

Application Format for Empanelment of Forensic Auditor

1. Name:
2. Constitution:
(Following documents be enclosed :
 - i). Attested copies of Certificate of Incorporation
 - ii). Memorandum of Association and Articles of Association of company
 - iii). Certified copy of Resolution whereby the authorized signatory has been authorized to seek empanelment of the company as forensic auditor in the Bank, apply for the same and execute all necessary documents for the purpose
 - iv). Attested copies of Certificate of Registration of partnership firm
 - v). Deed of partnership (duly registered wherever required)
3. Date of registration/ incorporation:
4. Registration with ICAI:
5. If there has been a change in name/constitution/management in the past, please furnish below the details along with supporting documents:
6. Date of commencement of business:
7. PAN of the entity:
(Attested copy of PAN card be enclosed)
8. Name and Mob. No. of Contact Person:
9. Details of Registered office, Administrative office and branches: Telephone No.Fax no.
Mobile No. E Mail
10. Activities in which company is involved, in detail along with experience (copy of proof be enclosed):
11. Present setup/facilities/infrastructure available to execute the principal functions.
13. Important assignments completed / undertaken during the last three financial years (please give detail of the name & addresses of the clients and services rendered. Also give present actual status of the last two forensic audit of loan accounts of Rs.50 cr and above done by the applicant.)
14. Personal & professional details of Promoters/partners/directors:
15. Personal & professional details of Professional Staff (Part time/~full time/associate):
16. Details of Registration/ Empanelment with other accredited agencies/ FIs/Banks as on date, mentioning the nature of empanelment:

17. Net worth of the Firm/Company of last three financial years.

Paid up Capital			
Income/Revenue			
Borrowings			
Net worth			
PAT			

Please enclose copies of past three years audited financial statements/ annual reports or copies of provisional financial statements in the absence of audited accounts & Income tax clearance certificate.

18. Declaration

I/we declare that the particulars furnished above are true to the best of my knowledge and belief. I/we, further confirm that all the necessary supporting documents are enclosed with the application.

I/we hereby undertake that the firm/company, if empanelled, shall have arm’s length distance with the proposed clients for whose forensic audit of loan account is done, will not have any business dealings with them or give them undue favour, will not demand additional remuneration than what is initially settled nor will unnecessarily delay the investigation report.

I/we hereby apply to the bank to empanel firm/company on the Bank’s panel as forensic auditor of loan accounts.

I/we understand that any discrepancy/wrong information/breach of undertaking would lead to cancellation of enlistment as auditor with immediate effect.

In the event of any negligence/mal-practice/s on part of applicant/s, the bank besides depaneling the applicant/s reserves an unqualified and absolute right to include the name/s of applicant/s in the caution list for circulation to all the member banks of India Banks Association (IBA). The applicant/s acknowledges and declares that the aforesaid shall be without prejudice to any other remedy that may be available to the bank under law or otherwise.

For_____

Seal of the company/firm

Place

Partner/Authorized Signatory

Date

Format of undertaking to be submitted by Forensic Auditor
(all partners separately in case of Firm)

I _____ son / daughter / wife of _____ r/o _____ do hereby solemnly affirm and state that:

1. I am a citizen of India.
2. I have not been removed / dismissed from any service / employment earlier.
3. I have not been convicted of any offence and sentenced to a term of imprisonment.
4. I have not been found guilty of misconduct in professional capacity.
5. I am not an un-discharged insolvent.
6. I have not been convicted of an offence connected with any proceeding under the Income Tax Act 1961, Wealth Tax Act, 1957 or Gift Tax Act 1958.
7. My PAN card No. / GST No., as applicable is _____.
8. I undertake to keep you informed of any events or happenings which would make me ineligible for empanelment as Forensic Auditor.
9. I have not concealed or suppressed any material information, facts and record and I have made a complete and full disclosure.

Dated:

Signature: _____

Name: _____

Format of undertaking to be submitted by Forensic Auditor
(where the applicant is a company)

I, _____ designation _____ duly appointed as authorized signatory of _____, hereinafter referred to as "company", (Name of the applicant Company) vide board resolution no. _____ dated _____ do hereby solemnly affirm and state as under:

1. That none of the promoters/directors of the company have been removed/ dismissed from any service employment earlier.
2. That none of the promoters/directors of the company have been convicted of any offence.
3. That neither the company nor any of its promoters/directors have been found guilty of misconduct in professional capacity.
4. That the company is not an insolvent.
5. That neither the company nor any of its promoters/directors have been convicted of an offence connected with any proceeding under the Income Tax Act 1961, Wealth Tax Act, 1957 or Gift Tax Act, 1958.
6. That the PAN /GST No. of the company is _____ .
7. That I undertake to keep you informed of any events or happenings which would make the company ineligible for empanelment as Forensic Auditor.
8. That I have not concealed or suppressed any material information, facts and record and I have made a complete and full disclosure.
9. That copies of the related Board Resolution/s, PAN Card and document evidencing issuance of GST No. are enclosed.

Dated:

Signature of Authorized Signatory: _____

Seal of the company: _____

NON – DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (hereinafter referred to as „agreement“) is made on this _____ day of _____ 20__ at _____ between _____ (Give name constitution, father's / spouse name in case of individual, address of Forensic Auditor“) (hereinafter referred to as „Receiving Party“ which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and assigns) of the FIRST PART;

AND

The Jammu and Kashmir Bank Ltd., a Banking Company under Indian Companies Act 1956 having its registered office at M.A Road, Srinagar (hereinafter referred to as “Disclosing party/J&K Bank” which expression shall unless repugnant to the subject or context thereof, include its successors and assigns) of the OTHER PART.

‘Receiving Party’ AND “J&K Bank” / “Disclosing Party” are hereinafter collectively referred to as “the parties” and individually as “the party”.

WHEREAS

J&K Bank / Disclosing Party has agreed to empanel Receiving Party as Forensic Auditor. For the purpose of Forensic Audit which may be assigned by J&K Bank / Disclosing Party to the Receiving Party, the J&K bank would need to disclose certain valuable confidential information to the Receiving Party. Therefore, in consideration of covenants and agreements contained herein for the mutual disclosure of confidential information to each other and non-disclosure thereof as provided herein after, and intending to be legally bound, the parties agree to terms & conditions as set out hereunder.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS UNDER:

- 1. Information:** “Information” under this agreement means any data or information disclosed/furnished by the disclosing party (J&K Bank) to the receiving party in connection with and for the purpose of conducting Forensic Audit, and includes any personal information of the customers or the information which the receiving party may obtain during the conduct of such forensic Audit from whatsoever source. Such information shall also include any copy, abstract, extract, sample note, module etc thereof.

The Receiving Party may use the Information solely for and in connection with the job assigned i.e. Forensic Audit.

Notwithstanding the foregoing, “Information” shall not include any information

which the Receiving Party can show : a) is now or subsequently becomes legally and publicly available without breach of this Agreement by the Receiving Party, (b) was rightfully in the possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party, (c) was rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality, (d) was developed by or for the Receiving Party independently and without reference to any Information and such independent development can be shown by documentary evidence, or (e) is disclosed pursuant to an order of a Court or Government Agency as so required by such order, provided that the Receiving Party shall, unless prohibited by law or regulation, promptly notify the Disclosing Party of such order and afford the Disclosing Party the opportunity to seek appropriate protective order relating to such disclosure.

2. **Non-Disclosure:** The Receiving Party shall not use or disclose any Information or any materials derived therefrom to any other person or entity other than persons in the direct employment of the Receiving Party who have a need to have access to and knowledge of the Information solely for the Purpose authorized by Disclosing Party. The Receiving Party may disclose information to consultants only if the consultant has executed a Non-Disclosure Agreement with the Receiving Party that contains terms and conditions that are no less restrictive than these. The Receiving Party shall take appropriate measures by instructions and written agreement prior to disclosure to such employees or consultants to assure against unauthorized use or disclosure. The receiving party agrees to notify the Disclosing Party immediately if it learns of any use or disclosure of the Disclosing Party's information in violation of terms of this agreement.
3. **Publications:** The Receiving Party shall not make news releases, public announcements, give interviews, issue / publish advertisements / publicize in any other manner whatsoever in connection with this Agreement, the contents/provisions thereof, other information relating to this Agreement, the Purpose, the Information or other matter of this Agreement, without the prior written approval of other party.
4. **Title and Proprietary Rights:** Notwithstanding the disclosure of any information by the Disclosing Party to the Receiving Party, the Disclosing Party shall retain title and all intellectual property and proprietary rights in the Information. No License under any trademark, patent or copyright or application for same which are now or thereafter may be obtained by such Party is either granted or implied by the conveying of Information. The Receiving Party shall not conceal, alter, obliterate, mutilate, deface or otherwise interfere with any trade mark, trade mark notice, copyright notice, confidentiality notice or any notice of any other proprietary right of the Disclosing Party on any copy of the Information, and shall reproduce any such mark or notice on all copies of such Information. Likewise, the Receiving Party shall not add or emboss its own or any other mark, symbol or logo on such Information.

5. **Return of Information:** Upon completion of assignment / written demand notice of the Disclosing Party, the Receiving Party shall (i) cease using the Information, (ii) return the Information and all copies, abstract, extracts, samples, notes or modules thereof to the Disclosing Party within seven (7) days after receipt of notice and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.
6. **Remedies:** The Receiving Party acknowledges that if the Receiving Party fails to comply with any of its obligations hereunder, the Disclosing Party may suffer immediate irreparable harm for which monetary damages may not be adequate. The Receiving Party agrees, in addition to all other remedies provided at law or in equity, the Disclosing Party shall be entitled to injunctive relief hereunder.
7. The Receiving Party shall indemnify and keep indemnified the Disclosing Party/J&K bank against all direct/actual losses suffered by disclosed party/J&K bank, whether on account of any third party claim or otherwise arising out of and in connection with the Breach of the confidentiality obligations undertaken by virtue of this agreement.
8. The confidentiality obligation assumed under this NDA shall survive and continue to be observed irrespective of the fact whether the Receiving Party continues to be on the Panel of Forensic Auditors of the Disclosing Party/J&K bank or not.
9. **Entire Agreement, Amendment, Assignment:** This Agreement constitutes the entire Agreement between the Parties relating to the matters discussed herein and supersedes any and all prior oral discussions and/or written correspondence or agreements between the Parties. This agreement may be amended or modified only with the mutual written consent of the Parties. Neither this agreement nor any right granted hereunder shall be assignable or otherwise transferable.
10. **Governing Law:** The provisions of this Agreement shall be governed by the Laws of India.
11. **General:** The Receiving Party shall not reverse-engineer, decompile, disassemble or otherwise interfere with any software disclosed hereunder. All Information is provided "as is". In no event shall the Disclosing Party be liable for the inaccuracy or incompleteness of the Information. None of the Information disclosed by the Parties constitutes any representation, warranty, assurance, guarantee or inducement by either party to the other with respect to the fitness of such information for any particular purpose or infringement of trade marks, patents, copy rights or any right of third persons.

IN WITNESS WHEREOF, the parties hereto have executed these present on the day, month and year first herein written below.

For and on behalf of

_____ **(Receiving Party)**

Signature: Name: Capacity: Date:

Witnesses: 1.

2.

For and on behalf of J&K Bank

Signature:

Name of Signature: Designation:

Date: Witnesses: 1.

2.

Fee Structure Payable to Forensic Auditors :

The Forensic Audit is to be Completed within a Maximum period of 2 years from the date of authorizing the audit.

The Forensic Auditor will be paid fee as under:

S. No.	Account having exposure Solo/consortium basis	Maximum Fee Payable* (in Rupees)
1.	Upto ₹50 crore	Upto ₹80,000.00
2.	Above ₹ 50.00 crore – ₹100 crore	₹1,50,000/-
3.	Above ₹100 crore – ₹250 crore	₹2,50,000/-
4.	Above ₹250 crore – ₹500 crore	₹3,50,000/-
5.	Above ₹ 500 crore – ₹ 1000 crore	₹4,00,000/-
6.	Above ₹ 1000 crore	₹ 5,00,000/-

*** (GST will be payable over and above fee. TDS as applicable will be deducted).**

(Travelling & lodging expenses may be considered over and above the aforementioned fee. However, total travelling and lodging expenses should not exceed 15% of the fee payable in respect of the Forensic Audit subject to submission of travelling and lodging bills. The above fee structure shall be subjected to review as and when required depending upon the prevailing market rates.)

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SCOPE OF FORENSIC AUDIT:

The scope of Forensic audit will extend to following aspects relating to a borrower:

- **Capacity to pay:** Examine as to whether the borrower has defaulted in meeting its payment/repayment obligations to the bank even when it has the capacity to honour the same.
- Money trail & End use of funds financed by the Bank.
- **Diversification of funds:** diversion of funds on the part of borrower would be construed in any of the undernoted occurrences:
 - Utilization of short term working capital funds for long term purposes not in conformity with the terms of sanction;
 - Deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned.
 - Transferring borrowed funds to the subsidiaries / group companies or other Corporate by whatever modalities.
 - Routing of funds through any bank other than the lender bank or members of consortium without prior permission of the bank/lenders.
 - Investment in other companies by way of acquiring equities / debt instruments without approval of bank/lenders.
 - Shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.
- **Siphoning off funds:** siphoning off funds on the part of borrower would be construed to occur if any funds borrowed from bank are utilized for purposes other than the one for which the credit facility was sanctioned.
- **Capital Structure:** Tracing the source of contribution by promoters, partners, proprietors, etc. as the case may be by analyzing equity/debt infused into the entity.
- **Abnormal trade transactions:** Commenting on transactions of substantial amount, which seem not to be normal trade transactions.
- **Sales:** Verifying revenue from operations including checking sale order, invoices and controls in billing process. The focus should be on inflated turnover / fictitious sales and / or Sales on Return (SoR) basis where profit has been booked and sales returned in the subsequent accounting period leading to writing off of stocks / debtors and reversal of booked profits. The sustainability of sales in future years should be co-related with Technical and Viability (TEV) study.
- **Escrow / Trust & retention Account (TRA):** Commenting on adherence to escrow / Trust & Retention Account (TRA) arrangements made with various banks. Also commenting on details of all transactions with banks outside the consortium.
- **Concentrating transactions** – sole customer, sole supplier, major

transactions with related parties / group companies, analysis of relationship in two-way deals with the same party or indirect payments made by customers of the borrower to the vendors of borrower,

- Movements in unsecured loans during specified period.
- Details of substantial debts raised in sister / associate / group companies either through corporate guarantee of borrower or against security of promoters or promoters" family assets.
- Verifying receivables thoroughly as there have been cases where the units have shown reciprocal receivables against each other, especially in case of related parties.
- Finding details of assets of unit / its promoter (s) / partners to ensure recovery of loans granted by banks as there would be cases where some assets are not reported in financials of the unit / promoters / partners.
- Examining chain of transactions pertaining to unit / promoters / partners to ensure genuineness of the dealings as there could be cases of bogus family/other transactions.

- Examining stocks / inventory & purchase transactions in particular with related parties / sister concerns.
- Identifying the type of fraud that has been operating, how long it has been operating for, and how the fraud has been concealed.
- Identifying the fraudster(s) involved.
- Quantifying the financial loss suffered by the bank.
- Gathering evidence to be used in court proceedings.
- Providing advice to prevent the reoccurrence of the fraud.

The list is indicative only and a Forensic Auditor may carry out other tasks also within the ambit of Forensic Audit.

Qualifications required for Empanelment of Forensic Auditors

Check list for selection of Forensic auditor firm/ company:

- a) Firms/Corporates who display exceptional professional competence in Forensic Auditing of the accounts with exposure of ₹ 50 Cr and above.
- b) Having in-depth knowledge and extensive experience in accounting and should be aware of the various practices existing in cross section of industries.
- c) At least 2 qualified Fellow of Chartered Accountants (i.e. experience of 10 years) as Members & must be registered with Institute of Chartered Accountants of India (ICAI). At least one Partner/Director with experience of minimum 10 years, preferably having exposure in sector of banking sector law and practice. The firm/Corporate should be at least 10 years old.
- d) The firm should be empaneled with RBI for conducting bank audits. Average professional receipt from audit as shown in the income tax return should be ₹50 lacs in last three years.
- e) One of the partner/director of the firm /corporate should be Certified Fraud Examiner (CFE) or has done Forensic Audit and Fraud Prevention (FAFP) course of The Institute of Chartered Accountants of India (ICAI).
- f) Proven track record of conducting a number of Forensic and Investigative audits and exposed/established frauds and malpractices.
- g) Firm should preferably have at least 5 years" experience of doing statutory or Internal Audit of organization covered below-
 - (i) listed companies; or
 - (ii) Unlisted public companies having a paid-up share capital of INR 10 crores or more; or
 - (iii) all private limited companies having a paid-up share capital of INR 20 crores or more; or
 - (iii) all companies (private and public) which do not meet the thresholds mentioned in (ii) and (iii) above, but have public borrowings from banks / financial institutions or public deposits of more than INR 50 crores.
- h) The Firm should have a good reputation, unblemished track record, with no unsatisfactory conduct in the past and should not have been blacklisted by any financial institution/other organizations/any government department. The firm/company should furnish self-attested affidavit on stamp paper in this regard.
- i) The name of the Firm/Company or its promoter/partner etc. should not be in the defaulters/barred/caution list published/displayed at websites of public bodies such as by RBI/IBA/ECGC/SEBI/CICs etc.
- j) Forensic auditor must not have worked as auditor of the borrower company for last three years to avoid any conflict of interest.
- k) The Forensic Auditors who were associated with any NPA account as auditor/concurrent auditor in the past will not be allocated Forensic Audit in that NPA account.
- l) **That no single auditors should conduct the forensic audit of two accounts.**

