

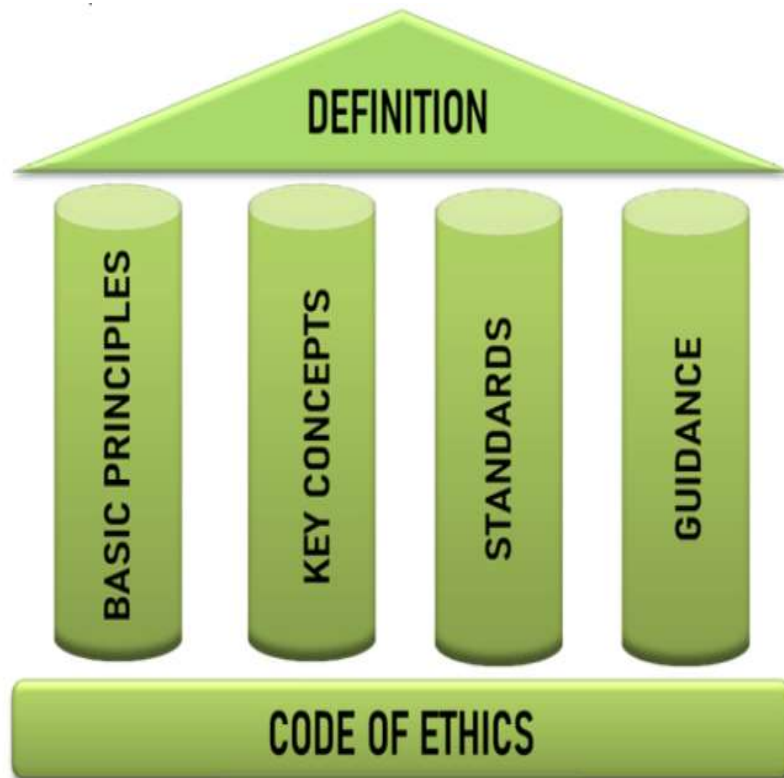
# **Curtain Raiser to Forensic Accounting & Investigation Standards**



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# Framework of FAIS



## FORENSIC ACCOUNTING is -

- ✓ Discovery and evaluation of evidence by a professional
- ✓ To interpret and
- ✓ To communicate findings
- ✓ Suitable for a Court of Law
- ✓ It pertains to area of financial transactions and operational arrangements

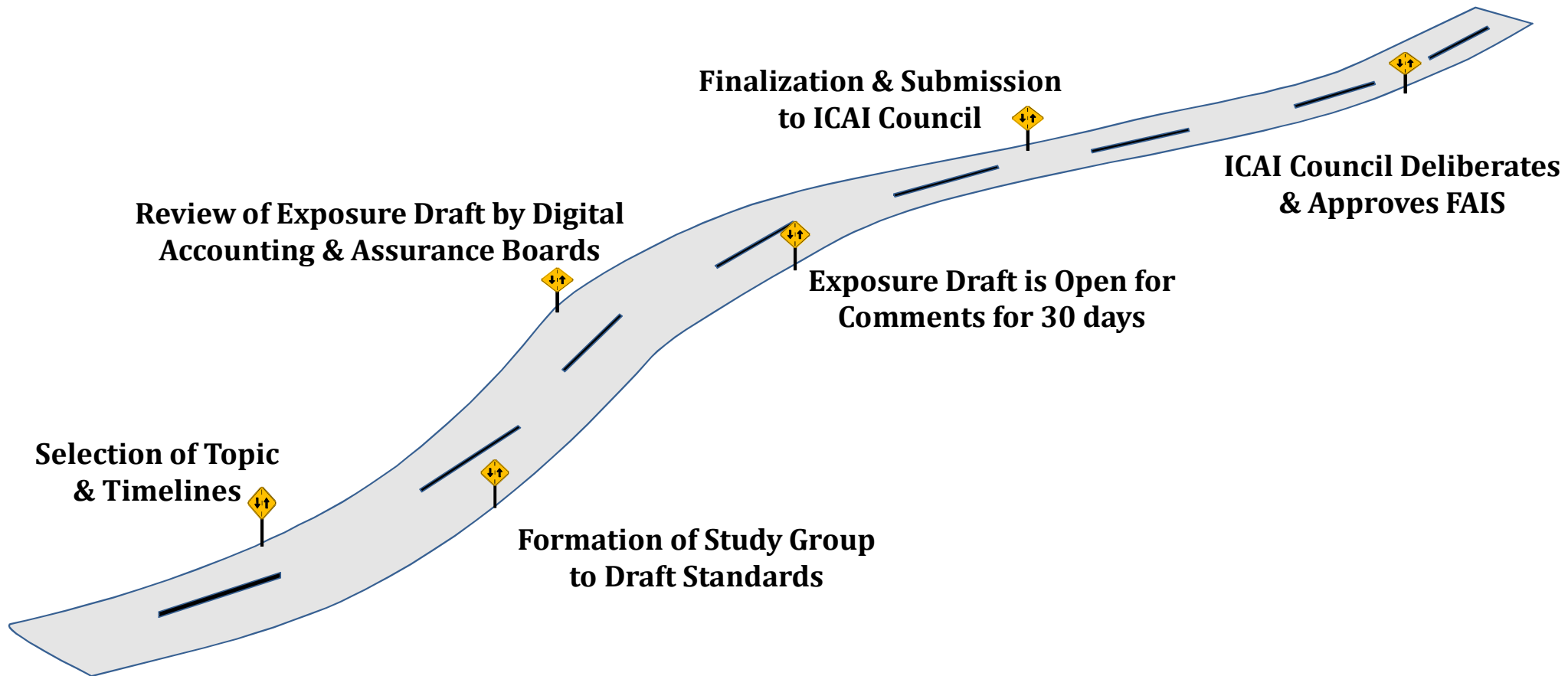
## INVESTIGATION is -

- ✓ Systematic and critical examination of facts, records and documents
- ✓ For a specific purpose

***Most investigations involve forensic accounting, but not all forensic accounting is an investigation***

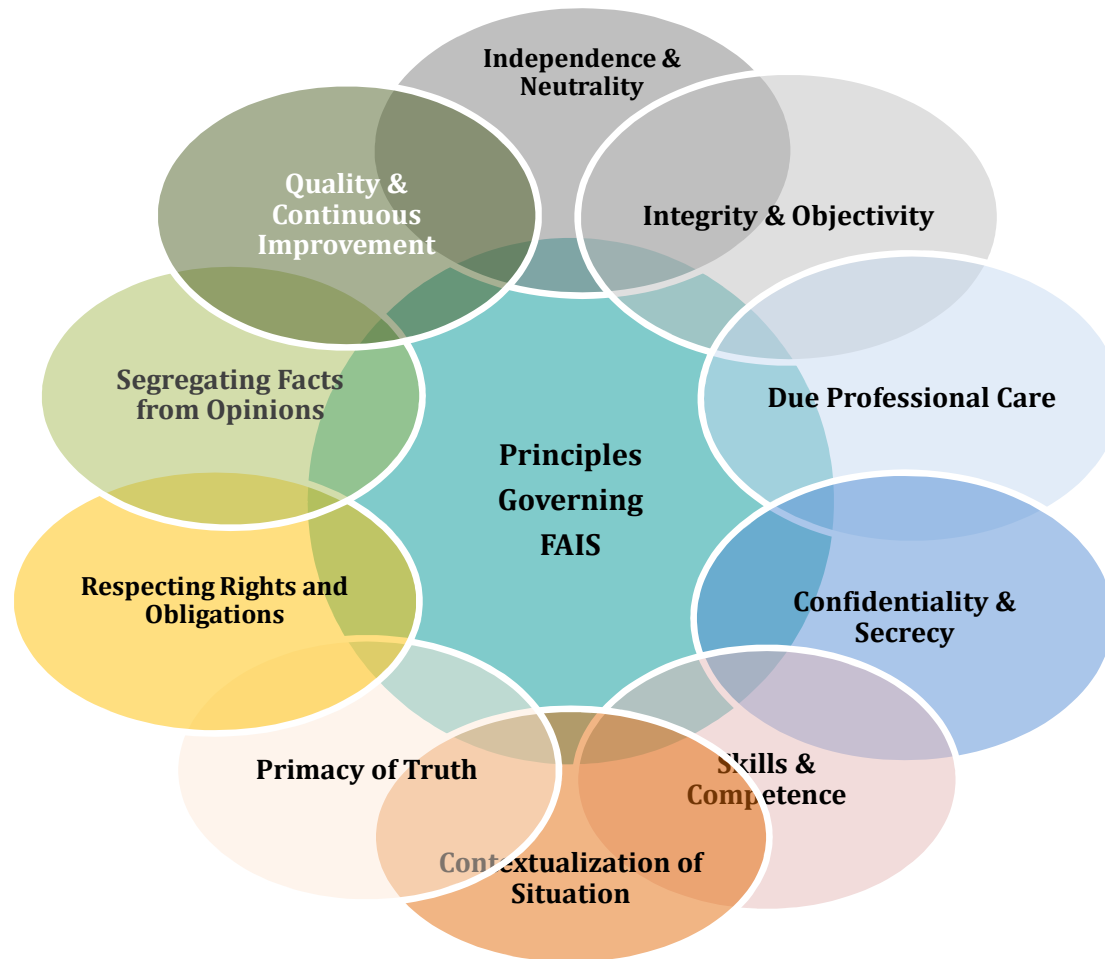
# Standard Setting Process

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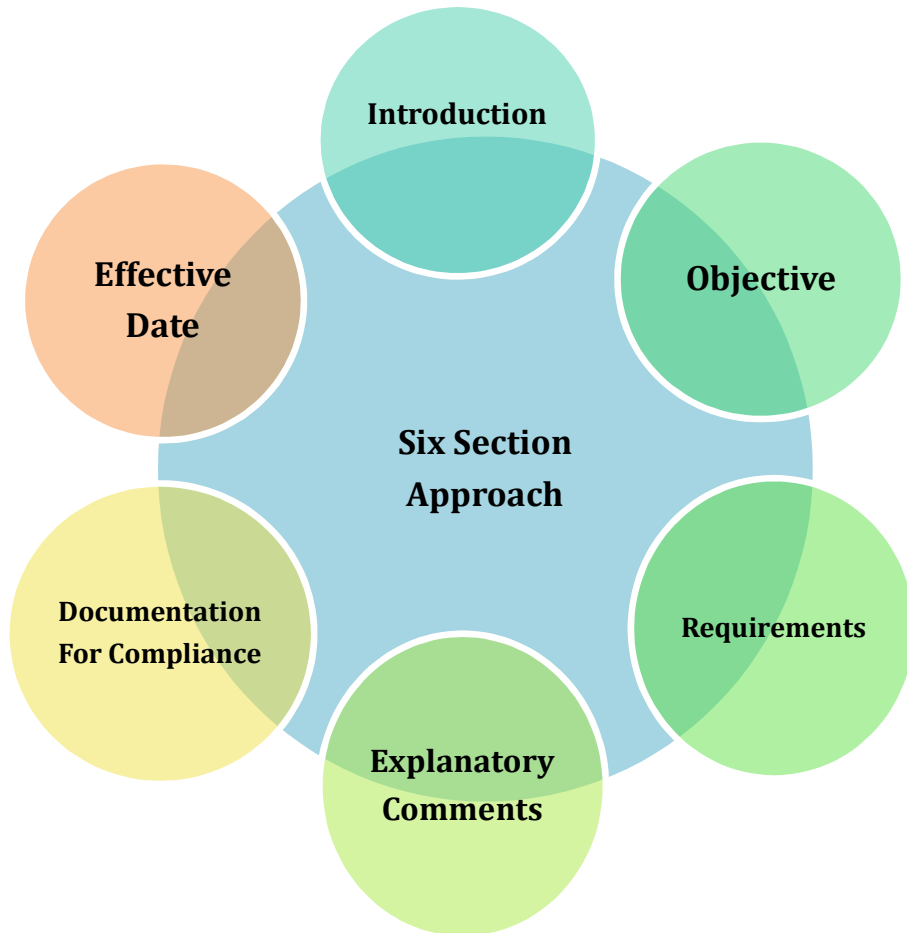


# Principles Governing FAIS

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# Preface to FAIS



The standards are intended to be principle-based rather than rule-based, thereby providing ample room for professional judgment when applying such principles



The spirit of law should prevail over the letter of law



The standards are a minimum set of requirements that apply to all members of ICAI and is also recommendatory to other professionals

FAIS Series	Broad Contents
100 series	Standards on Key Concepts
200 series	Standards on Practice Management
300-400 series	Standards on Executing FAI Assignments
500 series	Standards on Specialized Areas
600 series	Standards on Quality Control

# Index to FAIS

FAIS	Title	Broad Subject
110	Understanding the Nature of Engagement	Standards on Key Concepts
120	Understanding Fraud Risk	
130	Laws & Regulations	
140	Applying Hypothesis	
210	Engagement Objectives	Standards on Practice Management
220	Engagement Acceptance & Appointment	
230	Using the Work of an Expert	
240	Engaging with Agencies	
250	Communication with Stakeholders	Standards on Executing FAI Assignments
310	Planning the Assignment	
320	Evidence & Documentation	
330	Conducting Work Procedures	
340	Conducting Interviews	
350	Review & Supervision	
360	Reporting Results	
370	Testifying Before Competent Authorities	Standards on Specialized Areas
510	Applying Data Analysis	
520	Evidence Discovery in Digital Domain	
530	Loans & Borrowings	
540	Related & Connected Parties	

# FAIS 110 – Understanding the Nature of Engagement

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## REQUIREMENTS – What should apply when?

- ✓ The Professional shall **understand the mandate** which is setting the requirements of the engagement
- ✓ This **mandate shall not be in the nature of an audit** which has a different connotation, and where Standard on Auditing shall apply. Hence no part of the engagement, or its report shall refer to an “Audit”, such as “Forensic Audit”
- ✓ Where the mandate is pointing towards the **need to apply forensic skills** to collect evidence and present these in a court of law or provide an expert testimony, the concept of **Forensic Accounting** shall apply
- ✓ Where the mandate requires the **need to collect evidence** to help establish possible fraudulent intent, or to identify potential perpetrators of fraud, the concept of **Investigation** shall apply

*All parties shall have clarity on the nature of the engagement, which can be a Forensic Accounting engagement, an Investigation, an Expert View, or a combination of any of the aforesaid, but **NOT** an audit*

# FAIS 120 – Understanding Fraud Risk

**F**RAUD is defined as -

- ✓ An intentional or deliberate act
- ✓ To deprive another of property or money
- ✓ Through deception or any other unfair means





# FAIS 130 – Laws & Regulations

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## •REGULATORS & STATUTE DRIVEN FORENSIC ENGAGEMENTS

- STOCK EXCHANGES
  - (BSE/NSE)
- SEBI
- RBI and BANK
- IBC
- LAW ENFORCEMENT AGENCIES (Police, CBI, SFIO, EOW, Cyber Crime etc)
- COMPANIES
- COURTS
- OTHER REGULATORS like TRAI, IRDA, CCI etc

## •GENERAL LAWS

- INDIAN CONTRACT ACT
- INDIAN EVIDENCE ACT
- INDIAN PENAL CODE
- CRPC ACT
- IT ACT

## •SPECIFIC LAWS

- INSOLVENCY AND BANKRUPTCY CODE
- PREVENTION OF MONEY LAUNDERING ACT
- PREVENTION OF CORRUPTION ACT
- COMPANIES ACT 2013
- RBI GUIDELINES AND MASTER CIRCULARS

# FAIS 140 – Applying Hypothesis

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## MEANING & APPLICABILITY

- ✓ A hypothesis is a theory or assumption that pertains to a set of facts which are to be tested by further examination
- ✓ In **Forensic Accounting** engagements, the hypothesis is generally checked by *testing certain transactions and balances* to prove or disprove the possibility of some exceptions
- ✓ In **Investigation** engagements, the hypothesis is generally developed *to support or reject a possible modus operandi* of fraud schemes

## REQUIREMENTS

- ✓ The Professional shall understand the concept of applying hypotheses to help confirm or reject potential violations or exceptions which may have been perpetrated
- ✓ The Professional shall design the forensic accounting and investigation methodologies in accordance with considered hypotheses while maintaining neutrality to ensure a methodical and reliable approach
- ✓ Hypotheses generated by the Professional 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

# FAIS 210 – Engagement Objectives

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Forensic Accounting Services	Investigation Services	Litigation Support Services
Financial Statement Manipulations	Criminal Investigations	Expert Witness
Fund Diversion	Cyber Fraud	Alternate Dispute Handling
Asset Tracing	Insurance Claims	
Anti-money Laundering	Code of Conduct Violations	
Tax Evasion	Whistle Blower Policy	
Valuation	Asset theft	
Transactions under IBC	Bribery/Corruption	

# FAIS 220 – Engagement Acceptance & Appointment

## PROCEDURES FOR ENGAGEMENT ASSESSMENT

- ✓ Evaluation of independence
- ✓ Preliminary capability assessment with available resources and skills
- ✓ Complexity of law
- ✓ Constraints or limitations on the scope

## DUE DILIGENCE OF ENGAGEMENT

- ✓ Nature of Engagement and primary purpose
- ✓ Scope of Engagement and any limitation
- ✓ Execution Challenges
- ✓ Intended Users
- ✓ Fees & Costs

## ENGAGEMENT LETTER

- ✓ All parties must agree to the terms and sign the engagement letter
- ✓ Any subsequent change must also be preserved in writing as an addendum to the original engagement letter



# FAIS 230 – Using the Work of an Expert

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## POINTS FOR DISCUSSION

- ✓ Evaluation of independence & objectivity of expert
- ✓ Qualification & credentials of expert
- ✓ Defining the scope and deliverables of expert
- ✓ Evaluating the work of an expert

# FAIS 240 – Engaging with Agencies

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## POINTS FOR DISCUSSION

- ✓ Special emphasis on privacy of information – Non disclosure undertaking
- ✓ Importance of engagement letter detailing the scope and subsequent addendums
- ✓ Understanding of various laws prior to acceptance of engagement
- ✓ Indicative list of agencies

# FAIS 250 – Communication with Stakeholders

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- ❖ This FAIS deals with Professional's responsibility to have an effective communication with its stakeholders
- ❖ Primary Stakeholders refer to those parties who appoint the professional or, those who have been identified as per terms of engagement (For eg. Client, governance body, regulatory authority etc.)
- ❖ Other Stakeholders are those parties other than primary stakeholders (for eg. Lenders, customers, agents etc.)
- ❖ The professional must directly communicate with primary stakeholders who in turn shall communicate with other stakeholders

## **ESSENTIAL MATTERS OF COMMUNICATION**

*Necessary for execution of the engagement*

- ✓ Scope & methodology of engagement
- ✓ Written process and protocol of communication
- ✓ Laws & Regulations applicable to engagement
- ✓ Support & Cooperation from Stakeholders
- ✓ Engagement budget and constraints thereto
- ✓ Periodic reporting of progress

## **SIGNIFICANT MATTERS OF COMMUNICATION**

*It may impact the scope, performance or results of engagement*

- ✓ Lack of cooperation or significant delays
- ✓ Potential conflict of interest with any stakeholder
- ✓ Alteration or destruction of evidences
- ✓ Break in chain of custody of evidences
- ✓ Life Threatening situations

# FAIS 310 – Planning the Assignment

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## ENGAGEMENT -vs.- ASSIGNMENT

- ❖ **“Engagement”** refers to overall contractual arrangement between the professional and client stipulating terms of reference, scope of work, coverage and expected deliverables
- ❖ **“Assignment”** refers to a part of the engagement or, a portion of overall engagement or, a specific group of tasks to be undertaken by the Professional
- ❖ This standard shall apply to all FAI assignments where only a part is outsourced to professional





# FAIS 320 – Evidence & Documentation

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## POINTS FOR DISCUSSION

- ✓ Reliability of Evidence
- ✓ Relevance of Evidence
- ✓ Nature of Documentation
- ✓ Ownership & Custody of Documentation

# FAIS 330 – Conducting Work Procedures

- ❖ FAIS 330 provides for a phase-wise approach to execute FAI assignments
- ❖ In the 1<sup>st</sup> phase on “**Preliminary Review**”, the objective is to identify the irregularities and fraud risk factors associated with the assignment
- ❖ In the 2<sup>nd</sup> phase on “**Detailed Investigation**”, the objective is to establish the hypothesis and credibility of evidence

- ✓ Identify the nature of evidence to confirm the allegations
- ✓ Collect various data, information, facts and documents pertaining to the subject matter.
- ✓ Look for fraud indicators (“red flags”)
- ✓ Collect available evidence using regular masked “audit” procedures
- ✓ Conduct discreet enquiries to corroborate evidence
- ✓ Perform basic financial analysis to quantify the extent of loss

## INDICATIVE LIST OF WORK PROCEDURES

Phase 1

Phase 2

- ✓ Conduct physical verifications and other “field procedures”
- ✓ Identify key individuals involved (internal or external) and their personal and specific role in subject matter
- ✓ Postulate hypotheses and collect evidences
- ✓ Seek clarification and written response from the individuals
- ✓ Interview relevant stakeholders with facts/evidence and record their written statements

# FAIS 340 – Conducting Interviews

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## POINTS FOR DISCUSSION

- ✓ Preparation & Planning of Interviews
- ✓ Interview Methodology & Essential Steps
- ✓ Maintaining Confidentiality of Data

# FAIS 350 – Review & Supervision

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## POINTS FOR DISCUSSION

- ✓ Extent of Review & Supervision
- ✓ Nature of Review & Supervision
- ✓ Change in circumstances
- ✓ Matter for consideration

# FAIS 360 – Reporting Results

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## FORM & CONTENTS OF REPORT

- ✓ An overview of objectives, scope and approach of assignment
- ✓ Fact that the assignment has been conducted in accordance with FAIS
- ✓ Executive Summary of the results covering all important aspects
- ✓ Reference to Use of an Expert, if applicable
- ✓ List of findings supported by key evidences, sources of evidences, and other relevant matters
- ✓ Assumptions and limitations of the assignment
- ✓ Conclusions (if any) drawn from the assessment

## KEY POINTS

- ✓ The report should be easy to understand and interpret
- ✓ It should be addressed to the Primary Stakeholders and shared with Other Stakeholders, **where required and permissible**
- ✓ The report should be issued within a reasonable time frame
- ✓ The report should convey all relevant facts and evidences and fulfil the engagement mandate as per agreed scope



***This FAIS emphasizes the need to maintain copies of draft, interim & final report along with all working papers for future reference***

# FAIS 370 – Testifying before Competent Authorities

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## POINTS FOR DISCUSSION

- ✓ Fact Testimony –vs.- Expert Testimony
- ✓ Independence in approach to ensure no conflict of interest
- ✓ Prime duty towards Competent authority and not the client
- ✓ Documentation for compliance

# FAIS 510 – Applying Data Analysis

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## POINTS FOR DISCUSSION

- ✓ Planning data analysis
- ✓ Data Preparation
- ✓ Data Analysis & Reporting
- ✓ Data Preservation

# FAIS 520 – Evidence Discovery in Digital Domain

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## POINTS FOR DISCUSSION

- ✓ E-Discovery
- ✓ Understanding the Digital Domain
- ✓ Use of Qualified Expert
- ✓ Compliance with laws & regulations



# FAIS 530 – Loans & Borrowings

## OBJECTIVES

- ❖ To identify and report any shortcomings by the loan sanctioning authorities in proper due diligence prior to loan approval
- ❖ To identify and report any defaults by the borrower of loan agreement terms and covenants
- ❖ To identify and report the true utilization of the borrowed funds, as per the stipulated terms and conditions

- ✓ Bank statements along with narrations of all accounts maintained for the review period
- ✓ Special report or any other audit report for the review period
- ✓ Sanction or disbursement letters along with the terms of engagement
- ✓ Letter of Credit and Letter of Undertaking reports from bank systems, projected financial statements, invoices submitted to the lender

### DOCUMENTATION FOR COMPLIANCE

From Lender

From Borrower

- ✓ Books of accounts, in order to verify the utilization of funds
- ✓ Bills and vouchers, in order to verify genuineness of transactions undertaken and booked by the borrower
- ✓ Audited financial statements for the period
- ✓ Photos of Physical verification undertaken for factory / premises
- ✓ Credit rating of co-borrowers
- ✓ Guarantees given in other financial arrangements

# FAIS 540 – Related & Connected Parties

## RELATED PARTIES –vs.- CONNECTED PARTIES

- ❖ A “**Related Party**” is identified under various statutes or prevailing laws **based on the relationship of the parties involved**, such as the personal relationship of the individual or in the case of entities, **through shareholding or position of key personnel**
- ❖ “**Connected Parties**” are those where one has the **ability to influence the decisions or transactions of another**, in a manner which is **prejudicial to the interest of either party**, or **collude against the interest of any other third party**
- ❖ The substance of the relationship, and not merely the legal form, shall be considered while identifying any RPs for the purpose of FAI Standards, and **any reference to the broader term of CPs is deemed to include RPs**

## KEY POINTS

- ✓ The report shall contain reference to any such transaction which has come to light during course of assignment
- ✓ Absence of policy or framework on dealing with related party issues or use of complex corporate structures may be prime risk factors of a possible intent to disguise business relationships and transactions
- ✓ An individual or entity can influence the underlying arrangements or transactions with CPs, or create a network thereof, in a manner beyond the ambit of Regulatory Compliance Framework. Thus, emphasis must be placed on substance over form
- ✓ Arm’s length valuation is a matter of professional judgment and Professional may decide to opt to engage an expert for this purpose
- ✓ Reference to additional procedures in case of such transactions as mentioned in the FAIS 540

# Q & A Round

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# CONTACT US

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For more information or any query, please reach out to us.

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