

**DRAFT OF PROPOSED  
CHANGES  
24 MAY'25**

Implementation Guide on

# **Forensic Accounting and Investigation Standards**

(As on **1st July 2023**)



**Digital Accounting and Assurance Board**  
**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

**DRAFT OF PROPOSED  
CHANGES**

**24 MAY'25**

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**This Implementation Guide provides technical clarifications and implementation guidance on how to prepare for and conduct work procedures on Forensic Accounting and Investigation Standard (FAIS) issued by the Institute of Chartered Accountants of India (ICAI) and should be read in conjunction with all the Standards relevant to the topic. The contents of this Implementation Guide are recommendatory in nature and do not represent the official position of the ICAI. The reader is advised to apply their best Professional judgement in the application of this Implementation Guide considering the relevant context and prevailing circumstances.**

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## Foreword

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The role of Chartered Accountants to uncover financial irregularities and ensuring transparency and accountability has become more crucial than ever. Thus, the Forensic Accounting and Investigation Standards (FAIS or the “Standards”) have also become more important in providing invaluable insights to practitioners engaged in the area of Forensic Accounting and Investigation (FAI).

The Institute of Chartered Accountants of India (ICAI), with release of these FAISs in 2021, becoming the only Accounting Institute in the world having authoritative literature on this specialised area. These FAIS have been very well received by not only the ICAI members but by the practitioners and other stakeholders functioning in this domain. These standards cover the whole process of planning, executing, concluding and reporting on forensic engagements, and mandate the key requirements to ensure quality and performance.

These FAISs are now mandatory from January, 2023. Thus, it is equally important that the practitioners should have due understanding and practical guidance on the effective implementation of these FAIS. I am delighted that the Digital Accounting and Assurance Board (DAAB) of ICAI has issued the Implementation Guide on FAIS. Implementation Guide outlines in detail the various procedures which the professionals may find relevant and suitable to complete the engagement and fulfil the requirements of FAIS. The example, illustrations as well as check-lists included in the Guide provides further clarity to the professionals.

I extend my heartfelt appreciation to CA. Charanjot Singh Nanda, Chairman, CA. Dayaniwas Sharma, Vice Chairman, and all members of the DAAB along with the team of forensic accounting professionals for their tireless efforts in spearheading this initiative.

I am confident that the Implementation Guide will serve as a vital resource for professionals navigating the complex landscape of forensic accounting and investigation.

**CA. Aniket Sunil Talati**

New Delhi

President, ICAI

# Preface

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We are pleased to present the Implementation Guide on Forensic Accounting and Investigation Standards (FAIS or the “Standards”), released by the Digital Accounting and Assurance Board (DAAB) of the Institute of Chartered Accountants of India (ICAI). This Guide brings all the 21 guidance material put together to support the implementation of the FAIS. The Compendium of FAIS is released as a separate publication of the ICAI and goes hand in hand with this Implementation Guide.

Forensic Accounting and Investigation (FAI) has emerged as critical disciplines in today’s complex business environment, necessitating the establishment of clear and concise Standards to ensure consistency, professionalism, and ethical conduct in this specialized area. The FAIS issued in 2021 served as a valuable resource to define the principles, objectives and requirements expected from a Professional conducting such engagements. They mandated what is expected from the Professional, but the principle-based, did not prescribe the manner (or the means) in which the Professional can achieve the desirable outcomes. There has been a need for the best judgement of the Professional based on the specific problem, context and circumstances.

This unique body of knowledge put together as an Implementation Guide (IG) on the FAIS supports and clarifies the 20 Standards, as well as the 3 over-arching standards by detailing the various operating procedures which a Professional may find suitable to apply in completing the various phases of the whole process from planning, to executing, concluding and to reporting of each FAI engagement. While the nature and complexity of each engagement is unique, the optional list of procedures (explained through indicative checklists, examples and illustrations) gives the Professional a practical guidance on how to undertake the assignments in a manner which improves the quality of the work and reliability of the outcome.

The IG is recommendatory in nature and therefore drafted using optional and suggestive language. The Professional is expected to evaluate the applicability of the guidance included in the IG and use what works best under the circumstances, thereby empowering them to navigate complex scenarios with greater clarity and confidence. By providing clear and concise explanations of the Standards, this Implementation Guide aims to enhance the consistency and quality of FAI engagements.

At this juncture, we wish to place on record our sincere thanks to members of the study group viz., CA. Manu Agrawal, CA. (Dr.) Durgesh Pandey, CA. Uday Kulkarni, CA. Sailesh Cousik, CA. Nikunj Shah, CA. Anand Prakash Jangid, CA. Satish Shenoy, CA. Sandeep Baldava , CA. Vikram Agarwal, CA. Jagvinder Brar, CA. Surath Mukherjee, CA. Bharat Jeswani, CA. Rahul Jindal, CA. Jyot Baxi, CA. Sumit Makhija, CA. Sanjay Poddar, CA. Puneet Grewal, CA. Sanket Dawda, CA. Lokesh Chopra, CA. Jeshwanth V., CA. Ayush Jain, CA. Naval Bajaj, CA. Himanshu Sarpal, CA. Aashna Khanna, CA. Rajiv Gupta, CA. Ashish Makhija and CA. Gaganpreet Puri for sparing time, out of their pressing preoccupations and contributing in developing this IG. We are providing their valuable comments. In addition, we extend our deep appreciation to a host of other ICAI members, lawyers and other stakeholders for reviewing the exposure drafts in great details and providing inputs and recommendations to make the content more relevant and practical.

We would like to express our sincere appreciation to CA. Aniket Sunil Talati, President ICAI and CA. Rameshwar Anand, Vice-President ICAI for their continuous support and guidance in the initiatives of the Board. We must also thank our members of the Council for their invaluable guidance, support and advice in the various initiatives of the Board. We also wish to place on record our gratitude for all the Board members, Co-opted members and Special invitees for their invaluable guidance and support to various initiatives of the Board.

We would also like to extend our sincere thanks to Mr. Harish Dua, Advisor, CA. Amit Gupta, Secretary, DAAB and their team for the efforts put in by them to work in developing this IG on FAIS.

We believe that this IG will serve as an indispensable tool for Professionals undertaking FAI engagements. We encourage all Members of the ICAI to embrace its principles and methodologies, and we remain committed to providing continued support and guidance to the accounting profession as it evolves to meet the challenges of the modern business landscape.

**CA. Charanjot Singh Nanda**  
*Chairman,*  
*Digital Accounting and Assurance*  
*Board, ICAI*

**CA. Dayaniwas Sharma**  
*Vice Chairman,*  
*Digital Accounting and Assurance*  
*Board, ICAI*

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# Implementation Guide on FAIS No. 000: Over Arching Documents

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## 1.0 Introduction

- 1.1 The Preface to the Forensic Accounting and Investigations Standards (FAIS) introduces the Digital Accounting and Assurance Board (DAAB), the ICAI body under whose aegis the FAIS, have been formulated and issued. It also provides an overview of the FAIS by covering its three Over Arching Documents (OADs), the Standard setting process and how the FAIS are structured and formulated.
- 1.2 These three OADs are as follows:
  - (a) The **Preface** to the FAIS;
  - (b) The **Framework** governing FAIS; and
  - (c) The **Basic Principles** of FAI.
- 1.3 The Framework governing FAIS presents the overall construct of the body of knowledge of Forensic Accounting and Investigations (FAI). With Ethics as the base, the Basic Principles, Concepts, Standards and Guidance as its pillars, the Framework comes together as one inter-related cohesive whole, to serve the needs of the FAI profession.
- 1.4 The Basic Principles are a set of core principles fundamental to conducting such engagements.

The first five of these principles relate to the attributes of the Professional and help to establish the credibility of the individual conducting the engagements while the next five principles relate to the performance of the Professional and help to establish the credibility of the manner in which the work is conducted.
- 1.5 In this regard, it's important to mention that this document, the Implementation Guide (IG), is issued to complement the FAIS in their effective implementation.

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- 1.6 The Professional is expected to study and understand these three OADs as they provide an overall coverage to all the Standards as well as all its related documents. In fact, the cover of each Standard has a message box which explicitly states that the Standard...

*“...should be read in conjunction with the “Preface to the Forensic Accounting and Investigation Standards”, the “Framework Governing Forensic Accounting and Investigation Standards” and “Basic Principles of Forensic Accounting and Investigations” issued by the ICAI”.*

## **2.0 Objectives**

- 2.1 This Implementation Guide (IG) outlines the manner in which the Professional can implement the requirements of the three OADs, forming part of the FAIS, when conducting FAI engagements.
- 2.2 Objective of this IG is to assist the Professionals in implementing the requirements of the OADs in the following manner:
- (a) Elaborate and clarify the definitions, where appropriate;
  - (b) Explain certain concepts and principles in more detail; and
  - (c) Provide examples and illustrations to guide on how the Standards can be implemented in true spirit and not just form.
- 2.3 The objective of the IG is not to introduce any new requirements, which being a key component of the Standard, can only be mandated by the Standard itself. However, the IGs serve an important role to ensure that the requirements of the Standard are understood and the manner of implementing the Standards is well explained, thereby improving the level of compliance.

## **3.0 Procedures**

- 3.1 **Implementing requirements of the Preface:**
- 3.1.1 **DAAB:** The DAAB, also referred to as the “Board”, undertakes a continuous, collaborative approach in the formulation and development of the Standards. However, given the rapid developments underway, it is difficult for the Board to stay abreast of all emerging challenges without the active support of its members. Therefore, it is important for

the Professional to participate in the formulation and development of the Standards. This can be done by some of the following initiatives which can be undertaken by the Professional in their individual capacity:

- Make suggestions and recommendations on the new Standards required, and the changes required to the existing ones.
- Volunteer to join drafting teams and become members of the study groups formed to develop new and revised Standards, Implementation Guides and Technical Guides.
- Contribute articles, develop educational material and training programs on the various subjects of the FAIS.
- Participate in FAIS awareness sessions and training programs as a student or faculty.
- Represent the ICAI before legal and regulatory bodies and other Stakeholders, in promoting the cause of the profession.

**3.1.2 Mandatory Nature of Standards:** Currently a full set of 20 FAIS have been issued in mandatory form. These were prepared by following the laid out Standard setting process. They become mandatory for all FAI engagements beginning on or after 1<sup>st</sup> July 2023. This means that every member of the ICAI conducting FAI engagements, to which these Standards apply, would be required to ensure compliance with the provisions of the Standards.

While the FAIS may not be mandatory on Professionals who are not members of the ICAI, it would be incumbent on them to voluntarily comply with the FAIS to justify the quality of their services and to ensure consistency and credibility of their report.

The mandatory nature of the Standard is explained in para 5 of the Preface. The implication of any non-compliance to the FAIS could, if deemed appropriate, trigger the disciplinary process on the ICAI member. It is also possible that, in the absence of any other such Standards on the topic, the government and regulatory bodies may choose to apply these Standards to all Professionals (including non-ICAI members) and therefore use them as a basis for their own disciplinary process. Suitable censure may follow such infractions.

- 3.1.3 **Content of the Standards and Implementation Guides:** Since the Standards are principle-based, they mandate only the required outcome on a particular subject matter (e.g., Planning, Evidence or Reporting), also referred to as the “what” of the FAIS. The IG, on the other hand is drafted to provide the Professional with guidance on the “how”. In this way, it is left to the judgement of the Professional to determine the most appropriate procedures which may be deployed to achieve the objective of the Standard (e.g., the steps required to conduct the planning exercise, or how to ensure that the evidence gathered is relevant and reliable). The manner chosen to achieve the requirements is left to the judgement of the Professional, since this may vary from engagement to engagement, or even from assignment to assignment.
- 3.1.4 **Standard Setting Process:** Each Standard goes through a detailed six-step Standard Setting Process as outlined in **Annexure 1** of the Preface, which includes a minimum 21-day exposure of the draft for comments from all Stakeholders.

The same process applies to the Implementation Guides (IGs), although these are not required to be exposed at all. If exposed, the time frame for exposure may be reduced in these cases as IGs are always issued in a non-mandatory (recommendatory) form. All Stakeholders are encouraged to actively participate in the Standard setting process by publicising the Exposure Drafts and submitting their suggestions to help make the content world-class.

Experience from the past has confirmed the importance of the exposure-draft stage as invaluable inputs, and suggestions have been received from a whole spectrum of Stakeholders allowing the ICAI to incorporate national and global best practices.

A illustrative list of the External Stakeholders from whom inputs are requested as part of the FAIS drafting process is included here as **Annexure 1**.

- 3.2 **Implementing requirements of the Framework:**
- 3.2.1 **Definition: Professional:** *A professionally qualified accountant, carrying membership of a professional body, such as the ICAI, who undertakes forensic accounting and investigation assignments using accounting, auditing and investigative skills.*

This clearly indicates that for forensic accounting, one is expected to be a professionally qualified accountant. In addition, it recognises that the FAI assignments require the use of multiple skills, especially accounting and investigative, but auditing skills are useful as well. In the case of ICAI members, the FAIS would apply to all members undertaking FAI assignments, irrespective of whether they are practicing or are in industry.

In the case of FAI assignments being conducted by ICAI members in practice, only the relevant Standards would apply. For example, FAIS 220 on “Engagement Acceptance and Appointment” may not be relevant as the Professional would already be an employee of the Company. The Professional may also be subject to employer-employee relationship conditions, and if such conditions are in contravention of the FAIS requirements then the Professional is expected to mention the same in the engagement report being issued for the benefit of the Stakeholders.

- 3.2.2 Definition: *Forensic Accounting is gathering and evaluation of evidence by a Professional to interpret and report findings before a Competent Authority.***

**Explanation: *The overriding objective of Forensic Accounting is to gather facts and evidence, especially in the area of financial transactions and operational arrangements, to help the Professional report findings, to reach a conclusion (but not to express an opinion) and support legal proceedings.***

Forensic Accounting by nature is an act of gathering evidences, conducting an evaluation of their relevance and reliability, and through interpretations of these evidences, reporting the findings, with a conclusion (if required) before a Competent Authority such as a Court of Law.

- 3.2.3 Definition: *Investigation is the systematic and critical examination of facts, records and documents for a specific purpose.***

**Explanation: *A critical examination of evidences, documents, facts and witness statements with respect to an alleged legal, ethical or contractual violation. The examination would involve an evaluation of the facts for alleged violation with an expectation that the matter***

***might be brought before a Competent Authority or a Regulatory Body.***

Investigation is by nature an extension of a Forensic Accounting exercise because the evidences gathered go through a critical examination in order to make a determination whether they support a specific purpose, such as an alleged violation (legal, ethical or contractual), or whether they prove or disprove some suspicion or allegations, such as the existence of an error, irregularity or fraud.

**3.2.4 Definition: *Fraud is any intentional or deliberate act to deprive another of property or money through deception or other unfair means.***

Where fraud (an intentional act) is suspected, the nature of an investigation would extend to exploring the role of certain individuals (involvement of people) to gather evidences supporting the intention behind their behaviour and actions.

As per Indian Companies Act, 2013, a “Fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss. Hence, there may not be a need to establish a loss or deprivation of money or property. The law is considered violated by the mere intentional act even if the intent of unlawful gain was not achieved.

**3.2.5 Code of Ethics:** The Code of Ethics of ICAI would be applicable to Professionals who are members of ICAI with respect to FAIS. However, considering the fact that non-member Professionals may also be conducting FAI assignments, the assumption is that these Professionals would comply with either the ICAI Code of Ethics or that of their own Institute of which they are members.

**3.3 Implementing requirements of the Basic Principles:**

**3.3.1 Principles of Attributes:**

(a) **Independence:** Neutrality, a key element implicit within independence, is rightly mentioned explicitly in this para 3.1 on Independence. It is also

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a state of mind and therefore difficult to prescribe through rules and norms. Nevertheless, concerns of Independence, which need to be kept in mind, may arise through any of the following situations (indicative list):

- Influence of an overpowering individual personality over the free functioning of the Professional, sometimes without any official relationship, e.g., a person of political influence.
- Employment or other concurrent fee-paying relationship, such as an audit or attestation related service by a partnership/firm of the Professional.
- Promise of future reward or favour on completion of the engagement to suit the needs of the Primary Stakeholder.
- Contingent fee arrangement, such as one involving sharing of loss recovered, post completion of engagement.
- Any other service or arrangement which may be perceived to influence the required neutral approach (or introduce an element of bias in the outcome) in the performance of the engagement.

(b) **Integrity (including Conflict of Interest):** This is very much an individual trait requiring high moral and ethical standards of the Professional. Regular acts of not seeking any undue benefits from others is a normal and acceptable display of such ethical traits. However, perceptions of integrity are just as important and play a big role in the need to display the absence of any conflicting situations. Concerns of such conflict of interest which need to be kept in mind may arise through any of the following situations (indicative list):

- Presence of personal relationships (e.g., blood or marriage relations, etc) with organisation officials.
- Personal interactions (i.e., interactions beyond business dealings) with certain key Stakeholders;
- Financial or pecuniary interest with the organisation, such as shareholding, debt or borrowings, etc.
- Other fee-paying arrangements or contracts with related parties of the organisation;

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- Participation or influence in the operational or strategic decision making of the organisation.
- (c) **Objectivity:** Work performed, and conclusions reached need to be free from external influences and based only on facts and evidences. Concerns over objectivity may arise, which need to be kept in mind, through any of the following situations (indicative list):
- Presence of discrimination or personal prejudices towards some religion, age, gender or a certain community (e.g., physically challenged persons, business class etc.).
  - Personal affinity, sympathy or favouritism towards certain individuals or groups (e.g., politicians or radical ideology);
  - Preconceived notions or self-fulfilling biases towards certain actions or behaviours (e.g., “poor are thieves”)
  - Engagements which mandate a certain preconceived outcome, such as, a confirmation of violation or the presence of fraud;
- (d) **Due Professional Care:** Due professional care in FAIS context is no different from the due professional care applied in all professional engagements covered by other pronouncements of the ICAI. Hence, the same would apply in an FIA engagement.
- (e) **Confidentiality (including Privacy):** A Professional always displays the ability to maintain a high level of confidentiality. However, most FAI engagements require an extra degree of sensitivity, for example, a casual sharing of information considered trivial may alert a suspect to destroy certain critical (primary) evidence. At the same time, the need to protect the privacy rights of individuals poses a challenge requiring the Professional to balance the two conflicting objectives.
- (f) **Skills and Competence:** The skills required to undertake an FAI engagement are quite specialised and unique. Beyond the basic skills of accounting, auditing and investigation, there is a multitude of other skills requiring specialised expertise, especially in the dual domains of law and technology. Both these areas are changing in a very rapid manner and both subjects now impact the FAI engagements in a significant manner.

In fact, no assignment exists where digital evidence or data analysis is not required, and practically all assignments are leading to some level of legal proceedings. The Professional is therefore expected to have, or procure, the require expertise in these two areas in particular. Similarly, given that expertise is getting so specialised, one person alone cannot be expected to master everything. Hence, it is, indeed, safe to recognise one's own limitations and seek out the expertise required to gather all the compelling evidence which may be available.

### 3.3.2 Principles of Performance

- (a) **Contextualisation of situation (Predication):** What makes each FAI engagement unique is the context of the situation and the environment in which the respective events take place. Similarly, no engagement begins in the anticipation of “finding something” and there is always a need to have the “probability of the occurrence of some activity” even if it is only a suspicion.

In fact, the mandate coming from the Primary Stakeholders will always indicate some type of predication or a suspicion (e.g., the suspicion of the collusion between a purchasing manager and a vendor or supplier).

This is particularly important at the time of establishing the objectives of the engagement through discussions with the Primary Stakeholder. A subsequent risk assessment will also help to identify the important fraud risk indicators, which again will assist in establishing the predication.

- (b) **Primacy of Truth:** One way to label a Professional would be to use the term “the seeker of truth”! Which is why, whenever there are any doubts in the mind of the Professional, the compass of truth will provide the right direction. In most cases, this is also a very comforting thought, since there would always be some evidence or another to support the truth, which only needs to be discovered. On the other hand, someone would have to “generate some evidence” to support some untruth which would most likely be in conflict with the true evidence, when available.

This basic principle of “truth being primary to everything else” is particularly relevant when case theories (or hypothesis) are being formulated at the time of planning the work procedures. These statements, when drafted in the form of truth seeking statements, will be most effective and give a fillip to Investigation.

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For example, in a situation where bid procedures were short circuited at the time of procuring half-dozen water pumps, one will contextualise the situation and develop a case theory which seeks to find out why that was the case. The truth might point in the direction of solving a problem of flooding in an emergency situation as the real intent, as opposed to any unethical intent of kickbacks. Hence, the truth may even justify the violations in certain unique scenarios.

(c) **Rights and Obligations:** The Professional always faces the on-going challenge of balancing their obligation of unearthing the truth with personal rights of the suspects.

i. This basic principle places an added obligation on the Professional to not just acknowledge that all suspects have the right to defend their innocence, but that the process of gathering evidence should also acknowledge the right to privacy etc, Unfortunately, it is also fair to accept that many a time, the suspect uses these rights to manipulate the system and even destroy evidence etc,

For example, many cases hit the media where the accused is acquitted on “technical grounds” of not having enough evidence to judge them guilty. In some of these cases, the evidence gathered may have been considered “inadmissible” in the Court due to some deviation from the legal requirements of evidence. Sometimes, it’s possible to take advantage of these rights provided by law to the other extreme and try to defeat the strict legal requirements of proof, as a result of which the real truth may not surface. Good Professionals are alert to such risks and pitfalls when developing their own cases for legal proceedings.

ii. At times, the Professional may have practical limitations placed on them by the restricted mandate they receive such that they may not have access to the other party to perform the principle of natural justice procedures. In such cases, the report will clearly state those limitations and, if possible, state that no inputs have been sought or received from the other party with respect to the findings being reported.

(d) **Separating Facts from Opinions:** A major pitfall in FAI engagements is the wastage of resources stemming from diversions which creep in

due to the difficulty in separating facts from opinions. While this is now a societal problem of the day and age of social media, this expertise of the Professionals is most important in FAI engagements. Many years of expertise gives the Professional an added advantage in quickly accepting facts and rejecting opinions, and this makes a big difference in saving precious time and resources in chasing evidences to support facts and not opinions. If such filtration is not done at the time of evidence gathering, then the professional runs the risk of embarrassing rejection of their evidence from cross examination during the legal proceedings.

- (e) **Quality & Continuous Improvement:** The only guidance which can be given to any Professional with regard to quality is to make sure that this aspect is built into the process of daily functioning, as opposed to an occasional project to be undertaken towards the end of the engagement. The outcome of the engagement, either in the form of a written report, or during legal proceedings will clearly bring out the quality aspects since the deliverable will be more reliable and have greater credibility when the work has been done with high quality standards.

**ANNEXURE 1**

**LIST OF EXTERNAL STAKEHOLDERS FOR INPUTS ON EXPOSURE DRAFTS**

- 1) The Ministry of Corporate Affairs (MCA)
- 2) The Ministry of Home Affairs (MHA)
- 3) The Reserve Bank of India (RBI)
- 4) The Securities and Exchange Board of India (SEBI)
- 5) The Comptroller and Auditor General of India (CAG)
- 6) The Controller General of Accounts (CGA)
- 7) The National Cyber Coordination Centre (NCCC)
- 8) The National Crime Records Bureau (NCRB)
- 9) The Central Bureau of Investigation (CBI)
- 10) The Enforcement Directorate (ED)
- 11) The Economic Offences Wing (EOW)
- 12) The Serious Frauds and Investigations Office (SFIO)
- 13) National Company Law Tribunal (NCLT)
- 14) Insolvency and Bankruptcy Board of India (IBBI)
- 15) Computer Emergency Response Team (CERT)
- 16) The Insurance Regulatory and Development Authority (IRDA)
- 17) The Data Security Council of India
- 18) The Central Board of Direct Taxes (CBDT)
- 19) The Central Board of Indirect Taxes and Customs (CBIC)
- 20) The Institute of Cost Accountants of India (ICMAI)
- 21) The Institute of Company Secretaries of India (ICSI)
- 22) Recognised Stock Exchanges in India
- 23) The Indian Banks' Association (IBA)
- 24) The Standing Conference of Public Enterprises (SCOPE)

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- 25) The National Bank for Agriculture and Rural Development (NABARD)
- 26) The Indian Institute(s) of Management (Various IIMs)
- 27) The Telecom Regulatory Authority of India (TRAI)
- 28) The Central Registrar of Co-operative Societies
- 29) Police Agencies and Cyber Crime Cells
- 30) The National Forensic Sciences University (NFSU)
- 31) Industry bodies/associations, such as, The Confederation of Indian Industry (CII), The Associated Chambers of Commerce and Industry (ASSOCHAM), The Federation of Indian Chambers of Commerce and Industry (FICCI), etc.
- 32) Any other body considered relevant by the DAAB, keeping in view the nature and requirements of the FAIS.

# **Implementation Guide on FAIS No. 110:**

## **Nature of Engagement**

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### **1.0 Introduction**

- 1.1 FAIS 110 on “Nature of Engagement” expects the Professional to understand the nature of an engagement. It presents three options:
- (a) a Forensic Accounting engagement,
  - (b) an Investigation; or
  - (c) a Litigation Support engagement.

It also states how these three are distinct from an audit engagement, and this distinction is particularly important since these Standards do not apply to audit engagements.

- 1.2 Use of the term “Forensic Audit”: FAIS 110 Requirement Para 3.1 clearly mandates the need to avoid any reference to the term “Forensic Audit”. This is to prevent any confusion between a FAI engagement with an Audit engagement, where the Auditor is expected to express an independent opinion based on work performed in accordance with Standards on Auditing. The FAIS therefore do not apply to Auditors, but to other Professionals undertaking FAI engagements, as per the Scope Para 1.3 of FAIS 110, irrespective of the Stakeholders. In many cases, the Stakeholders could include a Competent Authority and other government agencies, such as a Regulatory Body (e.g., RBI, SEBI etc.). In fact, some of these bodies mandate FAI type of engagements, at times referring to them as “Forensic Audits”. Hence, wherever the Professional is undertaking an engagement which is being referred to as a “Forensic Audit” (or any name whatsoever) and it complies with the mandate which is in the nature of either a Forensic Accounting engagement or an Investigation engagement (or a combination of the two), the FAIS would be applicable to such an engagement.
- 1.3 The Standard expects the Professional to recognise the nature of the engagement by understanding the mandate received from the Primary Stakeholder. The requirements of the Standard are expected to be

implemented through an understanding of the various unique features which define the requirements in the mandate. These unique features cover various elements like objective, approach, focus, required skill set and also the typical outcomes, etc.

## **2.0 Objectives**

- 2.1. This Implementation Guide (IG) outlines the manner in which the Professional obtains clarity on the nature and purpose of the Forensic Accounting and Investigation (FAI) engagement for the purpose of implementing the Standard.
- 2.2. The objective of the IG is to assist the Professional establish the nature of the engagement by:
  - (a) Understanding the concepts which determine the nature of the engagement.
  - (b) Obtaining the engagement mandate, what it requires, as well as what the deliverables are.
  - (c) Defining the appropriate engagement scope and approach.
  - (d) Identifying if any specialised skills or resources may be required to execute the engagement.
- 2.3. The IG also provides examples and illustrations to help the Professional make a determination of the nature of the engagement.

## **3.0 Procedures**

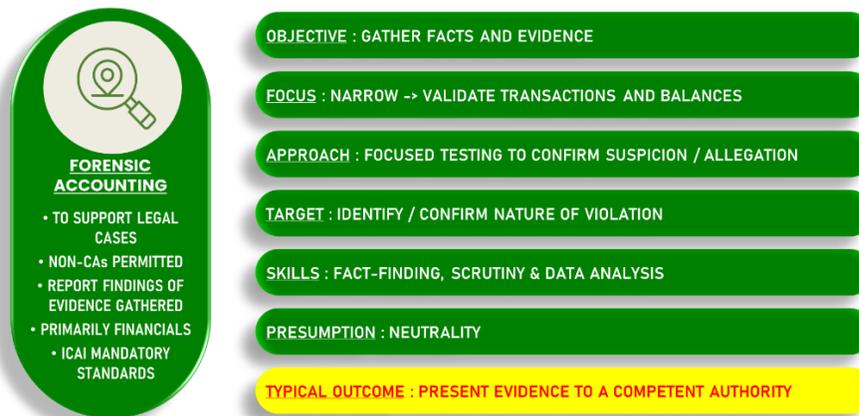
- 3.1 There are certain salient features of the engagement which make it either a Forensic Accounting engagement, or an Investigation or a Litigation Support engagement. The reason for such a classification is designed to assist the Professional to develop the right strategy, approach and work procedures. If the Professional can consciously focus on the precise nature of the engagement, they can expect quality results and report findings more in line with the expectations. Nevertheless, there is no hard and fast demarcation, and it's possible that an engagement can commence as one (e.g., Forensic Accounting, for fund diversion) and end as another (Investigation, for fraudulent activities of the promoter). The main point to note is that the Professional should be

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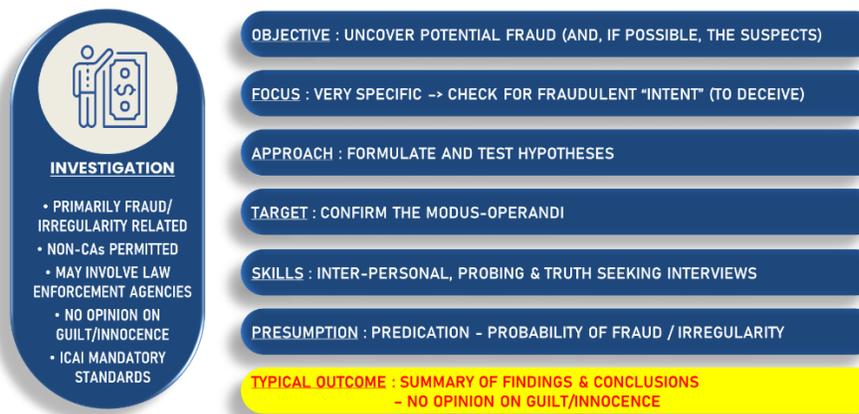
aware as to exact nature of the mandate, and execute the engagement accordingly.

- 3.2 The Professional uses these unique features to establish the nature of engagement. A snapshot of some of these indicative features can be summarised in the infographic presented below.

Indicative features of **Forensic Accounting** are presented here:



- 3.3 Indicative features of an **Investigation** are presented here:



- 3.4 For example, one of the features which defines the nature of the engagement is the "Objective" and if this objective is to gather evidence which may be admissible before a Competent Authority, then it may be a Forensic Accounting engagement. However, if the objective is to uncover a potential fraud or unearth preferential, undervalued and

## **Implementation Guide on Forensic Accounting and Investigation Standards**

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extortionate credit transactions, then it may be categorised as an Investigation.

- 3.5 The Professional can make a determination of the nature of the engagement by looking at the proposed mandate by the Primary Stakeholder (the party seeking Professional help and appointing the Professional).
- (a) In most cases, the mandate does not specify any procedures which would immediately direct the Professional to decide the nature of engagement. In fact, the Primary Stakeholder may not know enough to help in this matter and would rely on the regular jargons like “Forensic Audit” or “Investigation” without even knowing enough about the distinction between the two.
  - (b) The mandate received from the Primary Stakeholders mostly define the purpose of the engagement, which eventually will define its nature. This mandate will rightly define the expected outcome. For example, the Professional is informed that the management suspects that there is inventory pilferage from the plant and unpacked finished product is probably being stolen. The purpose in calling the Professional is to seek help to confirm or rule out this suspicion. This therefore becomes the mandate, which in most cases would point towards a Forensic Accounting engagement.
- 3.6 The Professional may consider asking some of the following indicative questions while determining the nature of the engagement:
- (a) Does the engagement require gathering of evidence regarding alleged legal, ethical or contractual violations?
  - (b) Will the findings be reported to a Competent Authority to make a legal or contractual determination?
  - (c) Does the engagement require provision of testimony or assistance to arbitration, mediation or other alternative dispute resolution mechanisms on financial or non-financial matters?

The answers to these, and similar questions, are presented as Annexures with illustrations (See Para 5.0) to provide greater clarity to help the Professional make an informed determination.

- 3.7 The proposal, and ultimately the engagement deliverable, may state that the engagement is not an audit engagement, and therefore generally accepted auditing standards may not apply in such a situation. This could help manage the Client's expectations and avoid any subsequent misunderstandings or disputes.
- 3.8 If the Professional determines that the engagement falls under FAIS, it would be appropriate to discuss this during communication with the Client or Primary Stakeholders and even as part of the proposal finalisation process. Compliance with the Standards do introduce the need to follow certain processes and protocols to help achieve engagement objectives and ensure that quality is maintained.

#### **4.0 Explanations with Examples**

- 4.1 Information about nature of the engagement may be forthcoming from various sources, or obtained through discussions and material provided by the Client as follows (indicative list):
- (a) Request for Proposal and Terms of Reference issued by Client.
  - (b) High-level meetings and discussions with the Stakeholders.
  - (c) Whistleblowing complaints.
  - (d) Board of Director/management suspicions.
  - (e) Identified red flags in statutory, internal or other audit reports.
  - (f) Identified business fraud risks as per the entity's Enterprise Risk Management (ERM) framework.
  - (g) Board of Director/Management decision to implement, monitor or strengthen anti-fraud measures.
  - (h) Minutes of meeting.
- 4.2 The Professional may also gather information about nature of the engagement from other sources as follows (indicative list):
- (a) Applicable laws and regulations (see FAIS 130 on "Laws and Regulations").
  - (b) Written orders of a regulatory authority, enforcement authority, court of law, arbitral tribunal or any other legal or quasi- legal authority directing the engagement.

- (c) Expected enforcement action by third parties (financial institutions, business partners etc.), regulators, enforcement agencies etc.
- (d) Progress and current status of legal or contractual disputes.
- (e) Comparable data about competitors (for benchmarking).

## **5.0 Annexures**

- 5.1 Examples of some mandate scenarios which may be proposed by the Primary Stakeholder and form the basis of making a determination of the nature of the engagement and considered to be an AUDIT – hence FAIS may NOT apply.

<b>Sr. No.</b>	<b>Proposed Mandate</b>	<b>Classification of the Nature</b>
1	Review of financial statements to ensure that they comply with accounting standards and regulations and to express an audit opinion on the true and fair view of financial statements for a particular fiscal year.	Statutory Audit
2	Evaluation of internal controls and strengthen processes and mitigate risks.	Internal Audit
3	Audit of information systems and technology used by an organisation to ensure that they are secure, reliable, and meet regulatory requirements.	Information Systems Audit
4	Review of financial statements and records of a not-for-profit organisation to ensure that they comply with accounting standards and regulations specific to not-for-profit organisations.	Not-for-Profit Audit

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<b>Sr. No.</b>	<b>Proposed Mandate</b>	<b>Classification of the Nature</b>
5	Evaluation of the efficiency and effectiveness of an organisation's operations and identifying opportunities for improvement.	Internal/Performance Audit
6	Review of organisation's financial records to ensure that they comply with legal and regulatory requirements.	Compliance Audit
7	Audit under section 44AB of Income Tax Act, 1961	Tax Audit
8	Review of an organisation's compliance with grant requirements and regulations.	Grant Audit

- 5.2 Examples of some mandate scenarios which may be proposed by the Primary Stakeholder and form the basis for determining the nature of the engagement, considered to be a FORENSIC ACCOUNTING engagement – hence FAIS would apply.

<b>Sr. No.</b>	<b>Proposed Mandate</b>
1	Review of books of account for errors and irregularities.
2	To assist an entity to estimate business interruption claims resulting from natural disasters, accidents, or other events causing a financial loss.
3	To estimate the loss of inventory in a warehouse fire or theft to estimate the loss of profits in an insurance claim. NOTE: Surveyors can help as an Expert, with specific valuation of the warehouse.
4	To analyse the production records indicating high wastage to confirm or deny the possibility of inventory pilferage.
5	SEBI mandated examination into financial related matters:

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<b>Sr. No.</b>	<b>Proposed Mandate</b>
	Examination of a whistleblower complaint lodged to SEBI alleging possible financial statement manipulation.

5.3 Examples of some mandate scenarios which may be proposed by the Primary Stakeholder and form the basis for determining the engagement, considered to be an INVESTIGATION engagement – hence FAIS would apply.

<b>Sr. No.</b>	<b>Proposed Mandate</b>
1	To examine suspicions of irregularity or fraud in the purchase of a particular raw material and to corroborate these with some unusual activity on the part of some staff members in the purchase department.
2	A review into certain whistleblower complaints against the Procurement Head in the nature of: 1) Procurement of raw materials at inflated prices; and 2) Payments of kickback for increased share of business.
3	Borrower defaults on Loans and engagement is to determine whether there is any Misutilisation of Funds.
4	Employee theft, securities fraud, falsification of financial statement information, identity theft, or insurance fraud.
5	To examine any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed.  To examine any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company.
6	Review possible manipulation of stock price using synchronised trade:

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Sr. No.	Proposed Mandate
	Examine any instance of manipulation in the price of the stock by entities acting in concert with synchronised trading. Further explore any instances of front running and churning by Portfolio Managers.

- 5.4 Examples of some mandate scenarios which may be proposed by the Primary Stakeholder and form the basis for determining the engagement, considered to be LITIGATION SUPPORT engagement – hence FAIS would apply.

Sr. No.	Proposed Mandate
1	Professional is asked by an investigative agency or a Competent Authority to provide evidence in support of the observations made in a forensic report.
2	To analyse financial records and provide testimony in a lawsuit involving a breach of contract.
3	To review a concern that profits have been impacted due to incorrect capitalisation. The Professional is appointed to testify as to whether the capitalisation is in accordance with the prescribed accounting standards and international best practices.
4	An engagement to value a closely held business in a dispute between shareholders. The analysis may be used in the settlement negotiations.

# **Implementation Guide on FAIS No. 120:**

## **Fraud Risk**

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### **1.0 Introduction**

- 1.1 FAIS 120 on “Fraud Risk” expects the Professional to understand the concepts of fraud risk and apply these in a Forensic Accounting and Investigation (FAI) engagement. The requirements of the Standard are expected to be implemented through:
- (a) A preliminary Fraud Risk understanding of the areas relevant to the subject matter of the engagement.
  - (b) Identification of Fraud Risk indicators.
  - (c) Prioritisation of work procedures and reporting in the areas most vulnerable to fraud.

### **2.0 Objectives**

- 2.1. This Implementation Guide (IG) outlines the manner in which the Professional prepares and executes work procedures for implementing the requirements of the Standard during the course of a FAI engagement.
- 2.2. The objective of the IG is to assist the Professional to scope and plan the engagement in order to:
- (a) Identify areas most vulnerable to fraud as they are relevant to the scope and objectives of the engagement.
  - (b) Perform a preliminary Fraud Risk understanding of these vulnerable areas.
  - (c) Identify and prepare a list of Fraud Risk Indicators and categorise them in terms of importance (High/Medium/Low).
  - (d) Prioritise the work procedures and allocate them to those with available skills and expertise.

- 2.3. The IG also provides examples and illustrations to help the Professional apply the Fraud Risk concepts which can be directed towards the areas of importance and assist in maintaining the focus on key areas of the engagement.

### **3.0 Procedures**

- 3.1 In order for the Professional to apply the Fraud Risk concepts in an effective manner, there is a need to understand how the risk, in general, is quantified. Since risk is a function of two key variables of Impact and Probability, a rating out of say 5 or 10 can be assigned to each of the two variables to get an overall quantification, out of 25 (5x5) or 100 (10x10).

For example, there is a risk of duplicate payments and the impact of any one such payment is INR 1.0 million (i.e., any payments above this amount goes through a more rigorous process, including checking for duplicate payments). A rating of 4 out of 5 may be assigned to Impact due to the large amount. Let's assume the probability of this event happening is average, or 50%. Hence, a rating of 3 out of 5 may be assigned to Probability. Therefore, the overall risk rating would be 12 (4 x 3) out of 25, and this would be considered when we compare the duplicate payment risk with some other risks such as the risk of unapproved payments (which may be rate 16 (4x4), or of payment for goods not received (which may have another rating), making the comparison between them easy due to the numerical quantification.

- 3.2 The Fraud Risk identification process requires an understanding of all the possible areas where a fraud could be perpetrated and accordingly estimating the likelihood of the risk being materialised. To understand the possible avenues of fraud, the Professional may review relevant policies and procedures and even consider a brief walkthrough of certain fraud vulnerable processes to get an appreciation of the control environment.
- 3.3 The Professional may consider certain high-level organisational factors that influence the engagement Fraud Risk areas, some of which are as follows (indicative list):
- (a) The nature of the business and industry of the organisation.
  - (b) The business environment and stakeholders of the organisation.

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- (c) The corporate governance and entity level control framework.
- (d) The existence and effectiveness of its anti-fraud programs.
- (e) Risk management and compliance culture.
- (f) Public perception and investor confidence.
- (g) Extent of automated controls and manual controls
- (h) Job rotation and mandatory leave policy

3.4 The Professional, in order to understand the financial impact of the Fraud Risk, may attempt to quantify it using financial information such as the Annual Financial Statements, Independent Auditor's Report, the Internal Audit reports, the Companies (Auditors Report) Order (CARO) report, the Internal Controls over Financial Reporting (ICFR) and consider a general financial analysis to note any particular areas which may point towards a need for deeper data analytics.

For example, long outstanding debtors or a sharp increase in debtor turnover ratio may indicate cash flow issues and a risk of timely loan repayments.

3.5 The Professional may also consider various internal non-financial sources of risk information such as customer complaints, employee grievances, vendor, whistleblower complaints, or past incidents of legal violations and penalties etc.

3.6 Since frauds usually involve a high degree of human intervention, the Professional may consider gathering relevant information from the public domain and external sources (such as social media, industry news, criminal, civil and regulatory complaints). Level of interaction of company officials with government officials may also be of some relevance in this regard.

3.7 The Professional may consider both the qualitative and quantitative factors when assessing the significance of Fraud Risk to the engagement. However, the quantified list of risks would only be a starting point, but a more comprehensive evaluation would be possible only by incorporating other non-financial information and other qualitative inputs.

For example, a risk of inventory pilferage may be considered not very material due to its low financial impact, but due to the sensitive nature of the risk (pointing towards possible integrity issue), the management may choose to rate the impact to be much higher considering its brand and reputation implications.

- 3.8 The Fraud Risks are assessed with a combination of quantitative and qualitative measures, after which they can be classified as either High, Medium or Low and accordingly allotted a level of priority for consideration. To achieve some consistency of application, various techniques can be deployed in this regard depending on the engagement requirement. Guidance can be sought from ICAI's Risk Management literature which is very useful in this regard.

For example, in an engagement of inventory pilferage, the list of Fraud Risk indicators may include various possible reasons, but the risk quantification of each will help the Professional decide how much time and attention is needed to be given to each fraud indicator. So, gate security measures, or poor quality of raw materials, or operational inefficiencies, or inventory record keeping are all Fraud Risk indicators for inventory pilferage, each having a different risk rating, and therefore, each with a different priority for consideration.

## **4.0 Explanations with Examples**

- 4.1 The Professional may consider the following Fraud Risk indicators (also called red flags and early warning signs), in assessing the significance of Fraud Risk:

- Unusual financial statement and performance indicators such as:
  - (a) A pattern of similar audit adjustments proposed year after year.
  - (b) Persistent cash flow problems, even when the organisation has regularly reported profits.
  - (c) Outstanding results when the rest of the industry has suffered a downturn.
  - (d) Transactions in the books that are not recorded in a complete or timely manner or are improperly recorded as to amount, accounting period, classification, or policy.
  - (e) Unreconciled subsidiary & general ledger accounts.

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- Unusual financial condition of the organisation such as:
  - (a) Unusual financial ratios when compared to competitors.
  - (b) Significantly outpacing competitors in the industry.
  - (c) A sudden change in fortunes of an organisation (huge profits or losses).
  - (d) Constant financial pressures (cash flows or profits).
- Unusual close association with vendors or customers.
- Excessive related party transactions.
- Inadequate segregation of duties or employee unwilling to share duties.
- Excessive cash transactions.
- Employee behaviour and lifestyle inconsistencies.
- Lack of transparency and information sharing.
- Unexplained inventory discrepancies.
- Lack of independent oversight.
- Hierarchy structure in the organisation not followed in decision making.
- Inconsistent, vague, or implausible responses from management or employees arising from inquiries or analytical procedures.
- Limited or poor written policies and/or procedures.
- Lack of internal controls or casual approach to reported internal control lapses.
- Instance of management override of controls.
- Significance to the operations, brand value and reputation.
- Whether employees suffered any financial damages.
- Whether any financial damage has been caused to third parties.
- Criminal, civil and regulatory liabilities.
- Reputation damage among stakeholders.

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4.2 The Professional can also review the qualitative aspects of the transactions, such as the parties involved, the individual signatories, and any possible connection between the parties. These connections may be in the form of:

- Connections or relationship between the parties and individuals involved in the transaction in terms of relations not covered as per the various statutes, old friendships or associations and other possible connections.
- Significant financial interests in form of loans or other transactions between the parties and individuals involved in the transaction.
- Personal guarantees or securities for loan facilities provided amongst the parties and individuals involved in the transaction.

4.3 The Professional may also review the electronically stored information (Refer FAIS 420 on “Evidence gathering in Digital Domain” for further details) in relation to employees involved in specific transactions to evaluate Fraud Risk.

4.4 **Risks in relation to revenue (Indicative list):**

- Unexplained variations between budgeted revenues and actual revenues.
- Revenue recognition manipulation: booking revenue prematurely or improperly to inflate revenue figures:
  - Revenue booked during the period ends, followed by revenue reversals at the beginning of the period.
- Fictitious revenue or sales: not supported with proof of delivery or service.
- Increase in quantity of sales without increase in sales value.
- Unexplained or unapproved high discounts, especially towards period end.
- Non-compliance with the industry-specific regulations and accounting standards related to the revenue recognition.

**4.5 Risks in relation to expenses and vendor onboarding (Indicative list):**

- Siphoning of funds through fictitious or inflated expenses in the books of accounts, personal profiteering and kickbacks through vendor-employee collusion is some of the common instances of fraud.
- Analysing the major spends booked, which should be commensurate with the size of business and nature of operations of the organization.
- Budgeted spends in comparison with actuals to identify reasons for deviations especially those that are indicative of any unusual pattern(s).
- Expenses booked towards the end of accounting period as adjustment entries.
- Sudden spikes in business volumes to vendor and whether the vendor was onboarded through the organisation's regular onboarding procedures.
- Use of "ghost vendors" to manipulate financial records with fictitious invoices.
- Bid rigging collusions to distort fair competition in procurement.
- Substitution Fraud: Vendors deliver substandard and inferior goods or services or use cheaper alternatives, resulting in financial losses.
- Conflict of Interest: Vendors with undisclosed conflicts of interest may manipulate the vendor selection process leading to improper vendor selection, inflated prices, or inferior goods or services.
- Unauthorized Purchases: Employees collude with vendors to make purchases not required, leading to obsolescence, fraudulent payments and potential receipt of kickbacks or bribes.
- Vendors submit falsified documentation, such as forged contracts, certificates, licenses, to deceive compliance with certain requirements or qualifications.

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- Onboarding of higher quoted vendor despite vendor quoting lower value.
- Vendor collusions and concentrated vendors (including mafias).

### **4.6 Risks in relation to loans (Indicative list):**

- Acquiring loans from banks on the basis of manufactured audited financial statements particularly by inflated valuations of property.
- Use of forged or altered documents including financials etc to acquire loans.
- Transactions immediately before and after the receipt of loan funds to understand the flow of funds or any potential instances of unauthorized application of loan funds.
- Specific elements in relation to security involved with the loan transactions, such as whether the security is owned by a third party, if so, what is the nature of relationship between them; or any undisclosed lien already created on the security offered for a particular loan, which may hamper the security coverage for either of the loans.
- Whether the loans are being serviced on time and enquire into the reasons for default, if any.
- Misrepresentation of value or condition of collateral used to secure a loan.
- Employees with lending institutes may collude with borrowers to manipulate loan approvals, disregard creditworthiness assessment etc.
- Loans acquired through identity theft.

### **4.7 Risks in relation to Information Technology, IT (indicative list):**

- Cybersecurity breaches: IT systems are often targeted by hackers and cybercriminals to gain unauthorized access to sensitive data or disrupt operations. The loss or theft of customer data can lead to financial fraud, identity theft, or other fraudulent activities.

- Insider threats: Employees or third-party associates may have access to valuable information, systems, or infrastructure, making them potential sources of fraud. Any unauthorized access to data, intellectual property theft, or misuse of company resources for personal gain.
- Misuse of technology: IT software, systems, or platforms can be vulnerable to misuse. Frauds can happen through unauthorized modifications to code or configurations, unauthorized access to systems, or intentional introduction of vulnerabilities for malicious purposes.

## **5.0 Annexures**

- 5.1 A number of Fraud Risk Indicators have been identified and presented here as examples which may be faced by the Professional in a broad range of situations. For sake of clarity these have been categorised in two different categories (External Factors along with Governance and Culture). In addition, examples relating to two types of frauds have also been included for consideration (Fraudulent Financial Reporting and Misappropriation of Assets).
- 5.2 Although these Fraud Risk Indicators are indicative in nature, they do cover a broad range of situations. Never-the-less, they are only examples and, accordingly, the Professional may identify additional or different Fraud Risk Indicators as part of their work procedures.
- A. Examples of Fraud Risk Indicators arising from **External Factors**:
- High vulnerability to rapid changes, such as changes in technology, product obsolescence, or interest rates.
  - High degree of competition or market saturation, accompanied by declining margins.
  - Rapid growth or unusual profitability especially compared to that of other companies in the same industry.
  - A strong financial presence or ability to dominate a certain industry sector that allows the entity to dictate terms or conditions to suppliers or customers that may result in inappropriate or non-arm's-length transactions.
  - Significant declines in customer demand and increasing business failures in either the industry or overall economy.

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- Perceived or real adverse effects of reporting poor financial results on significant pending transactions, such as business combinations or contract awards.
  - Excessive pressure on management to meet the requirements or expectations of third parties.
- B. Examples of Fraud Risk Indicators arising from **Governance and Culture** (relevant for most frauds):
- In effective communication, implementation, support, or enforcement of the entity's values or ethical standards by management, or the communication of inappropriate values or ethical standards.
  - The practice by management of committing to analysts, creditors, and other third parties to achieve aggressive or unrealistic forecasts.
  - Excessive interest by management in maintaining or increasing the entity's stock price or earnings trend.
  - The promotor makes no distinction between personal and business transactions.
  - Dispute between shareholders in a closely held entity.
  - Known history of potential violations of securities laws or other laws and regulations, or claims against the entity, its senior management, or those charged with governance alleging fraud or violations of laws and regulations.
  - Personal financial fortunes of management or those charged with governance closely linked with the entity's financial performance arising from some of the following:
    - Significant financial interests in the entity.
    - Significant portions of their compensation (for example, bonuses, stock options, and earn-out arrangements) being contingent upon achieving aggressive targets for stock price, operating results, financial position, or cash flow.
    - Excessive pressure on management or operating personnel to meet financial targets established by those charged with governance, including sales or profitability incentive goals.
  - Low morale among senior management.

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- Monitoring of management is not effective as a result of the following:
  - Domination of management by a single person or small group (in a non-owner managed business) without compensating controls.
  - In effective oversight by those charged with governance over the financial reporting process and internal controls.
- Complex or unstable organizational structure, as evidenced by the following:
  - Difficulty in determining the organization or individuals that have controlling interest in the entity.
  - Overly complex organizational structure involving unusual legal entities or managerial lines of authority.
  - High turnover of senior management, legal counsel, or those charged with governance.
- Accounting and information systems that are not effective, including situations involving significant deficiencies in internal control.
- Inadequate monitoring of controls, including automated controls and controls over interim financial reporting (where external reporting is required).
- Management failing to remedy known significant deficiencies in internal control on a timely basis.
- The relationship between management and the current or predecessor statutory auditor is strained, as exhibited by the following:
  - Frequent disputes with the current or predecessor statutory auditor on accounting, auditing, or reporting matters.
  - Unreasonable demands on the statutory auditor, such as unrealistic time constraints regarding the completion of the statutory audit or the issuance of the statutory auditor's report.
  - Restrictions on the statutory auditor that inappropriately limit access to people or information or the ability to communicate effectively with those charged with governance.
  - Domineering management behaviour in dealing with the statutory auditor, especially involving attempts to influence the scope of the statutory auditor's work or the selection or

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continuance of personnel assigned to or consulted on the audit engagement.

- High turnover rates or employment of accounting, internal audit, or information technology staff.

### C. Examples of Fraud Risk Indicators in case of **Fraudulent Financial Reporting**

- Profitability or trend level expectations of investment analysts, institutional investors, significant creditors, or other external parties (particularly expectations that are unduly aggressive or unrealistic), including expectations created by management in, for example, overly optimistic press releases or annual report messages.
- Operating losses making the threat of bankruptcy, foreclosure, or hostile takeover imminent.
- Recurring negative cash flows from operations or an inability to generate cash flows from operations while reporting earnings and earnings growth.
- Significant related-party transactions not in the ordinary course of business or with related entities not audited or audited by another firm.
- Assets, liabilities, revenues, or expenses based on significant estimates that involve subjective judgments or uncertainties that are difficult to corroborate.
- Non-financial management's excessive participation in or preoccupation with the selection of accounting policies or the determination of significant estimates.
- New accounting, statutory, or regulatory requirements.
- Need for additional debt or equity financing to stay competitive—including financing of major research and development or capital expenditures.
- Marginal ability to meet exchange listing requirements or debt repayment or other debt covenant requirements.
- Significant, unusual, or highly complex transactions, especially those close to period end that pose difficult "substance over form" questions

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- Significant operations located or conducted across international borders in jurisdictions where differing business environments and cultures exist.
  - Use of business intermediaries for which there appears to be no clear business justification.
  - Significant bank accounts or subsidiary or branch operations in tax-haven jurisdictions for which there appears to be no clear business justification.
  - Recurring attempts by management to justify marginal or inappropriate accounting on the basis of materiality.
  - Undue interest by management in employing inappropriate means to minimize reported earnings for tax-motivated reasons.
- D. Examples of Fraud Risk Indicators in case of **Asset Misappropriation**:
- Personal financial obligations may create pressure on management or employees with access to cash or other assets susceptible to theft to misappropriate those assets.
  - Change in behaviour or lifestyle that may indicate assets have been misappropriated.
  - Disregard for the need to monitor or reduce risks related to misappropriations of assets.
  - Behaviour indicating displeasure or dissatisfaction with the entity or its treatment of the employee.
  - Adverse relationships between the entity and employees may motivate those employees to misappropriate those assets. For example, adverse relationships may be created by the following:
    - Known or anticipated future employee layoffs.
    - Recent or anticipated changes to employee compensation or benefit plans
    - Promotions, compensation, or other rewards inconsistent with expectations.
  - Tolerance or disregard of defalcations or petty thefts.
  - Certain characteristics or circumstances may increase the susceptibility of assets to misappropriation. For example, opportunities increase when there are:
    - Large amounts of cash on hand or processed.

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- Inventory items that are small in size, of high value, or in high demand.
- Easily convertible assets, such as bearer bonds, diamonds, or computer chips.
- Fixed assets which are small in size, marketable, or lacking observable identification of ownership.
- Weak or inadequate internal control over assets may increase the susceptibility of misappropriation of those assets. For example, misappropriation may occur because of:
  - Inadequate segregation of duties or independent checks.
  - Inadequate oversight of senior management expenditures, such as travel and other reimbursements.
  - Inadequate management oversight of employees responsible for assets, for example, inadequate supervision or monitoring of remote locations.
  - Inadequate job applicant screening of employees with access to assets.
  - Inadequate record keeping with respect to assets.
  - Inadequate system of authorization and approval of transactions (for example, in purchasing).
  - Inadequate physical safeguards over cash, investments, inventory, or fixed assets.
  - Lack of complete and timely reconciliations of assets.
  - Lack of timely and appropriate documentation of transactions, for example, credits for merchandise returns.
  - Lack of mandatory vacations for employees performing key control functions.
- Inadequate management understanding of information technology, which enables information technology employees to perpetrate a misappropriation.
- Inadequate access controls over automated records, including controls over and review of computer systems event logs.
- Disregard for internal control over misappropriation of assets by overriding existing controls or by failing to take appropriate remedial action on known deficiencies in internal control.

5.3 The Annexure includes reference from RBI's Master Directions on Fraud.

As per RBI "Master Directions on **Frauds – Classification and Reporting by commercial banks and select FIs**" vide notification **RBI/DBS/2016-17/28**, some early warning signals are highlighted which should alert about some wrongdoings in the loan accounts which may turn out to be fraudulent:

- Default in undisputed payment to the statutory bodies as declared in the annual report, bouncing of the high value cheques.
- Frequent change in the scope of the project to be undertaken by the borrower.
- Costing of the project which is in wide variance with standard cost of installation of the project.
- Foreign bills remaining outstanding with the bank for a long time and tendency for bills to remain overdue.
- Frequent invocation of bank guarantees and devolvement of letter of credits.
- Large number of transactions with inter-connected companies and large outstanding from such companies.
- Substantial increase in unbilled revenue year after year.
- Significant increase in working capital borrowing as percentage of turnover.
- Frequent change in accounting period and/or accounting policies.
- Heavy cash withdrawal in loan accounts.
- High value RTGS payment to unrelated parties

# Implementation Guide on FAIS No. 130:

## Laws and Regulations

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### 1.0 Introduction

1.1 FAIS 130 on “Laws and Regulations” deals with the responsibility of the Professional to understand the provisions of laws and regulations and how these apply to Forensic Accounting and Investigation (FAI) engagements.

1.2 As mentioned in the Standard, either the Professional may be engaged as per the provisions of a particular law and regulation, or the appointment may be as per contractual arrangements.

For example, the Professional may be appointed by a bank to detect a Loan Fraud as per certain provisions of master directions released by the Reserve Bank of India (RBI) or by Resolution Professional under the Insolvency and Bankruptcy Code (IBC). In other contractual cases, there would be no specific Act or regulation covering the appointment except the arrangement governed by the Indian Contract Act.

1.3 Irrespective of the basis on which appointment is made, legal disputes and litigation are fundamental to most engagements which are exposed to legal proceedings and hence the applicability of some or the other law and regulation.

1.4 Considering these circumstances, the Professional is expected to have a basic understanding of the relevant laws and regulations.

For example, there might be a dispute between two parties having a contractual arrangement of lending and the debt is not being settled as per the terms of the contract, while the lender is seeking legal help to collect the pending debt. Movement of these funds and their accounting treatment will provide the evidence required by the Competent Authority to establish the pending debt and contractual violations (if any).

## 2.0 Objectives

- 2.1 The objectives of this Implementation Guide (IG) are to ensure that the Professional has a basic understanding of the relevant laws and regulations that govern the FAI engagements in such a manner that the work procedures and evidence gathered would adequately serve the requirements of Competent Authorities.
- 2.2 Understanding the provisions of laws and regulations can help the Professional to:
  - (a) Confirm the appointment under specific law or regulation.
  - (b) Accept the contractual assignment which may end up under specific provisions of law or regulation.
  - (c) Agree the scope with Primary Stakeholder considering the provisions.
  - (d) Develop the plan and work procedures considering the legal or regulatory requirements and to ensure compliance to such laws and regulations.
- 2.3 One of the main objectives of FAI engagement is to gather evidence which may withstand scrutiny and cross examination and admissible before a Competent Authority. Therefore, the Professional is expected to plan the work procedure and gather evidence in a manner which would comply with relevant laws and regulations. Hence, understanding the provisions of all applicable laws, rules and regulations of the jurisdiction where the incident took place becomes utmost important.

## 3.0 Procedures

- 3.1 While it is important for the Professional himself to have an understanding of the relevant laws and regulations, under certain complex circumstances or unique situations there may be a need for the engagement of a legal expert to help with the engagement.

For example, where the Professional is engaged to investigate mining royalty related frauds or other malpractices, the Professional may engage a geologist or lawyer with an understanding of both the terrain and the law. An understanding of the Mines Act, 1952 and the Mines and Minerals (Development and Regulation) Act, 1957 would help in

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appreciating the difference between mines, quarry, major mineral and minor mineral etc. and their relevance to the engagement. Even though they may be capable of appreciating such broad provisions, the Professional cannot generally be supposed to have all the expertise related to those laws or regulations. Therefore, in such situations a Professional may take the help of legal or other Experts, in which case the FAIS 230 on “Using the work of an Expert” would provide necessary help.

- 3.2 The Standard has classified the laws and regulations into two classes - Direct Impact Laws and Engagement Specific Laws. Direct Impact Laws are an integral part of most engagements since they are broad in nature with an influence over most facets and types of engagements.

An example of a Direct Impact Law is the Bharatiya Sakshya Adhiniyam, 2023 which defines various aspects of evidence and the manner in which evidence can be gathered so that it is considered admissible in a court of law or before Competent Authorities. Similarly, Information Technology Act, 2000 is another example of Direct Impact Laws wherein provisions are made for legal recognition of electronic records. Other Direct Impact Laws will depend upon the nature of each engagement.

- 3.3 The modus operandi of frauds is also a determining factor while considering the Direct Impact Laws. If fraud is of the nature of notified offences as defined in Prevention of Money Laundering Act (PMLA) then provisions of this Act may become crucial for such fraud cases. Based upon the modus operandi the Professional may have to understand the provisions of relevant direct impact laws and the Bharatiya Sakshya Adhiniyam, 2023 to gather the evidence relevant to the case.

For example, in case of a FAI Engagement related to non-performing loan accounts of a company, the Professional may require to conduct the assignment as per RBI's guidelines. If the borrower is a corporate entity, provisions of Company Act, 2013 may also apply. In case the loan was borrowed using forged or manipulate documents, provisions of the Bharatiya Nyaya Sanhita, 2023 also becomes relevant. In case the funds are diverted or siphoned, it may be charged as scheduled offences and may involve money laundering aspects. Hence the assignment may require to incorporate relevant provisions of the Prevention of Money Laundering Act, 2002.

- 3.4 It's important to note that the specific laws and regulations applicable to FAI engagement can vary depending on the jurisdiction and the nature of the engagement. It is recommended to consult local professional bodies, regulatory authorities, and legal experts to understand the specific requirements in the particular jurisdiction.
- 3.5 It's worth mentioning here how, in certain cases, the Professional may be called upon to testify before Competent Authorities. At that time, the Professional has to be aware that the complexities of the litigation process come with substantial risks and potential pitfalls. Translating forensic findings into court settings may be undermined by the Professional's inability to adhere to strict evidentiary and discovery requirements, comply properly with court proceedings and rules of court, understand the various rules that individual jurisdictions mandate, or fall short of the sophistication that rigorous legal cross-examination may necessitate. Additionally, there could be multitude of laws over which the Professional may be called upon to assist the legal counsel in trial preparation. Therefore, the Professional is advised to seek the help of legal Experts (as per FAIS 230 on "Using the Work of an Expert") in this regard.

## **4.0 Explanations with Examples**

- 4.1 In order to impress the importance of laws and regulations in a FAI engagement, an example of the term Fraud can be used. In India, for a long time, this term Fraud was defined in the Indian Contract Act, 1872 somewhat narrowly covering contractual situations only.
- 4.2 This definition of Fraud, as per the Indian Contract Act, 1872, is as follows:

*Section 17. "Fraud" defined—"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—*

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;*
- (2) the active concealment of a fact by one having knowledge or belief of the fact;*

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- (3) *a promise made without any intention of performing it;*
- (4) *any other act fitted to deceive;*
- (5) *any such act or omission as the law specially declares to be fraudulent.*

4.3 The term “fraudulently” as related to “intent to defraud” and “Dishonestly” related to “Causing Wrongful Gain or Wrongful Loss” have been used for a long time in the Bharatiya Nyaya Sanhita, 2023 (earlier Indian Penal Code) and other Statutes. The courts, and these Statutes have helped to define the key elements of the term (such as deception or intent to deceive) and therefore helped to establish whether or not a fraud has occurred. But its coverage in the corporate setting was very limited. Now in the Companies Act, 2013 this term Fraud has been defined in very broad terms covering almost every conceivable situation.

4.4 This legal definition, as per Section 447 (1) (i) of the Companies Act 2013 is:

*“Fraud” in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.*

4.5 If the Companies Act, 2013 applies to the relevant FAI engagement, then this definition of fraud would apply to that particular situation and therefore, there would be (as an example) no need to prove whether or not there was any wrongful gain or wrongful loss (the last line of the definition). However, this may not necessarily be the case in all situations. Hence, these finer nuances become relevant when FAI engagements are expected to lead to legal proceedings.

4.6 As another example of the legal nuances, consider the need for gathering of evidence. Where the appointment of the Professional is on a contractual basis, by say, the promotor of a small company, who is suspecting the accountant of defalcation and is seeking Professional help to gather evidence to confirm the suspicion. In such a scenario there may be no need to gather evidence in a manner as meticulous as

stipulated by the Bharatiya Sakshya Adhinyam, 2023 and the promotor may be satisfied with mere “secondary” evidence and not insist on “primary” evidence as is usually the case when the appointment is expected to lead to legal proceedings. In this example, there is always the risk of the suspect taking legal recourse for wrongful dismissal, hence it’s advisable to take a meticulous approach in all evidence gathering efforts, even if it results in extra time and costs.

In most other cases, the Professional is appointed on the understanding of gathering primary evidences and therefore the act of gathering the evidences is done in such a meticulous manner that not only these evidences are admissible in the court (legal compliance is ensured) but also can withstand the test of cross examination by the other party.

4.7 Some examples for laws and regulations that can be looked upon to understand the basics of the nature of assignment are as follows:

4.7.1. Engagement Specific Laws are laws under the provisions of which the appointment is done and the engagement is to be executed.

For example, in case of piracy of software, the provisions of Copyright Act, 1957 are considered. This is in addition to the Direct Impact Laws of the Bharatiya Sakshya Adhinyam, 2023 and the Information Technology Act, 2000.

Consider another example, where the Professional is appointed to investigate the allocation of coal to certain entities under specific regulation. Here, the Professional has to study the particular regulation and the Act under which such coal is distributed and allocated to the entities. Further, broad understanding of the Bharatiya Sakshya Adhinyam, 2023 and the Bharatiya Nyaya Sanhita, 2023 is also required to investigate the relevant cases.

4.7.2. In case of securities market, Professional may be appointed to examine any act of diversion, mis-utilisation or siphoning off of assets or earnings of a company whose securities are listed or to examine any concealment of such act or any device, scheme to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company **resulting in insider trading**. Understanding of SEBI Regulations and provisions in this

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regard is important to identify, gather and collect relevant evidences during the engagement.

- 4.7.3. Under Insolvency & Bankruptcy Code, 2016 (IBC) the Professional may be appointed as transaction auditor to investigate specific transactions under such a code. Predominantly such transaction uses the acronym of PUFEE Transactions (Preferential, Undervalued, Fraudulent Trading and Extortionate Credit). The Professional would understand the relevant provisions of IBC which explain these transactions and specific situation and reasons to identify such transactions as PUFEE in the insolvency process. Understanding these provisions is important to identify, gather and collect relevant evidences during the engagement.
- 4.7.4. In case of banking and loan frauds, the Professional would first understand the Nature of Engagement as per FAIS 110 and the Objective of the Engagement as per FAIS 210. Also, the Professional would confirm whether the borrower is a firm, a company or an individual. In case of loan frauds, where borrower company has submitted overstated financial statements or stock statements, the Professional would understand whether the loan fraud may attract the provisions of Section 36 of The Companies Act, 2013. It will be helpful for the Professional to gather the evidence as per the requirements of these legal provisions.
- 4.7.5. The Professional may be involved in an investigation of a case of credit card fraud where card number along with login credential of bank customer is stolen and used by another person. Such cases fall under the provisions of Information Technology Act 2000, the provision of the Payment and Settlement Systems Act, 2007 and directions/guidelines/regulations issued by RBI from time to time, and possibly the Bharatiya Nyaya Sanhita, 2023. Understanding the provisions related to identity theft may be helpful in gathering the relevant evidences.
- 4.7.6. In a case of partnership firm, consider a situation where the partners deducted the tax amount from vendor's payment but did not deposit this with the tax authorities. Instead, the amount was utilized for the personal benefit of the partners. In such cases, the Professional may require the understanding of Income Tax Act, 1961 and Bharatiya Nyaya Sanhita, 2023 as the provisions related to such offences will most likely be mentioned in the charge sheet.

## 5.0 Annexures with Illustrations

- 5.1 In order to provide relevant guidance to the Professional, a summary of some of the more prevalent laws and regulations have been included as reference material in this Implementation Guide so as to illustrate the nature of the provisions which may apply in a typical FAI engagement.
- 5.2 The Table below provides an illustrative list of possible applicable laws (along with their relevant clauses) which the Professional may consider in order to understand the provisions and may find useful during the FAI engagements.

**NOTE: This is not a complete or comprehensive list and is merely an indicative summary of the more common and prevalent laws and regulations. The Professional is expected to undertake an evaluation of the relevance of this list and apply their Professional judgment as to what may be applicable to an engagement, or otherwise.**

Sr. No.	Name of the law	Section no	Section title
1	THE BHARATIYA SAKSHYA ADHINIYAM, 2023		
		2(1)(f),(k),(g),(d),(e),(j),(c),(i)	Definitions of Fact, Relevant, Facts in Issue, Document, Evidence, Proved, Disproved, Not Proved
		2(1)(h),(l),(b)	May Presume, Shall Presume, Conclusive Proof
		13	Facts bearing on the question whether act was accidental or intentional
		20	When oral admissions as to content of documents are relevant
		22	Confession caused by inducement, threat, coercion or promise when irrelevant in criminal proceedings

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<b>Sr. No.</b>	<b>Name of the law</b>	<b>Section no</b>	<b>Section title</b>
		28	Entries in books of account when relevant
		39	Opinion of Experts
		57	Primary Evidence
		58	Secondary Evidence
		60	Cases in which secondary evidence relating to documents may be given
		63	Admissibility of electronic records
		86	Presumption as to electronic records and electronic signatures
		104	Burden of proof
		109	Burden of proving fact especially within knowledge
<b>2</b>	<b>THE BHARATIYA NYAYA SANHITA, 2023</b>		
		2(36)	Wrongful Gain
		2(7)	Dishonestly
		2(9)	Fraudulently
		61	Definition of criminal conspiracy
		316	Criminal breach of trust
		318(1)	Cheating
		318(3)	Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect
		318(4)	Cheating and dishonestly inducing delivery of property
		336	Forgery
		335	Making a false document
		338	Forgery of valuable security, will, etc.
		336(3)	Forgery for purpose of cheating

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<b>Sr. No.</b>	<b>Name of the law</b>	<b>Section no</b>	<b>Section title</b>
		340(2)	Using as genuine a forged document
		344	Falsification of accounts
<b>3</b>	<b>INFORMATION TECHNOLOGY ACT 2000</b>		
		43	Penalty and compensation for damage to computer, computer system, etc
		65	Tampering with computer source documents
		66	Computer related offences
		66B	Punishment for dishonestly receiving stolen computer resource or communication device
		66C	Punishment for identity theft
		66D	Punishment for cheating by personation by using computer resource
		66E	Punishment for violation of privacy
		67	Punishment for publishing or transmitting obscene material in electronic form
		67A	Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form
		67B	Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form
<b>4</b>	<b>COMPANIES ACT 2013</b>		
		210	Investigation into affairs of company.
		211	Establishment of Serious Fraud Investigation Office.
		212	Investigation into affairs of company by Serious Fraud Investigation Office.

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Sr. No.	Name of the law	Section no	Section title
		213	Investigation into company's affairs in other cases
		245	Class action
		447	Punishment for fraud
		448	Punishment for false statement
		34	Criminal liability for mis-statements in prospectus
		36	Punishment for fraudulently inducing persons to invest money
5	THE PREVENTION OF MONEY-LAUNDERING ACT, 2002		
		22	Presumption as to records or property in certain cases
		23	Presumption in inter-connected transactions
		24	Burden of proof
		3	Offence of money-laundering
6	THE PREVENTION OF CORRUPTION ACT, 1988		
		2(c)	public servant
		7	Offence relating to public servant being bribed
		7A	Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence
		8	Offence relating to bribing of a public servant
		9	Offence relating to bribing a public servant by a commercial organisation
		12	Punishment for abetment of offences
7	THE INDIAN CONTRACT ACT, 1872		

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Sr. No.	Name of the law	Section no	Section title
		17	"Fraud" defined
		18	"Misrepresentation" defined
8	SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992		
		12A	Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control
		15A to 15JB	Penalties and Adjudication
9	THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952		
		14	Penalties
		14AB	Certain offences to be cognizable
10	THE ARBITRATION AND CONCILIATION ACT, 1996		
		7	Arbitration agreement
		Chapter V	Conduct of arbitral proceedings
		Chapter VI	Making of arbitral award and termination of proceedings
11	THE NEGOTIABLE INSTRUMENTS ACT, 1881		
		Chapter XIII	Special Rules of Evidence
		138	Dishonour of cheque for insufficiency, etc., of funds in the account
		139	Presumption in favour of holder
		145	Evidence on affidavit
12	THE BANKERS' BOOKS EVIDENCE ACT, 1891		
		4	Mode of proof of entries in bankers' book

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Sr. No.	Name of the law	Section no	Section title
		5	Case in which officer of bank not compellable to produce books
13	U.S.A. SARBANES OXLEY ACT, 2002		
		802	Criminal penalties for altering documents
		803	Debts non-dischargeable if incurred in violation of securities fraud laws
		303	Improper influence on conduct of audits
		406	Code of ethics for senior financial officers
		807	Criminal penalties for defrauding shareholders of publicly traded companies
		902	Attempts and conspiracies to commit criminal fraud offenses
		906	Corporate responsibility for financial reports
		Title XI	Corporate fraud and accountability
14	FOREIGN CORRUPT PRACTICES ACT, 1977		
		104	Prohibited foreign trade practices by domestic concerns
		104(h)	Definitions
		102	Accounting Standards
		30A	Foreign corrupt practices by issuers
15	U.K. BRIBERY ACT, 2010		
		1-5	General Bribery Offences
		6	Bribery of Foreign Public Officials
		7-9	Failure of commercial organisations to prevent bribery
16	THE RIGHT TO INFORMATION ACT, 2005		
		2	Definitions
		3	Right to Information

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Sr. No.	Name of the law	Section no	Section title
		4.	Obligations of Public Authorities
		6.	Request for obtaining information
17	THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023		
		2	Definitions
		4	Trial of offences under the <del>Indian Penal Code</del> Bharatiya Nyaya Sanhita, 2023 and other laws.
		21	Courts by which offences are triable.
		181	Statements to police not to be signed: Use of statements in evidence.
		209	Receipt of evidence relating to offences committed outside India.
		307- 318	Mode of taking and recording evidence
18	THE CODE OF CIVIL PROCEDURE, 1908		
		2	Definitions
		6	Pecuniary jurisdiction.
		26	Institution of suits.
19	THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988		
		3	Prohibition of Benami Transactions
		4	Prohibition of the right to recover property held benami.
20	EU GENERAL DATA PROTECTION REGULATION, 2016		
21	THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023		
22	INTELLECTUAL PROPERTY ACT.		

# Implementation Guide on FAIS No. 140:

## Applying Hypotheses

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### 1.0 Introduction

- 1.1 A hypothesis is a provisional, unproven theory, supposition or proposed explanation, based on limited facts, assumptions and observations, the merits of which needs to be established through further examination and study of evidence. Applying hypotheses is a technique that improves the approach and efficiency of undertaking the engagement and achieving its objectives.
- 1.2 FAIS 140 on “Applying Hypotheses” introduces the concept of hypothesis in a Forensic Accounting and Investigation (FAI) engagement, to make the process of evidence gathering methodical and effective. Hypothesis gives directions to an engagement. Framing hypothesis is a key step in application of forensic methodology since it helps the Professional in developing work procedures to be undertaken.
- 1.3 Further, similar to gathering evidence to prove the hypothesis, it is equally important that evidence is also sought to disprove the hypothesis. Of course, there may be situations where neither is possible (for example, where the required evidence is not forthcoming) in which case the hypothesis is considered as not-proved.
- 1.4 In addition, developing and initiating work procedures through the application of hypotheses provides additional benefits such that it:
  - Achieves the basic principle of objectivity.
  - Allows a balance between professional scepticism and maintaining neutrality.
  - Promotes deployment of a focused and intelligent approach.
  - Helps deliver an outcome which is reliable and admissible before Competent Authorities.

## 2.0 Objectives

- 2.1. The objectives of the Implementation Guide (IG) on Applying Hypotheses are to help the Professional develop and apply the concepts of hypothesis in a manner which is easy to understand, formulated well and executed in a focused manner, thereby making the process of evidence gathering more efficient and effective.
- 2.2. The IG also provides examples and illustrations to help the Professional apply the hypotheses concepts in a seamless and effective manner all through the engagement.

## 3.0 Procedures

- 3.1 Forming a hypothesis is an iterative process, which continues till a hypothesis is found that explains the case under consideration. Also, based on the evidence gathered and changing dynamics of the case, hypotheses can be redrafted or updated.
- 3.2 The Standard also requires testing the evidence gathered on various objective parameters and drawing logical and reliable conclusions for proving, disproving or not proving. Developing various hypotheses and testing them is a technique that helps to eliminate various possible logics which can be placed as a defence by the opposing lawyer during cross-examination of the expert. Once all possible hypotheses proved to be null except those which support a particular assertion or possibility, they help the Professional to reach a valid conclusion with confidence while rejecting other possibilities.
- 3.3 The hypotheses approach is also sometimes called the case theory approach to solving Forensic and Investigations cases. As an example, to better understand the basic concept of hypothesis, take the following situation where there are allegations of kickback to get a government contract. Two scenarios can be considered in which the first does not apply the hypotheses approach and the second does:

Scenario 1: Professional A starts to review the contract file and based on the information obtained, starts to interview all the staff members who were involved with bidding for the government contract. Included in this list of staff is also the suspect who denies the allegations. The Professional gathers a lot of information but is not clear what can be

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used as evidence, and what may not be relevant, therefore, there is not much success.

Scenario 2: Professional B makes a list of possible theories. If allegation is true, some unusual evidence trail must have been left behind, such as:

- someone in the organisation made contacts with someone in the government under unusual circumstances or in odd hours.
- some unusual terms or conditions were included or amended to accommodate the organisation.
- some exchanges of favours were made to some government official.

Some or all of these theories (or hypotheses) could be proved or disproved, but in checking these, some relevant evidence would be found to help reach a conclusion.

So, Scenario 2 with Hypotheses, would provide Professional B with a methodical approach to conduct the work procedures and prevent wastage of resources. In addition, as the work procedures progress, the theories may get modified (dropped, added or changed) and thereby minimise chances of digression from the core investigation.

3.4 The final modus operandi emerges only when multiple hypotheses are formulated and tested. Although the hypotheses may or may not be referred to in the Report, the quality of the evidence gathered as a result of application of hypotheses, makes the outcome more reliable.

3.5 A hypothesis is generally formed once an understanding of the background of the case is obtained, which would include the following (indicative list):

- The engagement terms and objectives.
- Nature of allegations or suspected violations.
- Availability of key documents and information.
- Involvement of certain individuals.
- Complexity of systems and processes.
- Relevant laws and regulations.

- Understanding of the control environment and other factors that might have contributed to an allegation or dispute.

3.6 After obtaining the preliminary understanding as described above, the Professional develops hypotheses and begins testing these through work procedures. A generic suggestive practical approach to forming a hypothesis is given as under:

- (a) *What might have happened?* – Noting down possible modus operandi in terms of the actions and transactions which could have taken place and developing further hypotheses around the same.
- (b) *Who might be involved?* – Listing all those individuals who have a role to play in the process, using the authority matrix, hierarchy and organisation structure as a basis to identify the staff and officials. Conducting public domain searches and open-source intelligence to identify any close contacts of these individuals.
- (c) *Why might the allegations be true?* – Link the concepts of pressure, opportunity and rationalisation to the extent possible and understand possible reasons for the actions.
- (d) *What are the possible concealment methods?* – Identify vulnerabilities through a review of previous cases and reports. At this point, trail of events, including digital trail, is an important consideration.
- (e) *When did it take place?* – Prepare a timeline of events in chronological form, link it with the involvement of individuals and their presence or absence from the place of action, list out exceptional situations.
- (f) *How is the suspected fraud being perpetrated?* – List down various possibilities on how the suspected modus operandi could have been undertaken based on academic understanding and practical experience.
- (g) *What could be the possible motives?* – Understand the trigger and motivation for taking the action.
- (h) Determine from where (the sources) the evidence could be gathered:

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- *On-book vs Off-book* – That is, whether it would be identified from review of books of accounts, documentation review and transaction testing or more from applying techniques of interviewing, external inquiries, visits and intelligence.
  - *Internal vs External to the organisation* – That is, whether it would be identified from review of internal records or third-party records and similarly engaging into discussions with internal individuals or external parties linked to the matter.
- 3.7 The above steps or methodology may be followed keeping in mind the principle of objectivity, i.e., the need for the Professional to avoid the trap of getting focused too early on a particular path. The Professional avoids the temptation of targeting any particular individual or department while formulating the hypotheses, or getting influenced by certain sub-conscious biases.
- 3.8 The Professional is aware of the existence of some of biases which may cloud the approach during the engagement, such as:
- (a) *Authority bias* – These are situations where a certain level of extra confidence is given to individuals of higher authority. Authority bias happens if greater weightage is extended to these individuals who hold positions of higher authority over others, despite there being information to the contrary.
  - (b) *Confirmation bias* – Situations where existing beliefs are given more emphasis or value over information which contradicts those beliefs. For example, review of data that supports hypothesis and seek evidence that match viewpoints, as well as reject any other information that defies assumptions and beliefs.
  - (c) *Selective Perception* - This is the tendency to see a particular situation or issue from a pre-chosen perspective. This is particularly related to team-based behaviour.
  - (d) *Availability Bias* – This relates to situations when focus is placed on immediate information or situations that come to our mind. The result is that belief on the information or experience is placed that is recalled or demonstrative or explicative of a situation or

scenario. This comes at the expense of looking for additional information that could lead to a further understanding of the situation.

- 3.9 The above biases are indicative in nature and not exhaustive. Therefore, every engagement has to be treated on its own merit due to its unique circumstances and hypotheses would need to be formulated, modified and tested objectively.
- 3.10 Fraud indicators (red flags) identified, may also be used to formulate a hypothesis. This is quite relevant so as to ensure that the work procedures are focused on the important matters. The Professional should refer to FAIS 120 on “Fraud Risk”.

#### **4.0 Explanations with Examples**

- 4.1 The basic concept of hypotheses can be better explained with an example. Take the following situation where there are allegations of theft of 30,000 tons of edible oil from a plant. The quantity was derived by auditors during the physical verification of various storage tanks. Based on an examination of the entire production, packaging, and shipment process, it appeared that there are a number of possibilities through which oil can be lost. For example, it can be lost due to, any of the following possibilities:
- (a) weight variance between what has been purchased and what has been received,
  - (b) overflow of storage tanks and was not reported due to management reprimand,
  - (c) excess filling in standard weight containers more than expected,
  - (d) wastage during processing and sent as dirty oil for soap manufacturing but the quantity not accurately reported,
  - (e) manipulation of weighing scale through which empty tank for tare weight is taken and then after loading again it is weighed to know the quantity loaded as a sale.

Unless each and every possibility is tested with the help of gathered evidence and a massive exercise of verification process of each phase of operation of the plant, it cannot be confirmed that only the weighing

scale manipulation has resulted in the theft of oil by the suspects. Unless all possible hypotheses are not developed properly and tested one by one either to accept or reject the hypotheses, the conclusion cannot be convincing. The defence may suggest all other possibilities that might have resulted in the loss of oil during production, now being branded as theft to cover weaknesses in their recording, reconciliation, and verification methods. Once such doubts are established, the entire testimony of the expert may be rejected by the court. But if all hypotheses developed have been tested and confirmed through results that all these possibilities have not resulted in any unaccounted loss, findings will be convincing and the purpose of engaging a forensic Professional will be fulfilled.

4.2 A set of examples, given below, is used to clarify the concepts of hypotheses and the manner in which they can be applied to different scenarios.

4.3 **Example 1: Concerning bank borrowings and NPA account.**

4.3.1 **Background of the case:** A borrower's account at a particular bank has turned into a Non-Performing Account (NPA) from which the borrower had availed credit facilities. The bank has now appointed the Professional with a mandate to check if there are any irregularities with regard to misrepresentation or manipulation in the books of accounts, or any diversion or siphoning of funds.

4.3.2 **Hypotheses:** Based on the understanding of the case and the basic review of the documentation and preliminary financial analysis, following hypotheses may be formulated for checking:

- (a) Promoters and Directors could have potentially mis-utilised the funds for personal purposes or purposes other than those for which funds were granted.
- (b) Covenants in the loan agreement could have been violated, such as diverting the inflow of funds to other accounts rather than the specified escrow account.
- (c) There could be errors or irregularities in the documentation submitted to avail the loans or during the submissions made for regular monitoring of the account.

- (d) Transactions with related or connected parties could have been undertaken to misstate the performance and financial position to avail further finance.
- (e) Fictitious purchases could have been booked against which funds would have been disbursed, however, the same could have been received back by the promoters.

**4.3.3 Application of the concept of hypotheses and work procedures:**

- (a) Review of the loan documentation i.e., agreement copies, and negative covenants, along with the details and data submitted to avail the funds.
- (b) Review other bank account statements of the borrower to understand the inflow and outflow of funds and modus operandi with regard to avoiding the inflow of funds in the escrow account.
- (c) Analysis of commercial sense in the transactions with the related parties (should be arms-length) along with transaction testing and documentation review for physical movement of goods and realisation of funds.
- (d) Analytical work procedures involving data analytics on purchase transactions.

**4.3.4 Status:** Evidence was gathered and hypothesis had following outcome:

- (a) Letter of Credit facility was exploited for inter-group companies and related parties in order to book fictitious sales in the books of accounts of one entity while increasing the purchase in another, hence **proved**.
- (b) Review of the documentation submitted during the continuous monitoring of the account suggested that everything was in line with the actual position and affairs of the borrower, hence **disproved**.
- (c) Other bank account statements were not available, hence hypothesis **not proved**.

**4.4 Example 2: Concerning authenticity of Trade Receivables.**

- 4.4.1 Background of the case:** Management has appointed the Professional to undertake forensic accounting work procedures in the trade

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receivables area since the entity has multi-location profit centres with common customers, to check if there are any non-existing trade receivables.

4.4.2 **Hypotheses:** Based on the understanding of the case and the basic review of the documentation and preliminary financial analysis following hypotheses may be formulated for checking:

- (a) Collusion between representatives of sales and marketing department along with finance department.
- (b) Sales target might not have been met, resulting in loss of performance incentive and thus pressure to indulge in such irregularity.
- (c) Any such non-existent trade receivables might have been entered into the system around the same time frame as the appraisal cycle.

4.4.3 **Application of the concept of hypotheses and work procedures:**

- (a) Call for balance confirmations.
- (b) Perform data analysis and tests of “Abnormal Duplications” (e.g., the SSS/SSD “same-same-same”, “same-same-different” tests on the customer master.
- (c) Review the documentation for material movement.
- (d) Perform detailed ledger scrutiny to analyse the year-on-year movement, during the year movement, identify any trend, etc.
- (e) Conduct site visits of the trade receivable account holders to check the actual existence.
- (f) Perform public domain checks – to understand the business in which they operate, market repute, reviews and financial strength.
- (g) Verify the names of payees as per the books of accounts and cross-check with the names reflected in the Bank Statements and the narrations therein. The same could have apparent mismatches if any misrepresentation has been done in the books of accounts.

4.4.4 **Status:** Evidence was gathered and hypothesis had following outcome:

- (a) Multiple customer masters were created around the same time with a trend in the suffixes used for such customer names, however, there was no web-based presence of business of such customers, hence **proved**.
- (b) Sales target was met well in time and there were enough sales orders in place, thus that hypothesis **disproved**.
- (c) There was not enough evidence to establish connection or collusion between the sales, marketing and finance department, hence **not proved**.

4.5 **Example 3: Concerning existence of Assets to support the Investments.**

4.5.1 **Background of the case:** Engagement pertains to potential irregularities at a company, with significant investments in fixed assets, property, plant, and equipment as the major components of the balance sheet which could be inflated in value.

4.5.2 **Hypotheses:** Based on the understanding of the case and the basic review of the documentation and preliminary financial analysis following hypotheses may be formulated for checking:

- (a) Fixed assets additions could only be on paper and physically might not be in existence, done to compensate for the inflated sales numbers so that the tax credit can be created in the books of accounts.
- (b) Management might have offloaded their share of investment in the company or they would be planning to raise additional funds.
- (c) Overall market is in a declining phase which has impacted sales and thereby investors have raised concerns, resulting in a decline in the share price.
- (d) There has been a delay in repayment of certain credit facilities that were maturing, this depicts a potential liquidity crunch, so there is a contradiction with the additions in investments.

**4.5.3 Application of the concept of hypotheses and work procedures:**

- (a) Check for any abnormality between the nature of business vs. amount of investment vs. type of fixed asset.
- (b) Check existence of records of the fixed assets, including title deeds, contracts, deeds, tax records, delivery and physical verification reports.
- (c) Compare the amount of investment compared with revenue from operations of those assets for the past few years.
- (d) Operating margin vis-à-vis overall investment in fixed assets.
- (e) Any principal reduction or sale of fixed assets.
- (f) Amount of term loans and other borrowings made against the fixed assets.
- (g) Any revaluation of the fixed assets.
- (h) Details of parties from whom the fixed assets are purchased.
- (i) Details of impairment testing done for the fixed assets etc.

**4.5.4 Status:** Evidence was gathered and hypothesis had following outcome:

- (a) Lack of meaningful income from the assets was noted, hence **proved**.
- (b) Management has not offloaded their share on the company, thus hypothesis **disproved**.
- (c) Primary evidence to support the existence and ownership of the assets was not possible, hence **not proved**.

# Implementation Guide on FAIS No. 210:

## Engagement Objectives

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### 1.0 Introduction

- 1.1 Setting engagement objectives involves identifying the purpose of the engagement and establishing its goals and desired outcomes when conducting a Forensic Accounting and Investigation (FAI) engagement.
- 1.2 To achieve engagement objectives, the Professional aligns these objectives with the nature of the engagement as per FAIS 110 on “Nature of Engagement”. This Standard explains the concepts behind various engagements such as a Forensic Accounting, Investigation or Litigation Support and distinguishes them from a regular audit.

### 2.0 Objectives

- 2.1 FAIS 210 on “Engagement Objectives” expects the Professional to ensure that the engagement objectives are established to ensure they are in line with one of the three natures of engagement outlined in FAIS 110. Engagement objectives typically depend on the nature and scope of engagement, which may differ on case by case, but it is relevant to categorise them in one or another category. **Annexure 1** to this Standard provides an indicative list of objectives which can be considered for each of the three different types of engagements.
- 2.2 In this Implementation Guide (IG), this Annexure list is used as a basis to elaborate on these objectives and clarifies with detailed examples and illustrations to help the Professional establish the engagement objectives clearly with the Primary Stakeholder, and those who will be relying on the work of the Professional.

### 3.0 Procedures

- 3.1 A methodical approach which can be deployed for setting the objectives of a FAI engagement is as follows:
  - (a) Identify the purpose of the engagement: Begin by identifying the reason for the engagement, such as financial impropriety,

suspected fraud, or a legal dispute. Understanding the purpose will help to determine the specific objectives of the engagement.

- (b) Determine the Stakeholders involved: Who may be impacted by the situation that requires a FAI engagement? Are there any victims, suspects, witnesses, or other parties that need to be considered?
- (c) Consider the legal or administrative context: What are the relevant laws and regulations, policies, or standards that apply to the situation that requires a FAI engagement?
- (d) Identify the goals and outcomes: What are the potential consequences or outcomes of the engagement? Based on the purpose and scope of the engagement, identify the specific goals and outcomes. For example, the goal may be to quantify the damages or losses, to identify the fraudulent transactions, or assist in legal proceedings.
- (e) Communicate the purpose of the engagement: Once the Professional has framed the purpose of the FAI engagement, it needs to be communicated clearly and transparently to all Primary Stakeholders. This will help the Primary Stakeholder to understand the scope and objectives of the engagement and can contribute to its success.

## **4.0 Explanations with Examples**

### **4.1 Forensic Accounting**

Forensic Accounting aims to highlight any accounting irregularities, legal violations, regulatory deviations, or contractual breaches through ascertainment of facts and gathering of evidence admissible before a Competent Authority. A list of various types of Forensic Accounting engagements presented below, and also the manner in which their objectives can be established may be taken up by the Professional.

#### **4.1.1 Financial Statement Irregularities**

When conducting a Forensic Accounting engagement on financial statement irregularities, the primary objective is to identify any fraudulent activities related to the financial statements of the

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organisation. Here are some specific objectives that may apply to such an exercise:

- (a) Identify the nature and extent of the irregularities: Determine the specific methods used to modify the financial statements, such as falsifying transactions, or altering/deleting records, and the extent to which they were used.
- (b) Determine the impact of the irregularities: Determine the impact on the financial performance of the organizations, such as inflating profits or deflating losses.
- (c) Identify the parties involved: Identify the individuals or groups that are engaged in the financial statement irregularities, including any external parties.
- (d) Identify any violations of laws and regulations: Determine whether the financial statement irregularities involved any violations of laws and regulations, including but limited to falsification of accounts, manipulation of capital market, inadequacy of disclosures, and other such matters in contravention of prevailing corporate, anti-money laundering, foreign exchange, insolvency and bankruptcy related regulations and other such matters. Violations and non-adherence to accounting standards and other guidelines issues by the stock market regulator and the central bank would also be relevant here.

### **4.1.2 Fund Diversions or Asset Tracing**

The objectives of Forensic Accounting in fund diversions or asset tracing cases can vary depending on the specific case, but generally, the following objectives may apply:

- (a) To identify Misutilisation of Funds or assets: The primary objective of Forensic Accounting in fund misutilisation or asset tracing cases is to identify any funds or assets that have been diverted or misappropriated in contravention to the original intentions or agreements. For example, funds received as a loan from the bank to expand production capacity are not used to buy the equipment but diverted to some other businesses, or to buy land for accommodation of individuals, unrelated to the business.

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Hence the objectives in this case may involve tracing funds through bank accounts or other financial records, or tracing assets through ownership records or other documentation.

- (b) To quantify losses: The objectives may be to quantify the losses suffered as a result of fund misutilisation or asset misappropriations. This may involve calculating the value of diverted funds or misappropriated assets, as well as any financial damages resulting from the diversion or misappropriation.
- (c) To establish a timeline: The objectives may be to establish a timeline of events relevant to the case. This may involve identifying when funds or assets were transferred, or when financial statements or other documents were altered, or when other irregularities took place.
- (d) To identify the parties involved: The objectives may be to identify the parties involved in the diversion or misappropriation. This may involve tracing financial transactions and analysing financial records to determine the people involved in processing the transactions from the bank or on the books of account.
- (e) To assist in asset recovery: The Professional may be called upon to assist in the recovery of diverted funds or misappropriated assets. This may involve working with Law Enforcement Agencies or other professionals to recover assets or providing information that can help identify the location of missing funds or assets.

### **4.1.3 Anti-Money Laundering**

The objective of a FAI engagement in money laundering offence is to trace the properties. The following objectives may apply in these situations:

- (a) To trace assets allegedly generated by commitment of scheduled offences:

The money laundering offence involves the properties generated by commitment of certain scheduled offenses prescribed under the Prevention of Money Laundering Act 2002 (PMLA). The relevant Law Enforcement Agencies (LEAs) expect the

Professional to trace those properties or to trace the funds and assets.

- (b) To verify and gather evidence allegedly from laundered assets:

The Professional is expected to verify and examine various documents such as accounting records, bank statements, property related documents, etc., to trace the properties. These documents are to be evaluated as per FAIS 320 for submission of evidence.

#### **4.1.4 License Fees/Dues/Tax Evasion**

The objectives of Forensic Accounting in license fee or dues or tax evasion cases can vary depending on the specific case, but generally, the following objectives may apply:

- (a) To identify the extent of the evasion: The primary objective of Forensic Accounting in license fee or dues or tax evasion cases is to identify the extent of the evasion. This may involve analysing financial records, reviewing tax returns, or conducting other financial analysis to identify any discrepancies or irregularities.
- (b) To identify the parties involved: The Professional may be called upon to identify the parties involved in the evasion. This may involve tracing financial transactions and analysing financial records.
- (c) To determine the amount owed: The Professional may be called upon to determine the amount owed as a result of the evasion. This may involve calculating the amount of taxes or fees owed, plus any penalties and interest.

#### **4.1.5 Related or Connected Parties**

The objectives of Forensic Accounting in related party transactions cases can vary depending on the specific case, but generally, the following objectives may apply:

- (a) To identify conflicts of interest: The primary objective of Forensic Accounting in related party transactions cases is to identify potential conflicts of interest. This may involve analysing financial

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transactions, reviewing contracts, or conducting other financial analysis to determine whether the transactions were conducted at arm's length.

- (b) To assess the risk of fraud: The Professional may be called upon to assess the risk of fraud in related party transactions. This may involve evaluating the potential for fraudulent activities based on the transaction's characteristics, such as the size, nature, or timing of the transaction.
- (c) To quantify the impact on financial statements: The Professional may be called upon to quantify the impact of related party transactions on financial statements. This may involve adjusting financial statements to reflect the fair value of the transactions or assessing the impact on financial ratios.
- (d) To evaluate compliance with laws and regulations: The professionals may be called upon to evaluate there has been any breach in the compliance of related party transactions with applicable laws, regulations, and corporate governance standards, especially those related to anti-corruption and insider trading regulations.

### **4.1.6 Valuations/Estimations of loss or damages**

The primary objective of Forensic Accounting valuations or estimations of loss or damages is to provide an independent, objective, and reliable assessment of the financial impact of a particular event or dispute. These events or disputes may include fraud, embezzlement, breach of contract, insurance claims, or any other situation where there is a financial loss or damage.

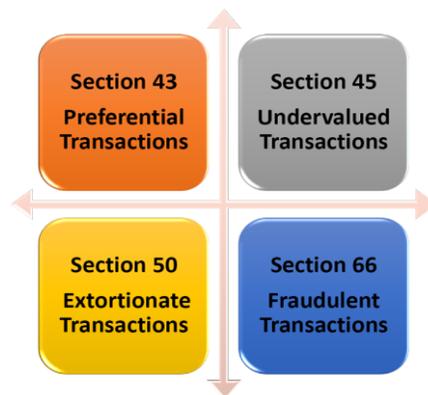
The specific objectives of Forensic Accounting valuations or estimation of loss or damages may vary depending on the nature of the event or dispute. Some of the common objectives include:

- (a) Determining the extent of the financial loss or damages incurred by the affected party: The Professional may be engaged to calculate the amount of financial loss or damages resulting from an event such as fraud, breach of contract or negligence.

- (b) Identifying the root cause of the financial loss or damages: The Professional may be called upon to investigate and determine the root cause of a financial loss or damages.
- (c) Evaluating the impact of the loss or damage: The Professional may also assess the impact that a financial loss or damage has had on an individual or organisation. This can involve analysing the financial, operational, and reputational impacts of the loss or damage.
- (d) Assessing the reliability of financial statements: The Professional may be called upon to investigate financial statements, particularly in situations where there is suspicion of fraud or misappropriation of funds.

#### **4.1.7 Transactions under Insolvency and Bankruptcy Code, 2016 (IBC)**

During the Corporate Insolvency Resolution Process (CIRP), the Resolution Professional (RP) or Liquidator may appoint a Professional for examining specific transactions, viz., Preferential, Undervalued, Fraudulent Trading and Extortionate Credit, which collectively are referred to as PUFET transactions. A summary of these is as follows:



##### **(a) Preferential Transactions (Section 43)**

Preferential Transactions are those transactions in which the Corporate Debtor has transferred the property or any interest thereof, for the benefit of creditors, surety or guarantor on account of an antecedent financial debt or operational debt or other liabilities owed by the Corporate Debtor which has resulted

into putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with the provisions of IBC.

The objective of the engagement is to gather evidences supporting any preference given as prescribed in Section 43 of the IBC including by way of evaluating whether or not these transactions were conducted in the ordinary course of the business or the financial affairs of the Corporate Debtor or the transferee or by way of any other method prescribed in Section 43 of the IBC.

**(b) Undervalued Transactions (Section 45)**

Undervalued Transactions are those transactions which are determined by Liquidator or Resolution Professional where the Corporate Debtor makes a gift to a person or, enters into a transaction with a person which involves the transfer of one or more assets by the Corporate Debtor for a consideration the value of which is significantly less than the value of the consideration provided by the Corporate Debtor.

The objective of the engagement is to evaluate whether or not these transactions were conducted in the ordinary course of the business of the Corporate Debtor and to gather evidences related to its valuation.

**(c) Extortionate Credit Transactions (Section 50)**

Extortionate Credit Transactions are transactions where the Corporate Debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date.

The objective of the engagement is to evaluate such transactions and ascertain whether these transactions were done in the ordinary course of the business, and to gather evidence related to:

- Debt that is provided is in compliance with the provisions of laws and regulation or not.

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- Exorbitant payment is required to be made by the Corporate Debtor.

**(d) Fraudulent Trading or Fraudulent Transactions (Section 66)**

These are transactions carried out with an intent to defraud creditors of the Corporate Debtor or for any other fraudulent purpose.

The objective of the engagement is to evaluate whether these transactions were of a fraudulent nature and to gather evidences related to their impact on creditors, corporate debtors etc.

**(e) Concealment or removal of property of Corporate Debtor**

The objective of the Engagement is to evaluate whether these transactions were done in the ordinary course of the business and to gather evidence related to:

- Property of Corporate Debtor is concealed.
- Any debt due to or from Corporate Debtor is concealed.
- Any Property of Corporate Debtor is removed fraudulently.
- Falsified books of accounts of Corporate Debtor.

In all these cases the Professional is appointed by the Resolution Professional or by the Liquidator.

The objectives of identifying suspicious transactions under IBC through Forensic Accounting are:

- (a) **Fraud detection:** Forensic Accounting can help detect fraudulent transactions that may have taken place during the insolvency process. This includes identifying transactions that were made with the intention of deceiving creditors, hiding assets, or inflating liabilities.
- (b) **Identifying preferential and undervalued transactions:** Forensic Accounting can help identify transactions that may have given preference to certain creditors over others. This includes transactions that may have taken place before the company was declared insolvent or transactions made with related parties. Similarly, Forensic Accounting can be used to determine if any property of the Corporate Debtor has been sold or transferred at an undervalued price by the management during the relevant period.

- (c) **Building evidence for legal proceedings:** Forensic Accounting can help build evidence to support legal proceedings against those who may have engaged in fraudulent activity or violated regulations during the insolvency process.

## **4.2 Investigation Services**

The purpose of the Investigation is to examine facts and circumstances and gather evidence to prove or disprove hypotheses formulated regarding alleged legal violations, unethical conduct or the possibility of a fraud by suspected individuals.

### **4.2.1 Fraud investigations**

When conducting a forensic investigation on suspected fraudulent activities, (including cyber fraud) the following are some specific objectives that may apply:

- (a) Identify the nature and extent of the suspected fraud: The Professional may be called upon to determine whether the fraud has occurred, its scope and severity of the illegal or fraudulent activities that have taken place.
- (b) Determine the impact of the suspected fraud: The Professional may be called upon to assess the financial, legal, and reputational effects of the fraudulent activity. The Investigation may be required to determine the amount of financial loss caused by the fraud.
- (c) Identify the parties involved: The Professional may be called upon to identify the individuals or entities responsible for the suspected fraudulent activity. This can include the person or group who perpetrated the fraud, as well as any third-party individuals or organizations that may have enabled the fraud to occur.
- (d) Identify any violation of laws and regulations: The Professional may be called upon to determine whether the suspected fraudulent activities involved any violation of laws and regulations, such as money laundering, bribery and embezzlement.

#### **4.2.2 Ethical/Code of Conduct violations**

The objectives of a forensic investigation into ethical or code of conduct violations are to determine if any violation has occurred, identify the extent of the violation, and establish a basis for disciplinary action or legal action, if required. Here are some of the primary objectives of such an Investigation:

- (a) **Establish Facts:** The objective of a forensic Investigation into ethical or code of conduct violation is to establish the facts. This may involve gathering evidence, interviewing witnesses, reviewing relevant documents, and analysing data.
- (b) **Identify Violation:** The Investigation aims to identify any violation of the ethical or code of conduct policies of the organisation. This may include actions such as discrimination, harassment, retaliation, conflicts of interest, fraud, or other violation of company policies.
- (c) **Assess the Extent of Violation:** The Investigation aims to assess the extent of the violation to determine the impact on the organization and its Stakeholders. This may involve evaluating the financial impact, reputational damage, and legal implications of the violation.
- (d) **Determine Accountability:** The Investigation aims to identify the individuals or groups responsible for the violation and assess their level of culpability. This may involve evaluating the actions of employees, supervisors, managers, and executives.

#### **4.2.3 Whistleblower complaints**

The objectives of a forensic investigation on whistleblower complaints are to identify any incidents of misconduct, assess the severity of the incident, identify the individuals responsible for the misconduct. These could be non-financial matters pointing towards some behavioural infraction or violation by individuals. Here are some of the primary objectives of such an investigation:

- (a) **Establish Facts:** The objective of a forensic Investigation on whistleblower complaints is to establish the facts and seek out the truth of what actually happened. This may involve gathering evidence, interviewing witnesses, reviewing relevant documents, and analysing data to determine if any incident of misconduct or harassment has occurred.

- (b) **Identify the Extent of the Misconduct:** The Investigation aims to identify the extent and severity of the misconduct to determine the impact on the organisation and its employees. This may involve evaluating the any financial, legal, or reputational implications for the organisation.
- (c) **Determine Accountability:** The Investigation may require the need to identify the individual(s) and assess their level of culpability. This may involve evaluating the actions of senior employees, supervisors, managers, and executives.

#### **4.3 Asset Theft/Bribery/Corruption**

The objectives of an Investigation on asset theft, bribery, or corruption are to determine the amount of financial loss or damage caused to the organization from these activities, assess the extent and scope of the wrongdoing, identify (if possible) the individuals or groups involved in the misconduct. Here are some of the primary objectives of such an investigation:

- (a) **Identify the Extent of misconduct:** The objective of an Investigation on asset theft, bribery, or corruption is to identify the extent of the misconduct. This may involve gathering evidence, reviewing financial records, interviewing witnesses, and analysing data to determine the scope and severity of the wrongdoing.
- (b) **Determine Accountability:** The Investigation may require the need to identify the individuals or groups responsible for the wrongdoing and assess their level of culpability. This may involve evaluating the actions of employees, supervisors, managers, and executives.
- (c) **Assess the Financial Impact:** The Investigation aims to determine the amount of financial loss or damage caused to the organisation by asset theft, bribery, or corruption. This may involve evaluating the financial records and analysing data to determine the extent of financial loss. Sometimes there is a need to seek restitution from the parties involved so as to try and recoup or mitigate the losses.

#### **4.4 Litigation Services**

#### **4.4.1 Alternate Dispute Resolution (ADR)**

The objectives of Forensic Accounting in ADR can vary depending on the specific case, but generally, the following objectives may apply:

- (a) **To facilitate a settlement agreement:** One of the primary objectives of Forensic Accounting in ADR is to facilitate a settlement agreement between the parties. The Professional may be called upon to provide financial information, analysis, or expert opinions that can help the parties reach a mutually acceptable settlement agreement.
- (b) **To identify financial issues:** The Professional may be called upon to identify financial issues that are relevant to the dispute. This may involve reviewing financial records, analysing financial statements, or conducting other financial analysis to identify financial discrepancies or irregularities.

#### **4.4.2 Testimony**

The Professional may be asked to testify before a Competent Authority with respect to their FAI Report. The following objectives may apply:

- (a) **To provide factual information:** The primary objective of a witness is to provide factual information relevant to the case. In the case of Forensic Accounting, this may involve providing information about financial transactions, accounting practices, or other financial matters.
- (b) **To explain methodology adopted:** The Professional may be questioned or cross examined on the methodology adopted in conducting the FAI engagement.
- (c) **To help establish a timeline:** A witness may be asked to provide information that helps establish a timeline of events relevant to the case. This may include information about when specific financial transactions occurred or when certain documents were created.

# Implementation Guide on FAIS No. 220:

## Engagement Acceptance and Appointment

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### 1.0 Introduction

- 1.1 Forensic Accounting and Investigation Standard (FAIS) 220 on “Engagement Acceptance and Appointment” deals with the responsibility of the Professional prior to agreeing with the terms of the engagement during appointment.
- 1.2 Since Forensic Accounting and Investigation (FAI) engagements have inherently a degree of sensitivity and associated risk, the Professional is expected to perform certain preliminary procedures and due diligence regarding the proposed engagements before he commits to undertake those engagements.

### 2.0 Objectives

- 2.1 The objectives of this Implementation Guide (IG) are to assist the Professional in:
  - (a) Conducting preliminary procedures and due diligence to better understand the conditions of appointment prior to acceptance of the engagement.
  - (b) Document key terms of the engagement, as agreed with the Primary Stakeholder (i.e., the appointing authority) in the form of a formal Engagement or Letter of Appointment.
- 2.2 The IG also provides examples and illustrations to help the Professional apply similar work procedures which may be relevant to the circumstances of the engagement.

### 3.0 Procedures

- 3.1 A Professional, when undertaking pre-engagement procedures, may wish to undertake an understanding of the Client and the engagement. This IG outlines certain suggested procedures which may be performed by the Professional in this regard.
- 3.2 The purpose of conducting such procedures is outlined in the Standard, primarily to understand the nature and complexity of the engagement and to assess the ability of the Professional to undertake the engagement. The Professional is also expected to assess the inherent risks in accepting the engagement.
- 3.3 The Professional would seek to obtain sufficient information about the engagement to make an informed acceptance decision. Also, the Professional may wish to consider the risk mitigation options available where they are applicable.
- 3.4 Based on the outcome of the evaluation, the Professional may consider proceeding ahead with the engagement. Possible mitigation steps that may be considered during acceptance include:
- Limiting the types of services that the Professional agrees to perform.
  - Additional engagement oversight or adequate staffing for the engagement.
- 3.5 **Independence Check and Conflict of Interest:** Independence is essential where the prospective Client is already an audit or assurance Client of the Professional since it may create perceived conflict of interest situations. Therefore, the Professional may take appropriate steps to identify, mitigate and manage any potential conflicts of interest which may arise before, during or after the commencement of an engagement. Conflict of interest creates perceived threats towards the basic principle of objectivity and may also create threats with other fundamental principles as well. There may be a situation where conflict of interest may develop during the engagement. Immediate disclosure of such conflict must be brought to the notice of the Primary Stakeholders.

- 3.6 **Continuous evaluation:** Sometimes, the Professional is empanelled ahead of time on a contractual or retainer basis, and needs to be prepared to take on engagement at short notice due to their urgency. At those times, a continuous evaluation (or re-evaluation) may be required in an on-going basis. This can also be performed for existing Clients whenever a significant change is identified, and which may impact the risk profile of the Client.
- 3.7 **Engagement evaluation:** This involves a decision as to whether the Professional:
- Has the necessary resources and skills to perform the specific engagement.
  - Is willing to accept the risks the engagement presents.
  - Is willing to source third party experts to perform part of the engagement, where appropriate.
- 3.8 **Engagement Team Composition:** The Professional is responsible for conducting the engagement in accordance with professional standards along with regulatory and legal requirements. The important element in achieving this are the qualifications and experience of the team as a whole, rather than any one individual. Considerations for the assessment of the engagement team include:
- The understanding and experience of the team with engagements of a similar nature and complexity as well as with applicable policies, professional standards and regulatory and legal requirements.
  - Technical and industry knowledge of the team.
  - Ability of the team to apply professional judgment on the engagement.
  - The fitment of the individuals as part of the team member is an important consideration and may be incorporated as part of the team composition evaluation.
- 3.9 **Engagement Letter:** When the decision is made to accept an engagement, the Primary Stakeholder and the Professional sign a contract detailing the scope of the work the Professional is to perform.

- 3.10 An Engagement Letter or Letter of Appointment is the result of discussion and agreement between the Professional and the Primary Stakeholder detailing the purpose of the work, how the work will be performed (including the responsibilities of both parties), what output will be generated and delivered, the engagement timelines and the terms and conditions that will apply to the performance of that work. The Engagement Letter or Letter of Appointment is designed to provide clarity regarding the engagement and serves to manage and clarify the prospective Client's requirements and the Professionals' responsibilities.
- 3.11 An Illustration of a typical Engagement Letter and its form and content is presented as **Annexure A**.

## **4.0 Explanations**

- 4.1 **Confidentiality:** Due to the sensitivity of certain engagements, the Professional may not have access to adequate information to be able to conduct some of the pre-engagement procedures outlined in this IG. Confidentiality of information plays a role in being able to access some of the information, such as protecting the identity of the whistleblower. The Professional may choose to provide confidence to the Client regarding the confidentiality of the information by agreeing to sign a Non-Disclosure Agreement (NDA) to ensure that any confidential information they share will remain protected with the Professional. The Professional would be expected to ensure that any such information will be secured in a manner as outlined in the NDA irrespective of whether or not to proceed with the engagement.
- 4.2 **Outsourcing to Experts:** Sometimes the Client may place certain restrictions on the Professional regarding the extent to which part of the engagement work procedures can be outsourced to third party Experts. Where the Professional may not have all the required expertise, such as evidence gathering from technical devices, and where this expertise would be required to be outsourced to other Experts, it would be important to discuss this with the Client at the pre-engagement stage itself. If such outsourcing concerns are based on confidentiality matters, as indicated above, they may be addressed through an NDA with the third-party Experts.

## 5.0 Annexures

### ANNEXURE A: Engagement Letter Format & Content

#### A. Identity of Contracting Professional

<b>Include Professional name</b>	The Engagement Letter needs to clearly identify the Professional.
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#### B. Identity of the Prospective Client

<b>Specify the Client's name in the Engagement Letter</b>	<p>The prospective Client is a legal entity that:</p> <ul style="list-style-type: none"> <li>• Professional is doing work for and issuing report to;</li> <li>• Is bound by the Engagement Letter and its obligations.</li> </ul> <p>This entity needs to be specified as a party to the Engagement Letter to bind it to the terms.</p>
<b>Identify all relevant prospective Client entities</b>	<p>Pay attention to who may be named in the Engagement Letter as the prospective Client when there is:</p> <ul style="list-style-type: none"> <li>• A group of companies; or related entities</li> <li>• More than one organisation obtaining the benefit of the services</li> </ul> <p>All parties to the Engagement Letter are identified to be bound by it.</p>

#### C. Scope of Engagement

<b>Scope must reflect what was agreed</b>	The scope and the purpose of the Professional's involvement need to be discussed and agreed with the Client prior to the Engagement Letter is finalised.
<b>Description of scope</b>	<p>The description of the scope of work in an Engagement Letter needs to be:</p> <p>Clear and unambiguous as to what the Professional will do;</p>

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	<p>Clear and unambiguous as to what the Professional will not do</p> <p>The manner in which the work will be performed and the means by which any relevant information will be gathered;</p>
<b>Avoid vague terms</b>	<p>Avoid words/terms which lack clear definitions and which may create ambiguity to describe the work the Professional plans to perform. Give due consideration to describe the broad procedures which the Professional intends to undertake during the course of the engagement.</p> <p>Example: If the Professional is to perform "a review," then the Engagement Letter scope may explain:</p> <p>How the review will be performed (brief procedures);</p> <p>Any professional standards that apply.</p> <p>Avoid using the word 'ensure' 'comply' 'adhere' or any other term that indicates the services can achieve a specific result for the prospective Client. The Professional will usually "share" the evidence gathered or "report" the findings. In that case, responsibility for actions taken or decisions made by the Client remains with the Client. This may be made clear in the Engagement Letter.</p>
<b>Legal limitations</b>	<p>The Professional may refer to the following in the Engagement Letter, if they affect the work to be performed or the deliverables:</p> <p>Laws and regulations.</p> <p>Professional standards.</p> <p>Additionally, the Professional may take into consideration that any limitations they place on the extent of work or deliverables are documented in the Engagement Letter.</p>

**D. Description of Deliverables**

<p><b>Clearly define deliverables</b></p>	<p>A description of the deliverables and their forms will often be included within the scope of the engagement.</p> <p>Define the engagement deliverables clearly. Manage the prospective Client's expectations so that the Client is aware of what the deliverable will contain and any limitations on that content. The nature of the deliverable must be made clear; that is, whether the deliverable will be:</p> <ul style="list-style-type: none"> <li>• A written report (including preliminary, interim, final reports, as agreed with the Client).</li> <li>• A presentation.</li> <li>• Any other form (example: a training/awareness session in person or in virtual mode).</li> </ul>
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**E. Timetable**

<p><b>Clearly documented milestones</b></p>	<p>Clearly document the specific timetable for undertaking and completing the work agreed upon with the Client. Also list any interim milestones that the Professional is expected to meet.</p>
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**F. Responsibilities of the Client**

<p><b>Overview</b></p>	<p>Explicitly state the responsibilities of the prospective Client for:</p> <ul style="list-style-type: none"> <li>• Providing information; physical access, IT access</li> <li>• Assisting the Professional when sought for</li> <li>• Making specific decisions to facilitate the assignment</li> </ul>
<p><b>Examples for Client responsibilities</b></p>	<p>For example, the contract might state that the prospective Client:</p>

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	<ul style="list-style-type: none"> <li>• Provides correct information promptly as and when requested or within an adequate time period</li> <li>• Gives access to its locations and personnel;</li> <li>• Accepts responsibility for certain tasks;</li> <li>• Agrees to make representations and warranties as required by the Professional</li> <li>• Warrants that use of equipment or other property belonging to the Client does not infringe on intellectual property rights of any third party.</li> </ul>
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**G. Using Client’s confidential information for other purposes**

<p><b>Clear responsibilities as to confidentiality</b></p>	<p>The Engagement Letter may be clear that the Professional is permitted to disclose information as required by law, regulation and other Professional standards.</p> <p>Wherever not mandated by law confidential information will be shared only after prior consent of the prospective Client</p>
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**H. Fees or Description of Fee Arrangements**

<p><b>Fee details</b></p>	<p>The following may be detailed in the Engagement Letter:</p> <ul style="list-style-type: none"> <li>• The fee including the basis (in case it is to vary)</li> <li>• Frequency of billing</li> <li>• Payment arrangements and timelines</li> <li>• Currency in which payment is required</li> <li>• Representations before the Competent Authorities (if applicable)</li> </ul>
<p><b>Expense recovery clause</b></p>	<p>The Engagement Letter may also include mechanisms for recovery of expenses, legal damages, OPE (out-of-pocket expenses), etc.</p>

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<b>Taxes</b>	<p>The Engagement Letter may be clear on payment of taxes e.g., GST on expenses and whether amounts are net or gross of tax.</p> <p>Where work is carried out in a foreign country or for a foreign Client, carefully address the tax implications, e.g.,</p> <ul style="list-style-type: none"><li>• Exposure to foreign withholding, personal or income taxes;</li><li>• VAT/ IGST.</li></ul>
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### I. Governing Laws and Jurisdiction

<b>Law and jurisdiction clearly stated</b>	<p>The contract may make clear which:</p> <ul style="list-style-type: none"><li>• Jurisdictional law governs the Engagement Letter.</li><li>• Jurisdiction to bring claims to, between parties to the Engagement Letter.</li></ul> <p>In some cases, it will also address different mechanisms for dispute resolution.</p>
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### J. Termination

<b>Right of termination</b>	<p>An Engagement Letter includes a termination clause to describe:</p> <ul style="list-style-type: none"><li>• How the Professional or the Client may bring the Engagement Letter to an end whether early or otherwise.</li><li>• If considered necessary, what consequences will follow, including recovery of fees to the extent of work performed and reimbursement of costs</li><li>• Force majeure clauses and consequences thereof.</li></ul>
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### K. Engagement Team

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<b>Team leader</b>	State who /what profile will be leading the team that will undertake the work for the prospective Client.
<b>Other Team Members</b>	State the team lead/s and state that the team lead/s would be assisted by other team-members as may be required for the engagement.

### L. Restrictions on use of deliverables (where permissible)

<b>Restricts unauthorized use of reports and deliverables</b>	The Engagement Letter may prevent the prospective Client from making unauthorized use of Professional's reports and deliverables. A clause may also be included in the Engagement Letter, where permissible, to restrict the circulation of deliverables provided to the Client.
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### M. Use of Third-Party resources

<b>Third party resources</b>	Where it is intended that a third party is to be used on an engagement, the prospective Client's consent may need to be obtained and incorporated in the Engagement Letter. This may also include clause related to reimbursement of fees to such third-party resources and scope of work.
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### N. Use of e-mails or other modes of communication

<b>Use of e-mails or other modes of communication</b>	It is recommended that the Professional may seek the consent of prospective Clients to the use of e-mail or any other form of communication.
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### O. Signature of Contracting Parties

<b>Client's and Professional's signatures</b>	Both the Client and the Professional sign or otherwise formally agree on the Engagement Letter.
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	Depending on applicable law and jurisdiction electronic signature may be sufficient to sign the Engagement Letter
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# Implementation Guide on FAIS No. 230:

## Using the Work of an Expert

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### 1.0 Introduction

- 1.1 FAIS 230 on “Using the Work of an Expert” expects the Professional to understand the responsibilities when reliance is placed on the work of another Professional considered to be an Expert in some area relevant to the engagement.
- 1.2 The requirements of the Standard are expected to be implemented through:
  - (d) An evaluation of the needs and availability of the expertise to assist the Professional in obtaining relevant and reliable evidence.
  - (e) Exercising the authority of who to engage and evaluating the credibility of that Expert.
  - (f) Conducting an evaluation of the work performed and how to use the report.
  - (g) Maintaining ultimate responsibility of the work performed.

### 2.0 Objectives

- 2.1 This Implementation Guide (IG) outlines the manner in which the Professional prepares and executes work procedures when implementing the requirements of the Standard during the course of a Forensic Accounting and Investigation (FAI) engagement.
- 2.2 This IG provides guidance to the Professional to determine:
  - (a) Procedures to be followed for engaging the Expert.
  - (b) Credibility and reliability report using the work of the Expert.
- 2.3 The IG also provides examples and illustrations to help the Professional apply similar work procedures which may be relevant to the circumstances of the engagement.

## 3.0 Procedures

- 3.1 **Procedures for Engaging the Expert:** The Professional is expected to obtain information about the independence, objectivity, qualifications and credentials of the Expert prior to engaging and relying on the work of the Expert. Illustrative sources for such information are as follows:
- (a) Knowledge of the Expert's qualifications, membership of a known and credible Professional body or industry association, license to practice, or any other form of external recognition.
  - (b) Personal experience with previous work of the Expert.
  - (c) Discussion with other Professionals who are familiar with the Expert's work to obtain feedback on the Expert.
  - (d) Discussions with the Expert to understand their availability of time and resources.
  - (e) Published papers or books written by the Expert.
  - (f) Self-certification by the Expert regarding its qualifications, expertise, any conflict of interest or any pending disciplinary actions.
- 3.2 **Annexure 1** has a list of illustrative check points to be considered prior to appointment of an Expert and **Appendix 2** has a sample template of a written confirmation / declaration which may be obtained from the Expert.
- 3.3 **Defining the Scope and expected deliverables of the Expert:** The Professional may communicate the following aspects to the Expert (indicative list):
- (a) Objective and scope of the Expert's work including the manner in which the evidence is to be gathered, retained and preserved.
  - (b) Responsibilities of an Expert for conducting work procedure and responsibility if any of the Professional to help the Expert while conducting work procedures.
  - (c) Confidentiality and non-disclosure requirements and whether the Expert will have direct access to the Client.
  - (d) Reporting authorities for the Expert.

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- (e) Engagement timelines and milestones of the Expert.
- (f) Nature of deliverables to be provided by the Expert and subsequent necessary changes in such deliverables.
- (g) Permissions and waivers enabling the Professional to share the Expert's deliverables.
- (h) Retention of Expert's working papers and production of evidence before a Competent Authority.

3.4 **Agreement with the Expert:** The professional may enter into a written agreement or a contract with the Expert covering the following aspects:

- (a) The nature, scope and objectives of that work to be completed by the Expert's.
- (b) The nature and form of the deliverable, such as a formal report.
- (c) The respective roles and responsibilities of the two parties.
- (d) The communication protocol between the Professional and the Expert.
- (e) Need for the Expert to be available if called upon by the Agencies for help or the Competent Authorities to clarify the work performed.

3.5 **Evaluating the Work of an Expert:** The Professional may evaluate the work performed by the Expert by conducting inquiries with the Expert and considering the following (indicative list):

- (a) Source of the data and nature of information (internal or external) accessed and relied upon by the Expert in arriving at the conclusion.
- (b) Assumptions, if any made by the Expert and scope limitations or restrictions, if any, faced by the Expert.
- (c) Work Procedures performed by the Expert in arriving at the results.
- (d) Results of the Expert's work, i.e., the relevance and reasonableness of the work and their consistency with other evidence gathered.

- (e) Results of the Expert's work in the light of the Professional's overall knowledge of the Client's business and findings from other investigation procedures.
  - (f) Conflict of Interest, relationships or circumstances which may adversely impact or impair the professional judgement of the Expert that have come to the notice of the Professional during the engagement.
- 3.6 Based on the nature and circumstances of the engagement, evaluation of the Expert's work and assessment as to whether the objectives have been achieved, the Professional may use professional judgement to consider whether the Expert's report is to be included in the FAI report.
- 3.7 In case the Professional disagrees with the Expert's work; the Professional may consider whether additional procedures need to be performed, either by the Expert or the Professional, or to appoint an alternate or additional Expert. In such circumstances, details regarding the appointment of the Expert, and the rationale for disagreeing and not including the results of the Expert's work may have to be disclosed in the working papers.

## **4.0 Explanations with Examples**

- 4.1 The Professional may decide to engage an Expert in the following scenarios:
- (a) Gathering of electronic evidence through digital imaging of electronic devices such as desktops, laptops or cell phones and data extraction.
  - (b) Legal advice in relation to any law, rules or regulations where Expert opinion may be desired to better understand and interpret the legal provisions related to taxation, insolvency, bankruptcy and other such areas.
  - (c) Technical design, valuations, evaluations or certifications to be provided or issued by the relevant industry experts (viz. engineering, soil testing, fire, crisis management, environment, etc.).

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- (d) Gathering market or corporate intelligence (from secondary sources) on entities and individuals through discreet enquiries and physical site visits.
  - (e) Forensic analysis including signature and image analytics.
  - (f) Data mining and Data analysis of complex information.
  - (g) Project management and consultancy services.
  - (h) Analysis of trades such as in futures, options or commodities to identify market manipulation, if any.
  - (i) Evidence gathering of cybercrime from computers, networks, and IT equipment including log analysis and artifact analytics.
- 4.2. The appropriateness and adequacy of the procedures performed by the Expert are the responsibility of the Expert. For instance, digital imaging, data indexing and execution of search terms performed by an e-Discovery Expert are the responsibility of the Expert. The Professional may not have the required expertise and, therefore, may not be in a position to either review or challenge the work of the Expert. It is, however, important for the Professional to understand the process adopted to ensure the credibility and accuracy of data and evidence.

## **5.0 Annexures with Illustrations**

- 5.1 This Section provides illustrative examples of the following:
- (a) Check points to be considered prior to appointment (Annexure 1)
  - (b) Written confirmation from an Expert (Annexure 2)

**Annexure 1 – Illustrative check points to be considered prior to appointment of an Expert**

1. Whether the Expert has the desirable reputation which is free of any unethical or improper conduct and has not been the subject of press reports suggesting illegal/unlawful activities. It should be ensured that the Expert enjoys impeccable reputation with no professional misconduct proceedings currently or in the past.
2. The Expert's qualifications, area of expertise, availability of infrastructure and resources, geographical location, should be suitable for performing the services contracted for.
3. Any direct or indirect interests or relationships (financial, personal, business or otherwise) which the Expert has with the Professional and/or the Client.
4. Any past relationships and/or working experience which the Expert has with the Client and/or the Client's group entities.
5. Any conflicts / independence concerns which the Expert has; close personal or family relationships with the Professional or the Client, whose engagement the Expert is being employed for.
6. If appropriate, the Professional may choose to conduct (with the full knowledge and consent of the Expert) a reference check, a brief due diligence or a complete background check including pending enquiries or proceedings against such Expert and disclose any relevant information sought by the Professional.
7. The Expert is expected to display a commitment to ethical conduct and abide by the applicable laws and regulations at all times during the engagement.

**Annexure 2 - Written representation / confirmation from the Expert**

I / We, confirm that the management of [Expert's name] and their immediate relatives (as defined below) are not related (financially / commercially) to the management of [Professional name] and [Client name] from [engagement commencement date] to [engagement end date] in any manner whatsoever.

I / We also confirm that I / we along with our employees, if any, who will work with [Professional name] and [Client name], are duly authorised, qualified and licensed to undertake the proposed assignment.

I / We also confirm that all information and documents provided by [Expert name] to [Professional name] or [Client name] are true, correct and accurate in all aspects including but not limited to the information and documents related to qualifications, experience and availability of resources.

I / We also confirm that I / we along with our employees, who will work with [Professional name] and [Client name], shall conduct ourselves with ethics and integrity and not indulge in any illegal / unlawful practices including those that may be construed as bribery or corruption.

I / We confirm that I / we have neither been subject to an investigation nor convicted of nor have pleaded guilty of an offence involving fraud or corruption, nor have I / we been listed by any Government agency as debarred, suspended, or proposed for suspension/debarment.

I / We acknowledge that confidential and proprietary information of the [Client name] and the [Professional name] will not be used for own purposes except as permitted hereunder, without the prior written consent of either Party, except if required by law, government / regulatory body or authorities as required by law, regulation, court order.

I / We understand and agree that any false certification is grounds for [Professional name] to immediately terminate the relationship with [Expert name] and take necessary actions against [Expert name].

Expert's Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Note:** 'Immediate relative' means a spouse, and includes parent, sibling, and child including stepchild of such person or of the spouse, any of whom is either dependent financially on such person or consults such person.

# Implementation Guide on FAIS No. 240:

## Engaging with Agencies

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### 1.0 Introduction

- 1.1 FAIS 240 on “Engaging with Agencies” expects the Professional to understand the responsibilities which apply when they are asked to engage with the Agencies, and how to apply these in a Forensic Accounting and Investigation (FAI) engagement.
- 1.2 While the definition of Agency is well explained in the Standard (see para 1.3), this Implementation Guide (IG) provides some examples of the nature of organizations which may form part of either the Law Enforcement Agencies or the Regulatory Bodies.

An indicative list of Agencies is presented in **Annexure 1**.

- 1.3 This IG outlines the manner in which the Professional prepares and executes work procedures for implementing the requirements of the Standard during the course of a FAI engagement. The requirements of the standard are expected to be implemented through:
  - (h) Having the required clarity on the terms of the engagement when the Professional is appointed by the Agency.
  - (i) Understanding the legal and regulatory requirements which drive the manner of engagement.
  - (j) Maintaining desirable communication protocols and documentation in relation to the engagement.

### 2.0 Objectives

- 2.1 The Objective of this IG is to assist the Professional engaging with Agencies in the following situations:
  - (a) Engagements where the Professional is appointed by the Agency or on their behalf as a consultant or advisor.
  - (b) Engagements where the Professional is called upon by the Agency in respect of the Forensic engagement carried out by the

Professional under the instructions of their employer, Client or Primary Stakeholders.

- 2.4 The IG also provides examples and illustrations to help the Professional apply similar work procedures which may be relevant to the circumstances of the engagement.

## **3.0 Procedures**

### **3.1 Professional engaged as Consultants or Advisors by the Agency**

- 3.1.1 **Scope of work:** The Professional is expected to agree on the terms of engagement and issue an engagement letter or obtain letter or appointment (or work-order) from the relevant Agency well in time. If the letter of appointment does not contain the scope and objectives of the engagement, the Professional may consider discussing the expectations and the scope with the relevant Stakeholders of the Agency at the time of entering into the engagement. Such expectations and scope of work may be agreed to and documented in the form of written communication, as mentioned above. Understanding of the scope of work is important to effectively plan the work procedures, manpower requirements, etc.
- 3.1.2 **Scope limitations:** In case of any perceived scope limitations, the Professional would adequately document the same and modify the work procedures where necessary. While documenting the scope of work, if there are any procedures indicating the need to involve any Expert, or to delegate certain work procedures, the Professional would clarify the same with the agency and document the reporting matrix for obtaining consent on any such key decisions which may be required during the course of the engagement.
- 3.1.3 **Additional Work:** In case of any additional work request, outside the agreed scope of work, it is suggested that the Professional documents the same with the **relevant** Stakeholders of the Agency in a manner that is binding on both the parties, and ideally seek to get an addendum to the original letter of appointment.
- 3.1.4 **Independence** and objectivity impairment checks may need to be performed before accepting any such engagement by the Professional. In case of any breach the same needs to be documented and approved by the Agency.

- 3.1.5 Understanding of applicable laws and regulations:** The Professional before planning and designing the work procedures is expected to identify the applicable laws and regulations with respect to the engagement. It is significant to gain knowledge about the relevant laws, rules and regulations. The Professional may engage legal Experts or seek appropriate legal advice as deemed fit to gain an understanding of applicable laws and regulations. Further, the applicable laws and regulations may vary based on the nature and allegations involved in the FAI engagement and in addition to this, FAIS 130 on “Laws and Regulations” may also be referred for identifying the applicable laws and regulations.

For example, if the Professional has been engaged by Serious Fraud Investigation Office (SFIO), the Professional would be expected to have knowledge of the provisions of the Companies Act, 2013 which are applicable for SFIO and the relevant sections under which the company under investigation or its Officers or Directors can be charged.

- 3.1.6 Allocation of team with requisite skill set:** Based on the agreed scope of work and expectations of the Agencies, the Professional is expected to identify the requisite skill set and allocate the manpower resources to the engagement accordingly. At this stage, the Professional may also plan on the number of resources required for the duration of the engagement and tools and technologies which are required to assist in the engagement and meet the expectation of the Agencies. The Professional is expected to ensure that the team has a good mix of new and experienced staff members with the necessary skill set for using tools and technologies.

For example, a complex Investigation involving multiple entities, individuals and analysis of multitude of bank statements would require use of data analytics tools at some stage. The data received from the banks or third parties could be in different formats which may first be required to be sanitized and structured before it can be analysed; further, the bank statements may contain thousands of line items, which can only be efficiently analysed through the use of data analytic tools. Therefore, the Professional in this case may consider including an Expert who has adequate experience of using such tools, as per FAIS 230 on “Using the work of an Expert”.

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- 3.1.7 **Evidence Gathering:** In case of engagements with Agencies, it is possible that the Agencies may control the process of gathering of evidence and the Professional is required to rely on that information. The same may be disclosed appropriately in the report in line with FAIS 510 on “Reporting Results”.
- 3.1.8 During the course of engagement, the Professional may be privy to information which is highly confidential in nature. The Professional should place adequate controls to ensure strict confidentiality is maintained and information shared with the team on a “need to know” basis with due authorizations.
- For example, a confidentiality and non-disclosure undertaking from the Professional and team members involved in the engagement may be obtained.
- 3.1.9 The qualification criteria for appointment of professional by the agency would already be provided by the agency seeking to appoint the Professional. However, there can be a situation when the professional can become disqualified during the engagement after his appointment. A protocol to report such changes would be defined and a pre-defined process may have to be adhered to.

### **3.2 Professional called upon by Agencies to provide information**

- 3.2.1 Professionals are called upon by the Agencies to provide information for an ongoing Investigation. For instance, it could be a case where a Professional had carried out a FAI engagement earlier, on an entity under investigation or on an Individual as the case may be, and the Agencies have requested for information with respect to the work performed by the Professional as the work could be of some significance to an ongoing Investigation. Alternatively, the Professional may also be called upon to provide information as an employee. In either case, the guidance would remain the same. The Professional may be called by Agencies to record his Statement on oath.
- 3.2.2 In case information has been requested verbally by the Agencies, the Professional may request a written communication and share the available information.

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- 3.2.3 The Professional at the time of being called upon may maintain a record of information provided and update it on regular basis. This record may include, but is not limited to, the following:
- (a) Date of request.
  - (b) Name of Investigation officer along with his/her designation.
  - (c) Information requested by the Agency.
  - (d) Mode of sharing (electronic / physical).
  - (e) Date on which shared.
- 3.2.4 The Professional may provide the factual information supported with the available supporting documentation and may refrain from providing any opinions or judgements on any matter unless specifically defined in the engagement letter. Care should be taken to make all statements and provide information in a truthful manner. The professional may seek a signed acknowledgement from the agency against information submitted.
- 3.2.5 Where the Professional is asked by the agency to submit the original evidence and work-papers, the Professional would retain photocopies and indicate the details of to whom the originals has been submitted.

**Indicative list of Agencies in India**

**1. Law Enforcement Agencies:**

- (a) Central Bureau of Investigation (CBI)
- (b) Enforcement Directorate (ED)
- (c) Economic Offences Wing (EOW)
- (d) Serious Frauds and Investigations Office (SFIO)
- (e) Directorate General of Income Tax Investigation (DGIT)
- (f) Directorate General of Goods and Service Tax Intelligence (DGGSTI)
- (g) National Investigation Agency (NIA)

**2. Regulatory Bodies:**

- (a) Reserve Bank of India (RBI)
- (b) Securities and Exchange Board of India (SEBI)
- (c) Insurance Regulatory and Development Authority of India (IRDAI)
- (d) Insolvency and Bankruptcy Board of India (IBBI)

# Implementation Guide on FAIS No. 250:

## Communication with Stakeholders

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### 1.0 Introduction

- 1.1 FAIS 250 on “Communication with Stakeholders” expects the Professional to appreciate the need for a clear, continuous, two-way communication with several Stakeholders at various stages of the Forensic Accounting and Investigation (FAI) engagement.
- 1.2 The requirements of the Standard are expected to be implemented through:
  - (a) Communicating in a process- driven manner and by using certain pre-defined and agreed protocols;
  - (b) Ensuring that Essential Matters and Significant Matters are communicated, while not mandating any form and content of communication.
  - (c) Maintaining good etiquette and confidentiality while communicating.

### 2.0 Objectives

- 2.1 This Implementation Guide (IG) outlines the manner in which the Professional plans and executes engagement procedures for implementing the requirements of the Standard during the course of a FAI engagement.
- 2.2 The objective of the IG is to assist the Professional in complying with the requirements of the Standard on communication before and during the course of the engagement, in the following manner:
  - (a) At the beginning of the engagement, identify all key Stakeholders, apart from those who appointed the Professional (the Primary Stakeholders).
  - (b) Through a dialogue with the Stakeholders, and right at the beginning of the engagement, establish a communication

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process, a key element of which is the communication protocol (which outlines the time and means of communication);

- (c) A list of Essential Matters and Significant Matters of communication are jointly identified, including those mandated by law or terms of engagement, and a process is agreed upon and laid down to ensure that these matters are properly communicated in a timely manner.
- (d) The process of communication is designed to promote certain basic quality and etiquette of communication at the same time controlling the content so that there are no confidentiality issues.

2.3 The IG also provides examples and illustrations to help the Professional apply the communication requirements in a seamless and effective manner throughout the engagement.

### **3.0 Procedures**

3.1 The initial communication like request for services, bidding process, an Engagement Letter or a letter of Appointment etc., are starting points and form the basis for all future communications, especially since these documents would lay out the scope and approach of the engagement. They may form the basis for the subsequent communication process and protocol.

3.2 In the initial stages of acceptance of the engagement, the Professional, with the help of the Primary Stakeholder, discusses and prepares a list of all the relevant Stakeholders with whom the Professional would need to interact. Contact details, the position and authority of each of the Stakeholders may be noted as well as the nature of information which they may be able to provide. The names of the Stakeholders with whom to communicate the Essential Matters and Significant Matters is particularly important. The Professional may choose to connect with some or all of these Stakeholders at the initial stage and take their support to design the communication process and protocol.

3.3 In designing and laying out the communication process, the Professional may keep the following in mind:

- (a) The communication protocol will act as a form of communication process documentation and capture all the important matters related to the process, list of Stakeholders, who will communicate

with whom, the nature and timelines of regular communication (e.g., status updates, escalations, reporting etc.), who has to provide what information and when, what will be the escalation mechanisms and how it will kick in and under what circumstances etc.

- (b) The list of Stakeholders would remain flexible and accommodate any changes, as the engagement progresses. The dynamic process would allow for an effective way to ensure the stakeholder list is kept updated, including the contact details of all.
- (c) The form and format of the communication may also be properly laid out, covering some or all of the following:
  - Form: Oral, written, physical meetings, physical observation etc.
  - Format: Voice recordings on digital files, documents (hard copy or digital format such as email or text messages), digital data files on pen/hard drives, Images and pictures, videos (e.g., CCTV recordings), etc.
- (d) In the form and format of communication, the Professional may keep in mind the requirements of any relevant laws and regulations, especially those concerning the nature of evidence and the chain of custody protocols to ensure that evidence gathered is in compliance with those legal requirements.
- (e) Data and information requirement would generally be a key element of the communication process and would find appropriate importance in the protocol as well. Getting timely information is key to the engagement and where this is not the case, escalation mechanisms need to kick in automatically through emails etc. The Professional may follow an escalation protocol in case of delay in obtaining information, lack of timely clearance of queries, etc. An escalation matrix may be defined and agreed at the beginning of the engagement with the Primary Stakeholders for communicating abnormal circumstances, significant matters etc.

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- (f) Where the Professional is taking help of other Experts, such as data scientists or cyber security or legal experts, the need for appropriate communication would have to be put in place. The Professional should consider incorporating the requirements of FAIS 230 on “Using the work of an Expert”.
- (g) Communication about the progress of engagement is one of the important parts of communication protocol. The Professional may define the timelines to communicate the progress of engagement and also communication protocol to all the Stakeholder, as applicable.
- (h) There could be a need for continuous and immediate conversations, which may not be anticipated in the pre-agreed protocols, in which case there might be a need to bypass some of the protocol requirements to address the issues on hand.

3.4 The communication which is conducted for gathering of information and evidences are required to be predefined and pre-agreed since the Professional is expected to follow appropriate evidence gathering procedures. It will be appropriate that the communication process to establish the manner in which evidence is gathered is also included in the protocol.

For example, in case of obtaining any public document as an evidence, an application in the prescribed format (along with fees) is required to be submitted to public authorities. The Professional may keep the detailed documentation in form of copy of application and copy of fees payment challan, etc, In certain cases, while producing the public documents as evidences the application along with details of payment may be required to be submitted.

3.5 While the Standard expects all communication to be with the Primary Stakeholder, it acknowledges that there would be a need for direct communication with the other Stakeholders (especially external parties like government agencies, suppliers, digital service providers etc.) as and when felt appropriate by the Professional or when called upon by those Stakeholders.

- (a) The communication process and protocol would anticipate under what circumstances the communication with the other

stakeholder would take place and in what manner (i.e., directly or through the Primary Stakeholder).

- (b) The nature of communication with Other Stakeholders may differ from that with the Primary Stakeholders. The communication with Other Stakeholders could possibly be required for enquiry, gathering of evidence, interview etc. Communication with Other Stakeholders would mostly be done with the prior knowledge of the Primary Stakeholder, unless the communication involves possible suspects, in which case the need for prior knowledge may not be necessary.
- (c) Where the Professional is asked to engage with government or Law Enforcement Agencies when called upon or on behalf of the Primary Stakeholders, the need for appropriate communication would have to be put in place. Most communication with the agencies would be mandated by law (not optional) and therefore the communication protocol would need to accommodate that. The Professional should consider incorporating the requirements of FAIS 240 on “Engaging with Agencies”.

- 3.6 While observing the communication protocol, the Professional is expected to understand the powers of authorities related to the engagement and clarify the communication expectations.

For example, in case of forensic investigation of PUFÉ (Preferential, Undervalued, Fraudulent Trading, and Extortionate Credit) transactions, required by the resolution process as per the Insolvency and Bankruptcy Code, 2016, the Professional may be required to attend the meeting of the committee of creditors and may be required to present his findings as per his report and provide clarification, if needed by any member. The Professional may need to ensure that the communication protocols are pre-agreed with the Primary Stakeholders well in advance, ideally at the beginning of the engagement, or later if appropriate.

- 3.7 In certain unique and unusual circumstances, the Professional may suspect some involvement of the Primary Stakeholders, as a result of which the communication protocol may need to be re-evaluated and nature of information sharing may have to be reconsidered. This level of professional scepticism is necessary in these sensitive cases and the

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Professional may choose to reach out to the next higher decision-making authority for further guidance on communication.

For example, if the CEO is the Primary Stakeholder, but is suspected to be close to those who are suspected of fraud, the Professional may reach out to the Board of Directors or audit committee. If appointed by a regulatory body, the Professional may exercise due judgement in communicating with the CEO on such issues. They (the Professionals) will be guided by the initially agreed upon communication protocols.

### 4.0 Explanations with Examples

- 4.1 The communication process and protocol generally developed jointly by the Primary Stakeholders and the Professional may consider the following points while carrying out such an exercise:

Sr. No.	Point to be considered	Particulars
1	Person through whom most of the communication will take place on behalf of the Professional on most matters.	Details such as name, contact address, official email details, contact numbers etc.
2	Person through whom most of the communication will take place on behalf of Primary Stakeholders for <b>Essential Matters</b>	Details such as name, contact address, official email details, contact numbers etc.
3	Person who will communicate on behalf of Primary Stakeholder on <b>Significant Matters</b>	Details such as name, contact address, official email details, contact numbers etc.
4	Mode of communication	Details such as digital mode, physical documentary mode, prescribed format of the Stakeholder etc.
5	Mode of communication with Other Stakeholder for gathering Evidences	List of Other Stakeholders.

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<b>Sr. No.</b>	<b>Point to be considered</b>	<b>Particulars</b>
		<p>Address, communication details such as email address, contact numbers etc.</p> <p>Communication mode – digital, paper mode through courier etc.</p> <p>Evidence gathering mode - list of evidences, mode of evidences, acknowledgement of delivery of evidences.</p> <p>Communication of safe keeping of original documents in case it is in custody of other Stakeholders.</p>
6	Mode of communication with Other Stakeholders like investigating authorities.	<p>The written notice from investigating authorities to the Professional</p> <p>Format prescribed if any by these authorities to exchange data and information.</p> <p>Mode of acknowledgment for submission of data or information</p>
7	Mode of communication with Other Stakeholders like adjudicating authorities or judicial authorities	<p>The legal provisions under which the data and information are to be shared.</p> <p>The prescribed format under the requirements of applicable law.</p> <p>Any restriction or instruction by these authorities about circulation or non-circulation of data and information to certain Stakeholders,</p> <p>Mode of submission - digital or physical documentation.</p>

4.2 In certain instances, the Professional is required to communicate with other Stakeholders for enquiry, gathering of evidence etc. The

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Professional may need to intimate the Primary Stakeholder in such circumstance. The Professional may consider the following points for such communication:

Sr.No.	Points to be considered	Particulars
1	Name of the Stakeholder	Full name and preferred salutation
2	Nature of association with the engagement	As a cloud service provider, supplier, customer, borrower etc
3	Confirmation of contact details	Confirmation of official address, Authority/Person to whom communicate, email, contact numbers etc
4	Reason for communication	The details of data, information and documents required etc
5	Timelines for communication	Periodicity during which the communication may take place
6	Whether any pre-communication from Primary Stakeholder is required	Professionals can suggest Primary Stakeholders to have a pre-communication with Other Stakeholders, in case necessary.
7	Mode of intimation	Digital or documentary

4.3 While communicating with other Stakeholders for gathering of evidence, following points may be considered:

Sr.No.	Point to be considered	Particulars
1	Person/authority with whom to communicate	The person/authority may have necessary power/authority on behalf of other stakeholder to exchange data, information which could be of in the nature of evidence.

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Sr.No.	Point to be considered	Particulars
2	Confirmation of attendance	In case physical meetings are scheduled, written confirmation of attendance to be obtained.
3	Mode of communication	Special care to be take about language in which communication to be done, digital communication with prior consent for recordings, oral communication to be documented and subsequently be signed by all the Stakeholders etc
4	Precaution about exchange of data and information through digital mode	Requirement of certification for digital exchange of data, information as provided under applicable and prevailing legislation, Accuracy and completeness test while exchanging the data and information etc.
5	Nature of data and information required	Depending upon the nature of engagement, professionals may ask for the nature of data, Information required through the communication. In case of enquiry or interview on a case-to-case basis, Professional can decide about sharing these through communication mode.
6	Acknowledgement of communication	Any important communication made by courier/postal mode should be done through registered post so as to get an acknowledgement through their proof of delivery.

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4.4 As explained above, the Professional may consider following points for Protocols:

Sr.No.	Point to be considered	Particulars
1	Communication protocol	To which authority the communication is to be addressed - it could be related to day-to-day requirements in assignments, third party communication for gathering of evidences, communication related to progress of assignments, summary findings, communication of significant matters.
2	Third party communication protocol	Any prescribed format and mode of communication by law, regulation or entity specific policies. The contractual terms and conditions if any prescribed for communication between Primary Stakeholder and Third Party.
3	Language protocol	The communication language may be considered. In certain cases, the stakeholder may understand only restricted languages and Professional is required to communicate only in that language. Documentation and evidences may be gathered in local, restricted languages. The Professional may decide to take the help of language Expert who may help in such communication.
4	General protocol	General protocols related to timings of work procedures normally during the daytime. General protocols related to tone and manner of communication.

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4.5 The following considerations may also be taken into account while defining an escalation protocol:

Sr.No.	Points to be Considered	Particulars
1	Hierarchy level of appointing Agency	The hierarchy and authority levels of various designations of appointing agency.
2	Expected Significant Incidences	<ol style="list-style-type: none"><li>1. Non-cooperation from certain parties to disputes</li><li>2. Non-cooperation from third parties for providing the evidence.</li><li>3. Life threatening circumstances</li><li>4. Work procedures that may involve the legal complications</li><li>5. The dependencies of disputed matter on other disputed matters</li></ol>
3	Defining the hierarchy level for different types of Significant Matters	<ol style="list-style-type: none"><li>1. Non-cooperation from parties to dispute may be handled at inspecting level</li><li>2. The legal complications may be handled by legal team of appointing authority.</li></ol>

## 5.0 Annexures with Illustrations

5.1 The Professional is required to communicate **Essential Matters** as defined in the Standard. The following is an Illustrative list of Essential Matters:

- (a) **Scope & Methodology of Engagement:** The scope depends upon the nature of engagement, periodicity for which data, information will be examined, investigated, the engagement plan and chosen methodology for forensic services to be communicated. Most of the time scope and methodology may get covered in the Engagement or Letter of Appointment, but it becomes an essential matter for communication when the agreed scope or methodology changes significantly. For example, an engagement

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which starts as Forensic Accounting may get expanded into a Fraud Investigation.

- (b) Laws and Regulations applicable to the engagement: Depending upon the nature of engagement, the Professional may communicate the laws and regulations under which the legal proceedings may take place. If the Professional is appointed as per the requirement under legal or regulatory provisions, the same may be mentioned in the Letter of Appointment. Any significant changes to this would also need to be communicated.
- (c) Reporting format for the engagement, which may be prescribed by legal and regulatory provisions, or any other alternative format.
- (d) Periodic reporting of engagement progress as per requirements: While communicating the **Periodic Status Update Reporting**, the Professional may consider the following points:

Sr.No.	Points to be Considered	Particulars
1	Periodicity or frequency of status update reporting	It may be predefined timelines or in the form of completion of certain procedures of engagements.
2	Work procedures / engagement execution details within certain time period	Details of completed work procedures or details of execution within the time period.
3	Reason for any delay	In case certain work, procedures are not completed the reason there of.
4	Sufficiency of Work Procedures	Whether the work procedures performed were sufficient or still further procedures are required to be carried out as outcome may not be confirmed.

- 5.2 The Professional is required to communicate **Significant Matters** as defined in the Standard. The following is an illustrative list of these matters:

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<b>Sr.no.</b>	<b>Points to be considered</b>	<b>Particulars</b>
1	Nature of Significant Matters	Nature of Significant Matters could be any as illustrated in the Standard.
2	Timing	When did it come to the notice of the Professional?
3	Importance	Importance of the matter in relation to execution of engagement and/or significance of it in relation to achievement of the objectives of engagement.
4	Alternate options	Any alternate options for getting the data, information, evidence which could be available, which may affect the original plan, methodologies, Professional fees and most importantly its impact on scope of the engagement.
5	Impact	In the absence of any alternate options, the Impact of such significant matters on overall engagement and ultimately on achievement of objectives of engagement.

# Implementation Guide on FAIS No. 310:

## Planning the Assignment

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### 1.0 Introduction

- 1.1 FAIS 310 on “Planning the Assignment” expects the Professional to recognise the need for a well-planned assignment, the objectives of which are clear, in line with the nature of the engagement, as well as its scope of work, objectives, roles and responsibilities, timelines and deliverables.
- 1.2 This is one of the first Standards of the 300 series level which cover the provisions at an assignment level, as opposed to the other Standards in the series which cover provisions at an overall engagement level. This Standard also makes this important distinction between an engagement and an assignment.
- 1.3 The requirements of the Standard are expected to be implemented through:
  - (a) Conducting planning in a process driven manner and documenting the agreed deliverable.
  - (b) Undertaking some key activities, covering key elements and collecting certain important information.
  - (c) Communicating relevant elements of the plan, as necessary.
- 1.4 Planning allows the Professional to anticipate and address areas of concern, allocate resources appropriately, and ensure the successful completion of the assignment in timebound manner.

### 2.0 Objectives

- 2.1 This Implementation Guide (IG) outlines the manner in which the Professional undertakes the planning procedures for implementing the requirements of the Standard during the course of a Forensic Accounting and Investigation (FAI) engagement.

- 2.2 The objective of the IG is to assist the Professional in defining the scope and planning the assignment in order to comply with the Standard as follows:
- (a) Developing and using a process in completing the planning procedures.
  - (b) Undertaking certain key elements of planning to ensure the achievement of assignment objectives.
  - (c) Using the information gathered; developing certain broad work procedures.
  - (d) Confirming the broad plan with the Primary Stakeholders to ensure it meets their expectations.
- 2.3 The IG also provides examples and illustrations to help the Professional apply the planning requirements in a seamless and effective manner throughout the engagement.

### **3.0 Procedures**

- 3.1 The Professional is expected to adopt a standard process driven approach to planning assignments. This process would deploy various techniques, such as a checklist, to develop and prepare a plan.
- 3.2 The Professional may consider involving key members of the team in planning the assignment, since it brings more perspectives, gets them quickly involved and also helps in the learning and growth of team members.
- 3.3 The Professional may consider it appropriate to allocate sufficient time and resources to gather required information, conduct interviews, or perform analyses when dealing with a complex assignment or new Stakeholders.
- 3.4 The Professional may determine the extent and depth of planning based on the complexity of the engagement, which could depend on:
- (a) Nature of assignment, such as a financial statement fraud, asset misappropriation, or a case of corruption etc.
  - (b) Sources of information and its reliability can be a challenge, e.g., whether its online, offline, ERP systems or only on manual records.

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- (c) Scope and size of the assignment, such as the number of entities or business units, the volume of transactions, restrictions on availability of data or the scope of work, the duration of the event and the number of Stakeholders involved.
  - (d) Involvement of multiple jurisdictions or regulatory requirements, which could also increase complexity.
  - (e) Involvement of Experts or any third party (if any) based on the complexity of the engagement.
- 3.5 Planning may also depend upon the familiarity of the Professional with the Stakeholders and facts such as:
- (a) Previous working relationships or experiences with the Stakeholders may affect the level of trust and understanding between the Professional and Stakeholders.
  - (b) Information available on the public domain in relation to the nature of business and industry.
  - (c) Availability and quality of information about the case, such as prior investigations, litigation, audit and forensic reports, or whistleblower complaints.
- 3.6 On an overall basis, the key elements to be considered while planning an FAI engagement are as set out below:
- (a) **Be specific:** Focus on the subject matter of the assignment (e.g., a certain allegation, financial statement line item, employee, third party, department, function and location). The Professional may limit procedures to the subject matter of the engagement and skip information not relevant for the scope of work.
  - (b) **Update regularly:** Update and revise the plan as needed throughout the assignment and review the performance of resources deployed to the assignment. For instance, if a new whistleblower comes forward during the assignment or additional areas of concern or additional sources of evidence are identified, the Professional may modify the plan as necessary.
- 3.7 The Professional may consider the following while planning an assignment:

**3.7.1 Alignment with scope:**

The plan is expected to be aligned with the mandate, knowledge of business environment and other relevant laws and regulations. The planning process will depend upon “Engagement Objectives” as per FAIS 210.

**3.7.2 Risk Factors:**

The Professional is expected to:

- (a) Evaluate the risks identified as per FAIS 120 “Fraud Risk” and design adequate procedures to prioritize vulnerable areas.
- (b) Tailor work procedures to consider any other risks identified as per FAIS 220 “Engagement Acceptance and Appointment”.

**3.7.3 Approach and Methodology:**

The Professional may align the understanding through discussions with Stakeholders in order to define a clear and concise approach as follows:

- (a) Obtain a detailed understanding of the subject matter, details of the available data sources and level of cooperation which is expected to be extended to the Professional.
- (b) Determine the varied methodologies that may be employed in order to collect evidence, viz., discussions and process understanding, data analytics, document review, transaction testing, corporate intelligence, market intelligence etc.
- (c) Determine the forensic tools and technologies available with the Professional which may be deployed or leveraged to achieve the objectives of the assignment along with limitations, if any.
- (d) Assess the need for Experts and/or third parties in relation to any services to be rendered to the Client.
- (e) The methodology may be tailored to the specific needs of the engagement and be flexible enough to adapt to changes that may arise during the investigation.
- (f) Attempt to identify possible operational difficulties that may arise during the engagement, as well as possible solutions to avoid or address those obstacles such as lack of cooperation, fear of retaliation, culture & language, access to source of evidence,

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destruction or tampering with evidence, collusion between witness etc.

- (g) The methodology may need to be tailored to present findings in legal proceedings, such as the need to ensure the evidence will be acceptable in a court in accordance with prevailing laws.

### **3.7.4 Discussion with Stakeholders**

- (a) Identify the relevant Stakeholders who may have information, knowledge or interest in the assignment.
- (b) Determine the appropriate timing and manner to approach the Stakeholders, keeping in mind the confidentiality requirements.
- (c) Conduct discussions and deliberations with the Stakeholders to gather their insights on identifying relevant information, their data sources and other intricacies.
- (d) Align Stakeholder expectations with the assignment objectives and expected outcome.
- (e) Agree on the escalation matrix to be followed in the event of non-receipt / delay in receipt of data / information required for the assignment or cooperation not received from the stakeholder(s).
- (f) Documentation of summary of all the information collected from the meetings & communications with the Stakeholders.

### **3.7.5 Technology Deployment**

- (a) Determine the usage and acceptability of technology tools to meet the assignment objectives, quality requirements, and timely completion of the project.
- (b) The Professional may consider the following aspects:
  - Level and extent of technology deployment.
  - Management of IT processes, internally by the organisation, or outsourced to a third party.
  - Need to use the services of an Expert on part of the assignment.
  - Need to conduct remote data processing, such as accessing data from a different location.

- Need to deploy data analysis, data mining, or digital forensic tools in the assignment.
- (c) The Professional may verify that the selection and use of technology tools comply with applicable laws and regulations, especially with respect to confidentiality and privacy. For example, in the European Union, in view of the stringent GDPR regulations, carrying of data analytics, imaging, usage of digital tool or review of email systems becomes challenging and adequate safeguards and disclosures would need to be adhered to in order to be in compliance with the legal requirements.
- (d) For instance, where required by regulations, the Professional may obtain the necessary consent from those whose data will be accessed. Additionally, the Professional may assess the security and confidentiality of the data and ensure that it is stored, processed, and transferred in a secure and compliant manner.

### **3.7.6 Skill and Resource Assessment**

Understanding various aspects and components of the engagement would enable the Professional to make a reasonable assessment of the skills and resources required to undertake the assignment such as, the following (indicative list):

- (a) Accounting or Financial Experts.
- (b) Subject Matter Experts (legal, industry, technology, etc.).
- (c) Tools for data extraction and analysis.
- (d) Disk recovery tools.
- (e) Mobile forensic tools.
- (f) Translation or Transcription services.

### **3.7.7 Resource Allocation**

- (a) Prepare a work schedule to estimate the time required for key procedures depending on the assignment objectives, scope, depth of coverage, and map these with available resources and competencies (knowledge, experience, expertise, etc.) for proper resource allocation.

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- (b) Define the number and skill level of resources to be allocated to the assignment and key milestones to be achieved.
- (c) The work schedule may consider the potential impact of contingencies such as delays, unexpected findings, non-availability of information, or resource constraints, so that the Professional may manage them effectively to minimize their effects on the assignment.
- (d) The Professional may use Experts for completing parts of the assignment in situations where required skills are not available with them (the Professionals), in line with FAIS 230 on "Using the work of an Expert."
- (e) The Professional may choose to designate someone to lead and oversee the assignment based on review and supervisory skills required for the assignment, in line with requirements of FAIS 350 on "Review and Supervision."

### **3.7.8 Communication:**

Based on an understanding of the above factors, the Professional may communicate the realistic expected outcomes that are achievable and their work output.

- 3.8 Additionally, the Professional may identify sufficient and appropriate milestones to keep Stakeholders informed about the progress of the assignment and seek their inputs and feedback.

## **4.0 Explanations with Examples**

- 4.1 Some examples on application of this Standard where only a part of the engagement is outsourced to the Professional are as follows:
- (a) A bank is concerned about potential money laundering activities and hires the Professional to investigate specific high-risk transactions. In this case, the FAI assignment is only a part of the engagement (focusing on high-risk transactions), and the Professional will plan and apply the Standard to this specific aspect of the Investigation.
  - (b) An organisation is investigating alleged employee misconduct and hires the Professional to conduct interviews with some employees suspected of misconduct. In this case, the FAI

assignment is a specific group of tasks (of conducting interviews of suspected employees involved in misconduct and investigate the matter), and the Professional will plan and apply the Standard to the interview process.

- (c) An organisation is dealing with a bribery and corruption case and hires the Professional to review financial transactions related to expense reimbursements and travel records of the accused. In this case, the FAI assignment is a part of the engagement (focusing on financial transactions), and the Professional will plan and apply the Standard to the financial review aspect of the Investigation.

## 5.0 Annexures with Illustrations

5.1 The table below further illustrates the concept of Engagement and Assignment

Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
1	A Professional is hired by a manufacturing organisation to investigate allegations of procurement fraud. The terms of reference include identifying any fraudulent activities, determining the extent of the fraud, and recommending appropriate	<b>Assignment 1:</b> vendor selection and bidding processes at a specific plant. The Professional may review relevant documentation, interview plant employees, and analyse bid data to identify any irregularities or signs of collusion between organisation employees and vendors.	<b>Scope:</b> The scope of work covers the entire procurement process from vendor selection to payment approval. <b>Possible Fraud Risk Factors:</b> <ul style="list-style-type: none"> <li>▪ Irregularities in vendor selection process</li> <li>▪ Collusion between organisation employees and vendors</li> <li>▪ Bid rigging</li> <li>▪ Unauthorized access or manipulation of data in the IT systems</li> </ul>

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Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
	<p>actions to prevent future occurrences. The scope of work covers the entire procurement process, from vendor selection to payment approval, and the expected deliverables are a comprehensive Investigation report and a presentation of findings to the organisation's board of directors.</p>	<p><b>Assignment 2:</b> reviewing relevant documentation, such as email exchanges, text messages, or any other records that may support or contradict the allegations. The Professional would analyse this evidence to determine its relevance, authenticity, and potential impact on the outcome of Investigation.</p> <p><b>Assignment 3:</b> examining the IT systems used in the procurement process, such as the organisation's Enterprise Resource Planning (ERP) system, to detect any unauthorized access or manipulation of data. The Professional may collaborate with IT</p>	<p>used in the procurement process</p> <ul style="list-style-type: none"> <li>▪ Data integrity issues in the IT systems used in the procurement process</li> </ul> <p><b>Approach and Methodology:</b></p> <p>Assignment 1:</p> <ul style="list-style-type: none"> <li>• Review relevant documentation such as bid data, vendor contracts, and procurement policies and procedures</li> <li>• Conduct interviews with plant employees involved in the procurement process</li> <li>• Analyse bid data to identify any irregularities or signs of collusion between organisation employees and vendors</li> <li>• Conduct a review of the vendor selection process to identify any red flags or irregularities</li> <li>• Identify any evidence of bid rigging based on information about bids received and their evaluation</li> </ul> <p>Assignment 2:</p>

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Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
		<p>Experts to review system logs, access controls, and data integrity</p>	<ul style="list-style-type: none"> <li>• Identify all relevant documentation such as email exchanges, text messages, and other records</li> <li>• Analyse the evidence to determine its relevance, authenticity, and potential impact on the investigation's outcome</li> <li>• Identify any evidence of collusion or fraudulent activities</li> <li>• Identify any evidence that supports or contradicts the allegations</li> </ul> <p>Assignment 3:</p> <ul style="list-style-type: none"> <li>• Identify the IT systems used in the procurement process, such as the organisation's ERP system</li> <li>• Review system logs, access controls, and data integrity to detect any unauthorized access or manipulation of data</li> <li>• Identify any data integrity issues in the IT systems used in the procurement process</li> </ul> <p><b>Discussion with Stakeholder:</b></p>

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Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
			<ul style="list-style-type: none"> <li>• Conduct discussions with the IT Department, procurement team, the plant management, and the board of directors.</li> </ul> <p><b>Technology Deployment for Investigation:</b></p> <ul style="list-style-type: none"> <li>• data analytics software may be used to analyse bid data and identify any irregularities or patterns.</li> <li>• forensic software may be used to analyse the relevant documentation</li> <li>• network traffic analysis tools may be used to examine the IT systems used in the procurement process and detect any unauthorized access or manipulation of data</li> </ul> <p><b>Resource Allocation:</b></p> <p><b>The Professional may require the following resources:</b></p> <ul style="list-style-type: none"> <li>• Access to relevant documentation such as bid data, vendor contracts, procurement policies and procedures etc. and experienced staff with adequate skills to review the information</li> </ul>

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Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
			<ul style="list-style-type: none"> <li>• Access to plant employees involved in the procurement process</li> <li>• Data analytics software</li> <li>• Collaboration with IT Experts if required</li> </ul>
2	<p>A Professional is hired by a manufacturing organisation to investigate allegations of fraudulent payment to freight service provider for services not rendered. The terms of reference include identifying any fraudulent activities, determining the extent of the fraud, and recommending appropriate actions to prevent future occurrences. The scope of work is limited to</p>	<p><b>Assignment 1:</b> Allocation of business, confirmation on receipt of services, invoice verification &amp; payment processing for specific service provider at specific location. The Professional may review relevant documentation, interview employees related with business allocation, service confirmation, invoice verification &amp; payment processing, and analyse freight data to identify any irregularities or signs of collusion between organisation</p>	<p><b>Scope:</b> The scope of work is limited to receipt of services, invoice verification &amp; payment processing.</p> <p><b>Possible Fraud Risk Factors:</b></p> <ul style="list-style-type: none"> <li>▪ Invoices raised by freight service providers for services not provided.</li> <li>▪ Collusion between organisation employees and freight service provider.</li> <li>▪ Unauthorized access or manipulation of data in the IT systems used in the transport management process.</li> <li>▪ Data integrity issues in the IT systems used in the transport management process.</li> </ul>

Implementation Guide on Forensic Accounting and Investigation Standards

Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
	<p>receipt of services, invoice verification and payment processing. The expected deliverables are a comprehensive investigation report and a presentation of findings to the organisation's board of directors.</p>	<p>employees and freight service provider.</p> <p><b>Assignment 2:</b> reviewing relevant documentation, such as email exchanges, text messages, or any other records that may support or contradict the allegations. The Professional would analyse this evidence to determine its relevance, authenticity, and potential impact on the investigation's outcome</p> <p><b>Assignment 3:</b> examining the IT systems used in the freight invoice processing &amp; payment, such as the organisation's enterprise resource planning (ERP) system, to detect any unauthorized access or manipulation of</p>	<p><b>Approach and Methodology:</b></p> <p>Assignment 1:</p> <ul style="list-style-type: none"> <li>• Review relevant documentation such as business allocation data, freight service provider contracts, and transport management policies and procedures.</li> <li>• Conduct interviews with employees involved in the business allocation, service confirmation, invoice verification &amp; payment processing,</li> <li>• Analyse freight data to identify any irregularities or signs of collusion between organisation employees and freight service provider.</li> <li>• Conduct a review of transport management process to identify any red flags or irregularities</li> <li>• Identify any evidence of favour being given to any specific freight service provider at any specific location in terms allocation of business or early payment.</li> </ul> <p><b>Assignment 2:</b></p>

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<b>Sr. No.</b>	<b>Engagements</b>	<b>Possible Assignments</b>	<b>Illustrative Planning Process</b>
		<p>data. The Professional may collaborate with IT Experts to review system logs, access controls, and data integrity</p>	<ul style="list-style-type: none"> <li>• Identify all relevant documentation such as email exchanges, text messages, and other records</li> <li>• Analyse the evidence to determine its relevance, authenticity, and potential impact on the investigation's outcome</li> <li>• Identify any evidence of collusion or fraudulent activities</li> <li>• Identify any evidence that supports or contradicts the allegations</li> </ul> <p>Assignment 3:</p> <ul style="list-style-type: none"> <li>• Identify the IT systems used in the transport management process, such as the organisation's enterprise resource planning (ERP) system.</li> <li>• Review system logs, access controls, and data integrity to detect any unauthorized access or manipulation of data</li> <li>• Identify any data integrity issues in the IT systems used in the transport management process.</li> </ul>

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Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
			<p><b>Discussion with Stakeholder:</b></p> <ul style="list-style-type: none"> <li>• Conduct discussions with the IT Department, transport management team, finance &amp; accounts team, and the board of directors.</li> </ul> <p><b>Technology Deployment for Investigation:</b></p> <ul style="list-style-type: none"> <li>• data analytics software may be used to analyse freight data and identify any irregularities or patterns.</li> <li>• forensic software may be used to analyse the relevant documentation</li> <li>• network traffic analysis tools may be used to examine the IT systems used in the transport management process and detect any unauthorized access or manipulation of data</li> </ul> <p><b>Resource Allocation:</b></p> <p><b>The Professional may require the following resources:</b></p> <ul style="list-style-type: none"> <li>• Access to relevant documentation such as freight service provider contracts, business allocation, services</li> </ul>

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Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
			<p>availed, invoice &amp; payment processed, transport management policies and procedures etc. and experienced staff with adequate skills to review the information</p> <ul style="list-style-type: none"> <li>• Access to employees involved in the transport management process &amp; payment processing.</li> <li>• Data analytics software</li> <li>• Collaboration with IT Experts if required</li> </ul>
3	<p>A Professional is hired by a manufacturing organisation to establish if any favour has been given to specific distributor for disbursement of marketing schemes. The terms of reference include identifying any favouritism, determining the extent of the favour given, and</p>	<p><b>Assignment 1:</b> marketing scheme selection and approval process, scheme eligibility calculation process for specific distributor. The Professional may review relevant documentation, interview sales &amp; marketing employees, and analyse marketing scheme approval &amp; disbursement data to identify any irregularities or signs of collusion</p>	<p><b>Scope:</b> The scope of work covers the entire marketing scheme process from scheme selection to disbursement.</p> <p><b>Possible Fraud Risk Factors:</b></p> <ul style="list-style-type: none"> <li>▪ Irregularities in marketing scheme calculation &amp; approval process.</li> <li>▪ Collusion between organisation employees and vendors</li> <li>▪ Unauthorized access or manipulation of data in the IT systems used in the marketing</li> </ul>

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Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
	recommending appropriate actions to prevent future occurrences.	between organisation employees and distributor.	scheme management process. ▪ Data integrity issues in the IT systems
	The scope of work covers the entire marketing scheme process, from scheme selection & approval to disbursement, and the expected deliverables are a comprehensive investigation report and a presentation of findings to the organisation's board of directors.	<b>Assignment 2:</b> reviewing relevant documentation, such as email exchanges, text messages, or any other records that may support or contradict the allegations. The Professional would analyse this evidence to determine its relevance, authenticity, and potential impact on the investigation's outcome	used in the marketing scheme management process. <b>Approach and Methodology:</b> Assignment 1: • Review relevant documentation such as marketing scheme data, all types of schemes approved along with eligibility criteria, and marketing schemes management policies and procedures • Conduct interviews with sales & marketing employees involved in the scheme identification, approval, communication & disbursement process.
		<b>Assignment 3:</b> examining the IT systems used in the marketing scheme selection, approval & disbursement, such as the organisation's enterprise resource planning (ERP) system, sales enablement	• Analyse scheme data to identify any irregularities or signs of collusion between organisation employees and distributors. • Conduct a review of the scheme selection, approval & eligibility calculation &

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<b>Sr. No.</b>	<b>Engagements</b>	<b>Possible Assignments</b>	<b>Illustrative Planning Process</b>
		<p>platform, to detect any unauthorized access or manipulation of data. The Professional may collaborate with IT Experts to review system logs, access controls, and data integrity</p>	<p>disbursement process to identify any red flags or irregularities</p> <ul style="list-style-type: none"> <li>• Identify any evidence of favouritism based on information about schemes approved &amp; disbursement made.</li> </ul> <p>Assignment 2:</p> <ul style="list-style-type: none"> <li>• Identify all relevant documentation such as email exchanges, text messages, and other records</li> <li>• Analyse the evidence to determine its relevance, authenticity, and potential impact on the investigation's outcome</li> <li>• Identify any evidence of collusion or favouritism.</li> <li>• Identify any evidence that supports or contradicts the allegations</li> </ul> <p>Assignment 3:</p> <ul style="list-style-type: none"> <li>• Identify the IT systems used in the marketing scheme management process, such as the organisation's enterprise resource planning (ERP) system, sales enablement platform.</li> </ul>

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Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
			<ul style="list-style-type: none"> <li>• Review system logs, access controls, and data integrity to detect any unauthorized access or manipulation of data</li> <li>• Identify any data integrity issues in the IT systems used in the marketing scheme management process</li> </ul> <p><b>Discussion with Stakeholder:</b></p> <ul style="list-style-type: none"> <li>• Conduct discussions with the IT Department, sales &amp; marketing team, finance &amp; accounts team, and the board of directors.</li> </ul> <p><b>Technology Deployment for Investigation:</b></p> <ul style="list-style-type: none"> <li>• data analytics software may be used to analyse marketing scheme data and identify any irregularities or patterns.</li> <li>• forensic software may be used to analyse the relevant documentation</li> <li>• network traffic analysis tools may be used to examine the IT systems used in the marketing scheme management process and detect any unauthorized</li> </ul>

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Sr. No.	Engagements	Possible Assignments	Illustrative Planning Process
			<p>access or manipulation of data</p> <p><b>Resource Allocation:</b>  <b>The Professional may require the following resources:</b></p> <ul style="list-style-type: none"> <li>• Access to relevant documentation such as marketing scheme data, scheme terms &amp; conditions, marketing scheme management policies and procedures etc. and experienced staff with adequate skills to review the information</li> <li>• Access to sales &amp; marketing employees involved in the marketing scheme management process</li> <li>• Data analytics software</li> <li>• Collaboration with IT Experts if required</li> </ul>

# Implementation Guide on FAIS No. 320:

## Evidence and Documentation

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### 1.0 Introduction

- 1.1 Forensic Accounting or Investigation (FAI) assignments is a fact-finding exercise seeking relevant and reliable evidence. Conclusions and reporting are dependent on the basis of evidence gathered and documents considered. While gathering evidence and documentation, applicable laws and regulations are considered, as per Forensic Accounting and Investigation Standards (FAIS) 130 on “Laws and Regulations”.
- 1.2 There is a possibility that most FAI assignments may end up as a subject matter of legal proceedings. Therefore, the assignment needs to be carried out in a manner which can demonstrate that evidence is gathered in a legally tenable manner in accordance with the provisions of the FAIS.
- 1.3 Due to the inherent litigative nature of the FAI assignment, the Professional is required to gather relevant and reliable evidence to support assignment objectives since these will be submitted during the legal proceedings. Although the admissibility of evidence is decided by the Competent Authority, the Professional is expected to follow procedures for its gathering, evaluation and submission.
- 1.4 The details of work procedure conducted for gathering of evidence, is required to be recorded in the form of documentation. The documentation is expected to include the manner in which the evidence was evaluated to arrive at the conclusions.
- 1.5 Reliable evidence, when recorded in the form of appropriate and sufficient documentation, would allow others to arrive at similar conclusions as the Professional.

## 2.0 Objectives

- 2.1 This Implementation Guide (IG) seeks to provide help to the Professional in complying with the various requirements of the Standard by elaborating on the definitions and clarifying the terms.
- 2.2 The objectives of this IG are as follows:
  - (a) To provide an outline of the procedures which may be followed while gathering relevant and reliable evidence.
  - (b) To explain the manner in which procedures for validating the findings can be recorded as appropriate and sufficient documentation.
- 2.3 The IG also provides examples and illustrations to help the Professional apply similar work procedures which may be relevant to the circumstances of the engagement.

## 3.0 Procedures

- 3.1 Nature of Evidence: The Professional gathers many types of evidence, which can be classified in different ways for different purposes.
  - 3.1.1 Type of Evidence: For evaluating the admissibility of evidence before Competent Authorities, the Professional may consider the following type of evidence:
    - (a) **Primary Evidence** is original documents and considered most authentic.
    - (b) **Secondary Evidence** is certified copies of original documents and admissible under certain circumstances.

Similarly, in order to discuss the form of an evidence, the Professional may consider the following type of evidence:

- (c) **Oral evidence** is the information gathered during the Interview or an enquiry.
- (d) **Documentary evidence** includes various records in the form of documents such as invoices, purchase orders, inventory record, asset title papers, various types of agreements etc.

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- (e) **Electronic evidence** includes records kept in electronic or digital mode such as email communication, mobile text (instant) message (such as WhatsApp), a spreadsheet file, etc.

Sometimes, the manner of capturing the evidence becomes a way to distinguish it from other evidence, and the Professional may consider the following type of evidence:

- (f) **Technical evidence** may include records generated from various mechanical devices such as the time recorded on a stop watch, the electricity consumed recorded by a meter, or the reading of raw material processed through a production machinery, etc.
- (g) **Camera evidence** provides photographs (still pictures) and videos (moving pictures) thus generating an image of the subject matter at a point in time and creating evidence.

- 3.1.2 The type of evidence drives the manner in which such evidence is to be gathered. Therefore, the Professional modifies the relevant work procedures of evidence gathering based on the type of evidence as per the due process of law.
- 3.1.3 Primary Evidence generally remains in custody of Stakeholders. It is worth noting that documents need to be proved by primary evidence but in certain circumstances, evidence may be given in courts by way of secondary evidence in some cases. As far as possible, the Professional should enclose copies of original documents with the reports. If that is not possible for some reason, the Professional may provide secondary evidence and record the references of custody of original documents in the chain of custody. The Professional can also keep the record of custody of original documents in the Stakeholder's custody in the form of acknowledgment of such custody by Stakeholder.
- 3.1.4 The electronic records as evidence are gathered through extracting various types of data in the form of image by using different types of electronic tools.
- 3.1.5 The documentary evidence is gathered in the form of invoices, registers, and records by obtaining the relevant copies from various Stakeholders.
- 3.1.6 Depending on the nature and circumstances, gathering evidence may involve various forms, such as locating documents, economic

information (e.g., bank account details), physical assets, an individual or a company or merely the proof of the occurrence of an event.

- 3.2 While gathering various forms of evidence, it is advisable to collect as much evidence as possible during the course of the assignment. The tests of relevance and reliability can be done later during the course of the work procedures. While the admissibility of the evidence will be tested by Competent Authority, the duty of the Professional is to ensure that due processes for gathering the evidence and maintaining documents is followed so that the evidence does not fail to serve its purpose on technical grounds.
- 3.3 If evidence is gathered from the usage of work of a third-party Expert, the Professional is expected to take additional safeguards as provided for under FAIS 230 on “Using the Work of an Expert”.
- 3.4 Documents, in addition to the evidence, also include the written record of the work procedures. As indicated in the Standard, the Professional is expected to take care to record the documents and work papers since this form the base when demonstration of conformance to work procedure is required.
- 3.5 The Professional, to the extent practical, can independently verify and evaluate the original documents and obtain copies thereof which may be enclosed with the reports as annexure and exhibits. Attempt should be made to obtain the documents certified as true by the person who is in possession of the original document. While a self-attested copy places highest degree of reliance on the evidence, it may not always be possible to get self-attested copies from the Stakeholders. While relying on the prints of documents from computer, care should be taken to comply with provisions of section 63 of the Bharatiya Sakshya Adhiniyam, 2023.
- 3.6 The Professional can gather the evidence from various sources. The Professional would generally seek evidence from authorised persons’ only. In some cases, a declaration may be obtained from senior management confirming the source (persons) authorised to provide relevant evidence. While obtaining this evidence, the Professional may consider that sharing of documents (which would be enclosed as evidence) is governed by agreements between different stakeholders. In such circumstances, the Professional may take the help of Primary

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Stakeholder to obtain the required documents and verify these with the respective source records and applicable laws and regulations (especially data privacy laws).

- 3.7 In some cases, the prescribed procedure to gather evidence may take considerable time, exceeding the assignment timelines. This may be communicated to the Primary Stakeholder. In such circumstances, if the Professional is relying on the copies of the documents, it shall be reported that to be the case.
- 3.8 Any non-cooperation from Stakeholder (or such other limitation) in obtaining and verification of the evidence shall be communicated as Significant Matter to the Primary Stakeholder and shall also be mentioned in the report, in line with the provisions of the Standard FAIS 250.

For example, data may be required for analysis from Cloud Service Provider. Stakeholder and Cloud Service Provider will have entered into agreements about the services and the manner in which the data would be made available. These agreements may be taken into consideration; support from Stakeholder is, of course, expected in such cases for obtaining the data.

- 3.9 The Professional is expected to ensure that all the original documents or data gathered is kept in a sealed cover or preferably under lock and key supplemented by a proper chain of custody. Digital evidence may be protected through a password. The Professional is expected to perform the review or work procedures after obtaining copies of the original documents or data. This is equally important while carrying out the data analysis wherein Professional should take precautions and work on the copy of the data gathered.
- 3.10 It is a good practice to preserve the evidence and documents till the conclusion of the legal proceedings. The Professional can preserve the evidence and documents in accordance with the applicable law, at least till the conclusion of the legal proceedings. The Professional is expected to develop procedures such as Documentation Register with Case Number, Safe Custody Location of where documents are kept, the mode in which documents are preserved - whether they are in hard copy format or in digital mode, access to the documentation is controlled etc.

## 4.0 Explanations with Examples

- 4.1 The evidence could be obtained or provided by Primary Stakeholder internally or by an external source such as Other Stakeholders. The internal sources of evidence include accounting records, inventory records, production records, audit trails of transactions etc. The external sources of evidence include documents and confirmation from Other Stakeholders, documents obtained from public authorities, digital footprints provided by the digital service providers, such as website logs, user activity data, or online transaction records etc.
- 4.2 The reliability of evidence depends upon the source and manner of gathering such evidence. To establish the reliability of evidence, the Professional may follow planned procedures while gathering and accepting the documents. The primary evidence generally takes considerable time to gather, and, therefore, the Professional has to start the assignment with whatever secondary evidence is available.
- 4.3 The reliability of the evidence also depends upon the type of evidence. For example, while treating books of account as evidence, the Professional may consider if the books of account are kept on regular basis by collecting the relevant digital trails of recorded transactions. In cases where the transactions are modified frequently (which becomes apparent from the digital trail), reliability may need to be further corroborated by other evidence. In the absence of corroborative evidence, the evidence may not be considered reliable. The Professional may come across different sets of books of account. In such a situation, Professional judgment is to be applied as to the genuineness of the data.
- 4.4 Certain documentation records the evaluation outcome of various other documents which were gathered with the intention of supporting evidence. For example, data analysed to determine the relationship of transactions and their relevance to matter in dispute, including (where necessary) further tracing of these with supporting transaction-related documents- can make them admissible evidence.
- 4.5 The documentation may also include those documents which were provided by Primary Stakeholder for evaluating and where the

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Professional is not under any obligation to gather additional documents as evidence.

- 4.6 Documents are generally evaluated from two perspectives in order to establish their appropriateness:
- (a) Whether the documents are related to the objectives of assignment. For example, in case a dispute is related to utilization of borrowed funds, the documents related to fund trails are relevant evidence.
  - (b) Whether the documents may assist to arrive at a conclusion. For example, evidence in the form of entries in the books of accounts is relevant but not sufficient and additional evidence- related transactions are also required to arrive at a conclusion.
  - (c) In situations where the Professional has received documents and information directly from the Agencies, the onus of the relevance and reliability of the evidence and the appropriateness and sufficiency of the documents is on the Agencies which have provided such documentation and information, and the same shall be mentioned in the report.
- 4.7 In an ideal situation, the Professional is expected to have custody of all the evidence and documents. However, depending on the engagement, the Professional may not get direct custody of the evidence, and should, therefore, endeavour to have a mechanism whereby access to the evidence can be provided to the Professional as and when required including presentation of evidence before Competent Authorities. A statement to this effect can be included in the Report (as per FAIS 510 on "Reporting Results").
- 4.8 Appropriate procedure refers to the legitimate method or procedure prescribed by laws or regulations to collect and gather evidence. The procedure followed to gather evidence is required to be documented. For example, while collecting the documents from the public authority, the Professional may follow the prescribed procedure such as submission of application and payment of fees etc.
- 4.9 As a general principle, a public document requires no strong proof of its authenticity whereas a private document does require it by way of primary evidence. Care should be taken to obtain certified copies of

public documents from the public officer having its custody. For example, any document downloaded from Ministry of Corporate Affairs (MCA) portal may not be admissible as such unless a certified copy of it is obtained after paying appropriate legal fee. Certified copies of public documents can be produced in proof of the contents of the public documents. Calling a witness or presenting other arguments is not needed to prove a public document. Mere production of it is enough for considering it in evidence.

- 4.10 The Professional may rely on public documents to the extent possible to reduce the burden of proving the documents. The competent authority may lay down guidelines for admissibility of specific documents based on context, relevance and authentication requirements. Notwithstanding this, an illustrative list of public documents is provided below
- (a) Revenue and land records.
  - (b) Register of births and deaths.
  - (c) While papers and statistics published by government departments, ministries or other official agencies.
  - (d) Court orders, decrees, judgements and other documents issued by competent courts.
  - (e) Certified copies of certain private documents may also be admitted depending on authentication and contextual relevance e.g. wills, contracts, agreements authorised by a court or a public official or assessment orders of taxation authorities, filings to bodies like the MCA, etc.
- 4.11 Electronic Evidence is required to be submitted as per the legal provisions of the Bharatiya Sakshya Adhiniyam, 2023. While gathering electronic records the Professional may take into consideration the following aspects related to it:
- (a) Regular use of digital technology for recording the transactions. It could be confirmed through the digital record trails.
  - (b) Information/data is maintained in the digital format as regular business activity.
  - (c) Details of specific tools used to collect and analyse the data for submitting as evidence and the limitations of the tools.

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- (d) Use of techniques like hash or other methods to ensure that images and copies of electronic evidence can be validated as original.
  - (e) The test of reproducibility as explained in FAIS 420 on “Evidence Gathering in Digital Domain”.
  - (f) The certificate related to submission of electronic records as evidence.
  - (g) While gathering the evidence from Stakeholder, the Professional may obtain the certification about electronic record from such Stakeholder.
  - (h) Maintaining detailed documentation throughout the entire process of collecting, preserving, and analysing the electronic evidence. This includes documenting the methods used, the individuals involved, the dates and times of each step performed etc.
- 4.12 A “chain of custody” refers to the successive custodians of physical items or documents in their original condition. A chain of custody has to be maintained by the Professional for evidence at hand. Non-maintenance of the chain of custody may jeopardise the admissibility of the evidence before competent authorities.
- 4.13 The Professional would avoid evidence based on hearsay. Hearsay is a concept in the evidence law where the witness has heard someone else say or read a document prepared by someone else and is not the party who created the document or record or was a witness to its creation.
- 4.14 Most of the FAI assignments lead to legal proceedings where the report of the Professional is subject matter of such litigation. The Professional, while conducting the engagement would keep in mind that the report may be subject to cross examination and scrutinized at the appropriate forums. Hence, the Professional would follow the evidence gathering process diligently and make appropriate remarks in the report so that the Professional can defend the report in case of cross examination.
- 4.15 Techniques to gather evidence in case of a fraud: In order to gather evidence, the investigator understands the possibility of the occurrence of a fraud, and if so, how it may have been perpetrated. In such cases, the evidence may need to be gathered to try and identify the individuals

involved to better understand the modus operandi, and where possible, the amount of financial loss.

- 4.16 While the Standard expects the Professional to seek written statements in the case where oral evidence has formed the basis of the inquiry, this may not be practical in all cases. The Professional may not always have the required support from the Client, or the required consent from the suspect to obtain the written statements. It may be prudent in those cases to at least have the Professional record the oral evidence to complete the documentation even though it may not be very reliable or acceptable.
- 4.17 Evidence can be gathered using various techniques, such as:
- testing controls to which identify the weaknesses, which allowed the fraud to be perpetrated.
  - using analytical procedures to compare trends over time or to provide comparatives between different segments of the business.
  - applying computer assisted audit techniques, for example to identify the timing and location of relevant details being altered in the computer systems.
  - discussions and interviews with employees.
  - Substantive techniques such as reconciliations, cash counts and reviews of documentation.

## **5.0 Annexures and Illustrations**

### **5.1 Illustration 1**

- (A) In case, the objective of the engagement is to confirm whether revenue of the manufacturing company is overstated by recording certain fictitious sales transactions, the following documents (Illustrative list) may be considered as evidence:
- (a) Entries in the books of account related to such transactions.
  - (b) Sales invoices and contracts.
  - (c) Goods and Service Tax (GST) records.
  - (d) Customer confirmation with GST details.

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- (e) Bank statements of the company to trace the sales amount collected.
  - (f) Inventory records to ascertain the movement of goods.
  - (g) Production records which identify manufacturing details such as batch number, goods identification number if any etc.
  - (h) Internal sales report and comparing the same with external documents like sales invoices, bank statements etc.
- (B) While documenting the procedure related to gathering and evaluating the documents for evidence purpose, following points may be considered (Illustrative list)
- (a) The procedure by which suspicious transactions are identified for example using the data analysis techniques.
  - (b) The suspicious transactions identified during the interview with stakeholder and details of it.
  - (c) The procedure followed to trace the transaction along with the documentary trail.
  - (d) Evaluation criteria for sales invoices which are considered as evidence.
  - (e) The details of source from where the Invoices are gathered.
  - (f) The procedure by which GST records gathered- whether request for providing the record submitted through application with GST authorities along with prescribed fees.
  - (g) The procedure followed to gather the bank account statement and verified that it is signed by bank officials with bank seal.
  - (h) The transactions recorded in books of accounts or inventory record which is maintained in electronic mode, the digital trails of it, certification from the company officials which is required to be submitted along with electronic records.

**5.2 Illustration 2**

- (A) In a case where the matter of dispute is amount misappropriated through salary payment to ghost employees, (Illustrative list):
- (a) The list of employees who are identified as ghost employees.
  - (b) Identification documents of ghost employees such as photos, PAN, Aadhaar number, address details etc.
  - (c) Bank account numbers where the salary of ghost employees was credited.
  - (d) The detail logs of HR software and payroll system which provide the details about creation of master and processing of salary for ghost employees along with user credentials.
  - (e) Bank statements of the company
  - (f) Bank statements of the ghost employees if provided by the bank on request.
  - (g) Attendance records with detail logs
- (B) While documenting the procedure related to gathering and evaluating the documents for evidence purpose, following points may be considered (Illustrative list):
- (a) The procedure followed to identify ghost employees. For example, the names of ghost employees revealed during the interview or through the data analysis procedure.
  - (b) The procedure followed to confirm the PAN, Aadhaar number details associated with ghost employees.
  - (c) Procedure followed to gather the ghost employees' bank statements.
  - (d) Procedure followed to gather electronic records from HR and payroll software or from related database.

**Annexure A – Chain of Custody Format**

Chain of Custody Form (Documentary evidence)			
Case number		Evidence number	
Name		Location	
Date			
Asset type (Document)	Date of document	Reason/Action	Received From
Received by	Date	Location	Signature

Chain of Custody Form (Electronic evidence)						
Case number				Evidence Number		
User name				Location		
Date						
Asset type	Manufacturer	Model	Serial Number	Size	Asset Tag	Any other detail
HDD Make	_____	Network collection	_____	Acquired by	_____	
HDD Type	_____	Username	_____	Acquisition Start date	_____	
Asset type	Manufacturer	Model	Serial Number	Size	Asset Tag	Any other detail
HDD Model	_____	Password	_____	Acquisition end date	_____	
HDD S/N	_____	Computer name	_____	Tool used	_____	
Sector Label	_____	Domain	_____	Tool version	_____	
Sector Image	_____	IP Address	_____	Image name	_____	



# Implementation Guide on FAIS No. 330:

## Conducting Work Procedures

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### 1.0 Introduction

- 1.1 FAIS 330 on “Conducting Work Procedures” expects the Professional to conduct work procedures which give direction to an effective execution of the Forensic Accounting and Investigation (FAI) assignment and help achieve its objectives.
- 1.2 The requirements of the Standard are expected to be implemented through:
  - (a) Designing work procedures based on the scope and objectives of assignment.
  - (b) Applying relevant tools and techniques, hypotheses, possibility of fraud indicators, etc.
  - (c) Documenting, communicating and reviewing progress makes the process of executing work procedures effective.
- 1.3 Further, the Standard has indicated how in FAI assignments, a phased approach is quite effective:
  - Phase 1 (Preliminary Review), with a focus on collecting data and evidences.
  - Phase 2 (Detailed Investigation), through interviews and direct interactions with relevant Stakeholders.

### 2.0 Objectives

- 2.1 This Implementation Guide (IG) outlines the manner in which the Professional undertakes the preparation and execution of work procedures for implementing the requirements of the Standard during the course of an FAI assignment.
- 2.2 The IG aims to ensure that there is a meticulous approach in the execution of the assignment, and it is carried out effectively in an efficient manner.

- 2.3 The objective of the IG is to assist the Professional in developing and conducting work procedures in order to comply with the Standards as follows:
- (a) Prepare a complete set of work procedures by ensuring they are directly related to the mandate of the assignment and relevant to its objectives.
  - (b) Execute the work procedures in two phases, where initially (Phase 1) the focus is on gathering limited information and evidence to establish whether there is a prima facie case. Subsequently, (in Phase 2), the focus is to gather all the required evidence to prove or disprove the hypothesis and, where possible, the modus operandi.
  - (c) In the gathering of the evidence, certain tools and techniques need to be deployed and used to highlight relevant fraud risk indicators.
  - (d) Ensuring that basic quality aspects of documentation and communication are maintained and updated when appropriate.
- 2.4 The IG also provides examples and illustrations to help the Professional apply the work procedure requirements seamlessly and effectively through the assignment.

### **3.0 Procedures**

- 3.1 As indicated in FAIS 310 on “Planning the Assignment”, the development of work procedures commences at the planning stage itself, since fraud risk and other key activities have already been conducted at that time. The Professional would therefore take the output from the planning stage as a starting point for developing the work procedures. At this stage the work procedures are finalised prior to executing them in the field.
- 3.2 To execute the work procedures, and as part of Phase 1 (Preliminary Review), the Professional would seek out some specific and detailed information, an indicative list of which is presented below:
- (a) Confirm the initial understanding of the issues, allegations or suspicions.

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- (b) Prepare a timeline of events.
  - (c) Understand the financials and substantial events which would have taken place during the review period.
  - (d) Identify the nature of evidences required to confirm the allegations and possible violations.
  - (e) Identify the sources of potential evidence, such as devices, files, logs and accounts etc.
  - (f) Conduct preliminary public domain searches to get a sense of what is what.
  - (g) Understand the systems and processes followed by the entity – focus on major customers, suppliers, etc.
  - (h) Collect all data and evidence.
  - (i) Perform an overall financial analysis and list potential grey areas.
  - (j) Incorporate past insights into the work procedures to enhance fraud detection and consider fraud risk indicators and “red flags” from FAIS 120 on “Fraud Risk”.
  - (k) Undertake application and testing of hypothesis.
  - (l) Consider undertaking market intelligence procedures, using external help or experts if appropriate.
- 3.3 The Professional may deploy resources with a strategic approach to focus on various aspects of an engagement and simultaneously conduct data documentation review, transaction testing, review of digital evidence, intelligence, and public domain searches, as a combination of Phase 1 and Phase 2, as required in the scope of work.
- 3.4 It is important to note that FAI engagements are dynamic in nature and evolve during the execution as well; therefore, the Professional would be required to be prompt to adapt to the change and accordingly modify the work procedures and methodology.
- 3.5 After the completion of above, Phase 2 (Detailed Investigation), the field procedures may be conducted along with interviews and interactions to arrive at conclusions based on the inferences drawn and evidence gathered.

- 3.6 Analytical analysis and other approaches need to be used including FAIS 410 and 420. Finally, the Professional would interpret and correlate the findings of the work procedures to reconstruct the events and activities related to the case, developing a modus operandi, where necessary.
- 3.7 Documentation of the evidence gathered and the outcome of the entire work procedures and the results in a clear, concise and accurate manner is very important. This should be done as per the requirements of FAIS 320 on “Evidence and Documentation”.
- 3.8 It is to be understood that there may be some assignments not involving Phase 2 since Phase 1 may provide all the evidence required to meet the objectives of the assignment.

For instance, if all the required data sets are provided to the Professional to identify any irregularities in the sales made from a particular location, and if the scope of work does not require the Professional to undertake any interviews, then Phase 2 work procedures may not be required. The Standard provides an illustrative list of the usual Work Procedures relevant in each phase, followed by an explanation of the needs, comprehension, and interpretation of the same with a practical approach.

## **4.0 Explanations with Examples**

- 4.1 **Example 1:** Loan account has turned Non-Performing Asset (NPA) on the books of the Bank and a FAI assignment is to be undertaken by the Professional to prepare a fund trail for the benefit of the bank. In such a case, the following work procedures can be undertaken:
- (a) Conduct a preliminary analysis of the borrower's profile.
  - (b) Prepare a list of related and connected parties for all the current and past directors of the borrower, by considering their other directorships, directors in these companies and also considering the shareholders of the borrowers.
  - (c) Through discussions with management ascertain the reason for the loans turning NPA, gathering a perspective of the business aspects.

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- (d) Analyse the annual financial statement of the borrower and its related parties, (such as Directors, Key Management Personnels (KMPs), relatives of KMPs, associate companies, subsidiary companies, joint ventures, step-down subsidiary companies, etc.) to determine the intent behind the transfer of funds (e.g., to hide or layer). Layering may include changing the nature of assets i.e., from cash to gold & silver, real estate, etc.
- (e) Analyse the bank statement of the borrower and its related parties (as indicated above) to identify all details of the flow of funds – from which account to which, and on what dates.
- (f) Obtain, review and study other relevant information and documents, such as the following:
  - i. Details of Profit & Loss Statements with item-wise details.
  - ii. Details of all bank accounts (bank, branch, account number, date opened, authorised signatories) along with all bank statements.
  - iii. Loan Application, Loan sanction letter and Loan statements details.
  - iv. Loan and security documents.
  - v. Cash flow statements/all cash transactions with details.
  - vi. End use of funds of loans and advances. Details of parties to whom advances were given.
  - vii. Share transactions of group companies and related parties.
  - viii. Income Tax Returns (ITR) of concerned companies and persons to identify the income from different sources,
  - ix. Property details check – ITR, Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI).
- (g) Undertake a detailed comparison of bank statements and Books of Account.
- (h) Any charges registered against the target company, KMP, related companies, etc.

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- (i) Review of minutes of all the meetings i.e., board meeting, annual general meeting, extraordinary general meeting.
- (j) Review of minutes of Joint Lender Meeting (“JLM”).
- (k) Identify the red flags that indicate possible fraud or diversion of funds.
- (l) Use various techniques such as data analytics, digital forensics, asset tracing, background checks, etc. to identify the modus operandi, beneficiaries, and extent of fraud or diversion of funds.

**4.2 Example 2:** Undertaking a review to identify Preferential Transactions, Undervalued Transactions, Extortionate Credit Transactions and/or Fraudulent Transactions as per the regulations of the Insolvency and Bankruptcy Code, 2016 (IBC). In such a case, the following work procedures can be undertaken:

- (a) Understanding the meaning of Preferential, Undervalued, Extortionate Credit and/or Fraudulent transactions
  - Fully understand the meaning of such transactions, exceptions, deeming fictions and relevant time of such transactions.
- (b) Transactions/Events analysis:
  - Analysis of paper documents as well as information in the computer system.
- (c) Financial Statement analysis:
  - Different analytical ratios to identify any unusual change in inflow/outflow.
  - Comparisons of similar transactions with historical data as well as industry trends.
- (d) Document analysis:
  - Check the authenticity of documents – whether they are approved by the defined authority as per the rules/policy.
- (e) Undertake an analysis as per the following (applicable) sections of IBC:
  - Section 43 Preferential transactions:

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- i. Review transactions with potentially suspicious operational creditors with an objective to identify potentially suspicious creditors during the review period.
- ii. Review of Corporate Debtor's notes to accounts with an objective to ascertain any contingent liabilities, guarantees, sureties, etc., of the Corporate Debtor.
- Section 45 Undervalued transactions:
  - i. Review the Fixed Asset Register and Investment Schedule to identify instances of disposal/sale of asset(s)/investment(s) during the review period.
  - ii. Comparison of standard rates / standard cost of inventory with the sales register to identify inventory sold at significantly lower than its standard rate / standard cost.
  - iii. Review prior write-offs and provisions made against debtors, to assess if such transactions tantamount to potential undervalued transactions.
- Section 50 Extortionate Credit:
  - i. List out the loans and borrowings outstanding/taken/paid during the review period.
  - ii. Review the supporting loan agreements and contracts to plot the rate of interest against the identified loans and borrowings, thereby comparing it with the standard rate of interest prevailing in the particular industry.
  - iii. Evaluate whether the terms and conditions of the identified loans and borrowings required exorbitant payments from the Corporate Debtor.
- Section 66 Wrongful and Fraudulent Transaction:
  - i. Review the transactions that could be considered as a possible fraudulent transaction.
- (f) Assess if before the insolvency commencement date, any Director of Corporate Debtors knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in

respect of such corporate debtor and they did not exercise due diligence to minimizing the potential loss to the creditors.

- (g) Additional analysis:
  - Sale of assets at loss to known parties shortly before the commencement of CIRP or before assets turned NPA.
  - Purchase and Sales records/transactions –
    - i. To know bogus/fictitious purchases/sales.
    - ii. To check whether transactions with related parties are carried out at a favourable rate.
  - Whether Related Party Transactions (other than purchase and sale) are carried out on an arm's length basis.
- (h) Loan and/or advances and/or Borrowings:
  - i. To know the Repayment Sequence of secured and unsecured loans to identify any irregularities.
  - ii. Checking whether the loan has been utilized for the purpose for which they were taken.
- (i) Cash transactions/Receipt-Payment records:
  - i. To identify duplicate receipts and payments.
- (j) Employee master and salary records
  - i. Identifying duplicate/ghost employees by analysing the employee master and salary records.
  - ii. To check if a higher salary has been paid to any employee who is a relative/known person or has a relative working in the same company.
  - iii. To know the regularity and disparity in paying salary to normal employees with that of a relative.

**4.3 Example 3:** Management wants a proactive review to be undertaken from a forensic accounting perspective through a Professional on the Inventory area of the Financial Statement. In such a case, the following work procedures can be undertaken:

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- (a) Identify the scope and objectives of the assignment. This may include the type of inventory, the period, the location and the parties involved.
- (b) Matching the vendor invoices with payment made; to see if the correct Goods Receipt Notes (GRNs) were submitted by the store manager to Finance Department.
- (c) Check if there is any abnormal frequency of Purchase Orders (PO) that shows signs of stock embezzlement.
- (d) To verify if the suspected employee has any relatives working in the company to check for collusion, if any.
- (e) In the case of perishable goods and foodstuffs, look for the date of expiry and the date of embezzlement, if any.
- (f) Match the quantity of goods in the invoice with the physical quantity by performing volumetric analysis.
- (g) Check the invoice number. of goods with the same invoice value to find any theft/alteration.
- (h) Check whether intimation was made by the store manager on the day of receipt.
- (i) Check the tagging of stock.
- (j) Get vendor confirmation of invoice received to confirm any short deliveries highlighted in the GRN sent by store department – this could be an attempt to cover up for any for stock theft.
- (k) Check whether shifts undertaken by employees are according to the agreement or not.
- (l) Review any third-party physical verification report prepared during the closure of the financial year.
- (m) Consider the inventory details from the stock statement shared as a part of the Drawing Power statement by the borrower.
- (n) Collect and preserve other relevant evidence from various sources. This may include physical inventory counts, CCTV footage, emails, etc.

- (o) Analyse and reconcile the evidence to identify any discrepancies or anomalies.

**4.4 Example 4:** The Professional is appointed by the management of an entity that has received information alleging that the book debts are potentially non-existent. In such a case, the following illustrative work procedures can could be undertaken:

- (a) Review the accounting records and policies of the entity to identify the sources and methods of recording book debts.
- (b) Evaluate the adequacy and effectiveness of the internal controls and procedures over book debts and assess the risk of fraud or error.
- (c) Examine the supporting documents and evidence for the book debts, such as invoices, contracts, agreements, correspondence, etc.
- (d) Call for balance confirmations.
- (e) Conducting age-wise analysis.
- (f) Perform data analysis and tests like “same-same-same” and “same-same-different” tests on the customer master.
- (g) Thoroughly review the documentation for material movement/deliverables of services.
- (h) Perform detailed ledger scrutiny, ageing and collectability to analyse the periodic (monthly, yearly) movements, during the review period, noting any insightful trends, any unusual patterns, discrepancies or anomalies, any misstatements or irregularities etc.
- (i) Conduct site visits of the trade receivable accounts to check their actual existence
- (j) Perform public domain checks – to understand the business in which they operate, etc.
- (k) Verify the receipts and cross-check with the Bank Statements and the narrations present in the same.

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- (l) Analyse the financial health and performance of customers with significant book debts. Assess their creditworthiness, payment history, and overall financial stability to determine the likelihood of their ability to honour their debt obligations.
- (m) Seek independent confirmations from third parties, such as auditors, banks, or credit agencies, regarding the financial position and creditworthiness of customers with significant book debts. This helps to validate the accuracy and reliability of the recorded debts.

**4.5 Example 5:** A review of electronic data has to be undertaken by a Professional as part of a FAI assignment to identify if there have been any irregularities perpetrated by the employee of an entity (the Target). Following could be the general work procedures to review the emails and data files extracted as a part of the digital evidence:

- (a) Prepare a list of key words based on the understanding of the irregularities perpetrated by the Target, confirming these with the Primary Stakeholders.
- (b) Using the key words, perform analytics using forensic tools on the email traffic to identify trends / patterns / sharp decline in the number of emails / user files to ascertain if any emails / user files were deleted.
- (c) Highlight instances where no emails were identified regarding communication between the Target and the suspected party even though Target was involved in the process.
- (d) Review all the email communications of Target during or around the time period of the processes.
- (e) Review the electronic communications between the Target and the suspected party to:
  - i. Compare the documents as sent by the suspected party to Target with the hard copy documents submitted to ascertain any alterations made such as rates, quotes, description of services etc.
  - ii. Reconcile the sequence of events and timelines to ascertain and identify if there were any exceptions such as

any bids shared by the suspected party with the Target or vice versa, etc.

- (f) Review one-to-one correspondence of Target with the suspected party.
- (g) Review any spreadsheet files (as attachment to the email) in a manner to highlight any hidden sheets or by changing the layout to "Page break preview" to identify any information not easily visible to the viewer.
- (h) Review communications between the target and suspected vendor on day-to-day operational activities for procurement of materials/items, representatives of the suspected party, inter-communications between Target and other employees, etc.
- (i) Review communications of target with addresses that were outside the Company domain (e.g., Gmail, Hotmail, Yahoo, etc.), emails which were marked as high importance, emails where target was or had marked individuals in BCC, emails with blank subject lines, emails present in the deleted folders, etc.
- (j) Perform a focused search on the user files and emails to identify red flags and anomalies through the voluminous data. Two types of keywords i.e., Priority 1 and Priority 2 for the targeted searches can be developed.

**4.6 Example 6:** A company suspects that one of its employees has been leaking confidential information to a competitor. The company hires a professional to examine the employee's laptop and smartphone. The Professional can undertake the following work procedures:

- (a) Identify the laptop and smartphone as the sources of potential evidence and obtain permission from the company to access them.
- (b) Define the scope and objectives, such as finding out what information was leaked, when and how it was leaked, and who was involved in the leak.
- (c) Acquire and preserve the evidence by creating images of the laptop's hard drive and the smartphone's memory card using a write blocker and an encryption tool.

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- (d) Record the serial numbers, model names and other details of the devices and store them in a secure location.
- (e) Analyse the evidence using various tools and techniques. For example, recover deleted files from the laptop's recycle bin and temporary folders, carve out hidden files from unallocated space, crack passwords for encrypted files and accounts, examine browser history and cookies for online activity, scan for malware and spyware that may have compromised the devices, extract contacts, messages and call logs from the smartphone's SIM card and memory card, trace network traffic and connections using packet capture and analysis tools, and compare timestamps and metadata to establish timelines and sequences of events.
- (f) Document every step and result of the analysis in a detailed report that includes screenshots, graphs and tables to illustrate the findings. The report also explains how each piece of evidence supports or refutes the hypothesis of information leakage.

**4.7 Example 7:** A company receives a whistleblower complaint alleging fraudulent expense claims by a senior executive. The Professional is engaged to investigate the matter.

- (a) The procedures performed will be tailored to the specific allegations in the whistleblower complaint. This might include examining expense reports, supporting documentation (receipts, invoices), travel records, communication logs, and conducting interviews with relevant personnel (including the whistleblower, if appropriate, the accused executive and subordinates).
- (b) The timing of procedures will be influenced by the urgency of the allegations and the need to secure potential evidence. Initial procedures might focus on preserving relevant electronic data and documents before individuals become aware of the investigation. Interviews might be sequenced strategically, starting with the whistleblower to gather initial information and then progressing to others.
- (c) The extent of procedures will depend on the initial findings and the level of corroboration required. If initial examination reveals discrepancies, the scope might be expanded to

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review a larger sample of expense claims over a longer period.

- (d) If the whistleblower provided specific documents or information obtained from third parties (e.g., vendor statements), the Professional may need to assess the reliability and relevance of this information. This might involve verifying the authenticity of the documents and potentially contacting the third parties to corroborate the information.
- (e) All procedures performed, evidence obtained, and conclusions reached during the whistleblower investigation will be appropriately documented. This includes documenting the initial complaint, the scope of work, the procedures performed, interview notes, analysis of expense reports and supporting documents, and the final findings. This documentation will be required for supporting any potential legal or disciplinary actions.

Throughout the investigation, the Professional will maintain professional skepticism and consider the possibility of fraud. If indicators of fraudulent activity are identified, the procedures will be expanded to investigate these indicators and determine the nature and extent of the fraud.

Further, following points may be considered with regard to safeguarding of the Whistleblower:

- Typical whistleblower policy requires the need to ensure the confidentiality of the whistleblower's identity.
- Protection against retaliation is a cornerstone of whistleblower rights. Policies typically prohibit employers/relevant stakeholders from taking adverse actions against whistleblowers for reporting wrongdoing.
- Whistleblowers generally have the right to report wrongdoing through internal channels (e.g., supervisors, ethics departments) and external authorities (e.g., regulatory agencies, law enforcement) without fear of reprisal.
- If a whistleblower faces retaliation, they often have the right to pursue legal action against their employer.

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- Whistleblowers are typically protected for disclosing information they reasonably believe to be evidence of wrongdoing. This protection usually extends even if the reported concerns turn out to be unfounded, as long as the whistleblower acted in good faith.
- Some whistleblower protection frameworks include provisions for providing support and resources to whistleblowers, such as legal aid or psychological counseling, to help them navigate the challenges they may face.

**4.8 Example 8:** In case of securities market, Professional may be appointed to examine a possible act of fund diversion, or mis-utilisation or siphoning off of assets or earnings of a company whose securities are listed. The work may include an examination of any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company. The Professional can undertake the following work procedures:

- (a) Study relevant SEBI Regulations and provisions in this regard to identify, gather and collect relevant evidences during the engagement.
- (b) Analyse the financial statement of the listed entity and its related parties – Associate companies, subsidiary companies, joint ventures, step-down subsidiary companies, etc. to find if funds are transferred with the intent to siphon off the funds.
- (c) Analyse the bank statement of the listed entity and its related parties – associate companies, subsidiary companies, joint ventures, step-down subsidiary companies, etc., Key Managerial Person (KMP), and Relatives of KMP to find the flow of funds.
- (d) Conduct interviews with senior management and employees of the listed entity and make notes of examination in this regard, which would be part of the professional's working papers.

# Implementation Guide on FAIS No. 340:

## Conducting Interviews

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### 1.0 Introduction

- 1.1 Interviews are a way of gathering evidence and information and also an effective means to corroborate the understanding of the documentary evidences. Written interview statements are used to record the information gathered making it an integral element of the work procedures.

### 2.0 Objectives

- 2.1 This Implementation Guide (IG) outlines the considerations for the Professional conducting interviews during the course of an FAI assignment.
- 2.2 The overall objective of this IG is to enable the Professional to conduct effective interviews by understanding:
  - (a) The interview process, including certain key considerations concerning methodical planning, conducting and closing of interviews.
  - (b) The application of good interviewer etiquettes.
  - (c) Using the outcome of an interview in an appropriate manner (e.g., statements obtained during the interview can be admissible before a Competent Authority).
- 2.3 Another aim of the IG is to ensure a meticulous approach is adopted in conducting the interviews, and how these should be carried out in an effective and efficient manner. It will also enable the Professional to conduct the interview with an open mind.
- 2.4 The IG also provides examples and illustrations to help the Professional apply interview techniques in an effective manner during and after the interview.

## 3.0 Procedures

### Planning an interview

- 3.1 Based on evidence gathered (factual or personal proof), an interview strategy must be drawn up and the conversation must be structured. The strategy involves planning the order of topics or submitting the evidence.
- 3.2 There are multiple factors that go into planning and preparation for an interview which the Professional may consider, and which have been set out in the following paragraphs. A few important points to consider at this stage are as follows:
  - (a) When planning an interview, the interviewer may wish to be aware of interviewee classification, such as a whistleblower, witness, information provider, or subject.
  - (b) Understand the purpose of the interview and ensure it is aligned with the aim of the investigation and not different from it.
  - (c) While planning an interview, explore all the hypotheses, including the possibility that the subject is innocent.
  - (d) Objective of an interview normally is to validate existing facts and also to seek additional information, where possible. Interviews also help in understanding the prevailing systems and processes adopted by client.
  - (e) An interview is neither to confirm what the interviewer thinks might have happened, nor to coerce the interviewee into providing information or confessing.
  - (f) An interview is a safeguard against false confession and errors of justice. Interview assists communication and the flow of information and, consequently, the detection of crime, violation, or breach.
  - (g) The interview objective, hypothesis and role of the interviewee in the matter at hand, are essential to understand before developing an interview plan.

- (h) An interview plan provides a framework on which to base the questioning, including the sequence and outline for questions on the activities or events.
- (i) The information obtained prior to the interview may be collated and analysed. If the information gathering process is incomplete, it may lead to an interviewee giving false or evasive response.
- (j) Linking the interview plan with certain specific hypotheses helps to make it an effective interview.
- (k) Prepare a set of possible questions to be asked. These questions may undergo change based on answers provided.

### **Interview participants**

- 3.3 Interviews are normally conducted with the help of an interview team. The ideal team should not have too many team members in order to avoid the impression that the interviewee is being interrogated. This in turn could negatively affect the willingness of the interviewee to testify.
- 3.4 One-on-one interviews are generally discouraged. The interviewer should endeavour to create an empathetic and respectful relationship with the interviewee, not an emotional one. But there is no hard or fast rule in this regard, and each situation needs to be evaluated on its own merits.
  - (a) Interview Team: It is necessary to understand the roles and responsibilities of the interview team. The Professional conducting the interview (“Lead Interviewer”) is responsible for the interview and provides direction to the interview. For example, the Lead Interviewer may take some of the following approaches:
    - Follow an outline questionnaire to structure the interview; however, this is more to get clarity on the subject matter rather than for using it as a checklist. The success of an interview is usually linked to the agility, experience and flexibility of the Lead Interviewer to modify the questions and pose the right follow-up questions, depending on the prevailing situation and response from the interviewee during the interview.

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- Consider conducting a mock interview or role rehearsal, to prepare for the interview. This may help the Lead Interviewer to better prepare for unplanned situations which may arise during the interview.
  - Invite a co-interviewer. The co-interviewer generally takes comprehensive notes of the meeting and also supplements the questions asked by Lead Interviewer, when given the opportunity. It is also the responsibility of the co-interviewer to manage and organize other documentary evidence and exhibits that may be required during the interview.
- (b) Interpreter: Clear and unambiguous communication between the interviewer and the person being interviewed is a prerequisite for the successful completion of an interview. It may be necessary to consider the need for an interpreter in some interviews. The Professional would seek an interpreter who is aware of their obligation to translate accurately in a confidential manner.
- (c) Stakeholder Representatives: The Lead Interviewer may choose to have a senior representative of the Primary Stakeholder present in the interview as an observer. Where the interviewee is a woman, there needs to be another woman present in the interview, either as a senior representative, or otherwise, as required in the Standard. For example, the Lead Interviewer may choose to invite a senior representative from the Client's human resources function for a subject interview.
- (d) Interviewee Representative: The interviewee may choose a representative to accompany them. These are usually individuals nominated by the interviewee and belong to ER/HR or any other independent function.

### **Location of the interview:**

- 3.5 Depending on the number of participants, a meeting room of the appropriate size must be arranged. The choice of the room must consider the protection of confidentiality as well as privacy. An interview in the interviewee's office is discouraged.

- 3.6 Once the persons for the interview are determined, it is good practice to send a formal written invite to the interviewee, stating the time, place and purpose of the interview. When selecting a location, the Lead Interviewer may want to consider the following points:
- (a) Selecting an interview location conducive to conducting business and interview timings convenient to all parties, preferably during business hours.
  - (b) Factor in the availability of amenities and space in the location (such as sufficient lighting, plug points, etc.) to enable smooth conduct of the interview. This also applies to interviews conducted in virtual mode such as through Zoom or Team meeting Apps.  

For example, if an interview is being conducted virtually, the Lead Interviewer may ensure the availability of the appropriate tools and connectivity.
  - (c) It is also recommended to conduct interviews under conditions of privacy.
  - (d) It is recommended not to conduct interviews of more than one interviewee at a time, since the answers of an interviewee most likely influence the other.
  - (e) While scheduling back-to-back interviews, it is good practice to estimate the time that will be required for an interview to avoid inconvenience. The Lead Interviewer may also factor in breaks required between long interviews.

**Conducting an interview:**

- 3.7 Interviews are dynamic and there cannot be a standard process that fits all situations. To increase the credibility and admissibility of the interview evidence, the same should be gathered by the Professional without any inducement, threat or promise. The following points may be considered when conducting an interview:
- (a) Invitation for interview: When summoning or inviting personnel to interviews, the interviewee shall receive information regarding the background for the summons and why he/she has been asked to provide information, the scope of the investigation, and the

## Implementation Guide on Forensic Accounting and Investigation Standards

procedure of verification on the information provided during the interview and how the minutes from the interview will be used. The interview has the right to solicit advice.

- (b) **Starting an interview:** The interview may begin with an introduction by the Lead Interviewer and other persons present. The Lead Interviewer should be courteous, impartial, patient, polite but firm, and converse in the language which the interviewee understands. This may help develop a rapport with the interviewee and make the interviewee feel comfortable. The Lead Interviewer may explain the purpose of the interview, lay the ground rules and explain the rights of the interviewee before the interview begins. At this stage, it is good practice to ask the interviewee if they understand the procedure intended to be followed. See **Annexure A** for a template for pointers on how to begin an interview.
- (c) **Obligation of Interviewee:** In most cases the interviewee has a responsibility to co-operate and contribute to the clarification of factual circumstances being sought in an interview. Interviewees are usually obliged to respond to questions from the interviewer regarding the performance of their work tasks and other issues related to employment in an organisational setup. It is in their best interest to use the opportunity to submit their perspective on the subject matter.
- (d) **Note taking:** It may be decided at the beginning of the interview whether to take notes or not. As a good practice, it is advised that the Professional take continuous notes during the interview process. Comprehensive, objective, accurate and relevant interview notes that capture the key discussions during the interview may be used as a work paper. The notes shall be presented to the interview for verification.
- (e) **Consent:** The interviewer can seek informed consent to use and share information provided during the interview by the interviewee.
- (f) **Audio or Video recording the interview:** The interview can be recorded only with the prior consent of the interviewee. Such consent may also be noted on the audio or video recording;

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discrete recording is inadmissible as evidence before Competent Authorities.

- (g) Confidentiality: The Professionals needs to work towards maintaining confidentiality of interview information. The Professional may exercise due discretion at the time of sharing any evidence or information gathered during the course of other interviews or other work procedures. It's better if any document shared with the interviewee at the time of interview is a copy and not the original. In case the engagement is covered by legal privilege, the Professional may consider obtaining appropriate advice and guidance from the attorney or counsel for conducting the assignment.

3.8 A few good practices to be considered by the interviewer:

Good Practices	Rationale
Keep an open mind	Do not assume either guilt or innocence: Interviewer role is to gather the facts in an impartial way.
Stay in control	Stay in control of both of the interview and of yourself. Do not let yourself become irritated or angry by insolent, insulting or aggressive comments from the interviewee. Patient, polite insistence will normally overcome these difficulties if the interviewee realises it is having no effect.
Ask the right questions in an open and cognitive way	Through the usage of open-ended questions, the lead Interviewer encourages the interviewee to give a full response, by providing an uninterrupted account of the events. The interviewer should remain silent until a response is received.
Ask the right questions in the right sequence	The order in which questions are put is important otherwise the record of the interview will be difficult to understand and follow the sequence of the events and it could lead to claims of a deliberate attempt to confuse the interviewee.
Do not reveal the extent of your knowledge	It can be a temptation to tell an interviewee under suspicion how much you know about their activities in the hope they will be unnerved to such an extent that

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Good Practices	Rationale
	they make an admission. This is likely to give the interviewee an opportunity to explain their actions if they know exactly how much you know.
<b>Physical Scenario</b>	When possible, the interview should be held in a physical location where the interviewee feels comfortable and secure, as well as where there is minimum hinderance to their freedom. Another basic rule is to conduct interviews under conditions of privacy. Ideally, an interview should take place in an environment that can be controlled by the interviewer.
<b>Maintain eye contact</b>	Interviewer should maintain eye contact with the interviewee as much as possible throughout the interview process. It creates comfortable environment and facilitates the flow of information during the interview process.
<b>Emotions</b>	Interviewer should not convey emotions such as excitement during the interview process or while taking interview notes.
<b>Opinions</b>	Interviewer should avoid making notes regarding your opinions or impressions about the interviewee.
<b>Questions</b>	Interviewer should not prepare a list of predetermined questions to ask the interviewee. Flow of the interview should be free and not restricted with predetermined questions. However, interviewer can develop a list of key points or key events to cover during the interview process. Interviewer should not provide list of key points or key events to the interviewee before the interview.

3.9 **During an interview:** The interview may proceed in the following phases.

- (a) Introduction and Building Rapport - Interviewer shall create an empathetic and respectful relationship from the outset. Explain the reasons, background, rights, formalities, and procedures for the interview, including audio/video recording information.

Establish the relevant ground rules and ensure the interviewee understands all requirements. This stage lays down the foundations for the interview, enabling the interviewer and interviewee to develop a shared understanding of the interview and its dynamics.

- (b) Initial dialogue - The interviewer may start with a dialogue to seek a general understanding at this stage. This phase may begin with broad, open-ended questions, and then proceed to more detailed questions to ensure all aspects of the situation are understood. Open-ended questions are usually formulated using: Who, Why, Where, What, When, for e.g.:
- “Can you tell me...”,
  - “Describe for me...”,
  - “What did you do next” or
  - “What happened next?”

This phase requires the interviewer to actively listen to the shared information without intervening when the interviewee is speaking.

- (c) Review and Repeat - The Lead Interviewer may review the interviewee’s answers with them to clarify their responses. Repeating a summarized version of the account provided by the interviewee, and getting a confirmation from the interviewee about the factual accuracy, helps in confirming the Lead Interviewer’s understanding. It is also recommended to allow the interviewee an opportunity to add on to the information collected on a topic before moving on to the next. The question “Do you have any additional information with respect to policy violations and/or concerns?” can be used for such purpose.

**Closing an Interview:**

- 3.10 At the end of the interview, it is recommended that the Lead Interviewer conclude the interview by keeping the following in mind:
- (a) Provide an opportunity to the interviewee to document any additional information and concerns, which may be relevant to the investigation.

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- (b) Provide a preferred mode of contact to the interviewee to remain in touch, in case the interviewee wishes to share any additional information later.
- (c) Give assurance to the interviewee regarding any privacy concerns and preserving the confidentiality of the interview, especially those who have requested anonymity (e.g., whistleblower, witness, etc.).
- (d) Review all written statements taken, with the interviewee being invited to sign their name at the bottom of each page and initial any mistakes that have been corrected. All others present may also sign each page. In cases where this may not be feasible (for example in an interview conducted in virtual mode), it is good practice to obtain a signed copy of the statements at the earliest possible.
- (e) Note that such signed minutes and statements can be used as evidence. The interview notes need not be verbatim or in question answer format, but must capture the relevant information in a precise and clear manner.

### **Post Interview Evaluation:**

- 3.11 After completion of the interview, the interviewer may wish to evaluate the whole interview with a view to:
- (a) Determine whether any further action is necessary
  - (b) Determine how the interviewee's account fits in with the rest of the investigation.
  - (c) Reflecting on the interviewer's coverage.

### **Documentation for Compliance**

- 3.12 The following are general characteristics of an interview that Interviewer shall consider throughout the interview process:
- (a) Logical structure of the interview process which should be based on the chronological order of events.
  - (b) Unstructured production of the facts and information by the interviewee should be allowed by Interviewer and should be

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examined by professionals independently to corroborate the facts.

- (c) Quantity of details obtained during interview process should be considered by Interviewer to get into any conclusion.

3.13 The following are specific characteristics of an interview that Interviewer shall consider throughout the interview process:

- (a) Description of actions, interactions and emotions involved during the interview process should be properly documented by Interviewer in their detailed notes.
- (b) Interviewer should consider unusual details mentioned by the interviewee during the interview process. Interviewer should consider that these statements can be fabricated by the interviewee to deceive the overall FAI process.
- (c) During the interview process, the interviewee can admit lack of memory in front of the Interviewer. Identified interviewee, however, generally will not admit a lack of knowledge about certain details and events because interviewee wants the interview to be as complete as possible.
- (d) interviewee wants to project honesty and may not want to correct themselves because, in their mind, doing so would give the appearance of deceit.

## 6.0 Annexures

### Annexure A - Starting an Interview

#### Template on how to start an interview for a non- legally privileged case

My name is {name} and I am {role}. With me is {name} who is {role}. We are conducting this discussion today to gather facts about {matter at hand}.

The interview is/is not being recorded.

This is only a fact-finding exercise. On the basis of the facts established in our discussion today and other work procedures, we will be issuing a fact-finding report to the relevant Stakeholders, who shall be responsible for determining what, if any, action needs to be taken.

This is a confidential discussion and you are requested to not share the topics discussed today with anyone.

At the end of the interview, we will be taking a written statement of the summary of the discussions (or, sharing a copy of the minutes of the meeting for your confirmation.) Your organisation's Code of Conduct (or equivalent documents) requires you to be forthright, honest and co-operate with the Investigation. You are expected to speak only the truth, and if it's established later that you have not been honest and truthful in your replies, this may be held against you.

After the interview today if you wish to share any further details, you may contact {me} / {point of contact}.

It is {date and time} and we are conducting this meeting at {location}

Do you understand? Do you agree to provide accurate information? Do you have any questions?

Let's start with your name and role in the organisation.

{The interviewer may then ask open ended as well as focused questions that would meet the objectives of the interview}

**Annexure B – Interview Minutes**

Template for minutes of interview for a non- legally privileged case

<b>Case Reference.:</b>	
<b>Name and role of the Professional:</b>	
<b>Date:</b>	Time start:                      Time End:
<b>Name of the Interviewee:</b>	
<b>Others Present and their role in the interview:</b>	
<b>Witness(es), if required:</b>	
<b>Location:</b>	
<b>Minutes of Interview:</b>	
Declaration that the Interviewee has not provided any information / evidence under coercion, threat or inducement.	
<b>Signature of Interviewer and other attendees:</b>	<b>Signature of Interviewee:</b>
<b>Annexure/ Exhibit (as required)</b>	

### **Annexure C - Interviewer Qualities**

An interviewer may consider some of the following qualities (where appropriate):

1. Be a good listener
2. Be a good observer
3. Be patient
4. Not get irritated

They are able to bond and create a relationship with the subject. It is the most critical component of communication in law enforcement. Auditors must be able to dissociate themselves from their feelings towards people whose lifestyles they may not agree with, and who are suspected of committing crimes repugnant to the Auditor. The Auditor must at times draw upon their own life stories to create a bond and to demonstrate to suspects and witnesses that they share common interests and life stories. These strategies of bonding allow suspects and witnesses to feel more comfortable with the interviewer. As such, suspects and witnesses are more likely to speak with an interviewer.

They display empathy when appropriate. Interviewers must be able to demonstrate to the suspect or witness that they are able to relate with a deep and emotional understanding of what the subject has been through, is going through at the moment and will potentially be going through in the future. This ability will allow subjects to sense a bond from someone who cares about their plight. Interviewers must take care not to assume that they have experienced exactly what the subject has experienced, or feel exactly what the subject feels. Interviewers should instead state how they think the subject would feel in that situation. Interviewers may also relate their own stories to the subject, but should be mindful not to one-up the subject or try to equate their story to the situation in which the subject finds themselves.

They actively listen to what the subject says. Interviewers must listen. As mentioned previously, good interviewers must listen to every word. This, at times, is difficult when interviewers are also trying to satisfy essential elements of a charge, or gather information they need for a complete understanding of the subject's involvement in a case. Interviewers must focus on every word that is said, and know that each word is spoken by the subject for a reason. The inclusion of a specific word may seem innocuous, however at times it may have intrinsic meaning that should be explored by the interviewer. Too often

interviewers are not focused on what the subject is stating, thereby dismissing the true meaning.

They are able to ask the right questions to achieve their goals. Interviewers must understand what their goals are and listen to the information the subject is relaying to them. When appropriate, the interviewer should recall what information has been missed, or what needs to be clarified, and then add the details through well-articulated, open-ended questions that are understood by the subject. Interviewers, while listening to the subject, should note questions as they arise, so they will not forget the questions when it is time for them to be asked. Investigators should also consider writing down key questions before the interview even starts. As the subject speaks and answers the questions, the investigator marks off the question so it is not asked at the end. Not repeating questions is a way to display to the subject that the interviewer has been listening. Subjects will express frustration when the interviewer asks questions after the subject has provided information that would qualify as the answer.

They display confident and appropriate body language. While we know that interviewers must be aware of the body language of the subject, it is equally important for the interviewer to be aware of their own body language, and the information they are transmitting to the subject. Interviewers must be aware that their body language may project their own negative emotions, such as boredom, disgust, anger or fear. Interviewers must project a body language that exhibits confidence. This will demonstrate to the subject that they are able to rely upon the interviewer, or that they ought to consider being truthful to the interviewer. Likewise, interviewers should show interest and respect to the subject. This can be achieved through body language that demonstrates empathy through nodding, a concerned look and leaning in. Conversely, investigators should monitor their own body language so they don't project emotions that ought to be concealed. At times this can be an act put on by the interviewer to conceal these negative emotions, but this skill is part of being an interviewer who is committed to receiving information that others may not be able to receive.

They use gestures. Interviewers should gesture with their hands to explain points. This part of normal conversation helps to 'normalize' what, to the subject, is likely a scary and unforgettable experience. Gestures should be in keeping with normal conversations and should be clearly non-threatening.

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They maintain eye contact. Most subjects subconsciously equate eye contact with active listening. Eye contact can at times be unnatural and, if inappropriate, can lead some subjects to become stressed. Such eye contact is unnatural and may appear to a subject as somewhat creepy. Eye contact should be natural and focused in a non-threatening way. Much like with body language, interviewers must be aware of the need to break away from eye contact if the subject indicates that they are uncomfortable and need time away from the interviewer's eye contact. Usually, subjects will want eye contact as confirmation that the interviewer is listening and is giving them the respect, they crave.

They show appropriate enthusiasm. As well as professional demands, interviewers have personal demands that may at times diminish the interviewer's enthusiasm. A case may be one of the least important cases the investigator is working on. Interviewers must be aware of these feelings and develop strategies to help them avoid looking and acting unenthusiastic in the interviews. Interviewers should state that the case is important, and that they want to get the truth and require the help of the subject to do so. Showing enthusiasm relies upon demonstrating the previous traits. If these traits are followed, the subject will believe that the interviewer is enthusiastic about their case and is treating the case as serious.

They are non-accusatorial. Regardless of the situation, the interviewer should exhibit neutrality about the behaviour of the subject. At times this will be hard to do, but the interviewer must always be mindful that people are reluctant to talk to those that are accusatorial. Subjects are much more likely to talk to interviewers who project respect for the subject by treating them as an equal.

They display interest in the case. So often, interviewers may lack faith in the case. They may believe that the victim or witness is lying and that the case has no merit. Interviewers may also believe that the case, while important, is unsolvable. However, interviewers must be aware that any case is solvable, given the right conditions. Sources may come forward or forensic evidence may appear that pushes forward what was previously considered an unsolvable case. Interviewers must always consider how they want to appear if the case is presented in court and the interviewer's negative attitude is revealed

# Implementation Guide on FAIS No. 350:

## Review and Supervision

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### 1.0 Introduction

- 1.1 This Implementation Guide (IG) for FAIS 350, on “Review and Supervision” is an integral part of the FAIS operational framework. This is separate and distinct from the quality control covered in FAIS 610 on “Quality Control”. The purpose is to ensure that the objectives of the engagement are achieved, and the work deliverables meet the Standards defined in the engagement letter.
- 1.4 Supervision involves directing the efforts of the engagement team in accomplishing the objectives of the engagement and determining whether those objectives are being accomplished as planned.
- 1.5 Elements of supervision include guiding team members, ensuring the availability of a clear communication channel to report and track issues, concerns, and their disposal. The extent of supervision appropriate in a given instance depends on many factors, including the:
  - (a) Scope of Engagement.
  - (b) Nature and complexity of the subject matter.
  - (c) Experience and competence of the engagement team.
  - (d) Work procedures to be performed.
  - (e) Internal quality control policies and procedures.
  - (f) Type and nature of evidences to be gathered.
  - (g) Significance of findings including their financial impact.
- 1.6 The review plan may seek to maintain the required levels of quality as applicable to the assignment and create an open environment within the engagement team (including transparency with two-way interaction etc.) to allow smooth functioning and interaction. The plan may include check points to determine the nature, timing and extent of such direction, supervision, and review.

## 2.0 Objectives

- 2.1. The objectives of this IG are to provide guidance on the aspects of review and supervision to ensure that:
- (a) the work procedures are being performed effectively and efficiently in line with the terms of the engagement, applicable laws and regulations, if any. Details of the terms of engagement are available in FAIS 220 on “Engagement Acceptance and Appointment” and applicable regulations are referred to in FAIS 130 on “Laws and Regulations”.
  - (b) the process of gathering evidence, information and data is objective, comprehensive and reliable to help in achieving the objectives of the assignment.
  - (c) the assignment timelines are monitored as per the plan, updating the plan as necessary, based on work completed and resources allocated and also to reflect any change in approach.
  - (d) the procedures performed, the evidence gathered, and the documentation prepared during the course of assignment are evaluated to ensure their adequacy and appropriateness to derive necessary conclusions in line with FAIS 320 on “Evidence and Documentation”.
- 2.2. The IG also provides examples and illustrations to help the Professional apply similar work procedures which may be relevant to the circumstances of the engagement.

## 3.0 Procedures

- 3.1 Review and supervision are effective when there is clarity among team members of the engagement regarding the assignment objectives and their roles and responsibilities. Due to the confidentiality and sensitivity of the assignments, information is shared on a need-to-know basis. However, certain relevant information is shared regularly, especially information covering matters which may affect the nature, extent, and timing of work procedures the staff needs to perform (such as background information of the entity’s business) as it relates to their assignments.

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- 3.2 The work performed by engagement team members may be reviewed on a sample basis to determine whether it was adequately performed and to evaluate whether the flow of information, starting from evidence gathering to analysis to deriving conclusions is consistent and also to ensure that both outliers and apparent contradictions have been satisfactorily addressed.
- 3.3 The Professional responsible for review may consider the following:
- Whether the assignment documentation adequately covers the services Professional is engaged to provide.
  - Nature of business carried on by the organisation.
  - Whether the storage of evidence (physical or electronic) and the documentation is as per established protocols.
  - Whether the rules for Read/Write/Retrieve etc., of electronic evidence are clearly defined, and any access is provided as per these rules.
  - Protocols are defined for preservation and retention of evidence and documentation after completion of the assignment with clear allocation of these responsibilities.
  - Work products/deliverables/output and the supporting assignment documentation is appropriately reviewed before any report is shared with Stakeholders.
  - All the assignment documentation is reviewed before finalisation and sign-off.
- 3.4 The Professional may delegate aspects of the documentation review responsibility. The responsibilities for reviewing documentation may be agreed during assignment planning. The nature, timing, and extent of the review of the assignment documentation that is appropriate in each instance depends on many factors, including the complexity of the subject matter, the nature of the services, the experience and competence of the person preparing and reviewing the documentation etc.
- 3.5 To determine the extent of supervision necessary for engagement team members to perform their work as directed and to form appropriate

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conclusions, the Professional and other supervisory staff may consider the following activities:

- Nature of the organisation, including its size and complexity.
- Nature of the work assigned to each engagement team member, including the procedures to be performed, the controls or accounts to be tested and any interviews to be conducted.
- Experience and competence of each engagement team member. In case required competence is not available within the team, the Professional may seek assistance from an Expert as per FAIS 230 on “Using the work of an Expert”.
- Nature, size of data and an assessment of any tool required to process the data.

3.6 The review concentrates on the appropriateness and overall completeness of the assignment documentation and its ability to support the work performed and report findings.

3.7 The purpose of review is to determine whether:

- Work procedures are performed to a satisfactory level, and meet applicable regulatory or professional standards.
- Documentation adequately reflects the work performed, findings, conclusions and meets the requirements of FAIS 320 on “Evidence and Documentation”.
- Work output/deliverable are relevant, objective, factual, accurate, clear, easy to understand, and logical.
- Information and data used has been validated and cross referenced for completeness and accuracy.
- The legal and regulatory considerations related to collection, processing and retention of information and data are met.
- Services are performed in line with the engagement letter.
- No type of positive or negative assurance is included in the report.
- Review of the relevance and reliability of evidence gathered in reference to the hypothesis has been completed and any

necessary changes have been made including rejecting or adding new or alternate hypotheses as appropriate to FAIS 140 on “Applying Hypotheses”.

## **4.0 Explanations**

4.1 To further explain the procedures which may be relevant to undertake when performing the Review and Supervision procedures, the Professional may wish to consider some of the following checklist items:

### **Review**

- Review process may be continuous throughout the assignment and not solely related to the final work product/product/deliverable. The process includes meeting the requirements of FAIS 250 on “Communication with Stakeholders”.
- Conduct regular update meetings with the engagement team to discuss progress and any issues, particularly of a significant nature. This discussion may include any significant changes to the overall strategy and plan, or planned work procedures.
- Include one-off sessions with Experts or seniors to provide guidance and clarify doubts of the team members where appropriate.
- Post completion of assignment, study work performed for best practices to identify improvement areas for future.

### **Supervision**

- Visit the engagement team locations as deemed appropriate and meet with supervisors and the firm’s Experts.
- Speak with engagement team members and direct, supervise and review their work.
- Whether there is timely availability of appropriate documents and information, or if there is an expected delay, how to bridge that gap through appropriate escalation process with concerned stakeholder as per agreed communication protocol.

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- 4.2 Reference may be made to the collection, storage, retrieval and retention of evidence and other assignment documentation as enunciated in FAIS 320: Evidence and Documentation.
- 4.3 The Professional may undertake a review of the documentation for completeness and check for some of the following checklist items:
- Minutes of review meetings.
  - Disposal and closure of Items and concerns raised during the review.
  - Sources for data validation used in the work procedures including external data sources as well as reports from Experts or Agencies involved in the process.
  - Information and documents stored in the digital folders maintained by the team to ensure nothing of importance and in the nature of evidence has been overlooked.
  - Learnings to be carried forward to future engagements including process improvements and other recommendations.

## **5. Annexures**

As explained earlier in this Implementation Guide the extent of the review and supervision process is a function of the complexity of the assignment and the competence and experience of the team members.

An illustrative review checklist is provided below:

<b>S. No.</b>	<b>Review points</b>	<b>Review comments</b>	<b>Target Timelines for addressing review comments</b>	<b>Comments addressed by (Name of team member)</b>	<b>Remark, if any</b>
1	The assignment has been planned appropriately?				
2	The scope of the procedures performed is in accordance with the				

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<b>S. No.</b>	<b>Review points</b>	<b>Review comments</b>	<b>Target Timelines for addressing review comments</b>	<b>Comments addressed by (Name of team member)</b>	<b>Remark, if any</b>
	engagement agreement?				
3	Define protocols related to evidence collection and documentation i.e., access, processing, storage, retention, and retrieval protocols.				
4	Communication of the assignment objectives, the roles and responsibilities of the team members, at the start and during the assignment.				
5	Evaluate if the existing team members have the necessary competence, including exposure to required tools and techniques for completion of the assignment.				
6	Evaluate if the team has all the necessary Tools required for				

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S. No.	Review points	Review comments	Target Timelines for addressing review comments	Comments addressed by (Name of team member)	Remark, if any
	conducting the assignment.				
7	Whether the objectives of the procedures were achieved?				
8	Regular review of relevance of Hypotheses and any changes to work procedure as applicable.				
9	Whether the work performed is adequately documented and supports the findings?				
10	Whether the documentation adequately reflects the work performed and complied with the requirements of FAIS 320: Evidence and Documentation?				
11	Are work procedures of appropriate quality, objective, factual, accurate, clear, logical and easy to understand?				

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<b>S. No.</b>	<b>Review points</b>	<b>Review comments</b>	<b>Target Timelines for addressing review comments</b>	<b>Comments addressed by (Name of team member)</b>	<b>Remark, if any</b>
12	Appropriate and timely escalation is made of Essential and Significant matters in line with FAIS 250 on "Communication with Stakeholders".				
13	In case the work of an Expert was used, it has been adequately documented as per FAIS 230 on "Using the Work of an Expert". Any differences of opinion with the Expert have been resolved?				
14	Is there any open item required to be completed before providing the report to the Client?				

# Implementation Guide on FAIS No. 360:

## Testifying before a Competent Authority

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### 1.0 Introduction

- 1.1 The Professional may be engaged during any legal proceeding or may be called upon by the Competent Authorities to testify on the evidence gathered and reported during the Forensic Accounting and Investigation (FAI) assignment, at which time the Professional is considered to be a “Testifying Professional (TP)” for the purpose of the FAIS.
- 1.2 FAIS 360 on “Testifying before a Competent Authority” explains the finer nuances of testifying and expects the TP to adhere to certain norms of testifying in an FAI assignment.
- 1.3 The requirements of the Standard are expected to be implemented as follows:
  - (a) To ensure compliance with the first five Basic Principles of FAIS concerning the credibility of the TP.
  - (b) To assist the Competent Authority, despite the Primary Stakeholder being the appointing party.
  - (c) To focus on testifying truthfully only on the facts and evidence gathered and in accordance with prevailing legal and regulatory requirements.
  - (d) To devote adequate time in preparing and testifying.
- 1.4 It is important that the TP understands the laws and regulations which are relevant to the assignment, while testifying before the Competent Authority. If appropriate, the TP may consider seeking legal advice prior to testifying before the Competent Authority, especially with regard to the Professional’s constitutional rights and its application while appearing for testimony.

## 2.0 Objectives

- 2.1 This Implementation Guide (IG) outlines the manner in which the TP prepares and testifies before a Competent Authority as per the requirements of the Standard during the course of, or subsequent to completing, a FAI assignment.
- 2.2 The objective of this IG is to assist the TP in preparing and testifying before Competent Authorities in compliance with the Standard as follows:
  - (a) By taking steps required to ensure that the credibility of the TP is not under question.
  - (b) Engagement with the Competent Authority in a manner which ensures full support and duty towards them.
  - (c) Understanding and sharing all the required information, facts and evidences when providing the testimony being sought.
  - (d) Giving full time and attention to the testimony to allow the Competent Authority to perform their duty.
- 2.3. The IG also provides examples and illustrations to help the TP apply work procedures which may be relevant to the circumstances of the assignment.

## 3.0 Procedures

- 3.1 **Duty towards Competent Authority:** Primary duty of the TP, while testifying remains towards the authority before which the TP is testifying, i.e., Court, Tribunal, Authority, Forum, Economic Offence Wing, Enforcement Directorate, etc., and not towards the company which may have appointed him. The TP must not engage in advocacy, i.e., should not use their testimony as an opportunity to promote a particular position or outcome that is favorable to any party involved in the case.
- 3.2 **Scope of testimony:** The TP is expected to limit the testimony to facts and evidences available or gathered during the course of the engagement. Hence, TP must avoid any speculations or making any assumptions that are outside the scope. For example, if the TP is required to provide testimony about a specific financial transaction, that

testimony would be based solely on the evidence and facts available with the TP with respect to such transactions.

### **3.3 Duty of the Testifying Professional**

**3.3.1 Obligation:** The obligation of the TP is to provide testimony in an impartial, objective and professional manner so as to facilitate the proceedings, irrespective of any contractual obligation with the Primary or Other Stakeholders with respect to the FAI assignment for which the testimony is being sought.

**3.3.2 Adequate documentation** of the records which may be required to be presented during the testimony such as, engagement letter, report of the engagement, workpapers including the relevant supporting documents, copies of relevant standards, deposition transcript, correspondence, annexures, exhibits, legal orders, directives and any other documents which may be relevant for the case. The evidence may be used to present the foundation and validity of testimony.

**3.3.3 Providing impartial testimony:** The TP would be involved throughout the case, including performance of necessary work procedures, directing and supervising the team to gather facts and evidence, and would be able to provide an impartial testimony. Involvement during the entire engagement would also equip the TP with a deeper understanding of the case under question.

## **4.0 Explanations with Examples**

**4.1** The whole process of completing the testimony requires adequate preparation and execution in a methodical way. An example of how this may be planned and executed is explained below and may be used by a TP.

**4.2** Understanding the context of the Proceedings: When the Professional is called upon by a Competent Authority to testify, the TP needs to keep in mind the following:

**4.2.1** TP may be asked to file an Affidavit of evidence prior to oral testimony or cross examination. Any wrong statement in Affidavit may tantamount to perjury and hence the Affidavit should be carefully drafted and the facts be cross checked before executing it.

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- 4.2.2 Be familiar with the specific procedures followed in the Court or authority who has summoned for testimony. The procedures may involve a dress code, rules of evidence, examination-in-chief, cross-examination, and re-examination.
- 4.2.3 If any fact is left out in Affidavit of evidence, the TP may seek the consent of the Competent Authority to file it through supplementary Affidavit.
- 4.2.4 Where necessary legal advice may be taken in the relevant area of law to understand the obligations and potential risks involved with the testimony. Legal counsel can assist in understanding the process and related matters including the roles of the various people involved such as the judge, arbitrator, lawyers, and investigators.
- 4.3 Preparing for Testimony: Once the context is understood, the planning process may require the Professional to take the following steps:
  - 4.3.1 Create a timeline of events and a general outline of what is required in the testimony. Summarise the procedure followed for gathering of evidence and the maintenance of chain of custody and related documentation.
  - 4.3.2 Review all relevant documents, records, statements, or any other item of evidence.
  - 4.3.3 Tabulate data regarding the relevance and reliability of evidence as well as the appropriateness and sufficiency of documentation.
  - 4.3.4 Review the relevant laws and regulations that may apply to the findings and conclusions in the report.
  - 4.3.5 Correlate the findings and conclusions in the report with non-compliance of any regulation or law, where applicable and have the findings cross-referenced with the corresponding evidence and documentation.
  - 4.3.6 Explain the significance of each item of evidence with emphasis on how the findings are supported. If an Expert was involved in the Investigation, it may be helpful to take assistance in this process and even review the proposed testimony with the Expert.
  - 4.3.7 While relying on the work of an expert, the TP may document the limitations while expressing his views with regard to the work done by an Expert. For example – while testifying on the damage caused by a

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fire incident, the TP may refer the valuation of damage amount provided by the valuation expert in his report subject to adequate disclosure of scope limitations over the testimony provided by the TP.

- 4.3.8 Notes, documents, and other such matters related to the testimony can be carried and referred to during the testimony.
- 4.4 Preparing for Cross Examination: The opposing counsel has the right to cross-examine wherein, they will attempt to challenge the testimony or highlight contradictions and inconsistencies by posing questions and making suggestions. As part of the preparation for cross-examination, the following steps are suggested:
  - 4.4.1 List the experience and skills of all the team members involved in the process, including Experts employed where applicable so that any aspersions on credibility of the testifying professional can be countered.
  - 4.4.2 Gather data confirming adherence to the FAIS as a whole and the Basic Principles in particular.
  - 4.4.3 Study the report thoroughly to avoid answering any divergent views than the report.
  - 4.4.4 Do a mock run of the testimony to prepare. A legal counsel or a colleague who was part of the case would be helpful in this activity. Alternatively, to minimise any surprises, help can also be taken of a competent person (with court experience) but not involved in the case.
  - 4.4.5 There is sometimes an opportunity for Legal Counsel to conduct a re-examination, to clarify any issues raised during the cross-examination and use the opportunity to reinforce any key points, correct any misunderstandings, or provide further context if needed.
- 4.5 Providing Testimony: This is a formal process and the manner in which it is conducted may vary depending upon the Competent Authority conducting the proceedings. The procedure in a court of law may vary from an Income-Tax Appellate Tribunal or Customs, Excise and Gold (Control) Appellate Tribunal or the Authority for Advanced Ruling in GST. Some good practices to be followed in the course of testimony are provided below:
  - 4.5.1 Listen carefully to each question and take a moment to understand it before responding. In case clarification is required feel free to seek help.

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It may be useful to ask for question to be repeated for better understanding.

- 4.5.2 Do not be in a hurry to respond to a question. TP is entitled to refer the documents to refresh his memory.
- 4.5.3 Maintain composure and take time to answer and provide truthful, accurate and consistent testimony. Be aware that there may be attempts to disrupt the trend of thought and discredit the TP in the following ways:
  - (a) Cast aspersions on personal integrity or highlight past failures.
  - (b) Raise conflict of interest issues.
  - (c) Some questions may be outside the knowledge of the TP. In all such cases passing the question and admitting ignorance is always a better alternative to an incorrect answer. It is acceptable to decline to answer questions under these circumstances.
- 4.5.4 The TP should confine the testimony to the scope of the engagement and avoid making statements not directly relevant to the subject matter, even if provoked during cross examination.
- 4.5.5 In case the TP has any areas of conflict of interest that have a bearing on the proceedings, these must be truthfully disclosed so that the Competent Authority has the information necessary to take a decision on the value of the testimony.
- 4.6 Examples of Cross Examination: Once the testimony is completed, cross- examination is an important part of the proceedings where the counsel has an opportunity to counter the testimony of the TP and present facts that are favorable to the opposite party. It would be necessary for the TP to prepare for the cross- examination as this is where the value of the testimony will be tested. Examples of the nature and scope of cross- examination are provided below:
  - 4.6.1 Present conflicting or contrary evidence to weaken the case.
  - 4.6.2 Bring other professionals or Experts who present an alternative view of the case or present alternative hypothesis to explain the facts included in the testimony.

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- 4.6.3 Pick loopholes in the chain of custody to establish the possibility that the evidence has been tampered with or present conflicting evidence from other sources.
- 4.6.4 Question the source of the evidence or the legality of the collection process.
- 4.6.5 Attempt to weaken the credibility of the TP by looking into past engagements, career records, social media, and other types of open-source intelligence. The purpose of this could be to establish bias or lower the credibility of the TP in the eyes of the Competent Authority.
- 4.6.6 Test the perception, memory, and skill of the TP to undermine the testimony and cast aspersions on the reliability of the testimony.
- 4.6.7 Exploit any inconsistency between the testimony of different individuals made during the proceedings. This is more so when the work is carried out in coordination with Agencies. It is necessary to maintain clarity in roles and responsibilities as well as hand over records at key points of transition in the Investigation and prepare for testimony accordingly.
- 4.6.8 Present public domain information that conflicts with the statements of the TP in an attempt to create doubt.
- 4.6.9 The cross examiner may question the quality and depth of the work done by the TP, along with sufficiency of the information gathered and tested. The cross examiner may also question the team composition used on the engagement with respect to their qualification, skill set and experience.

# Implementation Guide on FAIS No. 410:

## Applying Data Analysis

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### 1.0 Introduction

- 1.1 FAIS 410 on “Applying Data Analysis” expects the Professional to understand the technical aspects of Data Analytics (DA), identify the best tools and deploy the evidence gathering techniques in the most efficient and effective way. The Standard applies to structured, semi-structured and unstructured data, including and not limited to logs, e-mails, text, images and social-media feeds, etc.
- 1.2 Various DA tools and techniques are applied by a Professional conducting Forensic Accounting and Investigation (FAI) engagements. DA is a dynamic area converging with new technologies such as Artificial Intelligence (AI), Machine Learning (ML), Natural Language Processing (NLP) etc. However, the manner of deploying the new technologies is covered in the next Standard, FAIS 420 on “Evidence Gathering in Digital Domain”.
- 1.3 The subject of DA is quite technical in nature, requiring the need for a basic understanding of the technical terms in use. The FAIS 410, in Para 1.3 introduces some of these terms under the heading “Definitions”. This Implementation Guide (IG) elaborates on some of these terms, and also introduces a few others, which are summarised in **Annexure A**.
- 1.4 The requirements of the Standard are expected to be implemented by:
  - (a) Developing and applying a methodical approach, including Data Analysis Plan (DAP).
  - (b) The detailed work procedures are expected to follow an iterative process and apply hypotheses techniques for an effective gathering of evidence.
  - (c) Ensuring certain key protocols of data governance, integrity and data preservation are maintained, on order to protect the relevance and reliability of the evidence.

## 2.0 Objective

- 2.1 This Implementation Guide (IG) deals with practical application of data DA techniques to assist the Professional in carrying out work procedures when implementing the requirements of the Standard during the course of a FAI engagement.
- 2.2 The overall objective of this IG is to provide the Professional with information, approach and illustrations to assist in application of DA techniques and FI tools used in an FAI engagement in testing the hypothesis and supporting the results.
- 2.4. FAI engagements incorporate data pre-processing steps, performing data analytics with consideration, such as data confidentiality, integrity, governance framework etc., along with due attention to certain key FAIS 410 requirements, such as:
  - (a) Establishing framework for Data Analysis Plan (DAP).
  - (b) Procedures which can be undertaken for Data Source Identification, Data Integrity, Data Collection, Analysis and Preservation.
  - (c) Introducing tools and techniques of Data Analytics to assist in Data analysis and Reporting (DAR) process.
  - (d) Test of Reproducibility.
  - (e) Data Preservation.
- 2.5. The IG also deals with performing data analytics on preventive basis to identify fraud indicators or red-flags, which are the predications to most investigation assignments.
- 2.6. The IG also provides examples and illustrations to help the Professional apply similar work procedures which may be relevant to the circumstances of the engagement.

## 3.0 Procedures

- 3.1 **Data Analysis Plan (DAP):** The DAP acts as a high-level blueprint for the Professional to obtain an understanding of the issues under consideration, and how data analysis can be used to address those issues. After getting an adequate understanding of data, one may be

able to develop a DAP for the FAI engagement. This DAP covers the different types and sources of data, the tools required and techniques to be performed in order to obtain the reliable results.

3.2 **Content of typical DAP:** Depending on the engagement and availability of the data and information to the Professional, a sample list of what may be included in the DAP is as follows (indicative list):

- (a) **Purpose:** The expected outcome from the DA test.
- (b) **Hypothesis / Assumptions:** The basis required to put evidence to test. Assumptions to be documented and procedure to be laid down clearly for documentation.
- (c) **Data Source:** Various database places from where data needs to be extracted. All sources to be validated before performing DA.
- (d) **FI Tools:** Details and nature of FI tools (such as Analytical Models / Scripts) used for conducting the hypothesis testing.
- (e) **Data Integrity Checks:** Procedures to check authenticity and reliability of the data set.
- (f) **Work Procedures / DA Tests to be performed:** The set of procedures which needs to be performed to achieve the purpose and will be part of the test of reproducibility. This would include the conversion of unstructured data to structured data.
- (g) **Limitations:** Any expected limitations which may prevail or may be encountered while carrying out DA test. Limitations may only be captured once the data has been understood in detail.
- (h) **Negating Type I and Type II errors:** Procedures to identify false-positives (rejecting the null hypothesis when it is true) and false-negatives (not rejecting the null hypothesis when it is false).
- (i) **Person(s) giving the data:** Name of the team member(s) who extract and share the data for conducting DA tests.
- (j) **Person performing tests:** Name of the team member(s) who will be performing the DA tests.
- (k) **Person reviewing the outcome:** Name of the team member(s) who will be reviewing the outcome of DA tests.

- (l) **Minimum set of fields required in the output:** Since DAP may not be fully executable due to data quality issues, data boundaries etc., certain minimum field requirements may need to be set.

In this IG, an illustrative format of typical DAP has been included to provide an overview of the nature of information to capture in such a document – See **Annexure B**.

**3.3 Data Preparation and integrity:** The data preparation for the DA includes data acquisition and validation, while maintaining its integrity. This includes, but is not limited to, preserving raw extracts in read-only form; performing completeness and accuracy checks against system totals; removing duplicates, correcting format errors, and flagging out-of-range values; maintain logs that capture Data Lineage from extraction through transformation.

- (a) In accordance with the DAP, the Professional reviews the Data Integrity and adherence to Data Boundary, with adequate precautions to ensure admissibility before Competent Authorities. Though it is a good practice to extract data from a back-end database or data warehouse, it may not be feasible in all situations due to certain limitations.
- (b) Irrespective of the process of obtaining the data, the FAI Professional may observe certain precautions to ensure data integrity, completeness and accuracy. This may be done by validating input source, matching control totals, ensuring subtotals match with the original Data Source, reviewing audit trail, doing a control match on current data with past data, etc.
- (c) For example, the completeness and accuracy of balances of general ledger and trial balance obtained for previous years may be validated through reconciliation with audited financial statements; the figures of sales and purchase dump may be reconciled with the balances in the trial balance; the exhaustiveness of current data can be compared with the same data shared in previous reviews.
- (d) Similarly, the integrity of data can be ensured by performing checks between data obtained from back-end and same data obtained from front-end. Various tests such as sequencing check,

blank rows/ columns, chronological order etc. may be applied to check the integrity of data. While performing this exercise, the robustness of accounting software must be kept in mind. And if these checks fail i.e., completeness or accuracy of the data cannot be ensured, then manual procedures may need to be performed as if no accounting/financial system exists.

- (e) For ensuring Data Integrity, the Professional must ensure that the source data obtained has not been tampered with. This may be done by way of:
1. Ensuring the data is extracted in their presence and the same file is shared with the FAI Professional.
  2. Getting access to the ERPs of the client and extracting the required information directly.
  3. Validating input when your data set is supplied by a known or unknown source (an end-user, another application, a malicious user, or any number of other sources).
  4. Reviewing the time stamps of data extraction from the ERP or source systems.
  5. In case external data is provided by third parties which are used in the course of the DA, then an appropriate confirmation may be taken from the external party like banks., vendor etc. with respect to the Integrity of the data.
  6. Any data, held on a computer, storage media or network, which may subsequently be relied on in court, should not be altered.
  7. Where a person finds it necessary to access original data held on a computer or storage medium, the Professional must ensure that such persons are competent to do so and be able to give evidence to explain the actions taken.
  8. By deploying cryptographic hash matching and controlled access log techniques, the Professional can ensure that data integrity is maintained and the data has not been corrupted unintentionally or deliberately.

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9. An audit trail or record of all processes applied to computer-based data should be created and preserved. It is expected that a third party should be able to repeat these processes and replicate the results.
  - (f) Once the integrity of the data is validated, the Professional may prepare the relevant data sets on which analytical procedures are to be carried out, keeping the raw data intact. The data prepared may comprise of the relevant fields which would be essential for carrying out the DA for the relevant assignment.
- 3.4 **Data Analysis and Reporting (DAR):** At this stage, the Professional undertakes execution of all critical data analysis identified in DAP. The Professional is expected to be familiar with the available DA tools, techniques, algorithms/codes/queries/models etc used for the engagement and their relevance to the hypothesis.
- A record of the details of analysis performed may be kept, in line with the requirement of Test of Reproducibility.
- 3.5 **Data Preservation:** Data preservation is critical to the admissibility of DA findings in the Court of Law. The requirement of “Test of Reproducibility” means that the same result can be recreated by following a specific set of steps with a consistent dataset. The Professional would need to ensure that all the Tests of Reproducibility are possible on all the DA done by them. The Professional may be required to provide future access and reference to the DA.
- The Professional may refer to the requirements of FAIS 420 on “Evidence Gathering on Digital Domain” and other legal provisions on the admissibility of the evidence before a Competent Authority.
- 3.6 Some of the commonly known advanced tools available for DA include Knime, ACL, IDEA, SQL, SAS, Python, R, amongst others. Such tools are based upon statistical techniques and require specific training to use them efficiently. Besides, there are many data visualization tools available that have graphic data representation capabilities along with limited data analysis capabilities, such as Power BI, Tableau, etc. This is not an exhaustive list and the purpose is to bring awareness amongst the Professionals on the existence of such tools. The Professional may take decision on the tools and their use in the course of the engagement.

*NOTE: ICAI does not endorse any Data Analytics tool as mentioned in this Implementation Guide and these tools are simply indicative in nature.*

- 3.7 During the course of performing DA tests, the Professional may discover patterns or anomalies or trends, which could be of relevance to the overall engagement. However, upon obtaining initial results from DA tests, the Professional may examine for false results (known as Type I and Type II errors), revise the tests where appropriate and perform iterative procedures until more reliable and satisfactory results are obtained.

For instance, while performing DA tests for potential splitting of purchase orders, the initial results may include some genuine business scenarios, as well, and these scenarios were not incorporated in the initial design of the DA tests.

The Professional is expected to discuss the initial results with the process owner to ensure that these genuine business scenarios are filtered out. It is pertinent to note that results from DA tests by itself may not be conclusive, since the objective of DA work is to primarily assist the Professional in shortlisting areas of concern for greater forensic analysis. Therefore, it's important that the results of the DA tests are subjected to further forensic analysis through a review of supporting documents and evidences. An iterative approach may be required in this regard.

- 3.8 Depending on the nature and scope of the assignment and expected user of the DA, output of the DA may be presented in a format understandable to the recipient and tailored to the needs and objectives of the respective assignment. The Professional may adequately capture the limitations pertaining to DAR process, which may form part of the working papers.

**For example:**

- (a) **Incomplete Data:** If there are any gaps in the data set such as data missing for certain dates, unintended data transfer errors etc.

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- (b) **Missing data fields:** Instances wherein data doesn't comprise of few relevant fields (such as vendor location) basis which certain additional analytics could have been performed.
  - (c) **Data Source limitation:** Instances wherein data could not be extracted from back-end, or audit trail could not be established.
  - (d) **External Data source:** Instances where the data is sourced from external parties, its relevance and the confirmation obtained.
- 3.9 The Professional may gather certain data sets comprising of Personally Identifiable Information (PII) and Sensitive Personally Identifiable Information (SPII), in the form of master data or unstructured data like emails, on which global laws may be applicable. Hence, FAIS 130 on "Laws and Regulations" may be referred to ensure confidentiality and storage of such data in accordance with the applicable rules and regulations.
- 3.10 The Professional may also gather unstructured data like emails, correspondence in word/text files, code and program files, PDFs, social media feeds, web portals, records of chats etc. With advancement in technology, Professionals can now analyse these unstructured data using Natural Language Processing (NLP) and Machine Learning (ML) algorithms. This analysis can help Professionals identify potential fraud, assess risks, and improve the overall review process.

For instance, review of emails could help in identifying communications indicating possible collusion between an employee and a vendor; social media feeds could help in determine employee conflict of interest with the vendor or in vendor organisation; review of chats could reveal information on monetary exchanges between employee and vendor etc.

Additionally, Professionals can use unstructured data to perform sentiment analysis, which can provide valuable insights into an organisation's reputation and public perception. Overall, the use of unstructured data in DA can enhance the accuracy and effectiveness of the work of the Professional, allowing more valuable insights and recommendations to the Clients.

- 3.11 FAI engagements are dynamic in nature. FAI Professional are expected to exercise their judgement while applying the DA tools and techniques.

## 4.0 Explanations with Examples

4.1 An illustrative DA test which may be run by a Professional during a FAI assignment involving allegations in the Procure-to-Pay function, may be as below (indicative list):

- (a) Three-way or Four-way match of quantity and price, i.e., Purchase Requisition (PR) vis-à-vis Purchase Order (PO) vis-à-vis Goods Receipt Note (GRN) vis-à-vis Invoice.
- (b) Invoices booked at the end of Financial Year or end of the Quarter.
- (c) Money trail to trace the flow of funds.
- (d) Significant price variation for the same material (between procurements from same vendor or procurements from different vendors).
- (e) Purchase Order splitting or invoice/ Payment splitting.
- (f) Payment date before invoice date.
- (g) Goods received before issuance of PO.
- (h) Round amounts.
- (i) High value or duplicate invoices/ payments.
- (j) Payments over non-business hours or weekends / holidays.
- (k) Payments processed before the due date (or goods received/work completed).
- (l) Vendor details matching with employee data or customer data.
- (m) Multiple vendors with same details/ coordinates.
- (n) Segregation of duty concerns – e.g., person in charge of procurement is also approving the GRN.
- (o) GRN punched without actual receipt of material (Can be verified through LR reference).
- (p) Payment to non-existent vendor.
- (q) Procurement of inventory in excess of production plan.

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- (r) Procurement from old unconsumed budget of closed project.
- (s) Purchase orders open in spite of project is completed and closed.
- (t) Purchase of short shelf-life material and subsequent write-off.
- (u) Payment done to vendor although advance given to vendor and no further transaction.
- (v) Additional margins earned through higher logistics charges and low base price.
- (w) Invoice number altered at the time of booking to facilitate multiple payment for same invoices.
- (x) Spot rates negotiated in spite of rate contract in place.
- (y) Bank account and vendor name difference.

4.2 An illustrative DA test which may be run by a Professional during a FAI assignment involving allegations in the Order-- to Cash function, may be as below (indicative list):

- (a) Two-way match of price, i.e., Delivery Order (DO) vis-à-vis Invoice.
- (b) Three-way match of price, i.e., Delivery Order (DO) vis-à-vis Invoice vis-à-vis Goods dispatched.
- (c) Four-way match of price, i.e., Customer Purchase order, Delivery Order (DO) vis-à-vis Invoice vis-à-vis Goods dispatched.
- (d) Goods invoiced but not dispatched.
- (e) Goods dispatched prior to invoice date.
- (f) Duplicate invoicing.
- (g) Sales skimming.
- (h) Sales made through dummy employees.
- (i) Sales made over weekends/ holidays.
- (j) Duplicate customer codes with different credit limits.
- (k) Outstanding more than the assigned credit limit.
- (l) Ageing of overdue invoices or long outstanding.

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- (m) Sales booked at the end of the month and sales return in the next month.
  - (n) Payments received from one customer applied against another customer.
  - (o) Multiple customers with the same contact details (email, phone number etc.).
  - (p) Discounts more than the pre-defined limits.
  - (q) Mis-utilization of fund.
  - (r) Round tripping of transaction.
  - (s) Invoice reversed via Credit-note and invoice reraised and money not received from customer.
  - (t) Repetitive credit blocks release of customer.
  - (u) Rate differential credit note issued with original sales invoice reference.
  - (v) Excess credit given at the time sales return due to incorrect price selection at the time of CN processing.
- 4.3 As mentioned earlier, the DA procedures may provide various anomalies. However, there may be a possibility that what the outliers noted, may neither be false positives, and neither be reportable fraudulent anomalies. For instance, there may be a genuine business transaction, wherein payments were made on holidays or payments, or receipt of goods were made before the invoice or PO dates; the advance payment was made to the vendor as per the terms of the contract; deal closure at the end of financial year leading to invoice booking etc. These instances may be carefully reviewed and accompanied by proper approvals and a reasonable business justification for these outliers.
- 4.4 The Professional must apply considered judgement to ensure that these exceptional transactions are justified and necessary documentation is in place to evidence the requisite approvals and justifications for their deviations from the norms.

## 5.0 Annexure A: Illustrative list of DA Technical Terms

S.No.	Term	Explanation
1	Analytical Model / Script	A reproducible set of code, queries, or statistical procedures that transforms input data into analytic outputs.
2	Anomaly	A data point or pattern that deviates materially from an established norm or expected behaviour, warranting further investigation.
3	Audit Trail	A chronological record of system or user activities that enables reconstruction, examination, and validation of the sequence of events surrounding data creation, modification, or deletion.
4	Chain of Custody	The documented and unbroken transfer history showing who has controlled or handled evidence—from acquisition through preservation—to demonstrate its integrity and admissibility.
5	Data Lineage	The life-cycle path of data from original source through all transformations, analyses, and storage locations, enabling traceability and reproducibility.
6	Data Minimisation	The principle of limiting collection, processing, and retention of data to what is strictly necessary for the stated forensic objectives.
7	Data Sanitisation	Techniques applied to remove or mask sensitive or irrelevant elements from a data set while preserving analytic value.
8	Digital Evidence	Information of probative value that is stored or transmitted in digital form and may be

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<b>S.No.</b>	<b>Term</b>	<b>Explanation</b>
		relied upon in legal or disciplinary proceedings.
9	False Positive / False Negative	An observation incorrectly flagged as an issue, and an actual issue that remains undetected, when applying an analytic test.  (NOTE: Also see 3.2 (h), above.
10	Metadata	Descriptive information about data—such as creation date, author, file size, and system attributes—that supports interpretation and validation of the primary content.
11	Personally Identifiable Information (PII)	Any data that can directly or indirectly identify an individual, triggering heightened privacy and security requirements.
12	Cryptographic hash matching	Technique used to ensure data integrity by incorporating the function of hash value which can be matched to compare two data sets.
13	Controlled access logs	Techniques used to track and monitor all access to datasets in a controlled manner.

### 5.0 Annexure B: Data Analysis Plan (DAP)

Test ID	DA Test	Purpose	Hypothesis	Data Source	Data Integrity Check	Limitations	False Positives	Executer	Reviewer
Every test may be given a unique ID	Test which needs to be performed	Expected outcome of the DA	Hypothesis against which DA is being performed	Reference to source from where data needs to be extracted	How to check integrity for the data being obtained	Any expected limitations	Procedures to negate false positives	<<Name>>	<<Name>>
DA#1	Duplicate vendor invoices	To ensure that vendor invoices are not paid more than once	Combination of (Vendor code + vendor invoice no. + invoice amount) is unique	SAP	While downloading data from SAP, make sure: Full year range is considered till date All vendor types are included	In case of report runtime error, you may like to split the report into shorter duration and then merge the reports	Do a sample check of the red flags identified for any possible false positive	<<Name>>	<<Name>>

# Implementation Guide on FAIS No. 420:

## Evidence Gathering in Digital Domain

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### 1.0 Introduction

- 1.1 The Forensic Accounting and Investigation Standard (FAIS) 420 on "Evidence Gathering in Digital Domain" provides guidance to the Professional for the gathering of electronic evidence in the Digital Domain, or DD for short (as defined in the Standard), ensuring that it satisfies the requirements of judicial scrutiny. DD is of volatile nature, and the evidence gathering in this domain is a continuous challenge, requiring the Professional to keep upgrading on various developments underway. The primary understanding and knowledge of the Professional of the DD and its components is assumed along with the Digital Evidence (DE) as these are well introduced and defined in the Standard.
- 1.2 The Standard expects the Professional to recognise the need for a well-planned approach when seeking to gather evidence in the DD. The requirements of the Standard are expected to be implemented through:
  - (a) Having the requisite skills and an overall understanding of the Information Systems (IS) to undertake e-discovery of evidence.
  - (b) Conducting the e-discovery exercise in a process-driven manner and following certain legal precautions and technical protocols.
  - (c) Undertaking some key activities, covering key elements and collecting certain important information.
  - (d) Taking full benefit of available tools and techniques to complete a successful e-discovery exercise.
- 1.3 In the Indian context, the applicable legal and regulatory environment for DE and cybercrimes consists of, but not limited to:
  - (a) The Bharatiya Sakshya Adhinyam, 2023
  - (b) The Information Technology Act, 2000 revised 2008
  - (c) The Bharatiya Nagarik Suraksha Sanhita, 2023

- (d) The Bharatiya Nyaya Sanhita, 2023
- (e) Bankers' Book of Evidence Act, 1891

## **2.0 Objectives**

- 2.1 This Implementation Guide (IG) outlines the manner in which the Professional prepares and executes work procedures when implementing the requirements of the Standard on e-discovery in DD during the course of a Forensic Accounting and Investigation (FAI) engagement.
- 2.2 For this the Professional is expected to:
  - (a) Evaluate the role of DE in DD, supporting the overall FAI engagement objectives.
  - (b) Consider the most appropriate process and procedures to be followed for collecting and analysing the evidence.
  - (c) Consider all the unique risk factors in e-discovery of the evidence and steps required to mitigate these.
- 2.3 Further, the Professional would to use his judgement in ensuring the type and mode in which the DE will be used in the overall engagement.
- 2.4 The IG also provides examples and illustrations to help the Professional apply similar work procedures which may be relevant to the circumstances of the engagement.

## **3.0 Procedures**

- 3.1 An organization's information system may include (indicative list):
  - (a) Email system, file servers and archival databases.
  - (b) Enterprise Resource Planning (ERP) system.
  - (c) Customer Relationship Management (CRM) system.
  - (d) Management Information System (MIS).
  - (e) Financial Accounting System.
  - (f) Human Resource Information System.
  - (g) Document Management System (DMS).

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- (h) Learning Management System (LMS).
- (i) Legal Workflow and Business Process System (LPS).

NOTE: The application and system architecture understanding is required which can be quite technical in nature. It requires the expertise of a Digital Forensic Expert (DFE) to identify, collect, acquire, and preserve digital evidence. See Para 4.1 and 4.2 for detailed explanations.

- 3.2 DE refers to data or information that is acquired, stored, accessed, examined, transmitted, and used in electronic form. DE may be found in the form of (indicative list):
  - (a) Emails, instant messages in an organisation's email system.
  - (b) Electronic records in ERP, CRM, MIS, financial accounting systems etc.
  - (c) Computer files such as documents, spreadsheets, presentations, databases including meta data such as date and time stamps, author information, and file properties.
  - (d) Web browsing history, search queries, cookies collected from a computer or mobile device.
  - (e) Images, videos captured by surveillance cameras or other monitoring devices.
  - (f) Social media posts, comments, or private messages.
  - (g) System logs, audit trails generated by computer systems or networks.
- 3.3 The Professional may consider the following prior to conducting evidence gathering in the DD:
  - 3.3.1 **Understanding of Information System (IS) environment:** This would include a number of steps, such as the following (indicative list):
    - (a) Identifying the relevant hardware and software systems, including their purpose and function in the organization's overall IT infrastructure.
    - (b) Examining the network architecture, including its topology, protocols, and security features.

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- (c) Reviewing the organization's policies and procedures for information security and data management, as well as any applicable regulatory requirements.
- (d) Identifying the location of data storage and backups, and the procedures for accessing and securing that data.
- (e) Reviewing the organization's incident response and business continuity plans.
- (f) Identifying any third-party providers involved in the organization's IT infrastructure and understanding their role in the overall system.

3.3.2 **Understanding risk factors:** The following risks may be involved in e-discovery of evidence, which would require appropriate mitigation steps (indicative list):

- (a) Technical risks such as data corruption, incomplete data collection, inaccurate Data Analysis, and errors in data conversion.
- (b) Legal risks such as violation of data protection laws, non-compliance with data collection requests, and inadvertent disclosure of privileged information.
- (c) Human risks such as errors in data collection or analysis, breach of confidentiality, and intentional destruction of evidence.

3.3.3 **Defining a timeline for E-discovery:** The timeline for e-discovery may vary depending on the size and complexity of the data involved, the scope of the request, and the urgency of the Investigation.

3.3.4 **Use of Experts and appropriate tools:** The Professional would assess the resources needed for e-discovery, including the availability of specialized software tools and Experts if appropriate.

NOTE: The above work procedures mentioned in para 3.3 are technical in nature and requires a senior Digital Forensic Expert (DFE) with experience in handling certain intensive IT Security and Risk roles:

- (a) IT Security Technical and Solution
- (b) IT Security Management
- (c) IT Security Risk and Compliance

See Para 4.1 and 4.2 for detailed explanations in this regard.

**3.4 Use of Documented, laid down procedure:** The Professional may conduct the e-discovery procedures, which are documented in writing to ensure consistency and accuracy. The documented process may stipulate technical as well as regulatory considerations for e-discovery of evidence.

**3.5 Technical considerations for e-discovery:**

- (a) **Data Collection and Preservation:** Use of specialized software tools to preserve and collect data from computers, servers, mobile devices, and other digital devices in the digital domain. This includes preserving metadata such as date and time stamps, file size, and file format, and maintaining the integrity of data throughout the e-discovery process.
- (b) **Data Processing:** Filtering out irrelevant data, converting data to a usable format and indexing the data to facilitate searching and review using software tools.
- (c) **Data Analysis:** Use of specialized software tools to identify patterns, trends, and anomalies in the data.
- (d) **Encryption:** Use of Industry-standard encryption techniques in order to protect sensitive data during transmission and storage and implementing secure key management practices.
- (e) **Data Storage:** Storing data on secure, redundant storage media and implementing data retention and deletion policies.
- (f) **Quality Control:** Exercising quality control checks in e-discovery process to ensure the accuracy and reliability of the data.
- (g) **Search and Review:** Use of software tools to search for relevant information and review the data for relevance and privilege.

**3.6 Relevant regulatory considerations for e-discovery process:**

- (a) **Rules of Evidence:** Compliance with rules of evidence required as per court of law and in particular section 63 of Bharatiya Sakshya Adhiniyam, 2023 relating to admissibility of electronic records.

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- (b) Chain of Custody Requirements: Compliance with chain of custody requires a detailed record of the movement of evidence through the e-discovery process to ensure that the evidence is admissible in court.
- (c) Confidentiality Agreements: Compliance with confidentiality agreements, which may be required to protect the confidentiality of sensitive information during the e-discovery process.
- (d) Data Protection Laws: Compliance with data protection laws which require that personal data be collected and processed lawfully and transparently.
- (e) Privacy Laws: Compliance with privacy laws which require that data be protected from unauthorized access and disclosure.
- (f) Data Retention Laws: Compliance with data retention laws, which require that data be retained for a specified period.
- (g) Preservation Orders: Compliance with preservation orders, which require that evidence be preserved pending the outcome of legal proceedings.
- (h) Search Warrants: Compliance with search warrants, which may be required for the collection of certain types of evidence, such as email or social media data.
- (i) Summons: Compliance with summons, which may be required for the production of certain types of evidence, such as financial records or corporate emails.

NOTE: Some of the above work procedures mentioned in para 3.5 and 3.6 are technical in nature and requires a senior Digital Forensic Expert (DFE) with experience. See Para 4.1 and 4.2 for detailed explanations in this regard.

## **4.0 Explanations with Examples**

### **4.1 Digital Forensic (DF) Overview:**

As already mentioned earlier, DF is a term used to refer to the whole process of identification, collection, acquisition, and preservation of Digital Evidence (DE) from Digital Media (DM) which contains all data from the information systems and applications referred to in Para 3.1

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above. Further information on DF is available from ISO 27037, ACPO, or NIST Standards.

To simplify the overall process, DF comes in two parts:

- 4.1.1 First part – the identification, collection, acquisition, and preservation of DE from DM are the set skill for Digital Forensic Acquisition (DFA).
  - (a) DFA is basically the forensic collection of data from all kinds of digital assets. It uses DFA Software.
  - (b) It requires multiple sets of DFA tools, in which the DFE are trained and well-equipped.
  - (c) Upon collection and acquisition and preservation of digital evidence media, the forensic process of acquired DM starts.
  - (d) Full recovery, indexing, hashing, file processing, information parsing, metadata parsing, logs parsing, email processing, system artifacts, Internet parsing, data extraction, etc.
  - (e) Upon completion of this process by a qualified and certified experience DFE, the second part starts
- 4.1.2 Second part – the content of the data acquired as above is then analysed using e-Discovery Forensic Software or Analytics tools.
  - (a) The e-Discovery part covers the analysis of the evidence acquired and processed (indexed).
  - (b) The Professional can use e-discovery features in e-Discovery software to search and gather DE related to the case as this is a non-technical area.
  - (c) However, this still may require the support of a DFE to add evidence media, and process, and manage e-Discovery forensic software.
- 4.1.3 DFE can use any of the following DFA Software tools:
  - (a) Encase Forensic Acquisition - for hard disk and Virtual OS.
  - (b) FTK Imager for hard disk, memory, and virtual OS.
  - (c) Axion Acquire for hard disk and cloud storage.
  - (d) Oxygen Forensic Detective for Mobile acquisition and Cloud

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- (e) Hamcom GMD for Mobile acquisition.
- (f) Sumuri for Mac acquisition.
- (g) Intella for email Acquisition.
- (h) X1 for Social Media Acquisition
- (i) FAW for Social-Media and Web Site Acquisition.
- (j) Write Blocker Tableau TX1 hardware for server SAS hard disk and SATA hard disk acquisition.
- (k) LIVE acquisition for all type of OS/system.
- (l) MD5 Testing LIVE SoftwareX

4.1.4 The Professional can use an e-Discovery Forensic Software. These accept and process a big set of data for searches, and analysis and have Artificial Intelligence (AI) capabilities built to ease the analysis which is generally handled and well managed by a Professional. Some of the capabilities are such as Document categorization, Image Categorization, OCR, Artifact relationship links, in-depth intelligence searches, Timeline of artifacts, reporting, etc.

4.1.5 The e-Discovery forensic software can import source evidence that has been acquired, and processed (filtered) by any DFA software. The e-Discovery forensic software has the capabilities of acquisition of evidence media but is limited to certain sources of media evidence (hard disk, cloud email, etc.). The Professional can use any of the following e-Discovery forensic software:

- (a) Intella Pro
- (b) NUIX
- (c) Relativity

**NOTE:** ICAI does not endorse any E-Discovery or Software tools as mentioned in this Implementation Guide and the tools mentioned are simply indicative in nature.

### **4.2 Use of a Digital Forensic Expert (DFE):**

The DFE does data gathering forensically, where it does not matter what kind of data it is but complies and adheres to the digital forensic process

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for identification, collection, acquisition, and preservation of Digital Evidence (DE) from digital media.

- 4.2.1 The Professional analyses the content of such data obtained by the DFE and gathers the DE to relate back to the investigative work with the help of e-discovery forensic or any other analytical software. It's possible that the Professional may not possess all the technical skills of the DFE, in which case the DFE would be charged with all the work procedures of collection, acquisition and preservation of DE from digital media.
- 4.2.2 It may be somewhat risky for a Professional to undertake the technical work steps due to the legal ramifications of any mis-steps in this regard, since it's possible that in a court of law, the cross examinations could get highly technical exposing the Professional with limited expertise in this area.
- 4.2.3 With regard to the requirements of the expertise of a DFE, the Professional is advised to look at the requirements of FAIS 230 "Using the work of an Expert" for completing the tasks in a systematic manner.
- 4.3 An illustrative description of evidence gathering process in the DD is as follows:

#	Stage	Description
1	Identify Data Source	<ul style="list-style-type: none"> <li>• Identify Data Sources from the DD such as laptops, mobile phones, server data etc.</li> <li>• Identify relevant custodians, date range of data to be collected.</li> </ul> <p><b>NOTE</b></p> <ul style="list-style-type: none"> <li>- <i>This can be done by the Professional with the support and advice of the DFE.</i></li> <li>- <i>The location of data would be best known to the DFE, where the data will be stored in a system and how it would be stored, such as the cloud, the access control, the storage, the encryptions, the application behaviour, and other dependencies, etc..</i></li> </ul>

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#	Stage	Description
2	Data Preservation	<ul style="list-style-type: none"> <li>• Prevent any loss or alteration of data in the DD</li> <li>• It may involve creating a copy of the data or implementing legal holds to prevent destruction of any relevant data</li> </ul> <p><b>NOTE</b></p> <ul style="list-style-type: none"> <li>- <i>This can be considered as media preservation.</i></li> <li>- <i>Preserve the media which contains the data.</i></li> <li>- <i>The access to the media can be restricted because it could lead to tampering.</i></li> </ul>
3	Data Collection	<ul style="list-style-type: none"> <li>• Use of specialised software to collect Digital Evidence, Digital Footprints from various sources while maintaining its integrity.</li> </ul> <p><b>NOTE</b></p> <ul style="list-style-type: none"> <li>- <i>Data Collection can be done by DFE with the necessary hardware/software.</i></li> <li>- <i>This process is called Forensic Acquisition and Preservation to maintain Integrity.</i></li> </ul>
4	Data Processing	<ul style="list-style-type: none"> <li>• Filtering out relevant data, and converting data into a usable format</li> <li>• Indexing the data to facilitate searching and review.</li> </ul> <p><b>NOTE</b></p> <ul style="list-style-type: none"> <li>- <i>Data Processing is more on recovering, indexing, hashing the data, categorization, compiling all system artifacts, compiling web and internet artifacts, document artifacts, and other data processing tasks.</i></li> <li>- <i>It also performs keyword searches.</i></li> <li>- <i>The AI is being implemented in Digital forensic tools to perform OCR, and</i></li> </ul>

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#	Stage	Description
		<p><i>categorization of such as Drugs, Human weapons, Credit cards, etc.</i></p> <ul style="list-style-type: none"> <li>- <i>Another part of data processing is the extraction and import of the data for e-Discovery forensic applications.</i></li> <li>- <i>There are separate tools for Media/Data Forensic Acquisition, such as Encase, FTK Imager, Axiom, Tableau hardware, Surumi, etc.</i></li> </ul>
5	Data Review and Analysis	<ul style="list-style-type: none"> <li>• Review of data by human Expert for relevance, privilege and confidentiality.</li> <li>• Categorising of data for further analysis to identify patterns, trends and anomalies</li> <li>• Use of DA techniques such as keyword searching, data visualisation and statistical analysis to identify relevant facts.</li> </ul>
6	Presentation/ Reporting	<ul style="list-style-type: none"> <li>• Preparation of fact-finding report and production of data in a format that is admissible in court</li> <li>• Expert Testimony, as required</li> </ul>

**NOTE:** ICAI does not endorse any E-Discovery or Software tools as mentioned in this Implementation Guide and the tools mentioned are simply indicative in nature.

## 5.0 Annexures

### 5.1 Annexure 1 - Authorization Letter

To,

XYZ

DD-MM-YYYY

**Sub: Authorized personnel to collect, remove, image and analyse hard disk on behalf of M/s ABC**

Dear Sir,

I, XYZ is hereby authorizing OPC Associate at ABC to collect, remove, image and analyse the hard disk on behalf of M/s XYZ

Enclosed a copy of my company ID. I take the responsibility for delivery and safety of the collected disk to the organisation.

Thank you

\_\_\_\_\_  
Authorized personal

<p><b>Company Stamp:</b></p>
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5.2 Annexure 2 – Backup Details (illustrative)

XYZ

Digital Forensic -  
Hard Disk

	Actual			Imaged		
	Capacity	Used Space	Free Space	Capacity	Used Space	Free Space
Local Disk ( C )	98.6GB	54.6GB	43.9GB	98.6GB	54.7GB	43.9GB
Local Disk ( D )	376GB	0GB	376GB	376GB	0GB	376GB
Local Disk ( E )	499MB	37MB	462MB	499MB	3MB	496MB
System Reserved (H)	-	-	-	907MB	554MB	353MB

Recovered deleted files 4622 items

Recovered deleted size 4.75 GB

5.3 Annexure 3 – Digital Evidence Collection Form

Digital Evidence Collection Form			
Name of the Authorized Officer:			
Name of the assessee :			
Date:	Time:	Premise Address:	
Examiner's Name and Details:			
Computer Information			
<input type="radio"/> Laptop	<input type="radio"/> Desktop	<input type="radio"/> Server	<input type="radio"/> File/Folder
<input type="radio"/> Others	If Others Specify		
System State		If switched On, What is visible on screen?	
<input type="radio"/> On <input type="radio"/> Off <input type="radio"/> Hibernation/Sleep			
System Info		Make: _____	Model: _____
		Serial No: _____	Size: _____
Whether Volatile Memory/RAM Memory was collected? _____			
Shut Down Type		<input type="radio"/> Normal	<input type="radio"/> Power Plug Pulled
		<input type="radio"/> Battery Removed(Laptop)	
Is the suspected media encrypted?		Type of encryption Software used	
<input type="radio"/> Yes <input type="radio"/> No			
Hard Disk Handling: <input type="radio"/> Seizure <input type="radio"/> Forensic Previewing <input type="radio"/> Imaging <input type="radio"/> Backup			
Details of Imaging Software/Version to be given			
Is the hash value calculated?		Algorithm:	
<input type="radio"/> Yes <input type="radio"/> No		<input type="radio"/> MD5 <input type="radio"/> SHA <input type="radio"/> OTHERS	
MD5 hash value:			
SHA hash value:			
Other Authentication Method:			
Storage Copy Details		Working Copy Details	
Make: _____	Model: _____	Make: _____	Model: _____
Serial No: _____		Serial No: _____	
Is the hard disk replaced back?		Date:	Time:
<input type="radio"/> Yes <input type="radio"/> No			
Is the signature of the witness taken? <input type="radio"/> Yes <input type="radio"/> No			
Note by the AO regarding the potential evidences in the digital devices:			

**5.4 Annexure 4 – Email Format Investigation Details**

To  
The Manager  
ABC Company.  
ISP Division: City name/District name

Subject: Request to furnish the details about the IP Address.

Reference crime number .....

With Reference to the above cited subject, the undersigned is investigating officer of the XXX case mentioned above.

For the purpose of investigation, details of the subscriber and his/her physical address are required as per the below- mentioned IP Address.

IP Address	Access date	Access time

Please treat the matter as most urgent

Regards  
Signature/Seal details

# Implementation Guide on FAIS No. 430:

## Loans or Borrowings

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### 1.0 Introduction

- 1.1. FAIS 430 on “Loans or Borrowings” is a specialised Standard related to disputed transactions of Loans or Borrowings. Both fund- based and non-fund based Loans or Borrowings are covered, (including personal Loans or borrowings) extended by banks as well as Non-Banking Finance Corporations (NBFCs). The Standard also provides an illustrative list of these disputed transactions (refer para 4.1).
- 1.2. This Standard expects the Professional to recognise the basis on which such transactions get disputed when providing Forensic Accounting and Investigation (FAI) services to help resolve these disputes.
- 1.3. The requirements of this Standard are expected to be implemented through:
  - (a) Studying the nature of these transactions and why they are being disputed;
  - (b) Developing work procedures to identify the basis on which the agreements and arrangements may have been violated;
  - (c) If the mandate requires, conduct a study of the flow of funds and whether they comply with the utilisation provisions; and
  - (d) Where the objectives are to seek recovery of funds and assets, execute the same with due precautions.

### 2.0 Objectives

- 2.1 This Implementation Guide (IG) outlines the manner in which the Professional prepares and executes work procedures when implementing the requirements of this Standard during the course of a FAI engagement.

- 2.2 The objective of this IG is to assist the Professional conducting FAI engagements in the area of Loans and Borrowings to comply with the requirements of the Standard on the subject, in the following manner:
- (a) Understand the circumstances leading to disputed transactions in the area of Loans or Borrowings;
  - (b) Identify whether these disputes have any merit and gather evidence to confirm or deny the concerns or allegations; and
  - (c) Develop work procedures to gather evidence in the area of funds flow and asset tracing to help achieve relevant objectives.
- 2.3 This IG also provides examples and illustrations of cases to help the Professional apply similar work procedures which may be relevant to the circumstances of the engagement.

### **3.0 Procedures**

- 3.1 Loan or Borrowings transactions are of a contractual nature wherein the purpose of the Loans, along with the terms and conditions of performance are stipulated. These transactions are generally governed by provisions of various applicable laws and the regulatory provisions of the jurisdictional Central Bank Regulatory Authority. Therefore, such types of engagements require the Professional to have basic understanding of regulatory, statutory and contractual provisions of Loans or Borrowings and apply them in the work procedures to undertake the review.
- 3.2 The Professional would understand the nature of Loans or Borrowings and get a background of the transactions under dispute through communication with the Primary Stakeholders. A set of basic documents for review would also be available from them, such as the following:
- (a) Loan Application.
  - (b) Project Reports, including financial projections if any.
  - (c) Loan Appraisal.
  - (d) Loan Sanction Letter.
  - (e) Loan Agreement.
  - (f) Security Agreement.

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NOTE: In case of a company, requisite records maintained include approvals of the Board of Directors and/or the shareholders for taking Loan or Borrowings from the financial institutions or any third party and statutory registers.

- 3.3 For additional information the Professional may reach out to many other sources as these would provide an opportunity to corroborate information received beyond accounting and legal records:
- (a) Compliance submissions made with the regulators, Registrar of Companies (ROC), the entity or organisation, etc.
  - (b) Legal and tax filings and submissions with the relevant authorities.
  - (c) Open-source intelligence (OSINT) and/or public domain searches to extract various databases and gather relevant information. OSINT refers to undertaking searches on publicly available information across various platforms, databases etc.

For example, the following compliance submissions may be pursued:

- (a) Approvals received from the regulators in respect of the Loans or Borrowings. For instance, in case of Borrowings from a foreign holding company, the company requires to comply with the Master Direction on External Commercial Borrowings (ECBs) issued by the RBI and other applicable guidelines/regulations.
- (b) In case of ECB, the Professional can also review other documents such as loan agreement, Form ECB and Loan Registration Number issued by the RBI etc.
- (c) The board of directors/shareholders need to pass the requisite resolutions for taking Loan or Borrowings and the company should have made requisite filings with the ROC.
- (d) Various provisions of The Companies Act 2013.
- (e) The company files requisite form for creation, modification or satisfaction of charges with the ROC.
- (f) Public search on MCA portal in relation to the charges created by company on its movable/immovable assets of company for securing the Loans.

- (g) The company needs to maintain relevant records and registers in relation to the Loans or Borrowings.
- 3.4 The Professional is expected to understand the Objectives of Engagement on the basis of the nature of dispute. For example,
- (a) The dispute may be related to violation of legal, regulatory or contractual provisions.
  - (b) The dispute may be related to violation of Loans or Borrowings sanctioning process. For example, the violation of any of condition mentioned in the regulator's approval such as RBI, DPIIT etc.
  - (c) The Loans or Borrowings may have been obtained by fraudulent means.
- 3.5 The Professional may be required to develop hypotheses as per the nature of the dispute and accordingly formulate work procedures to gather relevant evidence and information for the purpose of completion of assignment. There could be multiple scenarios under which a certain dispute might have developed and although subjective, an indicative list of the nature of dispute and possible work procedures to test the same have been provided under para 5.0, Annexure of Cases.

## **4.0 Explanations with Examples**

- 4.1 Explanation of work procedures and tests that could be performed by the Professional in order to review if the loan was extended or obtained through inappropriate means or was not in conformity with the established procedures (indicative list):
- 4.1.1 The Professional may confirm the nature of documents submitted and their authenticity, wherever required and relevant. This could be done by cross verifying those documents with Borrower's information (such as application forms, financial statements, credit reports, income verification documents, periodic stock reports or otherwise being submitted with the lenders etc.). Other sources of information available with public authorities, such as Goods and Service Tax (GST) department, Income Tax (IT) department and the Registrar of Companies (ROC), can also help in this regard. This could involve comparing the Borrower's information with external databases,

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identifying inconsistencies in financial statements, or identifying suspicious transaction patterns with the relevant regulators or otherwise.

- 4.1.2 The Professional may conduct an investigation of the Borrower's background, including their financial history, employment status, business operations (if applicable), and any other relevant information pertinent to the engagement. This helps validate the Borrower's claims and ensures transparency in the loan application process. This may also identify the financial viability of the suppliers / vendors or business partners in accepting the monies from the corporate debtor and assess the transaction worthiness.
- 4.1.3 The Professional can corroborate those documents from other external sources such as confirmation from debtors /suppliers of Borrower's banks etc.
- 4.1.4 The Professional may also verify the compliance level observed by the sanctioning authority.
- 4.1.5 The Professional may perform a financial analysis of the Borrower's financial statements and creditworthiness. This includes assessing their income, debt levels, repayment capacity, and overall financial stability. Identify any discrepancies, inflated figures, or hidden liabilities that may suggest fraudulent intentions.

NOTE: In case, the internal loan appraisal procedures and documentary compliance have not been observed, the Professional may assume it to be a fraud indicator and may choose to gather evidences about such non-compliances. The Professional may get additional confirmation for this type of fraud indicator from Internal Audit, Concurrent Audit, Statutory Audit reports etc., of the bank. Further, the work procedure related to this area may require the need to revisit/reconfirm the scope agreed with the Primary Stakeholder.

- 4.2 There could be instances of assets offered as securities for Loans are either not owned, or not in existence, or misappropriated without the knowledge of the lender. The following could be the possible work procedures to review and test the same (indicative list):
  - 4.2.1 Review of the documents to understand and test the authenticity of the same with the help of legal Expert who may provide the legal search

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report or with the help of valuation Expert in case of inflated valuation of property or any other asset offered as security.

- 4.2.2 The Professional may want to test the possibilities of Asset Stripping, which involves disposing of assets of an organisation leaving behind the debts.
  - 4.2.3 The Professional may want to take the help of an Expert to identify the existence, ownership, valuation and quality of the secured asset with the help of digital records.
  - 4.2.4 The Professional may also undertake a search on the web portal or Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) web portal or Information Utility etc.
  - 4.2.5 Undertake searches to check if there is a particular charge on an asset for example (in the case of companies) charge with the ROC.
  - 4.2.6 Conduct a physical inspection of the assets where possible. This step is particularly relevant for tangible assets like real estate, vehicles, or inventory etc., The professional may visit the property or location to confirm its existence and condition. Any discrepancies or signs of misrepresentation would be noted.
  - 4.2.7 Conduct a review of the Borrower's transaction history to identify any unusual or suspicious transactions, such as large transfers, sudden changes in asset composition, or transactions with related parties. These activities may indicate attempts to manipulate or misrepresent the ownership or value of assets.
- 4.3 Funds from Loans and Borrowings may not have been utilised as per contractual terms and conditions of Loans or Borrowings. Hence, work procedures such as the following can be conducted in this regard (indicative list):
- 4.3.1 Understand the purpose of Loans or Borrowings through a review of loan sanctioning documents and paying close attention to any restrictions or specific purposes for which the funds were borrowed.
  - 4.3.2 Understand the end-use of the funds through an analysis of bank statements, accounting entries in the Borrowers' books of account, and attempting an asset trail and highlighting and reporting any unusual or unauthorized transactions that deviate from the contractual terms.

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- 4.3.3 Fund trail related to the inter-bank transfer must be carried unless until end-utilisation is ascertained. Further, in case of transfer of funds to the group companies or related parties and on non-availability of the bank statements of the group companies or related parties, then such transactions must be highlighted and reported.
- 4.3.4 Where a Stakeholder is not cooperating, it could be a Significant Matter to be communicated to the Primary Stakeholder at the earliest.
- 4.3.5 It would be ideal to focus on the related party transactions and transactions pertaining to single vendor / supplier for arms-length and transparency. Professional may consider undertaking a review of transactions with related or connected parties to check if there are any transactions without underlying commercial substance.

NOTE: There could be diversion of funds through payment to related or connected parties without offering any services, without movement of goods or offering them at an abnormal price in comparison with Arm's Length pricing. It may be that funds are also diverted through parties who are not directly related; in such a case Professional may require to gather additional evidences to establish the connection between Borrower and such parties. (e.g., a party may not be legally related to Borrower but other indicators such as a common address, contact details, may point towards the ability of the Borrower to exercise influence over the party).

- 4.3.6 Prepare a detailed fund flow analysis / statement showing the nature of the expenditure (such as related party transactions, repayment of Loans, taxes and dues, rent and lease etc.) against which fund has been utilised.
- 4.3.7 Prepare a summary documenting the findings and observations regarding the utilization of funds. Highlight any instances where the funds were not utilized in accordance with the contractual terms and conditions. The summary would include supporting evidence, recommendations, and any potential implications or consequences.
- 4.3.8 Based on the available bank statements, fund trail working can be performed using the following methods:
- (a) Current account bank statements then Last-in-First-out ("LIFO") must be followed, where balance available before the receipt of

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fund has to be adjusted and thereafter fund utilization has to be mapped.

- (b) Cash Credit bank statements then First-in-First-out (“FIFO”) must be followed, where disbursed fund shall be mapped with the subsequent utilization.
- (c) Below mentioned are the pointers to be considered while preparing the fund trail working:
  - i. Bank statements should be considered while performing the working, reliance on bank books is made.
  - ii. Beneficiary extraction must be done from the narration mentioned in the bank statements, in case same is not available then request to bank shall be made for making RTGS and NEFT dump available. In case, same cannot be made available then beneficiary shall be considered from bank book and same should be reported in the report.
  - iii. Based upon the beneficiary extraction, categorization has to be done on the basis of (related party transaction, repayment of loans, taxes and duties, reversals, cash deposit and withdrawal, unidentified transactions and Investments etc.)
- (d) Inter-bank transfers shall be considered for multiple legs (generally 3 to 4 legs), in case of requirements of the appointing authority to reflect full utilisation of funds then the same may extend

4.3.9 Diversion of funds as per RBI Master **Direction** includes the following forms:

- (a) Utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction of Credit Facility.
- (b) Deploying borrowed funds for purposes / activities or creation of assets other than those for which the Loan was sanctioned.
- (c) Transferring borrowed funds to the subsidiaries / Group / Shell companies or other corporates by whatever modalities, in violation to agreed terms and conditions.

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- (d) Routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender.
  - (e) Investment in other companies by way of acquiring equities / debt instruments without approval of lenders.
  - (f) Shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.
- 4.4 In cases where there are fraud indicators or suspicions that the Borrower might have submitted fraudulent documents related to fund utilization, following work procedures can be performed (indicative list):
- 4.4.1 One may investigate the inconsistencies or alterations in the submitted documents, such as changes in fonts, formatting, or signatures etc. False documents may also contain discrepancies in dates, amounts, or other important details and should also emphasize on signs on the documents which may be forged signatures or unauthorized authorizations on the documents. This could include variations in handwriting, unnatural-looking signatures, or lack of consistency between signatures on different documents.
  - 4.4.2 Documents such as Loan and current account statements, supporting documents for the utilisation, and certificate for end utilisation, to be analysed in detail to understand the end purpose and beneficiary vis-à-vis the permission purpose. Utilisation certificates can be externally verified through Unique Document Identification Number (UDIN) if the same have been signed by a Chartered Accountant.
  - 4.4.3 In case of Project Specific Funding, detailed analysis of the project report and supporting documents such as Quotations and estimates may be required to be evaluated. Further, the Professional may confirm whether the loan has been disbursed to the parties mentioned in the project report. The Professional may also choose to confirm the work done and rely on the work of technical expert in relevant cases.
  - 4.4.4 Review the expense claims made by the Borrower and assess their reasonableness. If the reported expenses appear unrealistic or inflated for the type of project or business, it could indicate false documentation.
  - 4.4.5 Analyse financial statements, bank records, and other relevant documents for unexplained discrepancies. False documents may

attempt to conceal irregularities or inconsistencies in the financial records.

- 4.4.6 Attention may be given to any tips or reports from employees, contractors, or other stakeholders that raise suspicions about the accuracy or legitimacy of the Borrower 's documents.
- 4.5 Work procedures relating to disputes of timely repayment of interest and principal (indicative list):
  - 4.5.1 Understand the repayment schedule and maturity period along with the concept of roll-over and penal interest.
  - 4.5.2 Check if any other form of Loans or Borrowings have been re-paid, which is to a related party and detrimental to the interest of the secured lender.
  - 4.5.3 Ever-greening and its practical application: The Professional may come to learn that the Borrower has made an attempt to roll-over the Loans or used funds availed through Loans or Borrowings for the repayment of defaulted Loans or Borrowings. The whole premise of ever greening is to avoid the classification of Loans or Borrowings as Non Performing Assetds (NPA).
  - 4.5.4 Evaluate the Borrower 's financial position to assess their ability to make timely repayments. Request updated financial statements, income verification documents, or other relevant information to determine if the Borrower is facing financial difficulties or if there are other reasons for the payment delays.
  - 4.5.5 Reference to the Auditors Report of borrowers may have to be made stating the going concern of the Entity.

NOTE: While applying the ever-greening criteria, the guidelines of the Reserve Bank of India on Loan Restructuring, Loan Rescheduling etc. may be considered.

## **5.0 Annexure: Cases**

- 5.1 **CASES:** A few examples of cases are presented here to show how certain work procedures can be undertaken in the area of Loans or Borrowings. However, these are just some possible scenarios, and the

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concept needs to be applied by the Professional more than the facts stated in these examples.

### (A) **CASE 1:** Litigation Support in a Case of Fund Diversion

- **Background:** Party A had alleged that Party B has diverted funds which were infused by Party A in ABC Ltd.
- **Appointment:** The Professional was appointed to gather evidence to support the suspicion of fund diversion and then to provide litigation support to Party A.
- **Work Procedures (indicative list):** The Professional undertook the following evidence gathering procedures:
  - From the ROC, identify the directors and shareholders of ABC Ltd.
  - Using this, identify connected parties (other entities/organisations linked to the directors and shareholders).
  - Perform OSINT and public domain searches to identify other potentially connected parties.
  - Extract the Financial Statements filed with the ROC, and review the Notes / Disclosures on Related Party Transactions.
  - Undertake a detailed review of all those entities, formed a web of all these entities involved.
  - Using the funds infused by Party A, as a starting point, and using related party transactions information as a basis, trace and match the transactions.
  - Prepare a timeline of events and back-to-back transactions between multiple entities.
- **Outcome:** Traced and matched the transactions in the related party entities through a layer of 15+ entities, the funds were identified to have been invested into a foreign entity.

### (B) **CASE 2:** Extortionate Credit Transactions

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- **Background:** IBC case identified by a Resolution Professional, where Corporate Debtor had availed a Loan at the rate of 48% from a private company to fund the losses and repayments of the institutional Borrower s during the period within two years preceding the insolvency commencement date.
  - **Concerns:** Charge-free assets have been mortgaged for availing of a private loan. Also, the mortgagee had the option to convert the debt into equity at the face value if the servicing could not be done for 180 days continuously.
  - **Work Procedures (indicative list):** The Professional may undertake the following evidence gathering procedures:
    - Review the Loan agreements.
    - Trace the funds movements and their utilization.
    - Assess the financial performance of the Borrower and understand the necessity of Loan at such a high rate of interest.
    - Identify the relation of a private company to confirm whether it is a related or connected party by reviewing ROC documents, directors' details, etc.
    - Identify the average market rate on which Borrowings could have been taken under the normal circumstances.
  - **Outcome:** These terms could be classified as exorbitant and unfavourable to the existing financial creditor's interest and could have been created knowingly to the situation, for defrauding the creditors and detrimental to their interest.
- (C) **CASE 3:** Authenticity of Loan disbursements.
- **Background:** Periodic payments are made to a named contractor by the Borrower against a contract, stating that the work completion is 55% and, accordingly, agreed instalment payment needs to be disbursed.
  - **Concern:** Whether the work alleged to have been completed by the contractor has been actually undertaken and is the milestone of 55% is an accurate claim.

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- **Work Procedures (indicative list):** The Professional may undertake the following evidence gathering procedures:
  - Review the Loan agreements.
  - The contract may be studied in details to understand as to actually what are the milestones defined, and has the contract value changed or modified etc.
  - Other forms of evidence expected to be corroborated with; i.e., as per the budgets, are other payment/expense line items in sync with the contractors' payment.
  - Trace the funds to confirm whether they are routed back to Borrower by verifying the Borrower s' banks accounts, books of accounts, etc.
  - Deploy services of an independent engineer and valuer to estimate the %age completion and verify the 55% claim.
- **Outcome:** The work completed by the contractor could not be verified and was estimated to be nowhere close to the claim being submitted based on percentage completion which in itself could not be supported by independent Experts.

### (D) **CASE 4: Utilisation of Working Capital Credit**

- **Background:** Cash Credit is availed in order to utilise the same for working capital purpose. However, the bank has concerns whether they are deployed for the business working capital.
- **Concern:** Nature of utilisation of the credit needs to be reviewed. Funds could have been paid for the purposes as per the agreement, however, there could be a refund of the same in another account or there could be round tripping of the said funds to change the nature of the transaction, which can be a violation.
- **Work Procedures (indicative list):** The Professional may undertake the following evidence gathering procedures:
  - Verify the Loan sanction documents.
  - Understand the nature of business of the Borrower and working capital needs.

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- Trace the funds received by an analysis of the bank statements with different bank accounts of the Borrower.
- Analyse the inventory records of the Borrower and confirm the requirement of drawing power limit of cash credit.
- Analyse the financial performance of the Borrower to identify the fraud indicator which may assist in asset trail.
- **Outcome:** A review of the flow of funds and its mapping with the dates and timeline, especially outflow from one account to a third party and inflow into another account from the same/another third party indicates misutilisation.

# Implementation Guide on FAIS No. 510:

## Reporting Results

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### 1.0 Introduction

- 1.1 FAIS 510 on “Reporting Results” mandates a written report comprising the findings along with the evidence relied upon by the Professional in a structured manner to provide the Stakeholders with a balanced and factual outcome of Forensic Accounting and Investigation (FAI) engagements.
- 1.2 The objective of a report is to enable the Stakeholders to understand the background, issues involved, findings evidence on which findings are based leading to a conclusion.
- 1.3 The Professional, as part of the deliverable, may issue Interim reports, and a final report on conclusion of the assignment. However, in some cases for example, if a new fact or evidence comes to the knowledge of the Professional after issuing final report, they may choose to issue a supplementary report.

### 2.0 Objectives

- 2.1 This Implementation Guide (IG) sets out key elements which may form part of a written report in FAI engagement.
- 2.2 The objective of this IG is to provide details of how to cover the key elements of the Standard in a meaningful way.
- 2.3 This IG also provides examples and illustrations to help the Professional apply similar work procedures which may be relevant to the circumstances of the engagement.

### 3.0 Procedures

- 3.1 While writing a report, the Professional follows a structured and organised approach to ensure clarity, accuracy and achievement of assignment objectives. The Standard refers to the need for certain key elements in the drafting of the report.

3.2 FAI engagements are diverse in nature and have unique characteristics. Therefore, reporting requirements may vary. If statutory requirements, or the terms of the FAI engagement prescribe a format of the report, the Professional needs to adhere to that. Nevertheless, certain key elements are likely to form part of most engagements. An overview of these key elements is provided as an indicative list in para 4.3 of FAIS 510. An explanation of these is provided here.

3.3 **Key Elements of a Report:**

- (a) **Covering letter:** It is a good practice for the Professional to issue a covering letter along with the report addressing it to the Primary Stakeholders and referencing it to the engagement letter.
- (b) **Table of Contents:** A concise table of contents serves a very useful purpose to provide an overall outline of the Report and also assists in organising the content and flow of the Report.
- (c) **Executive summary:** The executive summary is a concise overview of the engagement and the findings in a summarised form. It provides a brief synopsis of the facts, methodology and the findings. It is a good practice to include a disclaimer stating that the executive summary is not a substitute of the report and should be read in conjunction with the final written report.
- (d) **Title, addressee, distribution list:** The title of the report may include the case reference number, or project name, as appropriate. The report shall be addressed to the Primary Stakeholders. Distribution of the report to others shall be subject to the prior approval of the Primary Stakeholders. A disclaimer may be added to restrict the distribution of the report beyond the Primary Stakeholders.
- (e) **Scope and objectives of the engagement:** The report may include the scope and objective of the engagement defined at the time of agreeing to the terms. However, any additional scope items may be included for an assignment, if appropriate.
- (f) **Approach and broad work procedures undertaken:** This section covers the work procedures performed by the Professional to gather all the evidence and information during the course of the assignment to determine the facts reported. This

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confirms that the Professional conducted procedures that were sufficient, appropriate and commensurate to the scope of the engagement. The work procedures may include sampling methodologies, digital tools and techniques, people interviewed, information gathered from public domain and site visits conducted, amongst others.

- (g) **Reference to use of expert:** The work of an Expert which may have been relied upon may be included in the report along with the credentials and the scope of work.
- (h) **Reference to FAIS or any other standards adhered to:** The report would include a statement confirming that the engagement has been conducted in accordance with the FAIS and also highlighting the deviations, if any.
- (i) **Detailed findings:** The report includes details of findings based on the evidence and documentation. As a good practice, the findings are referenced to the relevant evidence and information gathered, which may be annexed to the report. The Professional may list the findings on the basis of evidence relied upon, the modus operandi identified and the quantum (to the extent possible) of the deviations, violations, breaches, non-compliances, noted. The Professional would choose a structure most conducive to convey the findings as per the requirements (if any) of the format as prescribed by the Primary Stakeholder. For example, tables or matrix with diagrams or graphical flow charts may be used to depict fund flows.
- (j) **Assumptions, limitations and disclaimers:** Where the Professional makes any assumptions, such assumptions and the reliance placed on them may be adequately disclosed in the report. When the Professional has not been able to review relevant information or perform relevant tests, which is a limitation on the scope of the work, the reasons for the limitations, the potential impact of the limitations, and any other disclaimers, may be disclosed in the report. The Professional may exercise discretion at the time of drafting limitations and disclaimers.
- (k) **Conclusions:** Based on the fact/ data based findings noted, the Professional may arrive at certain conclusions regarding the

objectives of the engagement. For example, the conclusion may indicate whether there has been any deviation from procedures, or whether there is a possibility of a legal violation, breaches, non-compliances, etc. However, the Professional shall refrain from expressing any opinion, such as those relating to the guilt or innocence of any person in the report.

NOTE: Forensic engagements usually entail the presentation of evidence gathered but not necessarily providing a conclusion in the report (unless required as per the engagement mandate). Further, in certain instances, the Professional may not be able to reach a conclusion such as the following:

- When there is lack of adequate and relevant evidence to prove or disprove a hypothesis.
- When the subject matter of the engagement requires legal interpretation or obtaining a legal opinion which Professionals may not be qualified to provide.

Considering this, the Professional would need to communicate such challenges to the Primary Stakeholder to arrive at a mutual agreement on the conclusive nature of the findings.

- (l) **Glossary and Abbreviations:** While preparing the report, the Professional may use abbreviations and acronyms but defining the abbreviations as part of glossary is recommended.
- (m) **Appendices and/or Exhibits:** The appendices and exhibits are a part of report and documents attached could be identified and attached in seriatim.
- (n) An indicative report template is provided in **Annexure A**.

3.4 **Considerations for issuance of Interim reports:** The Professional may consider the following when issuing any Interim reports:

3.4.1 The report may contain 'Interim Report' in the title.

3.4.2 A statement to the addressee of the Interim Report that the observations contained in the report are based on the work procedures performed till date, which may change on account of performance of complete work procedures or information gathered post the date of the Interim Report.

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- 3.4.3 A statement that the Interim Report may not be in accordance with all the FAIS.
- 3.4.4 A statement that due care should be taken by the addressee before taking any action based on the observations in the Interim Report on account of incomplete work procedures.
- 3.4.5 If for any reason, the Professional is unable to complete a FAI engagement, the incomplete work procedures and the reasons thereof may be adequately captured in the Final Report subsequently to be issued by the Professional
- 3.5 **Inability to issue a report:** The Professional may not be in a position to complete an engagement for any reasons, including the following:
- (a) Possible involvement of Primary stakeholder.
  - (b) Non-availability of evidence, or incomplete evidence.
  - (c) Non-availability or non-cooperation of Stakeholders.
  - (d) Possibility of personal threats to the Professional.
  - (e) Any other extenuating circumstances.

In such circumstances the Professional would need to record the reasons for non-completion of the engagement and communicate as per the revised communications protocols and incorporate the same in the final report.

- 3.6 **Attributes of a report:** Certain drafting qualities of the report are important to ensure its integrity and credibility. Examples of some of these are as follows:
- 3.6.1 **Free from bias:** The report is prepared on the basis of facts determined during the course of the engagement without any personal, pecuniary or subject matter bias.
- 3.6.2 **Factual:** Facts stated in the report are generally supported by relevant and reliable evidence. Such evidence may be annexed to the main report.
- 3.6.3 **Clear and unambiguous:** The language used in the report should be easy to understand. Relevant references to be provided wherever required.

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- 3.6.4 **Transparent:** The report may contain complete details of all the findings. In case of any limiting factor in the engagement, the same may be highlighted in the report.
- 3.6.5 **Chronological:** The report may establish the chronology of the events leading to the issue under consideration.
- 3.6.6 **Meeting the objective:** The report may be reviewed to evaluate whether the findings are in line with the objective of the engagement.
- 3.6.7 **Conclusive:** As far as practical and feasible, the value of the report is enhanced if it is conclusive in nature. Inconclusive reports have little evidentiary value before the Competent Authorities.
- 3.6.8 **Circulation:** The report may have restricted circulation and may be made available only to the Primary Stakeholders unless it has been expressly mentioned in the letter of engagement that the report has to be shared with others or with the prior permission of the Primary Stakeholders. The report may clearly highlight who it can be circulated to and include a note to maintain confidentiality.

## 4.0 Annexures

### Annexure A – Indicative Report Template

#### COVERING LETTER

Name & Address of the Professional

Date of issue of report

Primary Stakeholders

Subject: Forensic Accounting / Investigation report for {Case reference}

I/We have conducted a Forensic Accounting / Investigation into {matter at hand} in accordance with the terms of engagement laid out in the engagement letter dated {date}.

Attached is the fact-

#### CONFIDENTIAL REPORT

<b>Distribution List</b>	Primary Stakeholders Others (where approved by the Primary Stakeholders)
<b>Case Reference</b>	Case reference number / Project name, if any
<b>Assignment Start date</b>	Date of starting the assignment, as agreed upon in the terms of the engagement
<b>Assignment End date</b>	Date up to which work was performed
<b>Report Date</b>	Date on which report is issued
<b>Notice to the reader</b>	Any limitation or statement to be highlighted to the Primary Stakeholders may be provided here. Examples include: 1. This assignment is conducted in accordance with the requirements of Forensic Accounting and Investigation Standards, issued by The

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	<p>Institute of Chartered Accountants of India (ICAI).</p> <p>2. This assignment is governed by the scope defined in the Engagement/Letter of Appointment dated XXX</p> <p>3. The {Professional} has relied upon the information and documents provided up to XXX date</p> <p>4. This report is issued to provide summary of findings. Any conclusion drawn out of these findings is the responsibility of the {Primary Stakeholders}</p> <p>5. The Professional has relied upon the work of {Expert}, {Credentials of the Expert and scope of his work} who is an Expert in the field of {subject matter}.</p> <p>6. This report must not be circulated further without the written approval of the Professional.</p> <p>7. No part of the report must be read in isolation.</p> <p>8. Assumptions, disclosures, annexures</p>
<b>Scope</b>	The objective of conducting the engagement, as defined in the letter of engagement/appointment.
<b>Scope Limitation</b>	Following are the attributes / details which could not be verified due to following:
<b>Work Done</b>	The broad work procedures performed, detailing the people interviewed, the devices reviewed and the period of coverage.
<b>Executive Summary</b>	Summary of key findings.
<b>Detailed findings</b>	The detailed list of findings provides a reference to the evidence, which may be annexed to the report as well as any assumptions made in order to test the findings.
<b>Conclusion</b>	Whether or not the evidence collected through the course of the investigation supports the concerns.

# Implementation Guide on FAIS No. 610:

## Quality Control

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### 1.0 Introduction

- 1.1 This Implementation Guide (IG) deals with practical application of Quality Control (QC) techniques to support the Professional in ensuring a consistent approach for an acceptable quality of work performed relating to Forensic Accounting and Investigation (FAI) engagements.
- 1.2 It is important to identify all direct and indirect Stakeholders because they may have different quality expectations from the assignment.
- 1.3 The Professional has to decide on the adequacy of QC process commensurate with the nature and the complexity of the assignment.

### 2.0 Objectives

- 2.1 The objective of this IG is to assist the Professional in focusing on quality in all forensic assignments along with a structure in place for the quality standards adherence.
- 2.2 The process of Quality Control (QC) in forensic assignments is a process that begins before the assignment is accepted, and ends post the submission of the final assignment report.
- 2.3 The Professional may establish a Quality Control System (QCS) keeping in view the general expectations of the Stakeholders involved.

### 3.0 Procedures

- 3.1 Before accepting the assignment, the Professional may assess that certain basic checks are in place, which are as follows:
  - 3.1.1 Perform an independence check. This can be done by carrying out procedures like reviewing past and current business and professional relationships and other connections between the Professional and the subject of the assignment or the Client; the nature of the scope of work received by the Professional and the authority and position of the person granting the assignment to Professional. In other words, there should

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not be any direct or indirect conflict of interest. For reference, the meaning of Independence in relation to this guidance is defined in the Basic Principles of Forensic Accounting and Investigations.

- 3.1.2 Obtain a fair understanding of the proposed forensic assignment. The Stakeholders, on their part have to ascertain whether the Professional is equipped with adequate skills, competence, infrastructure and relevant staff so that a quality report is produced during the course of the forensic assignment. In ascertaining the skill and competence of the Professional, consideration needs to be given to the scope and nature of the assignment, the past knowledge, experience, and qualifications required to conduct such assignment, and the availability of required manpower and technical resources to deliver the assignment results within the required timeframe.
- 3.1.3 For instance, while conducting an assignment in an automated environment, the Professional may engage the staff having required IT auditing skills. Similarly, while conducting assignment related to a construction project, a civil engineer staff or Expert may also be needed apart from Chartered Accountants, and so on.
- 3.1.4 Have a discussion with the Client and/or the target/subject entity to understand the scope and expectations with data limitations that the Professional might face during the course of the forensic assignment. It is also important to understand whether the scope can be expanded as the assignment progresses. This is imperative for QC so that the Professional does not face any limitations that they are not aware of while accepting the assignment.
- 3.1.5 The Professional would accept the assignment once they are satisfied that they would be able to deliver a quality assignment report within the acceptable time frame as required by the Client.
- 3.2 During the course of the forensic assignment, the Professional needs continuous monitoring of work through adequate staffing, review and supervision of the work performed, giving proper guidance on documentation of the Work plan for the assignment, reviewed versions of the report, etc.
- 3.3 Given the dynamic nature of forensic assignments the work plan may need revision based on new facts and evidence. Accordingly, the

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hypotheses can be developed in line with the new information that comes to light. This is essential to maintain QC.

- 3.4 During the course of the assignment, the Professional may need to conduct market surveys or field studies to gather information about the parties allegedly involved, and the possible modus operandi of committing fraud to develop and re-model the hypotheses on a continuous basis during the assignment. Such unstructured information is usually available outside the organisation and may be gathered by the Professional during field visits, informal discussions with people, and accessing information that may not be received in a formal or authenticated manner from its source and is usually termed as market intelligence. The reports as well as working papers may clearly identify such information and indicate the nature of such information so that the users of such information can make informed conclusions thereof.
- 3.5 **Quality Control Review (QCR):** Prior to the finalization of the assignment report, depending on the nature of the forensic assignment, the Professional may perform an independent internal review of the assignment report, which may be in the form of a peer review. This is essential primarily for the following reasons:
  - 3.5.1 Given the nature and use of the report of forensic assignment, an independent QCR can examine the assignment report to understand the various issues or loopholes in the report, that may raise doubts or concerns over the veracity or the reliance to be placed on the report.
  - 3.5.2 Further, if there are known gaps in the analysis conducted during the forensic assignment on account of various reasons, such as data limitation, scope limitations, etc., or the areas where there may be concerns in the future, the QCR process helps to make sure that these are properly addressed by preparing well-documented work papers explaining the rationale behind the limitations, gaps or concerns, as applicable.
  - 3.5.3 It may help to ensure that the documentation is as per FAIS 320 on “Evidence and Documentation”.
- 3.6 The Professional may build a system of safe filing, storage and retrieval of all working papers. The retention period of these working papers would be defined in consultation with the Client and in accordance with

the Professional's retention policy as well and the relevant legal and regulatory requirements.

For instance, in case of an assignment that is linked to an ongoing court case or a regulatory Investigation, the retention period should be aligned to the requirements of the assignment and may need longer periods of retention.

The QCS implemented by the Professional may include a periodic self-check on the systematic and logical arrangement of all working papers and their retention. This check may extend to the digital working papers (including storage drives having forensic imaging data) as well.

## **4.0 Explanations with Examples**

- 4.1 The Professional may implement a QCS that is robust enough to check quality of work in performing the review and compliance with applicable professional and legal standards/regulations.
- 4.2 The QCS may develop a checklist for various quality reviews required in the project, including but not limited to:
  - (a) **Pre-acceptance stage** – Including evaluation of skill sufficiency of the professional and independence of the team.
  - (b) **Define Scope and planning stage** – Including assessment of key risks and objectives that will be covered in the assignment, as well as the work plan or schedule and the use of Experts.
  - (c) **Execution and fieldwork stage** – Including evaluation of findings/hypothesis, documentation supporting the same and completion of work plan (including the adequacy of communication with Stakeholders of key results and challenges). This will also include the sign-off of Experts, as required.
  - (d) **Reporting stage** – Refer to QCR process in para 4.8, beow.
  - (e) **Post-reporting documentation and archival stage** – Including adequate retention of documentation to support the conclusions of the assignment and proof of quality reviews. The Professional may clearly document the times when multiple signoffs are required (e.g., Level 1, Level 2, external, etc.).

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- 4.3 The completion of all activities in the quality checklist (up to the “Post-reporting documentation and archival stage”) may be signed off by the Professional before issuance of the report. The Professional may also define the timeline within which the post-documentation and archival activities are to be completed and signed off.

Refer to **Annexures** with Illustrations/Checklists for sample checklists.

- 4.4 The Professional may define the frequency of a periodic independent peer review. The reviewer may be independent of the executing team in charge of the assignment and may not have a reporting line to the Professional or the staff on the project. If required, an external party may be appointed to perform such a review. In case external peer review is to be engaged, appropriate declaration on Independence would need to be obtained and documented.
- 4.5 Any findings from the peer review are to be agreed upon by the Professional, and a remediation plan be defined. A follow-up testing may be performed by the peer-review within pre-agreed timelines from the date of peer-review report issuance.

### **4.6 Staffing and Competency**

The Professional may assess the capabilities and competencies of the team to be involved in the assignment by considering their understanding of professional standards, regulatory and legal requirements, technical expertise including relevant information technology requirements, knowledge of industries in which the Client operates, ability to apply professional judgment and past experience, if any.

The Professional may implement training programs, online courses, classroom sessions, on-the-job learning with the seniors, individual development plans, etc to continue developing the capabilities and competencies of the team.

### **4.7 Communication**

The Professional communicates the requirements in clear and unambiguous manner to the staff. This may include training at a regular frequency (preferably once a year). Staff who do not demonstrated satisfactory knowledge of the QCS in internal assessments may not be included. The Professional may also assess that any external Expert

appointed for assignments are adequately trained on the QCS prior to the assignment.

**4.8 Quality Control Review (QCR)**

- (a) The Professional may establish policies and procedures requiring QCR that provides an objective evaluation of the conclusion in the report for all FAI assignments.
- (b) The Professional may establish policies and procedures setting the criteria for eligibility and appointment of QC Reviewers, the extent and timing of their involvement, and documentation requirements for the QCR.
- (c) The Professional may establish timelines to ensure that QCR is completed before the issuance of the final report.

Matters having differences of opinion between the Professional and QC Reviewers are to be resolved before the final report is issued and in case opinion of QC Reviewer is not accepted, the reasons be recorded in the working papers.

- 4.9 The Professional may implement a process by defining the minimum number of hours to be spent in Continuing Professional Education (CPE) annually and obtaining written confirmation from the team. CPE program may be designed by including the combination of online courses, case study submissions, classroom sessions, contributions in the magazine relevant to their professional fields, facilitating seminars, etc.
- 4.10 The assignment documentation is the property of the Professional, who defines the process to maintain the custody, integrity, accessibility, and retrieval of the same.

## 5.0 Annexures with Illustrations/Checklists

### Illustration checklist 1: End-to-end Process

Phase	Checkpoints	Remarks
<b>Pre-acceptance procedures</b>	<ol style="list-style-type: none"> <li>1. Whether the Professional along with his team is independent of the assignment?</li> <li>2. Is the relationship with key Stakeholders and conflict of interest checks been performed?</li> <li>3. Are available resources competent and possess the requisite knowledge to complete the assignment?</li> <li>4. Has due diligence been performed with respect to the nature, scope, purpose, limitations, expected assignment reports, timeliness, and cost?</li> <li>5. Has the engagement letter or other equivalent document been shared with the Primary Stakeholders to obtain consent in writing? (Also refer to FAIS 210: Engagement Objective, and FAIS 220: Engagement Acceptance and Appointment)</li> </ol>	
<b>Scoping and Planning</b>	<ol style="list-style-type: none"> <li>1. Has an assessment of the objectives that will be covered in the assignment been done and discussed with the team?</li> <li>2. Whether the use of technology to be deployed is considered as part of planning?</li> <li>3. Have enough procedures including consideration of fraud indicators been designed to meet the objective of the assignment?</li> <li>4. Whether the Professional is using the work of an Expert? If yes, whether the requirements as stated in FAIS 230:</li> </ol>	

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	<p>'Using the Work of An Expert' are being met?</p> <p>Also refer to FAIS 310: Planning the Assignment</p>	
<b>Execution and Field Work</b>	<ol style="list-style-type: none"> <li>1. Whether the obtained evidence is reliable and relevant to draw a conclusion?</li> <li>2. Whether all procedures have been performed as designed in the planning phase including procedures identified as per the revisited planning phase in the light of the additional information or change in the scope of work?</li> <li>3. Whether appropriate steps have been taken to ensure that confidentiality of the information collected during the course of engagement is maintained?</li> <li>4. Whether a fair opportunity of being heard is provided to all the parties involved?</li> <li>5. Whether sufficient documentation is maintained explaining the way the evidence was gathered, reviewed, recorded, and stored?</li> <li>6. Where the work of an expert has been used, whether requirements as stated in FAIS 230: 'Using the Work of An Expert' have been met.</li> </ol> <p>Also refer to FAIS 320: Evidence and Documentation</p>	
<b>Pre-completion of Assignment</b>	<ol style="list-style-type: none"> <li>1. Whether the appropriate level of reviews has been performed as per the policies defined by the firm depending on the complexity involved?</li> <li>2. Whether all the work has been completed and reviewed in accordance</li> </ol>	

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	<p>with the assignment plan and objectives?</p> <p>3. Where deemed necessary, whether the significant matters arising from the review have been discussed with the SMEs or experienced peers?</p> <p>Also refer to FAIS 350: Review and Supervision</p>	
<b>Reporting</b>	<p>1. Whether the final conclusion drawn is in line with the work performed and reviewed?</p> <p>2. Where independent peer reviews are involved, have all the differences in the opinion resolved, aligned and documented?</p>	
<b>Post-reporting documentation</b>	<p>5 Has all planning including revised planning papers, work performed, evidence obtained, reviews, and conclusions drawn is documented as per the requirement of the standards?</p> <p>6 Have signoffs obtained from the reviewers, peer reviewers, Experts, and SMEs involved in the assignment?</p> <p>7 Has all the communication with the Stakeholders and minutes of those meetings and interviews been documented?</p> <p>8 Is the final assignment report attached/indexed in the file/folder/tool?</p> <p>Also refer to FAIS: 320 Evidence and Documentation</p>	

**Illustrative checklist 2: Quality Controls in case of using the work of an Expert**

Standards	Checkpoints	Remarks
<p><b>Using the work of an Expert</b></p>	<p>1. Where Professionals make an independent determination of using the work of an Expert:</p> <p>(a) Whether the independence and objectivity of an Expert were evaluated?</p> <p>(b) Whether the qualification and credentials of an Expert were evaluated?</p> <p>(c) An Agreement with the Expert is in place to define the scope and objective of the work of the expert, including adequate provisions for Confidentiality and Non-disclosure?</p> <p>Also refer to FAIS 230: Using the Work of An Expert</p>	
	<p>2. Where the appointing Authority engages the Expert and in case of concerns with respect to the independence and objectivity of the appointed expert, whether the Professional communicated the same to the Authority well in time?</p>	
	<p>3. Whether the work done by an Expert was evaluated and reviewed by the Professional ensuring the procedures performed were as per scope and the evidence gathered is sufficient and reliable supporting the overall conclusion?</p>	
	<p>4. Whether the final report issued by the Professional clearly states the role of the</p>	

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	Expert and the reliance placed (if any) on the work performed by the Expert?	
	5. The original signed final copy of the formal report issued by the Expert, along with supporting documents, if any, are included in the working files?	