

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 – Laws and Regulations.

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=DOHF0zhjoU6NJ-O1tggEOvuF6SRz25pIvVExBjm2K8JUNk5JUjNSNEpXSFNTQIVaNTVQW-TJLVExCTi4u>

Last date for sending comments is October 18, 2020.

FORENSIC ACCOUNTING AND INVESTIGATION STANDARD No. 130

LAWS AND REGULATIONS

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This Forensic Accounting and Investigation Standard 130, on “Laws and Regulations” 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 The purpose of Forensic Accounting and Investigation Standards (FAIS) 130 on “Laws and Regulations” is to establish an understanding about the provisions of laws and regulations pertaining to Forensic Accounting and Investigation (FAI) engagements.
- 1.2 Law refers to statutes passed by the sovereign government in their respective parliament. Regulation are subsets of laws drafted by regulatory agencies to implement the relevant laws. All engagements conducted by Professionals are expected to be based on the prevailing framework of law and regulations of the country in which that engagement is undertaken.
- 1.3 Forensic Accounting and Investigation engagements may arise either:
 - (a) in accordance with some specific law or regulation – which may provide both, the mandate and the process, of executing the engagement (such as an appointment by a court, or a law enforcement agency); or
 - (b) driven by provisions of various laws and regulations – where the Professional has flexibility in the mandate (established through a contractual arrangement), but executes the engagement within the framework of various laws and regulations (such as the Evidence Act).
- 1.4 Each engagement is unique and subject to relevant applicable statutes. A Professional is expected to adhere to those statutes in addition to general applicable laws which form part of any engagement. Hence the requirement to understand the law and discover admissible evidence is pivotal in such engagements.

2. Objectives

- 2.1 The main objectives of this Standard on Laws and Regulations is to ensure that:
 - (c) Engagements undertaken by the Professional are conducted as per the given mandate of the relevant laws and regulations (where applicable);
 - (d) The work procedures are executing keeping in mind the unique requirements of the prevailing laws and regulations; and
 - (e) A process driven approach is taken to identify and report any significant violations of laws and regulations pertaining to the objectives of the engagement.

3. Requirements

- 3.1. The Professional appointed under any specific laws or regulations, shall ensure the objectives of the engagement are in line with the provisions of those laws and regulations. Any mandate agreed with the stakeholders shall be consistent with the relevant laws and regulations.
- 3.2. When executing an engagement, the Professional shall consider the provisions of various laws and regulations which stipulate the manner in which such engagement work needs to be completed and the testimony of evidence needs to be presented (refer Paras 4.1 and 4.2).
- 3.3. The Professional shall implement a process driven approach (such as a checklist or an automated solution) to assist in identifying any significant deviations or non-compliances concerning laws and regulations impacting the subject matter of the engagement.
- 3.4. Principal of Natural Justice: While the Basic Principles of FAIS (refer Para 3.8 of that document) expects the Professional to respect the rights of all concerned, due importance shall be given to Principles of Natural Justice which provides for the other party full rights to be heard and to present their version of the truth.

4. Explanatory Comments

- 4.1. **Direct Impact Laws (refer Para 3.2):** Despite all laws being an integral part of the engagement, certain laws are central to all engagements. These laws form an essential basis for the Professional to conduct the engagement. An indicative list of the direct impact laws, pertaining to the context in India, is as follows:
 - (a) Indian Contract Act, 1872
 - (b) The Information Technology Act, 2000
 - (c) Indian Penal Code, 1860
 - (d) The Code of Criminal Procedure Act, 1973
 - (e) Indian Evidence Act, 1872
- 4.2. **Engagement related Laws (refer Para 3.2):** In addition to the direct impact laws mentioned above, there are certain specific laws which apply when engagements are planned and executed. These engagement specific laws shall govern the overall conduct of the engagements in such specific cases. A pictorial representation of the authorities and the statutory framework where Forensic Accounting and Investigation engagement may arise is presented as **Annexure 1**.

5. Documentation for Compliance

- 5.1 Since the nature of engagement varies from case to case, the laws and regulations will also vary based on the terms of engagement. Nevertheless, the following documents should be maintained for demonstrating compliance:
- (a) Check list drawn under the applicable laws and regulations, along with the criteria for choosing the particular law or regulation.
 - (b) Compliance requirements conducted to ensure admissibility of evidence.
 - (c) Documentation for Chain of Custody.
- 5.2 The engagement report shall give references to the laws and regulations that have been considered while conducting the engagement, in discovering evidence and drafting the report.

6 Effective Date

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

Typical Statutory Framework for Forensic Engagement

***(Indian
Con
text)***

•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