNEXURE B

SCHEDULE OF FEES, ALLOWANCES AND TERMS OF PAYMENT TO COUNSEL

The panel of Special Company Prosecutor/ SFIO own panel of Counsel will be engaged in accordance with the schedule of fees and related terms & conditions applicable to them as given below:

S. No.	Activity	Fees Payable
1.	Effective Hearing 1	Rs. 9,000/- per day per case (there shall be ceiling per day, irrespective of the number of cases heard on a day)
2.	Non- effective Hearing	Rs. 1500/- per day per case (subject to the payments for maximum 5 non-effective hearings in a case/ connected cases).
3.	Settling Pleadings	Rs. 3,000/-
4.	Drafting per Complaints/ Rejoinders/ Written Statements/ Misc. Applications	Rs. 6,000/-
5.	Conference fees (with Officer Concerned for above) – 5	Rs. 900/- per conference limited to payment for a maximum of 4 conferences in a case/ connected cases of its life.
6.	Clerkage	10% of fee at Sl. No. 1 to 4 above
7.	Misc. Application	Rs. 3000/- per case

Additional conditions for empanelment of counsel as per The Ministry of Corporate Affairs vide its letter no. A-48/3/2022 – Ad.III – MCA/2557922, dated 01.06.2022 are as follows:-

1. For proposed fees for drafting of Complaints/ Rejoinders/ Written Statements/ Misc. Applications, which is Rs. 6000 should be made only when such a Complaint/ Rejoinders/ Written Statements/ Misc. Applications are submitted before the Court.
2. Any engagement of Panel of Counsels in SFIO and the termination of engagement, must be approved from D/o Legal Affairs and the Ministry of Corporate Affairs.
3. The composition of the Committee for appointment/ engagement of panel of counsels chaired by Director, SFIO should have adequate representations from Prosecution Division of this Ministry, Law Division and Representation of D/o Legal Affairs, Ministry of Law & Justice in which, Officers not below the level of SAG should form the composition of Committee.
4. A contract relating to conflict of interest upon termination of engagement is proposed to prohibit the terminated counsels to represent the accused party or any other respondent of the cases handed over to them during the period of engagement.