

The Auditor-General

Quis custodiet ipsos custodes? (Who shall guard the guardians?)

Juvenal (Satires. vi. 347)

Public officials must be held accountable to the public and to the Legislature for their performance and stewardship of public funds and assets. The currency of financial accountability is information, but Ministers and officials are unlikely to always agree with members of the Legislature as to the quantity and quality of information that should be provided.

As such, the Office of the Auditor-General (Comptroller or Supreme Audit Institution) stands at the pinnacle of the financial accountability pyramid. It is therefore crucial that the appointment of the office-holder not be in the gift of the ruling party. If it is, it is a little like asking the burglar to select the watchdog. Indeed, political appointments of Auditor-Generals have been the root cause of many of the problems with integrity systems in various parts of the world.

The Office of the Auditor-General

The Auditor-General is, too, the fulcrum of a country's integrity system. As the officer responsible for auditing government income and expenditure, the effective Auditor-General acts as a watchdog over financial integrity and the credibility of reported information. The classic description of the role of the Office is that:

The [Auditor-General] audits the Appropriation Accounts on behalf of the House of Commons. He is the external auditor of Government, acting on behalf of the taxpayer, through Parliament, and it is on his investigations that Parliament has to rely for assurances about the accuracy and regularity of Government accounts.¹

The responsibilities of the Office of the Auditor-General also include:

- ensuring that the Executive complies with the will of the Legislature, as expressed through parliamentary appropriations;
- promoting efficiency and cost effectiveness; and,
- preventing corruption through the development of financial and auditing procedures designed effectively to reduce the incidence of corruption and increase the likelihood of its detection.²

Paraguay: Attempts to bring Comptroller-General to trial fail

The lower Chamber of Congress in Paraguay has failed in its attempt to initiate a political trial against the Comptroller General, Daniel Fretes Ventre, on charges of corruption. Fretes, who is responsible for fighting corruption in the country, is being investigated by a criminal tribunal for 18 crimes including inducement to illicit activities, extortion, blackmail, money laundering and covering up. Congress, however, needed the vote of two thirds of the 76 members of the lower chamber (47 votes) in order to formalise the charges. Only 44 votes were cast in favour of the trial, with 25 against and seven abstentions, which effectively ended the process that began last November. "This is regrettable because the evidence shows that the comptroller used his position for personal gain, he failed to respect the constitution, he extorted and he encouraged subordinates to commit serious crimes", the opposition member Rafael Filizzola told Reuters.

Reuters, 2 March 2000

¹ U.K. House of Commons, *First Special Report from the Committee of Public Accounts, Session 1980-81, The Role of the Comptroller and Auditor-General*, Volume 1, Report, HMSO, 4 February 1981.

² The Auditor-General should not, of course, be responsible both for developing financial procedures and then auditing the outcomes. For this to be the case would be to confuse the Auditor-General's role as an independent body with that of becoming responsible for activities carried on within the Executive.

The appointment process

The Office of the Auditor-General is of such significance that it warrants special provisions concerning appointment and removal procedures and the protection of the office-holder's independence from the control of the governing party, politicians, and senior civil servants. Ideally, the issues of selection, accountability and authority should be incorporated into a country's constitution.

"The nation needs a financial watchdog that barks and bites"

"The consequences of giving the job [of Comptroller and Auditor General] to unqualified persons have been disastrous for India.... A strong and effective CAG is the best ally that the government and the people can have to reduce the enormous waste and fraud we see everywhere in the central and state governments. It will be in the interests of the government not to yield to pressure from retiring government officials lining up for the job, but to find a professionally qualified and independent CAG.... The nation needs a financial watchdog which barks and bites. This is the time to look for one. The opportunity should not be lost."

"Selecting the Next CAG", K.P. Joseph writing in the Economic and Political Weekly (India), 27 May 1995.

The public perception of the Auditor-General is similar to that of the Ombudsman in that the office is viewed as an independent and fair mechanism for preserving financial accountability. The selection process is therefore an issue of some concern. If the Executive reserves the right to appoint and remove the Auditor-General, without due consultation, and makes appointments based on political influence or patronage, the incumbent can be identified in the public mind as an officer of the government rather than as an external and qualified public auditor.

The appointment process must be based on merit and involve institutions and persons other than simply the party in power. It is arguable whether the accountancy profession should have a say in the matter (although in some countries they are rightly concerned to ensure appointments of high professional calibre), but ideally, the appointment should be confirmed by a substantial majority in Parliament.

Accountability

To be effective, any external auditor must be immune from pressures from the clients or institutions being audited. The Auditor-General's clients are the Legislature or Parliament, and the public officials entrusted with public expenditure. Unfortunately, the Auditor-General's office can be particularly vulnerable to pressure from its clients if, as in the majority of cases, the Executive:

- appoints the Auditor-General;
- determines the resources allocated to the Auditor-General's office;
- determines staffing levels and classifications; and,
- is responsible for overall financial management and administration through the Minister of Finance.

An Auditor-General who is not constitutionally protected can be liable to arbitrary removal at the whim of a disgruntled administration - and most administrations that incur serious criticism for financial mismanagement are more inclined to shoot the messenger than accept responsibility for their misdeeds.

An apparent ambiguity in terms of accountability can be reduced if the office-holder is clearly designated as being an officer of the Legislature, rather than an appendage of the Executive. For example, British legislation now states that "the Comptroller and Auditor-General shall, by virtue of his office, be an officer of the House of Commons [the elected House of Parliament]."³

If the role of the Office is to be a properly independent and constitutional one, the Office and its functions should be accountable and subject to periodic reviews by the Legislature (in many countries, through the Public Accounts Committee). It should also have direct access to Par-

³ National Audit Act 1983 (UK), section 1(2).

liament, the Public Expenditure Committee, the Director of Public Prosecutions, and other investigative agencies as needed. In addition, best practice dictates that the Office of the Auditor-General should itself be subject to peer review to ensure quality through external inspection and audit.⁴

Contracting out to the private sector

In an era when governments around the world are looking at ways of reducing bureaucracy by contracting out to the private sector, there must be a clear understanding of the necessity to preserve the constitutional function performed by the Office of the Auditor-General.

By hiring a number of private sector accountancy and auditing firms to do the job, most, if not all, of the following would be at risk:

- developing and retaining considerable expertise in public sector audit;
- continuity of office (private sector firms would be dependent on the goodwill of those hiring them for the renewal of their contracts);
- a reputation for public integrity sustained over a long period of time;
- a deterrent to aberrations, illegal acts or wasteful decisions on the part of public servants, simply through the knowledge that the Auditor-General can inspect at any time;
- the non-partisan performance of duties; and
- a core public mechanism for keeping the public sector accountable to the Legislature.

Moreover, with audit firms increasingly made to tender for audit work, unease has grown within the audit profession that tendering may harm audit quality. Such concerns have become major problems for the accountancy profession in the United States.⁵

Unless contracting out is a direct attempt to reduce accountability, such a move would be based on an unspoken belief that the Auditor-General's office lags behind best practice in the private sector when it comes to auditing commercial organisations. This points to the need to rehabilitate and better equip the office of the Auditor-General. If, however, circumstances dictate that a particular audit would best be conducted externally, constitutional propriety would be met if the Auditor-General maintains jurisdiction but, after consultation with the appropriate Minister, decides to sub-contract a private sector firm to perform the work.⁶ It is of critical importance that the Auditor-General be, and remain, the statutory auditor of all public bodies.

Certainly, the notion that a public agency should be free to pick and choose between competing private firms as to which they should be accountable – and for how long – flies in the face of concepts of sustainable accountability. That said, there will be occasions, particularly in countries where auditing resources in the public sector are scarce, where private sector firms will have to play a role.

Dangers in contracting out...

The dangers of contracting out were highlighted in 1989, by Mr Kenneth Dye (then Canadian Auditor-General), when he described how private sector auditors were appointed in Canada to oversee state corporations. "[State corporations] do not appoint their own auditors. It is done by government in cabinet, and so [for example] the chairman of the post office does not have much choice; he does not know who his next auditors will be, It will be at the whim of cabinet. They usually leave them in for five years, but sometimes they change, and they tend to change with a change of government... I have strongly held views that accounting firms ought not to contribute to political parties on the basis of expected reward.... There is a correlation between the strength of the gift and the appointment of audits."

"The Auditor General: Ally of the People and Parliament: Report 296 Joint Committee of Public Accounts", Australian Government Printing Service, Canberra, 1989, p. 113. Evidence given to the Committee.

4 U.S. Government Auditing Standards (1994) (commonly known as the Yellow Book) is widely used around the world. Published by the US General Accounting Office, it states that "each audit organisation conducting audits in accordance with these standards should ... undergo an external quality control review."

5 See, for example, B. Simmons, *The Case for Audit Tenders*, Business Review Weekly, 4 November 1988, p. 117; M. Peers, *Auditors in uproar over fee discounts*, Australian Financial Review, 17

August 1988; and, T. Thomas, *No Merger, But Links to be Stronger*, Business Review Weekly, 16 December 1988, p.89.

6 Such a recommendation has been made in Australia. See *The Auditor General: Ally of the People and Parliament – Report 296* (Joint Committee of Public Accounts, Australian Government Printing Service Canberra, 1989, p.108). This supports a similar recommendation made by the Senate Standing Committee on Finance and Government Operations in 1982.

Conflict of interest is an inherent danger in contracting out the functions of the Auditor-General. A private sector auditing firm should be barred from providing other services to a department or ministry being audited, at least for as long as the duration of the audit contract. Indeed, one of the prime arguments used by the private sector is that an external auditor could provide a range of additional financial services which are not presently provided by an Auditor-General. This argument ignores the significance of conflict-of-interest considerations in public sector work.

Perhaps the greatest single factor in the argument against contracting out to the private sector is that the Auditor-General acts as a filter between audited departments, ministries and individuals, and the Legislature. If the Legislature cannot rely on the Auditor-General to single out the most important issues, it would be confronted by a welter of reports emanating from a myriad of different accounting firms. In the face of many individual reports, each with its own claims for the Legislature's attention, the task for the Legislature of identifying the most important issues would be an extremely taxing and time-consuming one.

In some countries, the modern trend is for government-owned or -controlled companies to be freed from the Auditor-General's scrutiny by gaining authority to appoint a private sector auditor to conduct an audit under the auspices of its own legislation and beyond the oversight of the Auditor-General. In such a situation, the Executive can truly be described as appointing its own auditor.⁷

The best that can be said in support of such a practice is that the Executive has the belief that there are efficiency gains to be made, without sustaining a loss in accountability. The worst that can be said is that there is more than a suspicion in many countries that some companies, then subject to Government audit, have seized the opportunity afforded by reductions in Ministerial control to deliberately slip the yoke of the Auditor-General.

Epitaph to an auditor of integrity

Shortly after filing an Annual Report⁸ which includes the following moving lines, the Auditor General, Su'a Rimoni D. Ah Chong, Controller and Chief of Audit in Samoa, was removed from office. His Report had detailed gross financial mismanagement by senior political figures, none of which were substantially challenged. The grounds for his removal from office were simply that he had, without authorisation, called upon an international auditing firm to assist him in his inquiries:

"The exercise of my functions as Controller and Chief Auditor in a small place like Western Samoa is a burdensome responsibility indeed, the full impact of which I am just now becoming fully aware of. The decisions which I must take, if the purpose of my Office is to be achieved, on matters arising out of my audits affect and will continue to affect many powerful people, some friends, some family members, etc. whose decisions and conduct affecting public moneys and Government properties have been called into question. The one thing that has kept me "unaffected" is my firm belief that the future of our children, our people and our country, depends on making our "governing" system work properly, for one and all, as our Constitution envisaged...Successive governments have such an obligation and duty to our people,

7 In some countries, this has given rise to complaints about the lowering of professional standards, most notably in the United States. See *United States General Accounting Office, Report to Chairman, Legislation and National Security Subcommittee, Committee on Government Operations, House of Representa-*

tives, CPA Audit Quality: Many Governmental Audits Do Not Comply With Professional Standards.. USAGO, March 1986.
8 Su'a Rimoni D. Ah Chong, Controller and Chief Auditor, Audit Office, Western Samoa, 6 July 1994 in his report to the Legislative Assembly Period 1 January 1993 to 30 June 1994.

and Parliament should ensure Governments are guided along a path towards achieving and sustaining that objective.”

Five years after Ah Chong had been summarily removed from office, a cabinet minister responsible for trying to contain rampant corruption in the same administration which Ah Chong had criticised, was murdered at the instance of two of his former cabinet colleagues, and by the son of one of them.

Effectiveness

It is clearly constitutionally anomalous for the Executive to have control over the budget and staffing of the Office of the Auditor-General. If the provision of adequate resources is left to the Executive to determine, the temptation will be to economise. A better approach involves making the necessary financial appropriations through the Legislature.

Some countries (Australia and Britain, for example) have established parliamentary committees to advise the Auditor-General on Parliament’s audit priorities as well as to consider in detail the finances of the Office. Committee members include the Chair of the Public Accounts Committee (which is responsible for considering and reporting on the Auditor-General’s reports) and the Minister of Finance (to ensure that resource “bids” are subjected to the same levels of analysis and evaluation as in other departments). The result is a shared responsibility between the Executive and the Legislature. The argument that this approach infringes upon the convention of the Executive alone preparing and placing proposals for expenditure to Parliament, is countered by the fact that Parliament is simply participating in the process by which advance estimates are determined.

To be fully effective, the Office of the Auditor-General should have relative freedom to manage the department’s budget and to hire and assign competent professional staff. There is usually a qualified and experienced pool of professionals who can be drawn from the private sector, if adequate remuneration is provided.⁹ To meet the attractive wage scale offered by the private sector, the trend in best practice is towards uncoupling the Auditor-General’s Office from the overall general public service pay structure, thus permitting the Office “as a statutory or constitutional authority” to determine the terms and conditions of employment. The Office should also be free to diversify its skill base by being able to recruit, on contract, persons from the private sector to positions of leadership. It may, however, not be possible to match private sector pay scales at the top levels. If so, a route which may be worth exploring involves seconding senior private sector staff to the Audit Office through an arrangement with the professional body of the accountancy profession.¹⁰

The issue of adequate funding also comes into play when ensuring the effectiveness of the Office. At times, the Auditor-General, especially in smaller countries, may require additional outside help to deal with complex situations. Without special budgetary provision to enable the Auditor-General to engage international firms of accountants or other specialists, the Office may be hamstrung in the most serious cases. If starved of necessary resources, the Office can also be prevented from ensuring that it keeps up-to-date with modern accounting prac-

Samoa politicians sentenced to hang

“The assassinated minister was a popular man and a vigorous opponent of corruption. Two former Samoan cabinet ministers have been sentenced to death for the murder of a fellow politician who had threatened to expose a corruption scandal. Dismissed Women’s Affairs Minister, Leafa Vitale, 57, and ex-Communications Minister, Toi Aukuso, 68, were found guilty of plotting to murder Luagalau Levaula Kamu, 44, who was shot in the head during a political gathering last July... Alalise Leafa Vitale, 34, eldest son of Leafa Vitale, who last year pleaded guilty to shooting the minister in the back of the head ... testified that his father and Aukuso, a family friend, had ordered him to do the killing. The prosecution alleged that the public works minister was murdered to try to prevent him from revealing widespread corruption and misuse of public funds.”

BBC World Service, 14 April 2000

9 In Australia, for example, salaries of senior staff were less than half those of private sector peers, leading to problems in recruitment and therefore diminishing the effectiveness and efficiency of the Office. See *The Auditor General: Ally of the*

People and Parliament: Report 296 Joint Committee of Public Accounts, Australian Government Printing Service, Canberra, 1989, p.xv.

10 The suggestion has been made in Australia. See *Ibid.*, p.85.

tices and technologies, and is able to conduct efficiency and performance audits. Developed countries tend to devote as much as 50 per cent of the Office's resources to efficiency audits. The proportions which developing countries can devote is very much lower, and at times negligible. Yet, if these countries are to develop meaningfully, with a minimum of corruption and maladministration of public funds, efficiency audits are fundamental to maximising their limited resources.

Furthermore, the effectiveness of the Auditor-General can also be eroded by legislation which creates quasi-autonomous public bodies beyond the Auditor-General's domain or by privatising functions that properly belong in the Office. A watchful press, public, and parliamentary opposition must always be on the lookout for any unjustified intrusion into the Auditor-General's jurisdiction. In addition, legislation governing the fundamental principles of financial management and control and accountability for public funds and property should be strong and up-to-date.

Relationships with other Agencies

Increasingly, the Office of the Auditor-General liaises closely with enforcement officials in other government agencies to ensure that skills and insights are shared and that the Office becomes more adept at spotting corruption. Recent developments in enforcement have uncovered failures in the traditional separation of government functions. For example, a number of serious scandals erupted in Germany in mid-1995 when operational changes were implemented which brought both the Office of the Auditor-General and the taxation authorities into a closer working relationship with those government structures responsible for investigating and prosecuting crime. A small team of carefully-selected investigators of the highest integrity, equipped with appropriate powers of investigation, and given both independence from political control and a high level of political support, has proven to be a much-improved method of investigating, and a better deterrent against, large-scale corruption.

Enforcement

The enforcement of financially sound procedures and adequate follow-up to reports from the Auditor-General should be essentially proactive. For example, there is little utility in having senior political figures file financial disclosures unless someone, somewhere, is going to analyse the information and check for accuracy and truthfulness. This is not to say that every disclosure must be checked, but there must at least be an awareness of the probability of this occurring and the risk involved in filing false information.

The basis for establishing proper methods of investigation and prevention of corruption begins with institution-building. At the front-line of an institutional integrity system are those civil servants who are also members of professional bodies, such as lawyers, accountants, auditors, researchers and investigators. Apart from being accountable to their direct superiors, these individuals may also be subject to disciplinary action by their professional bodies if they are shown to have conducted their professional duties in an unethical manner. Where professional societies exist, the public service sections of their membership should be fostered and encouraged to debate the ethical and professional issues that can and do arise in the course of public service.¹¹

In addition, civil service professional staff could be made responsible to constitutional office-holders outside their departments. For example, internal accountants and auditors may be made professionally responsible to the Office of the Auditor-General in order to allow them

direct access to this Office when they believe they are being subjected to unprofessional demands by their departmental superiors. Similarly, departmental lawyers may be professionally responsible to the Attorney-General. This “enforcement” of professional accountability can halt much corruption quite literally in its tracks. However, another view is that the analogy to the Attorney-General (an Office of the Executive) is, in fact, misleading, and that the Auditor-General functions best when wholly separated from the Executive, and not as an adjunct to it.

Eleven recommendations provide a checklist

Recognising the importance of the Supreme Audit Institution, representatives from the countries in the process of joining the European Union, adopted the following eleven recommendations in October, 1999.¹²

The Legal Framework

Recommendation 1: Supreme Audit Institutions should have a solid, stable and applicable legal base that is laid down in the Constitution and the law and is complemented by regulations, rules and procedures.

Recommendation 2: Supreme Audit Institutions should have the functional, organisational, operational and financial independence required to fulfil their tasks objectively and effectively.

Recommendation 3: Supreme Audit Institutions should have powers and means that are clearly stated in the Constitution and the law to audit all public funds, resources and operations (including EU funds and resources), regardless of whether they are reflected in the national budget and regardless of who receives or manages these public funds, resources and operations.

Recommendation 4: Supreme Audit Institutions should undertake the full range of public-sector external auditing, covering both regularity and performance audits.

Recommendation 5: Supreme Audit Institutions must be able to report freely and without restriction on the results of their work. Reports may be submitted to Parliament and should be made public.

Adoption and Implementation of Auditing Standards

Recommendation 6: Supreme Audit Institutions, recognising existing national experience, should formally adopt, promulgate and disseminate auditing policies and standards, compliant with INTOSAI Auditing Standards, European Implementing Guidelines for INTOSAI Auditing Standards and any relevant public sector auditing standards issued by IFAC and accepted for application in the EU. Auditing standards should be applied on a consistent and reliable basis to an SAI's work to ensure that audit work is of an acceptable quality and competence. The SAIs should therefore

11 See, for example, the discussion by Professor John LI. Edwards on the jurisdiction of a Law Society or Bar Association over an Attorney-General or a Director of Public Prosecutions when the officer in question has acted unprofessionally in a professional context. *"The Office of Attorney-General: New Levels of Public Expectations and Accountability"*, in *Memoranda presented to the 1993 Meeting of Commonwealth Law Ministers, Grand Baie, Mauritius* (Commonwealth Secretariat, London: 1995).

12 *Recommendations concerning the Functioning of Supreme Audit Institutions in the Context of European Integration* (October,

1999) was prepared by a working group comprising delegates of the Supreme Audit Institutions of Albania, Bulgaria, Croatia, the Czech Republic, Estonia, the European Court of Auditors, Hungary, Latvia, Romania, Slovenia, Slovakia, and chaired by the Supreme Chamber of Control of Poland. The Presidents of the SAIs approved the eleven recommendations and agreed to give high priority to their use in the future development and work of their institutions. It is included in the Best Practice section on the Internet version of this Source Book: www.transparency.org.

develop auditing manuals and detailed technical guides to help promote the practical use and achievement of the standards.

Managing an Audit Institution

Recommendation 7: Supreme Audit Institutions should ensure that their human and financial resources are used in the most efficient way to secure the effective exercise of their mandate. To this end, SAI management will need to develop and institute appropriate policies and measures to help guarantee that the SAI is competently organised to deliver high-quality and effective audit work and reports.

Recommendation 8: Supreme Audit Institutions should develop their internal organisation as a supportive structure for the proper conduct of work related to the requirements of the pre-accession period.

Recommendation 9: Supreme Audit Institutions should ensure that their staff are competent, capable and committed to help guarantee that effective audit work is produced in conformity with international standards and good European practices.

Recommendation 10: Supreme Audit Institutions should develop the technical and professional proficiency of their staff through education and training.

Role of an SAI in the Assessment and in Encouraging the Development of Internal (Management) Control

Recommendation 11: Supreme Audit Institutions should focus on the development of high-quality, effective internal (management) control systems in audited entities.

Indicators for assessing the Auditor-General's Office as an integrity pillar

- Is there security of tenure for the office-holder (is the post constitutionally protected or otherwise guaranteed against political interference)?
- Is the post a non-political appointment?
- Is the post adequately remunerated?
- Is the Office adequately staffed?
- Are reports to the Legislature up-to-date?
- Are Reports made public promptly?
- Are Reports followed up regularly by a Public Accounts Committee of the Legislature or another equivalent body?
- Is action taken on Reports?
- Are there rules requiring annual auditing of financial accounts of state and parastatal institutions by independent auditors, and requiring public disclosure of the results? Is the Auditor-General responsible for the conduct of these audits?
- Is there an assets tracking system to enable periodic evaluation of assets so as to ensure that assets purchased by the state remain in the state's control until they are properly disposed of?
- Does the Office meet appropriate accounting and auditing standards?
- Does the Office in fact receive what is budgeted for it by the Ministry of Finance or by the Legislature?