

The Digital Accounting and Assurance Board (DAAB) of The Institute of Chartered Accountants of India (ICAI) invites comments on a new Forensic Accounting and Investigation Standard (FAIS) on – **Engaging with Agencies**

Comments are most helpful if they indicate a clear rationale and, where applicable, provide a suggestion for alternative wording.

Comments can be Submitted at
<https://forms.office.com/Pages/ResponsePage.aspx?id=DOHFOzhjoU6NJ-O1tggEOvuF6SRz25pIvVExBjm2K8JUNIFGS1BMUFlaQTMzNU9JW EU1RlhBUzVBSi4u>

Last date for sending comments is November 09, 2020.

FORENSIC ACCOUNTING AND INVESTIGATION STANDARD No. 240

ENGAGING WITH AGENCIES

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EXPOSURE DRAFT

APPROVED BY DAAB

(7 Oct'20)

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Annexure 1: Indicative List of Agencies

This Forensic Accounting and Investigation Standard Number 240, on “Engaging with Agencies,” issued by the Council of the Institute of Chartered Accountants of India (ICAI) 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 Institute.

1. Introduction and Scope

1.1 Forensic Accounting and Investigations (FAI) engagements are highly specialized in nature and in many engagements, Professionals are required to interact, or work closely with, the Law Enforcement Agencies, Regulatory Bodies or Adjudicating Authorities (collectively referred to as “Agencies”). This interaction is either in their Professional capacity as a service provider, or in their capacity as part of their organization.

1.2 Definitions:

- (a) Law Enforcement Agencies are typically Central or State Agencies mandated to enforce a particular law with the power to prevent, detect and investigate non-compliances with those laws. Their powers may be restricted by geography or by type of law they are entrusted to enforce.
- (b) Regulatory Bodies are established to govern and enforce rules and regulations for the benefit of public at large.
- (c) Adjudicating Authorities refer to Tribunals or Judicial Authorities established to interpret the law and pass necessary judgements in case of disputes.
- (d) Note: Agencies may also include international bodies, in such circumstances, the engagement may be governed by rules and laws relevant to the particular agency or engagement.

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

1.3 **Scope:** This Standard covers the following type of engagements:

- (a) Engagements where the Professionals are appointed by the Agency or on their behalf as a Consultant, Advisor or an Expert.
- (b) Engagements where the Professionals are called upon by the Agency in respect of the work carried out by them under the instructions of their employer, client or other Stakeholders.

This standard does not apply in situations wherein the Professionals provide Expert Witness services in any proceeding before the court of law. In such cases, Professional should refer to a separate FAIS on “Expert Witness”.

2. Objectives

- 2.1 The main objectives of this standard on Engaging with Agencies are:
- (a) Define certain protocols, including legal aspects, which are to be followed while undertaking engagements involving Agencies.
 - (b) Clarify certain roles and responsibilities of Professionals when interacting with the Agencies.
 - (c) Take into account special considerations when called upon by the Agencies to assist as an expert.
 - (d) Outline the manner in which the Professional can provide evidence to Agencies in relation to engagements carried out by the Professional.

3. Requirements

- 3.1. Professional shall agree on the objectives, scope and planned procedures of the engagement with the Agencies through an engagement letter or suitable form of communication. (refer Para 4.1)
- 3.2. Professional shall be aware of the applicable laws and regulations being governed by the respective agency and the legal implications of their work. (refer Para 4.2)
- 3.3. Professional shall comply with Basic Principles with special emphasis on Independence, Objectivity, Integrity, Confidentiality and Neutrality. (refer Para 4.3)
- 3.4. Professional shall be aware of their roles and responsibilities in presentation of facts before the Agencies. (refer Para 4.4)
- 3.5. Due professional care shall be taken with regards to communication with Agencies supported by adequate documentation trail. (refer Para 4.5)

4. Explanatory Comments

4.1. Engagement Letter or Terms of Reference (refer Para 3.1)

The Professional shall agree on the objectives, scope and planned procedures of the engagement with the Agencies either through a Reference or Work Order issued by the Agency or through an Engagement Letter or such suitable form of communication issued by the Professional. In this regard, the Professional shall adhere to FAIS 220 on “Engagement Acceptance and Appointment”.

If during the course of the engagement, there is a change in scope and objectives, the same shall be documented and agreed upon in the manner that is binding on both the parties. The Professional shall in all cases clearly communicate any changes to the concerned Agencies.

4.2. **Understanding of applicable laws and regulations (refer Para 3.2)**

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 Professional performing services in the nature of digital forensics shall be aware of the procedures to be undertaken to maintain evidentiary value of the digital data.

4.3. **Special emphasis governing engagement with Agencies (refer Para 3.3)**

- (a) During the tenure of the engagement, the Professional may be privy to information which is highly confidential in nature. The Professional shall inform their team members on the sensitivity of the engagement and to share the information only on a “need to know” basis.
- (b) The Professional shall take into account the protracted nature of the engagement and the need to be available later to explain their work and findings. Therefore, the Professional shall secure their evidence and documents to ensure admissibility in the court.

4.4. **Explanation on work carried out for other stakeholder(s) (refer Para 3.4)**

When the Professionals are called-upon by Agencies for clarifications regarding engagements carried out by them, they shall ensure the following:

- (a) The terms of engagement entered with Client shall include clauses relevant to sharing of information with Agencies in line with FAIS 220 on “Engagement Acceptance and Appointment”.
- (b) Communication with respect to scope limitations and work procedures that may have impact on the engagement deliverables.
- (c) Professionals engaged by Agencies to provide expert advice shall be duty bound to assist the agencies in areas of their expertise while maintaining their objectivity and independence and inform the agencies on matters outside their expertise.

4.5. **Communication with Agencies (refer Para 3.5)**

The Professional shall secure adequate documentation of correspondence with Agencies at every stage of the engagement and ensure archival of such correspondence. In this regard, the Professional shall also ensure adherence to FAIS 250 on “Communication with Stakeholders”.

5. Documentation for Compliance

- 5.1 Engagement Letter/Terms of Reference with scope, objectives and procedures
- 5.2 Chain of custody for physical/digital evidence
- 5.3 Non-Disclosure undertaking from Professionals and team members involved in the engagement.
- 5.4 Retention of all correspondences including Reports and Working Papers in physical/digital form.

6. Effective Date

- 6.1 This Standard is applicable for all engagements beginning on or after ... (a date to be notified by the Council of the ICAI).

Annexure 1**Indicative list of Agencies****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) Insolvency and Bankruptcy Board of India (IBBI)
- (f) Directorate General of Income Tax Investigation (DGIT)
- (g) Computer Emergency Response Team- (CERT)
- (h) National Crime Records Bureau (NCRB)

2. Regulatory Bodies:

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

3. Adjudicating Authorities:

- (a) National Company Law Tribunal (NCLT)
- (b) Income Tax Appellate Tribunal (ITAT)