

INTOSAI



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## ***Guidelines and Good Practices Related to SAI Independence***

# INTOSAI PROFESSIONAL STANDARDS COMMITTEE

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# **INTOSAI Guidelines and Good Practices Related to SAI Independence**

Under the Mexico Declaration on Independence, Supreme Audit Institutions (SAIs) should protect the value of their work by adding the proper safeguards and removing real and perceived barriers to their independence.

These guidelines should serve as a source of good practices to share means of increasing and improving SAI independence. They are intended to be a living tool that is maintained and updated. We have set out the principles, as disclosed in the Mexico Declaration on Independence, and have added examples of good practices to help SAIs achieve independence. As more good practices are identified, they will be added to these guidelines.

## **Principle 1**

The existence of an appropriate and effective constitutional/statutory/legal framework and of *de facto* application provisions of this framework

### **Guidelines**

Legislation that spells out, in detail, the extent of SAI independence is required.

### **Good practices**

**The SAI's role and duties are not set out in legislation.** Where the head of the SAI has a minister's status, the SAI adopts specific organizational behaviour to gain more independence from the Executive. The SAI distances itself from the Executive, by not attending all cabinet meetings or events—only attending when it needs to accomplish its audit work.

## **Principle 2**

The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties

### **Guidelines:**

The applicable legislation specifies the conditions for appointments, re-appointments, employment, removal and retirement, of the head of SAI and members of collegial institutions, who are

- appointed, re-appointed, or removed by a process that ensures their independence from the Executive

- given appointments with sufficiently long and fixed terms, to allow them to carry out their mandates without fear of retaliation; and

- immune to any prosecution for any, act, past or present, that results from the normal discharge of their duties.

## Good practices

The Legislature appoints, re-appoints, or removes the Head of the SAI. The President of the Republic appoints the members of the Commission Proper (the Chairman and two Commissioners) with the Commission on Appointments' consent. These members can only be removed from office if they are impeached.

The Governor in Council appoints the Auditor General on the recommendation (not approval) of the House of Representatives. The SAI considers the recommendation as an "approval in practice," because of the non-political role of the Governor General and the conventions for accepting advice.

The Head of State appoints, re-appoints, or removes the Head of the SAI with the approval of the Legislature. The President of the Republic appoints the Auditor General, until the age of retirement. The Auditor General shall not be retired or removed from office unless there are grounds—similar to those that apply to a High Court judge, including physical or mental incapacity or misconduct.

The President appoints the Head of SAI with Congress's advice and a two-thirds majority vote to consent. It also takes a two-thirds majority to remove, for cause, the Head of SAI from office.

The Government appoints the Auditor General—not the Legislature or the Head of State. To make the appointment more independent and remove any real or perceived influence by the Executive, an advisory committee is established. The committee comprises senior government members and members from related outside organizations (for example, the national auditing foundation, senior accounting and auditing professionals, and professional associations). The advisory committee does the initial screening of the candidates and makes a recommendation to a Minister of the Crown, who then makes a recommendation to the Prime Minister.

The Head of State—which is not the Head of the Government and is elected by the majority of the citizens—appoints the Head of the Court of Audit.

Members in collegial SAI (Court of Audit) are recruited by public competition, with an independent jury. The conditions for candidates and criteria for selection are fixed by legislation.

The Constitution does not address legal immunity, in the normal discharge of duties, for the Auditor General. The SAI seeks to prevent litigation, through a clearance process that includes the following:

- a letter of representation from management;

- continuous discussion of findings during the audit, to clear up issues as they occur if possible;

- an exit meeting to discuss findings that were not cleared during the audit;

- a management letter (that the entity has three weeks to read and comment on), which is considered when the Report is written;

- for performance (value-for-money) audits, a draft report sent to the entity for comments, which are considered when the report is finalized and are reproduced in a report chapter; and

for financial audits, a copy of the Draft Report shown to management, during a courtesy visit, so management still has an opportunity to give evidence that may cause contentious items to be removed from the report.

The President of the Court (collegial SAI)

is appointed by decree that the President of the Republic makes, after receiving a proposal from the President of the Council of Ministers, who heard the opinion of the Court's Council of Presidency (SAI);

has to be chosen from Court's magistrates that have carried out functions of President of Chamber at the Court, for at least five years, or who have carried out equivalent functions at national constitutional bodies or European Union Institutions; and

once appointed, carries out the functions of the role until retirement age and cannot be removed from the position.

- Head of SAI is appointed to the Office for a term of seven years—after a submission is made by the Chairman of the Parliament, a secret ballot is held and the appointee receives a majority of votes from Parliament;

### **Principle 3**

A sufficiently broad mandate and full discretion, in the discharge of SAI functions

#### **Guidelines**

SAIs should be empowered to audit the

use of public monies, resources, or assets, by a recipient or beneficiary regardless of its legal nature;

collection of revenues owed to the government or public entities;

legality and regularity of government or public entities accounts and entities;

quality of financial management and reporting; and

economy, efficiency, and effectiveness of government or public entities operations.

Except when specifically required to do so by legislation, SAIs do not audit government or public entities policy but restrict themselves to the audit of policy implementation.

While respecting the laws enacted by the Legislature that apply to them, SAIs are free from direction or interference from the Legislature or the Executive in the

selection of audit issues;

planning, programming, conduct, reporting, and follow-up of their audits;

organization and management of their office; and

enforcement of the decisions where the application of sanctions is part of their mandate.

SAIs should not be involved or be seen to be involved, in any manner, whatsoever, in the management of the organizations that they audit.

SAIs should ensure that their personnel do not develop too close a relationship with the entities they audit, so that they remain objective and appear objective.

SAIs should have full discretion in the discharge of their responsibilities, they should cooperate with governments or public entities that strive to improve the use and management of public funds.

SAIs should use appropriate work and audit standards, and a code of ethics, based on official documents of INTOSAI, International Federation of Accountants, or other recognized standard-setting bodies.

SAIs should submit an annual activity report to the Legislature and to other state bodies—as required by the constitution, statutes, or legislation—which they should make available to the public.

### **Good practices**

Offering training courses to staff can protect an organization's independence by introducing the importance of independence into its culture. SAIs train their staff and emphasize the required quality and performance standards. Significant efforts are needed to ensure that work is autonomous, objective, and without bias.

For one SAI the terms “waste” and “extravagance” relate to the economy and efficiency of performance (value-for-money) audits, but not necessarily to effectiveness. Effectiveness is managed matching audit criteria or standards to the operations. Because audited entities are consulted when the criteria are determined, their approval of criteria is considered an indirect acknowledgment that the effectiveness of the program has been reviewed.

SAI employees are sometimes required (by the Legislature) to work closely with the executives (for example, on tender committees) to ensure compliance with procedures. This requirement may appear to cause a conflict of interest. However, the SAI can maintain its independence by ensuring that the auditors act only as observers and do not participate in the decision-making process.

## **Principle 4**

Unrestricted access to information

### **Guideline**

SAIs should have adequate powers to obtain timely, unfettered, direct, and free access to all the necessary documents and information, for the proper discharge of their statutory responsibilities.

### **Good practices**

The SAI receives copies of all cabinet decisions, which helps it select audits and understand government financial activities.

During audits of important public bodies and enterprises, a Court's magistrate (who is appointed by Court's council of Presidency to act as a delegate) has the right to attend the meetings of the public body's assembly, governing board, steering committee, board of auditors. As a result, the magistrate (who does not have the

right to vote) is aware of all of the public body's activities and has full access to information.

## **Principle 5**

The right and obligation to report on work

### **Guidelines**

SAIs should not be restricted from reporting the results of their audit work. They should be required by law to report at least once a year on the results of their audit work.

### **Good practices**

The Auditor General is required to submit an annual report directly to the sovereign (the King), who will order that the report be tabled in Parliament. The *Audit Act* allows the Auditor General to report audit findings at any time of the year. Findings that require immediate action, such as misappropriation of public monies and abuse of powers, are reported directly to the relevant authorities, for immediate investigation. The perpetrators of such acts could face sanctions or punitive actions.

The SAI is not legally required to make individual audit reports available to the public, except in its annual report to the President and the National Assembly. However, since August 2003, the SAI has made all of its audit reports available to the public on its web page.

## **Principle 6**

The freedom to decide the content and timing of audit reports and to publish and disseminate them

### **Guidelines**

SAIs are free to decide the content of their audit reports.

SAIs are free to make observations and recommendations in their audit reports, taking into consideration, as appropriate, the views of the audited entity.

Legislation specifies minimum audit reporting requirements of SAIs and, where appropriate, specific matters that should be subject to a formal audit opinion or certificate.

SAIs are free to decide on the timing of their audit reports except where specific reporting requirements are prescribed by law.

SAIs may accommodate specific requests for investigations or audits by the Legislature, as a whole, one of its commissions, or the government.

SAIs are free to publish and disseminate their reports, once they have been formally tabled or delivered to the appropriate authority—as required by law.

### **Good practices**

Even if the *Audit Act* does not clearly state that the opinions given to the Chamber of

Deputies can be released to the public, in the SAI report, the Budgetary Committee of the Chamber of Deputies may make opinions a compulsory part of the government reports, which must be discussed publicly.

## Principle 7

The existence of effective follow-up mechanisms on SAI recommendations

### Guidelines

SAIs submit their reports to the Legislature, one of its commissions, or an auditee's governing board, as appropriate, for review and follow-up on specific recommendations for corrective action.

SAIs have their own internal follow-up system to ensure that the audited entities properly address their observations and recommendations as well as those made by the Legislature, one of its commissions, or the auditee's governing board, as appropriate.

SAIs submit their follow-up reports to the Legislature, one of its commissions, or the auditee's governing board, as appropriate, for consideration and action, even when SAIs have their own statutory power for follow-up and sanctions.

### Good practices

**No follow-up function.** Currently, heads of departments are primarily responsible for dealing with matters raised by the SAI. The head of the Department of Finance requires that

ministers continue to scrutinize the actions that portfolio agencies take to respond to SAI recommendations, and

regular information is provided to the SAI and the public accounts committee.

**No statutory power for follow-up or to impose sanctions.** One SAI presented the following views on this topic.

Follow-up audits may be initiated at the Auditor General's discretion, sometimes at the request of a parliamentary standing committee. In the absence of a formal mechanism for follow-up or a public accounts committee, parliamentary standing committees may consider reports on a case-by-case basis.

Maintaining a strong relationship with parliamentary standing committees allows the SAI to brief the committees on reports. Because these briefings are often public, the SAI has the opportunity to draw attention to the recommendations.

An informal mechanism exists to draw the Executive's attention to the SAI's reports, which involves regular meetings between the Auditor General and the heads of the three central government departments (the Department of the Prime Minister and Cabinet, the Treasury, and the State Services Commission).

One country noted that the Auditor General discusses SAI recommendations with the concerned ministry and takes appropriate actions if the ministry is reluctant to follow the recommendations. In some cases, issues are followed up in the next audit year

and stronger actions are recommended.

In one SAI, while no follow-up is required, under the *Audit Act*, there are mechanisms to ensure that the ministries and agencies are following up on the recommendations.

Controlling officers are required to form a Financial Management and Accounts Committee, chaired by the controlling officers, to follow up on audit recommendations and ensure that necessary remedial actions are taken at the ministries and agencies.

In a follow-up audit report, the SAI will report on the status of matters raised in the previous audit. In addition, the Prime Minister's office has established the high-level, Management Integrity Committee to discuss Audit issues raised by the Auditor General's Office.

A key element of our follow-up regime is to hold a post-audit meeting—with audited agencies, the Ministry of Planning and Budget, and the Ministry of Government Administration and Home Affairs—to discuss realistic ways to act on the audit recommendations and to make budget and personnel decisions. The SAI is also preparing to include the government agency responses, to recommendations, on its Web page and to update the page regularly.

The SAI has no authority to ensure that the entities address anomalies and act on recommendations, and the Public Accounts committee is inactive. The SAI is following up on a suggestion to set up a small committee of permanent secretaries in the Prime Minister's Office and to have the Ministry of Finance and the Director of Audit meet with the audited entity, to address anomalies identified in the audit reports.

The Court reports to Parliament annually and may also submit special reports. The Court's report is subject to hearings of the budget committee's subcommittee, where senior officials of ministries are asked to answer questions. The budget committee accepts the recommendations included in the Court's report and requires ministries to implement the recommendations within a specified timeframe and to report to the Court or the Committee.

## **Principle 8**

Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources

### **Guidelines**

SAIs should have available necessary and reasonable human, material, and monetary resources—the Executive should not control or direct the access to these resources. SAIs manage their own budget and allocate it as appropriately.

The Legislature or one of its commissions is responsible for ensuring that SAIs have the proper resources to fulfill their mandate.

SAIs have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfill their mandate.

## Good practices

**No formal mechanism for an appeal to Parliament if the resources are insufficient.** A report can be made to the legislature in Parliament, in addition to the normal budgetary process.

**The process to determine the budget is not sufficiently independent and impartial.** The SAI's budget is currently negotiated with government representatives, which the SAI also audits. The process must allow for the appropriate funding for the SAI to be determined objectively, without any real or perceived influence; and

SAI's funding level and performance to be challenged effectively to ensure accountability.

To achieve the desired level of independence, the Speaker of the Legislature in Parliament appoints a panel of parliamentarians to oversee the SAI's annual funding requests. The panel receives the SAI's funding request and the government's analysis of the request. It can seek input from the SAI, the government, and outside experts, before it makes its recommendation to the Treasury.

**The SAI now pays salaries and allowances directly to field auditors.** Agencies cannot insist that the assigned auditors reside with them (making them virtually internal auditors). SAI has shifted from resident audit teams to audits done by teams within the SAI.

**SAI has discretion over budget allocations.** The SAI receives a lump sum from the general state budget (**one-line vote**). The Head of the SAI determines how the funds will be allocated among various expenditure categories.

The SAI has the discretion to allocate funds, but there are concerns about whether enough funds have been approved by Parliament. If funds do not cover the actual requirements, submissions are made to the Ministry of Finance, then to the Prime Minister, and then, if there is no positive feedback, to the Public Accounts Committee.

One SAI undergoes the following budgetary procedure:

The SAI submits its annual request for funds to the Ministry of Finance.

The Ministry of Finance passes the request on to the Cabinet ministers without any changes.

The Cabinet ministers negotiate the budgetary request with the government representatives (which the SAI audits). Although the Cabinet is authorized to alter the SAI request for funds, the Auditor General participates in the Cabinet meeting, as an advisor.

The Cabinet approves the budgetary request, and the parliamentary Public Expenditure and Audit Committee reviews it and the Committee's opinions.

If Parliament approves the Committee's opinion, the SAI's independence is assured.