A Walkthrough of Forensic Accounting and Investigation Standards (FAIS)

Seminar at EIRC-ICAI Date: 21st November 2023

Objectives

- ➤ Codify Best Practices
- > Clarification on Expectation from the Assignment
- > Set common terminology
- Provide Knowledge and Guidance
- > Set basic quality benchmarks
- > Harmonise and Improve performance
- > Protect the ICAI brand

Overview of the FAIS

Over-Arching Documents

- Preface
- Framework
- Basic Principles

100 Series: Key Concepts

- 110-Nature of engagement
- 120-Fraud Risk
- 130-Laws & Regulations
- 140- Applying Hypotheses

200 Series: Engagement Management

- 210-Engagment Objectives
- 220-Enagament Acceptance & Appointment
- 230-Using work of an Expert
- 240-Engaging with Agencies
- 250-Communication with Stakeholders

400 Series: Specialised Areas

- 410- Applying Data Analysis
- 420-Evidence Gathering in Digital Domain
- 430-Loans & Borrowings

300 Series: Executing Engagement

- 310-Planning the Assignment
- 320- Evidence & Documentation
- 330-Conducting Work Procedures
- 340- Conducting Interviews
- 350-Review & Supervision
- 360-Testifying before Competent Authorities

500 Series: Reporting

510- Reporting Results

600 Series: Quality

610- Quality Control

Framework & Definitions



KEY DEFINITIONS

- Forensic Accounting is gathering and evaluation of evidence by a professional to interpret and report findings before a Competent Authority.
- Investigation is the systematic and critical examination of facts, records and documents for a specific purpose.

FIXED FORMAT FOR A STANDARD

- Introduction & Scope: Brief background and scope of the Standard and its applicability.
- 2. Objective: Purpose of issuing the Standard and why it is required and essential.
- Requirements: The desired outcome and what is critical to achieve the objective of the Standard.
- Explanatory Comments: Explanation of certain parts of the Requirements which need clarity and elaboration, including defining key words or terms.
- Documentation of Work Procedures: Indicative list of the nature of documentation which may be expected to demonstrate conformance to the Standards.
- Effective Date: Date from which the Standard is to be applied and made mandatory.

Basic Principles

Attribute based

- Independence
- Integrity and Objectivity
- Due Professional Care
- Confidentiality
- Skills and Competence

Conduct based

- Contextualization of a situation
- Primacy of Truth
- Respecting Rights and Obligations
- Separating facts from opinions
- Quality and Continuous Improvement

FAIS 110: Nature of Engagement

NATURE OF ENGAGEMENTS

- ▶ Forensic Accounting
- Investigation
- ▶ Litigation support

3.1 ... no part of the engagement, or its report shall refer to an "Audit", such as "Forensic Audit"...

- Understand the mandate, which is setting the requirements of the engagement. This mandate shall not be in the nature of an audit.
- Where the mandate requires the application of accounting skills to gather evidence, the concept of <u>Forensic Accounting</u> shall apply.
- Where the mandate requires the need to gather and evaluate evidence for a specific purpose, such as to help establish possible fraudulent intent, or to identify possible suspects of fraud, the concept of <u>Investigation</u> shall apply.
- 4. All Stakeholders shall have clarity on the nature of the engagement, which can be a Forensic Accounting engagement, an Investigation, Litigation support, or a combination of any of the aforesaid, but <u>not an</u> audit

FAIS 110: Nature of Engagement

Forensic Accounting Services



POSSIBLE OBJECTIVE:

Forensic Accounting aims to highlight any accounting or legal violations, regulatory deviations or contractual breaches through ascertainment of facts and gathering of evidences admissible before a Competent Authority. The focus area is critical examination of transactions, funds and balances in the books of account or with third parties.

NATURE OF SERVICES: (Indicative List)

210-Annx.1

- 1. Financial statement manipulations
- 2. Fund diversions/asset tracing
- 3. Anti-Money laundering
- 4. Licence fees/dues/tax evasion
- 5. Related party transactions/valuations
- 6. Valuations/estimations of loss/damage
- 7. Suspicious transactions under Insolvency and Bankruptcy Code (IBC)

Investigation Services



POSSIBLE OBJECTIVE:

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.

NATURE OF SERVICES: (Indicative List)



- 1. Fraud investigations (including cyber frauds)
- 2. Insurance/personal injury claims
- 3. Ethical/Code of Conduct violations
- 4. Whistle-blower complaints
- 5. Asset theft/bribery/corruption
- 6. Data breach/theft of Intellectual Property

FAIS 110: Nature of Engagement

<u>Litigation Support Services</u>



POSSIBLE OBJECTIVE:

Provide testimony before a Competent Authority, based on FAI expertise and/or to help facilitate some resolution to legal disputes based on facts/circumstances.

NATURE OF SERVICES: (Indicative List)

- 1. Alternate Dispute Resolution
- 2. Testimony before Competent Authority

FAIS 120: Fraud Risk

ESSENCE OF FRAUD RISK

FAI engagements involve the possibility of fraudulent events or suspicious transactions.

- ✓ Define Fraud
- ✓ Define Risk
- ✓ Fraud Risk = concepts of risk applied in a fraud scenario

- Undertake a preliminary fraud risk understanding of the areas and processes relevant to the subject matter of engagement to understand the nature and complexity of the engagement and to assign appropriate skill sets.
- Prioritize work to identify Fraud Indicators and focus on areas most vulnerable to fraud.
- Give due consideration to matters indicating fraud risk when reporting findings of the work completed.

FAIS 120: Fraud Risk

Fraud Indicators









During the course of the engagement, the Professional shall prioritise the work to identify fraud indicators.

The fact that fraud is usually concealed, can make it very difficult to detect.

Nevertheless, the Professional may identify events or conditions that indicate an incentive or pressure to commit fraud (the motive) or provide the situations to perpetrate one (the opportunity).

For example, frauds are generally driven by a motive to gain, combined with the exploitation of a weakness in the system and rationalised as acceptable.

FAIS 130: Law and Regulations

ESSENCE OF STANDARD

Professional appointment can be:

- ✓ in accordance with some specific law or regulation by a Competent Authority.
- ✓ through a contractual arrangement with the Client.

- Essure that the objectives of the engagement are in line with the provisions of (those) laws and regulations.
- Any mandate, agreed with the Stakeholders through a contractual arrangement, shall be consistent with the relevant laws and regulations.
- Engagements to be conducting in line with relevant laws and regulations which may also stipulate the work or evidence requirements.
- Implement a process driven approach to assist in identifying any significant deviations or non-compliances with laws and regulations.
- On complex and important matters, expert legal advice may be sought.
- 6. Principle of Natural Justice be given due importance.

FAIS 140: Applying Hypotheses

CONCEPT OF HYPOTHESIS

- A hypothesis is a provisional, unproven theory, which needs to be proven or rejected.
- Applying hypotheses is a technique which makes the process of evidence gathering more methodical and effective.

- Understand and apply concepts of hypothesis to help validate the possibility of potential violations or exceptions which may (or may not) have been perpetrated.
- Design FAI methodologies in accordance with considered hypotheses while maintaining neutrality to ensure a methodical and reliable approach.
- Hypotheses generated shall be flexible, evolving and include new or alternate hypotheses to validate or reject them in order to prove or disprove a larger theory or assumption, such as the modus operandi.
- After concluding an investigation, the Professional shall be in a position to either prove, disprove, or not prove the theory as formulated.

FAIS 210: Engagement Objectives

ESSENCE OF STANDARD

What is the purpose and objectives of the engagement:

- ✓ Forensic Accounting
- ✓ Investigation
- ✓ Litigation support

- Understand and document the main purpose of the engagement.
- Scope shall be defined in line with the objectives so that it is clear as to what is included or excluded from the scope.
- Expected outcome is in line with the objectives and the defined scope.
- 4. The objective shall not be designed to commit to any particular outcome, however, Professional can draw reasonable conclusions based on the evidence discovered where this is part of the mandate.

FAIS 210: Engagement Objectives

(A) FORENSIC ACCOUNTING SERVICES:

POSSIBLE OBJECTIVE: Forensic Accounting aims to highlight any accounting or legal violations, regulatory deviations or contractual breaches through ascertainment of facts and gathering of evidences suitable before a Competent Authority. The focus area is critical examination of transactions, funds and balances in the books of account or with third parties.

NATURE OF SERVICES (Indicative List)

- 1 Financial statement manipulations
- 2 Fund diversions/asset tracing
- 3 Anti-Money laundering
- 4 Licence fees/dues/tax evasion.
- 5 Related party transactions/valuations
- 6 Valuations/estimations of loss/damage
- 7 Suspicious transactions under Insolvency and Bankruptcy Code (IBC)

(B) INVESTIGATION SERVICES:

<u>POSSIBLE OBJECTIVE</u>: 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.

NATURE OF SERVICES (Indicative List)

- 1 Fraud investigations (including cyber frauds)
- 2 Insurance/personal injury claims
- 3 Ethical/Code of Conduct violations
- 4 Whistle-blower complaints
- 5 Asset theft/bribery/corruption
- 6 Data breach/theft of Intellectual Property

(C) LITIGATION SUPPORT SERVICES:

<u>POSSIBLE OBJECTIVE</u>: Provide testimony before a Competent Authority, based on FAI expertise and/or to help facilitate some resolution to legal disputes based on facts/circumstances.

NATURE OF SERVICES (Indicative List)

- 1 Alternate dispute resolution
- 2 Testimony before Competent Authority

FAIS 220: Engagement Acceptance and Appointment

ESSENCE OF STANDARD

- Engagements come with a degree of sensitivity and inherent risk.
- ▶ There is a need to conduct:
 - ✓ Preliminary procedures; and
 - ✓ Due diligence
 when evaluating the
 conditions for appointment.

- Undertake preliminary procedures aimed at getting an understanding about the nature and complexity of the engagement.
- Conduct a due diligence directed to gain an assessment of the inherent risks of accepting the engagement.
- Identify all key Stakeholders, the individuals covered under the scope and the direct and indirect users of the engagement report.
- 4. A written Engagement Letter shall be signed, or a Letter of Appointment (in the case of Government Agencies) obtained to confirm the terms of appointment.

FAIS 230: Using the work of an Expert

ESSENCE OF STANDARD

- Engagements come with a degree of sensitivity and inherent risk.
- There is a need to conduct:
 - ✓ Preliminary procedures; and
 - ✓ Due diligence
 when evaluating the
 conditions for appointment.

- Undertake preliminary procedures aimed at getting an understanding about the nature and complexity of the engagement.
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- Identify all key Stakeholders, the individuals covered under the scope and the direct and indirect users of the engagement report.
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FAIS 240: Engaging with Agencies

ESSENCE OF STANDARD

- Required to interact, or work closely with, various Agencies
- Defines agency as:
 - Law Enforcement Agencies
 - Regulatory Bodies

- Agree on the objectives, scope and planned procedures of the engagement with the Agencies.
- Gain understanding of the applicable laws and regulations governing the respective agency.
- Comply with Basic Principles with special emphasis on Independence, Integrity, Objectivity and Confidentiality.
- Be aware of roles and responsibilities in presentation of facts before the Agencies.
- Due professional care shall be taken with regards to communication with Agencies.

FAIS 240: Engaging with Agencies

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)

2. Regulatory Bodies:

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

FAIS 250: Communication with Stakeholders

ESSENTIAL MATTERS - Engagement Execution

- a) The scope and methodology of engagement.
- b) Written process and protocol of communication.
- c) The laws and regulations applicable to the engagement.
- d) Support and cooperation required from Primary and Other Stakeholders for access to information sources and for gathering evidences.
- e) Engagement fees and any resourcing requirements or constraints.
- Periodic reporting of engagement progress as per requirements.
- g) Reporting format which may be specific to the engagement or prescribed by legal and regulatory provisions.

SIGNIFICANT MATTERS - General

- a) Lack of cooperation by Stakeholders, causing significant delays.
- b) Prevention of access, withholding of information.
- c) General repression, domination or intimidation by Stakeholders.
- d) Potential conflict of interest with any Stakeholder.
- e) Alteration or destruction of evidences.
- f) Break in chain of custody of evidences.
- g) Safety or life-threatening situations.

FAIS 310: Planning the Assignment

INTRODUCTION

- Distinguish between:
- ✓ Engagement: An overall contractual mandate between the Professional and the Primary Stakeholder.
- ✓ Assignment: A part of the engagement or a portion of the overall engagement.

- Planning of the FAI assignment to follow a laid down process.
- The planning activities to contain key elements required to achieve objectives:
 - a) Knowledge of the relevant business and environment.
 - b) Risk considerations.
 - Discussion with the Stakeholders.
 - d) Technology deployment.
 - e) Resource allocation.
- Work methodology to be established (including any hypotheses formulated), together with the depth and nature of procedures to be conducted.
- Relevant elements of the plan to be communicated to the identified Stakeholders, on a need-to-know basis.

FAIS 320: Evidence and Documentation

ESSENCE OF STANDARD

- Gather relevant and reliable evidence and maintain appropriate and sufficient documentation :
- "Evidence" information, written or oral, or contained in electronic form.
- "Documentation" aggregate of all evidences gathered along with written record of work procedures conducted, conclusions reached and reported.

- Obtain <u>evidence</u> from <u>reliable</u> sources and ensure evidence discovered is <u>relevant</u> to the objectives of the assignment and admissible before a Competent Authority.
- Maintain <u>documentation</u> which is <u>appropriate</u> and <u>sufficient</u>, explains the manner in which the evidence was gathered, reviewed, recorded and stored along with its chain of custody.
- Ownership and custody of the documentation shall remain with the Professionals.

FAIS 330: Conducting Work Procedures

ESSENCE OF STANDARD

- Work Procedures: number of FAI activities to gather relevant and reliable evidence in order to prove or disprove formulated hypotheses.
- Work Procedures are generally conducted in phases:
 - ✓ Phase 1: behind the scenes where there is little interaction with the individuals involved, and
 - ✓ <u>Phase 2</u>: where there is a need to engage with the relevant Stakeholders.

- Develop Work Procedures in line with the agreed scope and objectives of the assignment.
- Evaluate deploying relevant tools, techniques and processes for gathering evidence.
- 3. Pay due attention to Fraud Indicators.
- Consider the formulation and testing of hypotheses to gather relevant and reliable evidences.
- Assess the need for any change in methodology (e.g., engaging experts).
- Duly document the details of the work performed, the outcome of each Work Procedure, limitations faced, and the conclusions drawn thereupon.
- Communicate with the Stakeholders the progress of the assignment.

FAIS 340: Conducting Interviews

ESSENCE OF STANDARD

- Interview refers to a structured meeting with individuals, for eliciting information.
- Documentary evidences may need to be corroborated with statements from individuals.

- Interviews shall be conducted after due preparation and planning.
- The interviewer shall develop a methodology, which includes certain essential steps to conduct an effective interview.
- The Professional conducting or participating in the interview shall maintain confidentiality regarding the details and outcome of the interview.
- 4. Interviews shall be conducted within the defined scope of work. Any interviews considered necessary by the Professional, but excluded from the scope for any reason, shall be mentioned in the report.

FAIS 350: Review and Supervision

ESSENCE OF STANDARD

- ▶ Review, examination of planning, work performed and documentation of work papers.
- Supervision, oversight of the team and provision of overall guidance.

- Apply best judgement for periodicity and extent of review and supervision.
- While nature of review and supervision will vary, the Professional shall exercise oversight on activities being performed.
- Review the plan during the course of the assignment to evaluate if circumstances have changed significantly to revisit plan.
- Work procedures conducted, and the working papers prepared, to be reviewed by the supervisor.
- 5. Identify matters for consideration.

FAIS 360: Testifying before a Competent Authority

ESSENCE OF STANDARD

- Define key terms:
 - √ Adjucating Authority
 - ✓ Competent Authority
 - √ Proceedings
 - √ Testimony
- Testifying refers to providing information and evidence to Competent Authorities pursuant to legal proceedings.

- The Testifying Professional shall be independent and objective in approach and ensure there is no conflict of interest in taking on the role prior to accepting an engagement.
- Where there is any conflict, the Testifying Professional's paramount duty shall be towards the Competent Authority and not towards the Client.
- The Testifying Professional shall limit the scope of testimony to only the facts and evidences gathered during the course of the assignment.
- The Testifying Professional shall be actively involved with the assignment execution to understand the facts and evidences.
- 5. The Testifying Professional shall adhere to the statutory provisions for deposition, as per applicable law and adhere to the relevant Standards issued by the ICAI including Accounting Standards, Guidance Notes, etc. where matters relating to accounting are concerned.

FAIS 410:Applying Data Analysis

ESSENCE OF STANDARD

- Objective is to examine the data to analyse and discover patterns of irregular and inconsistent activities or other anomalies.
- The result of the DA work is used to support the hypotheses and observations which may form part of the conclusions to be reported.
- Define key terms:
 - ✓ Data Analysis
 - √ Many other DA process terms

- Prepare and follow a Data Analysis Plan, containing certain essential elements required to achieve the objectives of applying data analysis techniques.
- Include pre-processing steps such as data acquisition, data validation and data preparation, while ensuring data integrity and adherence to data boundary, with adequate precautions to ensure admissibility before a Competent Authority.
- Undertake the process of performing DA in line with the objective, ensuring test of reproducibility and reporting results in an effective format.
- Undertake measures to maintain data confidentiality, integrity, archival and retrieval over the course of the assignment and till such time as required under relevant laws and regulations.
- The assignment team as a whole should possess adequate DA expertise and experience of applying DA techniques for conducting FAI assignments.

FAIS 420: Evidence Gathering in Digital Domain

ESSENCE OF STANDARD

- As most business activities and transactions shift to the Digital Domain (DD), the evidential matter now required to complete FAI assignments needs to be gathered in a new way, referred to as "electronic gathering" (or sometimes as "e-discovery").
- Define key terms:
 - ✓ Digital Domain
 - ✓ Digital Evidence
 - √ E-Discovery

- Maintain and deploy a documented process for e-discovery of evidence, stipulating relevant technical standards and legal requirements to be followed.
- Undertake an overall understanding of the prevalent Information Systems (IS)
 environment and its linkage to the DD in so far as it is relevant to the assignment
 objectives.
- Gathering of evidence in the DD shall be conducted by those who have the
 requisite skills, expertise and experience of working in such a domain so as to
 preserve the reliability and admissibility of digital evidence before a Competent
 Authority.
- Evidence gathered in the DD shall comply with the domestic laws (or International laws, where applicable) concerning the DD and respective data privacy laws which place restrictions on the e-discovery and custody of digital evidence.
- Where necessary, the Professional shall deploy appropriate forensic tools and techniques to authenticate the evidence, analyse the data and maintain a reliable chain of custody over the evidence.

FAIS 430: Loans or Borrowings

ESSENCE OF STANDARD

- Deals with specific types of engagements related to disputed transactions of loans or borrowings.
- The subject matters of these engagements generally require an examination of compliance with contractual, statutory, or regulatory provisions.
- Define key terms:
 - ✓ Loans
 - √ Borrowings
 - ✓ Misutilisation of Funds

- The Professional shall identify the nature of dispute, Primary Stakeholder's expectations and agree on the scope and requirements of the engagement with regards to the Loans or Borrowings, addressing specifically the unique aspects of each appointing authority, such as a Resolution Professional (RP), lending Bank, or an investigating agency.
- Any areas specifically agreed to be out of scope shall be clearly mentioned in the Letter of Engagement or Appointment.
- While compliance with legal, regulatory and contractual requirements is a key aspect of the Professional's work procedures, specific methodology and work procedures for asset-tracing shall be considered, especially to identify the flow of transactions in dispute through diversion or siphoning.
- The Professional shall make reasonable efforts to collect additional information from other sources which can help to corroborate facts found beyond accounting records and made available by the appointing authority.

FAIS 510: Reporting Results

ESSENCE OF STANDARD

- Deals with the responsibility of the Professional to issue a written report to the Primary Stakeholders.
- Reporting results of the work procedures completed, and the findings from those procedures, is the concluding part of the assignment.
- One engagement may include multiple assignments, hence multiple reports.

- The Professional shall issue a written Report which is precise and unambiguous.
- The Report shall be addressed to the Primary Stakeholders and shared with Other Stakeholder(s) if required or otherwise permissible.
- While no fixed form or content of the report is mandated by this Standard, the Report shall include certain key elements to enable the recipient to understand the assignment.
- Where the form and content of the Report is mandated by the Primary Stakeholders, or specified by the statutory or regulatory requirements, the Professional shall report in line with those requirements, while keeping in mind the key elements.
- Where the mandate of the engagement requires a discussion of the findings with the subject party prior to finalisation, a summary of the responses received from them shall be included in the report.
- The Report shall highlight any key assumptions made and whether any limitations were faced by the Professional.
- The report shall not express an opinion or pass any judgement on the guilt or innocence.
- 8. In circumstances where the assignment could not be completed due to unforeseen or unavoidable reasons, the Professional shall provide a status report with an assessment of the results, including due limitations and disclaimers, and reasons for the incomplete nature of the assignment.
- 9. The Report shall be issued within reasonable time frame as per the engagement terms.

FAIS 510: Reporting Results

KEY ELEMENTS OF THE REPORT

- Title, addressee and distribution list (if any)
- Scope and Objectives of the assignment;
- Approach and broad work procedures undertaken;
- d) An Executive Summary of the results, covering all important aspects and the essence of the findings;
- Reference to Use of an Expert, where applicable;
- The fact that the assignment has been conducted in accordance with FAIS, or any material departures therefrom;
- g) List of findings supported by key evidences, sources of evidences, and other relevant matters;
- h) Assumptions, limitations and disclaimers of the assignment; and
- Conclusions (if any) drawn from the assessment undertaken.

FAIS 610: Quality Control

ESSENCE OF STANDARD

- Quality as a general term is well understood, as is the fact that the Stakeholders are the best judge of acceptable quality. FAI assignments generally have multiple Stakeholders, and recognising their quality expectations are important.
- Delivering quality output requires a systematic and disciplined approach. This approach needs a combination of
 - · the right people,
 - · robust processes and a
 - Quality Control System (QCS).

- Establish a QCS designed to specify the quality control requirements and how these requirements will be met during all stages of an assignment.
- Shall ensure that assignments are appropriately staffed with individuals having relevant experience and technical capabilities. Since each assignment is unique in nature, and in order to keep-up with evolving trends, an ongoing Competency Development Plan (CDP) shall be put in place.
- The QCS shall be communicated and disseminated amongst all the staff working on the assignments, and where appropriate, with the Experts engaged on the assignment.
- The Professional shall establish policies and procedures for Quality Control Review (QCR) that sets out timely evaluation of the work performed before the report is issued.
- A process to ensure regular monitoring of Continuing Professional Education (CPE)
 requirements of the ICAI shall be implemented. Particularly, for Professional
 conducting FAI engagements, at least 5 (five) of the annual CPE hours shall be in the
 area of FAI subjects.

Reference

- Compendium of Forensic Accounting and Investigation Standards (Digital Accounting and Assurance Board, ICAI).
- Webinar on "Overview of Forensic Accounting and Investigation Standards", organized by Digital Accounting and Assurance Board, ICAI on 27th October 2023.