

1st DRAFT (15 Dec'20)

FOR REVIEW BY DAAB

(On 21 Dec'20)

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 – **Testifying Before a Competent Authority** .

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->

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Last date for sending comments is January 28, 2021.

FORENSIC ACCOUNTING AND INVESTIGATION STANDARD NO. 370

TESTIFYING BEFORE A COMPETENT AUTHORITY

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This Forensic Accounting and Investigation Standard Number 370, on “Testifying before a Competent Authority,” 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 ICAI.

1 Introduction and Scope

1.1 Forensic Accounting and Investigation (FAI) covers services where a Professional is called upon to testify before a Competent Authority in relation to a legal proceeding. Pursuant to the directives received from the Competent Authority, the Testifying Professional may be required to provide testimony in person as a Fact Witness or as an Expert Witness on the matter under investigation.

1.2 This Forensic Accounting and Investigation Standard (FAIS) 370 on “Testifying before a Competent Authority” covers the requirements to be followed by the Professional when testifying before a Competing Authority as a Fact Witness

1.3 Definitions:

- (a) **Client:** The term Client refers to the Primary Stakeholder which appoints the Professional and for whom the FAI engagement is undertaken by the Professional. It includes their legal counsel or solicitors or any other party specifically chosen to represent them.
- (b) **Competent Authority:** Competent authority refers to statutory or regulatory bodies and includes a court of law, an enforcement agency, an adjudicating authority or any other judicial or quasi-judicial body.
- (c) **Proceeding:** The legal process pursuant to directions given by a court of law or a regulatory body or an enforcement agency designed to conclude on a case.
- (d) **Testimony:** A statement of a Professional testifying before the Competent Authority on the facts in relation to an subject matter.

NOTE: The term **Fact Testimony** is different from **Expert Testimony**. The former is limited to presenting facts as observed, without any opinion, while the latter includes the expression of an opinion through the application of assumptions and analysis on the facts and by reaching a conclusion on the outcome of the work completed.

- (e) **Testifying Professional:** A Professional testifying before the Competent Authority either on own behalf or representing a firm having the competency to testify for FAI services.

1.4 **Scope:** The Standard applies to the following situations:

- (a) where the Professional is called upon by the Competent Authority to function as a Fact Witness in legal proceedings;
- (b) where the Professional provides FAI services to a Client as part of an agreed scope of services; and
- (c) where the Professional provides FAI services not forming part of the original scope of service; however, an addendum to the scope of service is issued

by the Client to provide Fact Witness testimony pursuant to legal proceedings.

2 Objectives

- 2.1 The objective of this Standard on Testifying before a Competent Authority is to set the requirements to be followed by the Testifying Professional when required to provide information and evidence to Competent Authorities pursuant to legal proceedings concerning the engagement.
- 2.2 The Standard also sets the competencies expected, and principles to be adhered to, by the Testifying Professional providing such services.

3 Requirements

- 3.1 The Testifying Professional shall be independent and objective in approach and ensure there is no conflict of interest in taking on the role of a Fact Witness prior to accepting an engagement in line with the Basic Principles of FAIS, which also mandate the need for confidentiality (refer Para 4.1).
- 3.2 Where there is any conflict, the Testifying Professional's paramount duty shall be towards the Competent Authority and not the Client; notwithstanding the fact that it may have been appointed by, or on behalf of, the party being investigated (refer Para 4.2).
- 3.3 The Testifying Professionals shall base the analysis only on facts and evidences acquired over the course of their assignment, and not be presumptive in nature (refer Para 4.3).
- 3.4 The Testifying Professional shall:
 - (a) be involved throughout the service period and lead the exercise;
 - (b) direct and supervise the team during the execution of the exercise;
 - (c) be involved in the preparation and finalization of the report; and
 - (d) devote reasonable time to demonstrate their involvement throughout the duration of the service.
- 3.5 The Testifying Professional shall adhere to the statutory provisions for deposition, as per applicable law and adhere to all the pronouncements issued by the ICAI including accounting standards, guidance notes, etc. where matters relating to accounting are concerned.

4 Explanatory Comments

4.1. Basic Principles (refer Para 3.1):

Where circumstances arise raising doubts over the independence, objectivity or conflict of interest of the Testifying Professional, they shall intimate the circumstances to the Client and Competent Authority and submit their inability to continue for the intended purpose.

Further, as a means to ensure independence and objectivity, the Testifying Professional's compensation shall not be contingent upon the outcome of the proceedings.

4.2. Duty towards the Competent Authority (refer para 3.2):

A unique feature for the Professional to act as a Fact Witness is that they shall have a fundamental responsibility to aid and assist the Competent Authority in arriving at a decision, notwithstanding the fact that the Testifying Professional may be appointed by, or on behalf of, the party being investigated. Hence, it is imperative for the Testifying Professional to remain impartial and demonstrate utmost integrity during the proceedings and the course of service.

The professional testimony should not tantamount to advocacy.

4.3. Basis of analysis (refer Para 3.3):

The objective of the Testifying Professional shall be to narrate the facts related to the subject matter, confirm or refute any other facts presented, and provide a report on the evidence gathered through independent analysis on matters within the scope of service.

In case, certain aspects of the matter have not been covered during the course of service, the Testifying Professional shall clearly identify the same in the report, state the relevant facts discovered and refrain from providing a conclusion on the same.

5 Documentation for Compliance

5.1 The Testifying Professional shall maintain adequate documentation which forms part of the service, including the following (indicative list):

- (a) Details of the scope of service agreed to be carried out by the Professional, purpose of the exercise, the report or other deliverable and its uses, remuneration for services, etc.;

- (b) Details of any significant scope changes and the reasons for such changes;
- (c) Details of data, documentation and information sought and received from the Client or its representative and further clarifications sought, and explanations received by the Professional including the source and custody of the documents and information;
- (d) Deliverables including reports and written submissions issued; underlying evidence (written, oral and digital) for the analysis carried out by the professional;
- (e) Directives as received through procedural orders from the Competent Authority and details sought from the Testifying Professional pursuant to the same; and
- (f) Documents submitted and representations made by the Testifying Professional to the Competent Authority pursuant to the directives received.

6 Effective Date

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