



Forensic Accounting and Investigation Standards (FAIS), 2023 : Empowering Transparency and Trust (An Analysis)



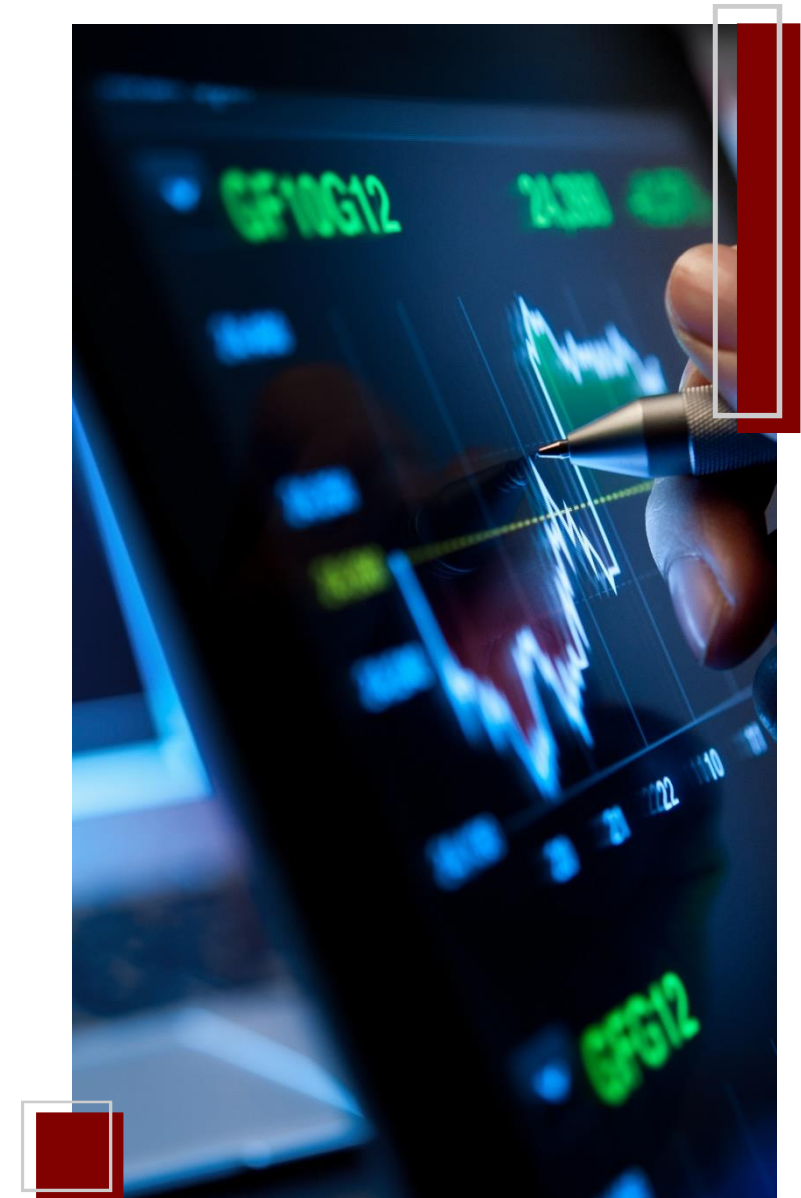
NANGIA & CO LLP

Introduction

With the surge in Forensic Accounting and Investigations services after impact of some popular cases on Indian Economy such as Bhushan Steel, Enron, Rajat Computer and Satyam, and Chartered Accountants being the huge part of that industry, needs standards for bringing uniformity and transparency for best practices.

In India, Foreign Direct Investment (FDI) has experience re markable growth in the recent times. Government to promote the investments has undertaken a lot of reforms to the economic sector. Capitalizing on this wave of transformative measures, Digital Accounting and Assurance Board (DAAB) of Institute of Chartered Accountants of India (ICAI) on 1 July 2023, has embarked on the pioneering task of formulating comprehensive standards for Forensic Accounting and Investigation (FAIS) for the industry to tackle the inadequacy led by the lack of a uniform process for FAI.

The standards, thereby providing adequate scope for professional judgment when applying such principles to unique situations and under specific circumstances. The unique nature of forensic assignments necessitates that, the application of forensic accounting and investigation skills and the use of technical tools and techniques, may vary depending on the nature of each specific engagement.



Objectives

- FAIS seeks to provide with the minimum standards for undertaking FAI engagements;
- Provides an indication of the quality of service that can be expected from such engagements;
- A guidance from government agencies and regulators as to what can be expected from FAI services;
- The standards are principle based, providing adequate scope for professional judgment;
- FAIS are a minimum set of requirements that apply to all members of the ICAI when conducting FAI assignments;



Series of standards

ICAI is leading the FAIS by being the first accounting body in the world to introduce the FAIS. As of now, 20 standards have been classified, and numbered in a series format, as follows:

- 100 series - Standards on Key Concepts (*4 standards*)
- 200 series - Standards on Engagement Management (*5 standards*)
- 300 series - Standards on Executing Assignment (*6 standards*)
- 400 series - Standards on Specialized Areas (*3 standards*)
- 500 series - Standards on Reporting (*1 standards*)
- 600 series - Standards on Quality control (*1 standards*)

Applicability and its stakeholders

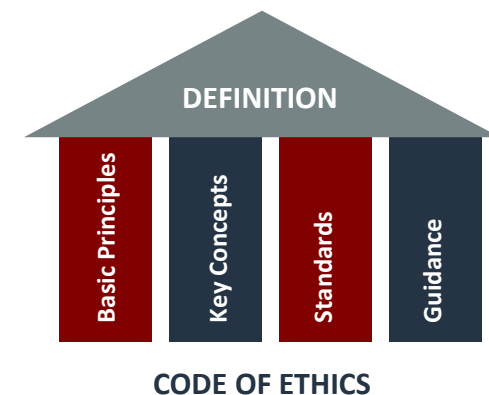
FAIS are mandatorily applicable w.e.f. 1 July 2023 for every member of ICAI (*but are incumbent on others professional to voluntarily comply with the FAIS*) and shall be effective for every new engagement executed on and after 1 July 2023. However, guidance note has not specifically stated whether the date of execution of Engagement letter or date of initiation of engagement has to be considered for applicability of FAIS but considering the **FAIS 220 “Engagement acceptance and Appointment”**, understanding about the Engagement Letter has been provided hence applicability may be considered from the date of execution of Engagement Letter.

The external stakeholders to FAIS are Banks, Financial Institutions, MHA, MCA, RBI, SEBI, CAG, CBI, NCLT, IBBI, IRDA, CBDT, CBIC, ICAI, ICSI, NABARD, TRAI, ED, EOW, SFIO, CERT, NSE, BSE, IBA and few more.

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.

The Framework as per FAIS 000 “Over Arching Documents”

The Framework governing FAIS presents the overall construct of the body of knowledge of FAI. With definition of the key terms as header, code of ethics as the base, the Basic Principles, Key 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.



Components of Framework

1. Definitions

- **Professional:** A professionally qualified person holding membership from a professional body who practices as a forensic accounting and investigation expert.
- **Forensic Accounting:** It means discovering facts & evidence to help professional report findings to reach a conclusion.
- **Investigation:** A critical examination of evidence, documents, facts and witness statements with respect to an alleged legal, ethical or contractual violation.
- **Litigation:** Litigation is a process of handling or settling a dispute in a Court of law or before a regulatory body.
- **Fraud:** It is an intentional or deliberate act to deprive another of property or money through deception or other unfair means.

Based on the **FAIS 110 “Nature of Engagement”**, following could be the nature of services to be provided under the three sets of engagement:

Forensic Accounting	Investigation	Litigation Support
<ul style="list-style-type: none"> • Financial Statement Manipulation • Asset tracing • Fund diversion • Anti-money laundering • Transactions Audit under IBC 2016 	<ul style="list-style-type: none"> • Cyber fraud • Criminal investigations • Insurance claims • Code of conduct violations • Whistle-blower complaints • Data breach / corruption • Asset theft 	<ul style="list-style-type: none"> • Criminal investigations • Alternate Dispute Handling • Expert witness

Components of Framework

2. Basic Principles

The Ten basic principles are a set of core principles fundamental to conducting such engagements, where 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:

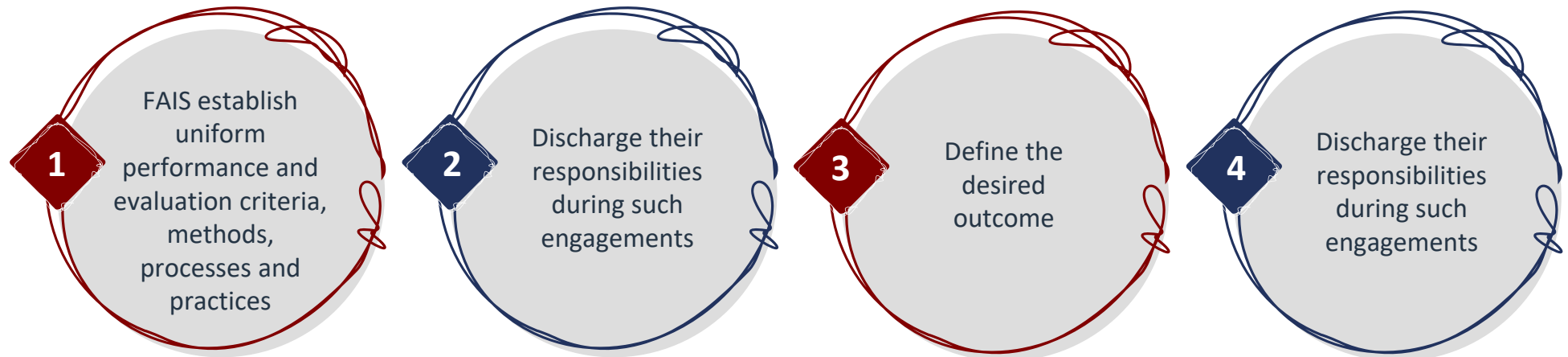
- **Independence:** The Professional shall be independent and neutral in, mind, conduct and appearance.
- **Integrity & Objectivity:** The Professional shall be honest, truthful, highly ethical and fair in all his dealings.
- **Due Professional Care:** It implies reasonable care in carrying out work, adequate focus and attention to the matters of importance, compliance with professional standards of work & continuous communication to prevent any misunderstanding.
- **Confidentiality:** Maintenance of utmost confidentiality & to protect privacy rights and discover evidence in a manner which does not infringe upon the privacy rights of individuals.
- **Skills and Competence:** Professional shall have the required qualifications and sound knowledge, practical experience and professional expertise in forensic accounting and investigation domains to conduct a quality engagement.

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:

- **Contextualization of Situation:** The context of the situation and the environment where the transactions or operations take place is important to understand the complete picture.
- **Primacy of Truth:** The primary objective of any Professional shall be centred around finding the truth and to reveal the reality behind every allegation.

- **Respecting Rights & Obligations:** It is critical to obtain standpoint of all parties by seeking information and evidence from suspects. They also have a right to defend their innocence.
- **Separating Facts from Opinions:** The information should not get contaminated with personal opinions of the source and rather should be based on pure facts.
- **Quality & Continuous Improvement:** The professional shall have quality controls in place to ensure reliance on the work performed.

3. FAI Standards



4. Code of Conduct

For a member carrying out FAIS engagement, the following shall apply:

- The requirements of the Chartered Accountants Act, 1949
- The Code of Ethics issued by ICAI
- Other relevant pronouncements of the ICAI

5. Guidance

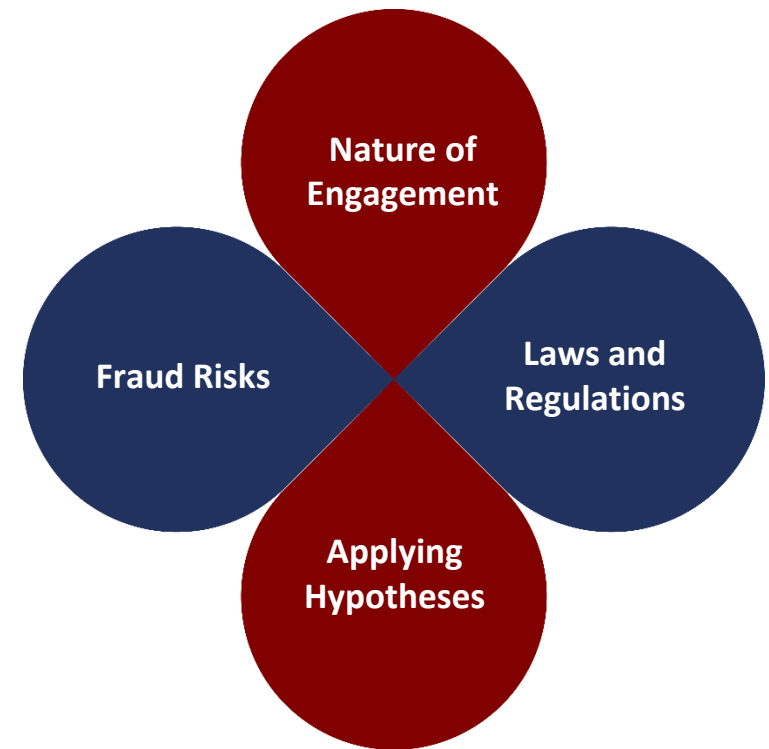
Guidance Notes are primarily designed to provide non-mandatory guidance on matters of implementation or clarification on their applicability in certain circumstances:

- **Implementation Guide:** Best practices, methodologies, or approach on how best to apply the prescribed requirements to achieve the objectives of the FAIS.
- **Technical Guide:** Clarifications as to what extent the FAIS applies in a certain situation, or in a specific industry or under unusual circumstances, considering the technical or operational uniqueness of the same.
- The Implementation and Technical Guides are recommendatory in nature. The Forensic Accounting and Investigation. Professional should ordinarily follow these recommendations.



6. Key Concepts

- **FAIS 120 “Fraud Risk”** objective is to recognize fraud risk while conducting FAI engagements, to identify Fraud Indicators for prioritizing work and assigning appropriate skill sets and evaluation of Fraud risk to establish the extent of emphasis required for reporting.
- **FAIS 130 “Law and Regulation”** objective is that engagements should be conducted as per the given mandate under the relevant laws and regulations, where work procedures are executed as per the prevailing laws and regulations and approach is to identify and report a violation of laws and regulations. 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.
- **FAIS 140 “Applying Hypotheses”** objective is to provide with need to evaluate the applicability of the concept of hypothesis in order to develop and execute considered engagement plans and to provide the need of test the evidence discovered on various observations and draw logical and reliable conclusions for proving or disproving the hypotheses.
- **FAIS 210 “Engagement Objectives”** deals with the effective and efficiency of workflow in the FAI engagements, the standard provides the clarity in setting objectives, which is most critical task in FAI engagement, by perusal of standard guidance for various types of engagements.

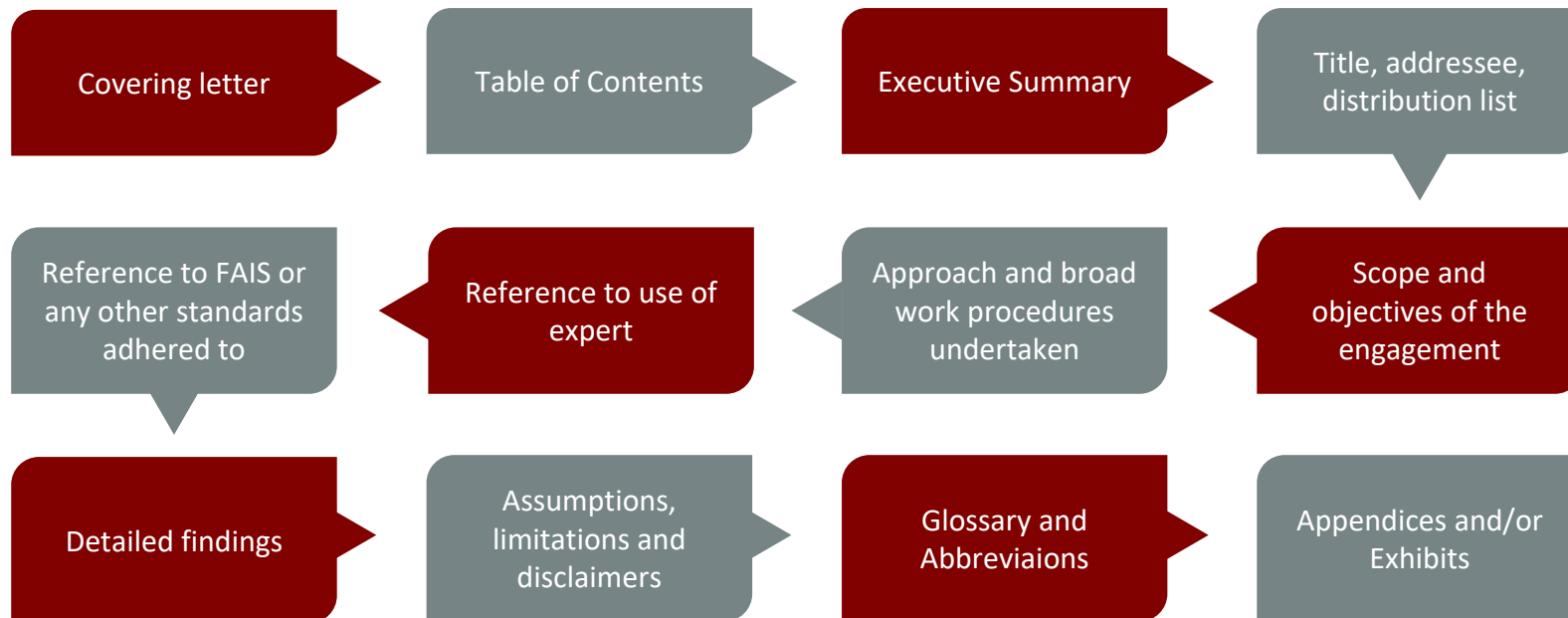


- **FAIS 230 “Using the work of an Expert”** deals with the deals with the use of an expert assisting in discovering reliable and sufficient evidence and seeking expert assistance where neither of the team member possess requisite set of skills and same is applicable where part of the work is completed by an expert relied upon by professional.
- **FAIS 240 “Engaging with Agencies”**, as Government Agencies like SFIO, CBI, ED and other agencies are one of the stakeholders in Major FAI engagement, so this standard is like cane to blind for professional to work with agencies.
- **FAIS 250 “Communication with Stakeholders”**, communication is one of the pillars of engagement which should be seamless and adequate to make the engagement of high quality, so this standard guides the professional for communicating with stakeholders during a FAI engagement, with not only direct stakeholder but also other stakeholders.
- **FAIS 310 “Planning the engagement”** guides the professional in planning the FAI engagement so that to achieve the engagement objectives with optimum utilisation of resources to bring efficiency and effective in operations.
- **FAIS 320 “Evidence and Documentation”** talks about documentation and gathering evidence during a FAI engagement, which is a very important element of FAI engagement. Chain of Custody, documenting every action during a FAI engagement are very critical areas during a FAI engagement, the standard also guides on it.
- **FAIS 330 “Conducting work procedure”** guides about the work procedures to be performed for achievement of engagement objectives which are already being performed by professional in the FAI industry.
- **FAIS 340 “Conducting Interviews”** guides the professional about conduct of interview during a FAI engagement so that objectives can be achieved without any hassle.
- **FAIS 350 “Review and Supervision”** talks about reviewing the work-done and supervision of FAI engagement of experienced professional as deliverables of FAI engagements are eventually presented at court of law.

- **FAIS 360 “Testifying before the Competent Authority”** another firewall for professional accountants for testifying themselves in courts and agencies so that it doesn’t backfire in future conduct of FAI engagement.
- **FAIS 410 “Applying Data Analysis”** comes with the flavour of FAI by applying data analytics in conduct of FAI engagement as data quantum is very huge in FAI engagement as compared to other engagement where a professional has to vouch/check years of raw data by applying analytical tools for sanitising it and making it informative for the engagement. The critical issues faced by professionals when applying data analytical tools in FAI engagement like non-uniformity and without beneficiary bank statements, data available in different formats, different line items in single data are also guided by standard.
- **FAIS 420 “Evidence gathering in Digital Domain”** talks about evidence available in digital formats, their gathering, protection, and presenting them in court of law without hampering chain of custody. As with the increase in usage of technology and software to store and transmit data, evidence gathering in digital domain is another challenging task as if sanctity of evidence is hampered then whole procedure can get jeopardize at court of law. The standard not only guides but also provides standard formats for gathering and protecting digital evidence, which is also another firewall of professionals.
- **FAIS 430 “Loans or Borrowings”** guides the professional in testing the loans and borrowing of entity in FAI engagement as major FAI engagements are concentrated around this area including Transaction Audit under IBC, Forensic Accounting etc. The standard guides the professional to vouch loans and borrowing of entity flowing through banks in their related parties, subsidiaries, associates and other entities indicating unusual transactions. The professional in these areas faces issues like non-availability of bank statements of individuals, related firms and companies, which a bottleneck in the major FAI engagements as entities easily bypass the professional asking for bank statements and other information of related parties.

- **FAIS 510 “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 FAI engagements.
- **FAIS 610 “Quality Control”** objective is to assist the Professional in focusing on quality in all forensic assignments along with a structure in place for the quality standards adherence. 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. The Professional may establish a Quality Control System (QCS) keeping in view the general expectations of the Stakeholders involved.

Key Elements of a Report:



- A FAI engagement is a fact-finding engagement rather than expressing an opinion or providing conclusion and presenting the same in deliverables for presenting the same in court of law. The facts corroborated during the engagement needs to be summarized in a report. Reporting in a FAI engagement is a critical task as professional faces many challenges during drafting and finalizing of report of FAI engagement. All characteristics of high-quality report are covered under FAIS which is appreciable as this area in FAI engagement is of very high risk.
- Testifying of professional in judicial forum is a new area covered under FAIS, as it also area of utmost importance in FAI engagement, a professional without thinking of repercussions of testifying in future, will end in death well. So as a safeguard, FAIS guides and protect the professional from any repercussions such as arrest, penalty, or loss of reputation.
- 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 would adhere to that. Nevertheless, certain key elements are likely to form part of most engagements.



Points to the reader

FAIS 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.

FAIS states the member of ICAI to have an understanding of various laws and regulations depending on the modus operandi of the engagement and in case of usage of experts, member can adhere the same.

FAIS allows the usage of 5W approach in forming a hypothesis: What, When, Who, Why and Where.

FAIS has taken immense stand by setting the standards on usage of data analytics and evidence gathering in digital domain. It has given applicability to legal and regulatory environment such as Indian Evidence Act, 1872, Information Technology Act, 2008, The Code of Criminal Procedure, 1973, Indian Penal Code, 1860 and Banker’s Book of Evidence Act, 1891.



Why Us?

- We have been conducting numerous forensic accounting, investigation and litigation projects by adhering a specified set of approach and methodology, which covers every aspect of the fraud scenarios and based upon the modus operandi the same has been followed during the engagement.
- The Reporting format stated in the FAIS has been followed by us during each and every engagement before applicability of the standards.
- Our team assisted in the framing of the Implementation Guide based on the understanding acquired during the execution of the engagements.



Synopsis of FAIS



Our Team



Srinivasa Rao
*National Lead,
Risk Advisory Service*

EDUCATION & EXPERIENCE:

Srinivasa Rao is a Partner in the firm and heads the Risk Advisory Services viz., Forensics, Due Diligence and Cyber practice.

Srinivasa has over 25 years of forensic experience. He has worked on more than 2000 forensic engagements across sectors.

Srinivas worked with global consulting firms like KPMG, PwC, BDO, etc. during his earlier employment and he is an eminent speaker at both domestic and global platforms on forensics. He also wrote various articles in business journals on forensics and risk management.

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Shrikrishna Dikshit
*Partner, Cyber Security
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EDUCATION & EXPERIENCE:

Shrikrishna Dikshit is a Partner with expertise in Cybersecurity and IT Governance. He has more than 20+ years of experience in IS Security, BCM and Disaster Recovery Management, Risk Management, Cloud Security Assessments, GDPR, SWIFT Assessments, Forensic Analysis, Application Security Assessments, Mobile Application Security Assessment, Vulnerability Assessment & Penetration Testing.

He is a Bachelor's (Commerce) and Poona University, Post Graduate Diploma in Information Technology (CDAC – ACTS, Pune). He is also a certified CISA, CISM, CEH and CBCP.

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Mayank Garg
*Director,
Risk Advisory Service*

EDUCATION & EXPERIENCE:

Mayank is a Director in Forensic practice of the Firm. He has more than 10 years of professional experience extensive experience of working in the areas of Pro-active Fraud Management, fraud risk management, fraud investigations and FCPA investigations. He has served several clients in the emerging sectors in India including pharmaceutical, media and entertainment, chemical, manufacturing, BPO, Information technology etc..

He is a Fellow Chartered Accountant and Associate Member of CPA. Mayank has worked with global consulting firms and companies like Deloitte, Hinduja Group, Biocon, etc. during his earlier employment.

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Amrish Chandra
*Assistant Manager,
Risk Advisory Service*

EDUCATION & EXPERIENCE:

Amrish is a Assistant Manager in Forensic practice of the Firm. He has over 5 years of professional experience in handling forensic investigation, forensic audit, transaction audit, process review, compliance review and risk-based engagements for manufacturing, infrastructure, real estate sector and stock exchange.

He is an Associate Chartered Accountant and LL.b. He has worked with global consulting firm Grant Thornton during his earlier employment.

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