**Legislative Reform [template]** **for the**

**Office of the Auditor-General of xxx:**

**Policy Paper**

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# Letter from the Auditor-General

[Office of the Auditor-General letterhead]

[date]

TO:

Honourable …

**RE: Independence Strategy for the Office of the Auditor-General**

The attached policy paper addresses the need for amendments to/a revised Auditor General Act.

Previously we have completed the development of a strategy for the greater independence of the Office of the Auditor-General (OAG). The independence of the audit office is the key to delivering effective assurance to the citizens regarding transparency and accountability in the use of public funds, and in integrity in public management.

Through a self-guided assessment, following the *Lima Declaration of Guidelines on Auditing Precepts[[1]](#footnote-1)* as well as the *Mexico Declaration on SAI Independence*,[[2]](#footnote-2) conducted on dd/mm/202y, we have identified in our assessment of independence of the OAG the following:

1. the legal framework governing OAG must be enhanced; and
2. […].

This has led us to conclude that the current Act is deficient in a number of areas dealing with independence. The attached policy paper provides suggestions on the way forward.

We are soliciting the support of the leadership of our country, particularly the Legislature for the passing of the enhancements to the [name] Act and for helping in making the changes to some of the OAG operational practices. [We submitted the proposed amendments to the Legislature on dd/mm/20yy.]

We would like to acknowledge the invaluable support of PASAI for this project especially Tiofilusi Tiueti, PASAI Director Technical Support and Professor William E Kosar, JD, LLM, MCIArb, CITP, SAI Legal Consultant, UNDP. We would also like to acknowledge the UNDP and the EU for supporting the work of Prof Kosar for this project.

Respectfully submitted

[Name]

# Objective

This policy paper addresses the need for a new [Auditor-General Bill] as part of the Government’s legislative package to support the national anti-corruption strategy. This policy paper will form the basis for consultations with stakeholders so that some of the issues relating to transparency and accountability of public resources are considered when ….

# Linkage to government policy and corporate plan

xxxxx.

### Current Government Policy

The policy paper comes under ….

### XXXX Strategic Plan – Corporate Plan XXXX-20XX

Key Result Area A: Fully Independent

Strategic objective A: Sufficient independence from government

A1.1 Draft legislation and submit to Cabinet

# Background

The Office of Auditor-General is established by section xxx of the Constitution of xxxx. The powers and duties of, and the legal requirements pertaining to, the Auditor-General are currently set out in Section xxxxx.

It has long been recognised that xxxx Act is out of date, and that the legislation about public sector auditing needs to be modernised to reflect the international norms and practices now applicable to government audit offices (which are known internationally as supreme audit institutions, or SAIs).

Replacement legislation has been in planning and consultation since xxxx. With the approval of Cabinet when the current xxxx Act was drafted, a draft Auditor-General Bill (the draft bill) was prepared in 20xx.

The object of the draft bill is [to create a separate Act] dealing with all matters relating to the functions, duties and powers of the Auditor-General, and in particular:

* to strengthen the functions of the Auditor-General;
* to establish the National Audit Office (known as the Office of the Auditor-General, or OAG) and [the National Audit Fund];
* [to create a position of the Deputy Auditor-General to perform the functions of the Auditor-General if he is unable for any reason to do so;
* to require independent audits of the Auditor-General and the National Audit Office;
* to provide for performance audits;
* to repeal [Part VI of the xxx Act]; and
* [add others as necessary].

The draft bill was discussed at length between officials in 20xx. [It is now proposed that the bill will be included in the Government’s legislative package for this year to give effect to the national anti-corruption strategy.]

The need for reform has been highlighted by the recent completion of an international assessment of the OAG, using a globally adopted assessment framework known as the SAI Performance Measurement Framework (or SAI PMF).[[3]](#footnote-3) The assessment (referred to in this paper as the SAI PMF assessment) covered all aspects of the activities and performance of the OAG against international standards. Its purpose was to assist the OAG and the Auditor-General to understand where the office sits against international standards; to target areas for development (including in relation to the governing legislation); and to demonstrate to the OAG’s development partners the progress that has been made to re-establish the OAG since 20xx.

# The purpose of this paper and what it covers

The purpose of this paper is to provide relevant information about the policy underlying the draft Bill, and how the proposed reform will strengthen the independence and functioning of the OAG in relation to international norms and standards.

The structure of the paper is as follows:

* Part A summarises the key elements of the Bill, and the underlying policy, with reference to the list of objectives set out above and the results of the recent international assessment of the OAG.
* Part B notes:
* an issue regarding the tenure of the Auditor-General, which while a constitutional issue is out of step with international standards on SAI independence; and
* certain additional matters that are not in the draft Bill but could be considered for inclusion following the proposed consultation process.
* Part C addresses the international dimension, with reference to:
* the assistance provided to the OAG by the Pacific Association of Supreme Audit Institutions (the regional group of government audit offices, known as PASAI) in the preparation of the draft Bill; and
* the importance of independence in any new legislation relating to a government audit office.

# Part A: Key elements and underlying policy

This part of the paper summarises the key elements of the Bill, and how they will strengthen the functions of the OAG as the SAI of [country].

### Strengthening the functions of the Auditor-General

The Auditor-General’s auditing mandate is derived from section xxx of the Constitution. It provides an overarching mandate to audit the accounts of the Government and report to Parliament. However, detailed provisions are needed in legislation to specify the extent of the mandate in relation to:

* the types of public sector entities that the Auditor-General can audit;
* the types of audit that the Auditor-General can perform;
* the powers of the Auditor-General and auditors appointed or delegated to him/her; and
* reporting and follow-up of recommendations.

### Types of entities audited

The Auditor-General currently audits a wide range of public sector organisations. They include the core public sector organisations (ministries, provincial governments, xxxxx) and also the wide range of other public sector organisations including statutory organisations, constitutional offices and special funds, publicly owned companies, state-owned enterprises, and other entities that are controlled by or receive a majority of their funds from public sector entities. The Auditor-General is also often asked to audit other entities which exist for a public purpose, such as entities that are accountable to the Government [or provincial governments], and others such as sporting, community, or charitable organisations.

The SAI PMF assessment found that the OAG has an appropriately broad mandate in relation to the public sector, but noted that the scope of the mandate under the existing legislation is unclear and in need of restatement. The assessment also noted a particular point of difficulty in the existing legislation concerning any trust, fund, or account not described in the Constitution or section xxx of the xxxx Audit Act. This provides that the Auditor-General “shall not be required” to audit such accounts unless the responsible Minister has directed the head of the entity to prepare accounts for audit. The SAI PMF assessment found this provision to be unsatisfactory – as has also been recognised in the preparation of the draft Bill.

More generally, the assessment noted with approval the purpose of the draft Bill to clarify the scope of the Auditor-General’s mandate by the use of consistent terminology that will identify clearly which public entities are subject to audit. This includes the power to audit trust funds.

### Types of audit

In relation to the types of audit, international standards recognise the importance of a SAI being able to carry out:

* financial audits in accordance with internationally recognised standards;
* performance audits, aimed at auditing the effectiveness, efficiency and economy of the use of public sector resources (within the scope of existing government policy); and
* compliance audits, which address compliance with laws and regulations as well as other matters of probity in the use of public resources.

The draft Bill will bring this aspect of the Auditor-General’s mandate into line with these international standards. Performance audits are discussed in more detail below.

*Powers of the Auditor-General*

Powers of access to information, documents, and government offices are an essential element of independence of a SAI, and to the effective conduct of audits.

The SAI PMF assessment found that the Auditor-General’s powers under section xxx of the Constitution and existing legislation meet international standards. The draft Bill intends to modernise and strengthen this aspect of the mandate.

*Reporting and follow-up of recommendations*

The power to report to Parliament is an essential element of SAI independence. This power is stated in section xxxx of the Constitution. Part XXX of the draft Bill contains specific provisions in relation to reporting. They include, importantly, powers to report:

* financial irregularities to the Minister of Finance;
* concerns about fraud, misconduct or other dishonest behaviour to the Police, the Leadership Code Commission, or other appropriate authority; and
* [ ].

International standards also emphasise the importance of follow-up of a SAI’s audit recommendations. This should include the ability to have reports to Parliament considered by the [Public Accounts Committee], but also other mechanisms to enhance accountability and ensure that areas of improvement are acted on. The draft Bill contains provisions which specifically address these needs.

### Independence

Independence is defined as “free from outside control, not subject to another's authority and is not depending on another for livelihood or subsistence”. An auditor must maintain independence from the audit client to uphold the objectivity and integrity of the audit process. Auditor independence is the cornerstone of the auditing profession and it is the foundation of the public's trust in the accounting and auditing profession.

At the country level, the independence of the Auditor-General is fundamentally important in its role as an agent auditing the government. It is the basis of the public’s trust in its work to ensure accountability and transparency. The work of the Auditor-General should give Parliament and the public ‘independent assurance’ that public entities are operating and giving an account of their operations and performances.

## Key documents regarding SAI independence

We will now turn to the some of the key international documents and declarations regarding the importance of SAI independence.

### Lima Declaration of guidelines on auditing precepts

The rule of law and democracy are essential premises for really independent government auditing and are the pillars on which the Declaration of Lima is founded.[[4]](#footnote-4)

#### **II. Independence**

##### Section 5. Independence of supreme audit institutions

*1. Supreme audit institutions can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence.*

*2. Although state institutions cannot be absolutely independent because they are part of the state as a whole, supreme audit institutions shall have the functional and organisational independence required to accomplish their tasks.*

*3. The establishment of supreme audit institutions and the necessary degree of their independence shall be laid down in the Constitution; details may be set out in legislation. In particular, adequate legal protection by a supreme court against any interference with a supreme audit institution's independence and audit mandate shall be guaranteed.*

##### Section 6. Independence of the members and officials of supreme audit institutions

*1. The independence of supreme audit institutions is inseparably linked to the independence of its members. Members are defined as those persons who have to make the decisions for the supreme audit institution and are answerable for these decisions to third parties, that is, the members of a decision-making collegiate body or the head of a monocratically organised supreme audit institution.*

*2. The independence of the members, shall be guaranteed by the Constitution. In particular, the procedures for removal from office also shall be embodied in the Constitution and may not impair the independence of the members. The method of appointment and removal of members depends on the constitutional structure of each country.*

*3. In their professional careers, audit staff of supreme audit institutions must not be influenced by the audited organisations and must not be dependent on such organisations.*

##### Section 7. Financial independence of supreme audit institutions

*1. Supreme audit institutions shall be provided with the financial means to enable them to accomplish their tasks.*

*2. If required, supreme audit institutions shall be entitled to apply directly for the necessary financial means to the public body deciding on the national budget.*

*3. Supreme audit institutions shall be entitled to use the funds allotted to them under a separate budget heading as they see fit.*

#### **III. Relationship to Parliament, government and the administration**

##### Section 8. Relationship to Parliament

*The independence of supreme audit institutions provided under the Constitution and law also guarantees a very high degree of initiative and autonomy, even when they act as an agent of Parliament and perform audits on its instructions.*

*The relationship between the supreme audit institution and Parliament shall be laid down in the Constitution according to the conditions and requirements of each country.*

##### Section 9. Relationship to government and the administration

*Supreme audit institutions audit the activities of the government, its administrative authorities and other subordinate institutions. This does not mean, however, that the government is subordinate to the supreme audit institution. In particular, the government is fully and solely responsible for its acts and omissions and cannot absolve itself by referring to the audit findings—unless such findings were delivered as legally valid and enforceable judgments—and on expert opinions of the supreme audit institution.*

#### **VII. Audit powers of supreme audit institutions**

##### Section 18. Constitutional basis of audit powers; audit of public financial management

1. *The basic audit powers of supreme audit institutions shall be embodied in the Constitution; details may be laid down in legislation.*
2. *The actual terms of the supreme audit institution's audit powers will depend on the conditions and requirements of each country.*

…

The Mexico Declaration reinforced and expanded Lima.

### Mexico Declaration on SAI Independence[[5]](#footnote-5)

*Whereas the Lima Declaration recognises that state institutions cannot be absolutely independent, it further recognises that SAIs should have the functional and organisational independence required to carry out their mandate.*

#### **Principle 1**

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

#### **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*

#### **Principle 4**

*Unrestricted access to information*

*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.*

#### **Principle 8**

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

*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 appropriately.*

### UN Resolutions

#### **Resolution A/66/209 “Promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions on SAI independence”, adopted on 22 December 2011[[6]](#footnote-6)**

This resolution highlights the importance of SAI independence. This resolution states explicitly that SAIs "can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence".

The UN General Assembly Resolution is the crowning conclusion of the common efforts of all SAIs to strengthen their independence and for recognition of the Lima and Mexico Declarations. It:

* recognises that supreme audit institutions can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence;
* recognises the important role of supreme audit institutions have in promoting the efficiency, accountability, effectiveness and transparency of public administration; and
* encourages Member States to apply, in a manner consistent with their national institutional structures, the principles set out in the ***Lima Declaration of Guidelines on Auditing Precepts of 1977*** and the ***Mexico Declaration on Supreme Audit Institutions Independence of 2007***.

This was followed by:

#### **Resolution A/69/228 “Promoting and fostering the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions” adopted on 19 December 2014**

* Promotes and fosters the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions;
* Recognises that supreme audit institutions can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence.

## How is audit independence measured?

This section outlines the two tools to measure audit independence.

1. The SAI Performance Measurement Framework (PMF) tool[[7]](#footnote-7) has been developed by INTOSAI to define and assess SAI independence against the following criteria or dimensions:

1. Dimension 1: Appropriate and effective Constitution framework**:** The establishment of the SAI and its independence should be laid down in the country’s Constitution, including provisions guaranteeing the SAI a high degree of initiative and autonomy. The appointment of the SAI Head position, the term of office and independence of decision making should be guaranteed in the Constitution along with adequate legal protection against interference with SAI independence.
2. Dimension 2: Financial independence/autonomy**:** SAIs should have available, necessary and reasonable resources, and should be allowed to manage their own budgets without interference or control from the Executive. Financial independence should encompass the whole budget process, meaning that the Executive should not unduly interfere with the SAI’s budget proposal, and after the budget has been adopted by the Legislature, it should not control the funding allocated, for example by hindering the disbursement of resources. This indicates that the Auditor-General should have the authority to submit its budget directly to Parliament without any interference from the government of the day.
3. Dimension 3: Organisational independence**:** In order for the SAI Head and officials to fulfil their mandate effectively should enjoy autonomy in the organisation and management of their offices. This means they should be able to manage their organisations and organise and plan their activities without interference from executive bodies. Importantly this must include the full authority to manage all aspects their own human resources.
4. Dimension 4: Independence of the Head of SAI and its officials**:** The conditions for appointment of the Head of the SAI should be specified in legislation. The term ‘Head of SAI’ refers to those who are responsible for the SAI’s decision-making and are answerable for these decisions to third parties. Their independence can only be ensured if they are given appointments with sufficiently long and fixed terms and if appointments and cessation of functions happens through a process that ensures their independence. This allows them to carry out their mandate without fear of retaliation. Any re-appointment where this is applicable and in accordance with the law, should take place in the same independent and transparent manner.

**Independence of the Head of SAI and its officials means their appointment should not be subject to the government in power. Regardless of any sophisticated provisions in the legislation to state that the work of the SAI is independent, if the SAI Head and officials are appointed like all the other public servants (that is through Cabinet or any public entity under the control of the Prime Minister and Cabinet) *the SAI is not fully independent***.

2. The Public Expenditure and Financial Accountability (PEFA)**[[8]](#footnote-8)** program provides a framework based on Standards and good practices, for assessing and reporting on the strengths and weaknesses of PFM. Pillar 7 of the PEFA tool examines the external audit function of a public financial management system of a country. It examines and assesses the areas of audit coverage and standards, submission of audit reports to Parliament, external audit follow-up and SAI independence. With a SAI independence indicator, they allocate an overall score based on the following dimensions:

|  |  |
| --- | --- |
| **Score** | **Minimum requirement for scores** |
| A | The SAI operates independently from the Executive with respect to procedures for appointment and removal of the Head of the SAI, the planning of audit engagements, arrangements for publicising reports, and the approval and execution of the SAI’s budget. This independence is assured by law. The SAI has unrestricted and timely access to records, documentation and information. |
| B | The SAI operates independently from the Executive with respect to procedures for appointment and removal of the Head of the SAI, the planning of audit engagements, and the approval and execution of the SAI’s budget. The SAI has unrestricted and timely access to records, documentation and information for most audited entities. |
| C | The SAI operates independently from the Executive with respect to the procedures for appointment and removal of the Head of the SAI as well as the execution of the SAI’s budget. The SAI has unrestricted and timely access to the majority of the requested records, documentation and information. |
| D | Performance is less than required for a C score. |

Overall, audit independence under the PEFA tool focuses on the independence of the appointment and removal of the SAI head and officials, having the independence to plan and complete audits, have independent access to financial resources to deliver its mandate as well as having unrestricted access to information. The ability to publishing audit reports without fear or influence from the Executive government is also considered crucial.

[some suggested wording of what is sought in the Bill should go here]

## Establishing the National Audit Office and the National Audit Fund, and creating a position of Deputy Auditor-General

The Constitution recognises the office of Auditor-General, but not the institution which supports his work. The OAG has existed as a public service organisation for many years, but the lack of separate statutory recognition has implications for its independence and ability to function effectively as the nation’s SAI.

[Similarly, the post of Deputy Auditor-General has existed for some time, but it has no recognised status or legal powers.]

The draft Bill addresses these deficiencies. Providing statutory recognition to the OAG and the Deputy Auditor-General will significantly improve the Auditor-General’s operational autonomy (a requirement of international standards) and enhance his ability to implement the areas of improvement identified in the SAI PMF assessment.

## Requiring independent audits of the Auditor-General and the National Audit Office

The question of “who audits the auditor?” is important for any SAI. International standards for SAIs recognise the need for SAIs to be fully and properly accountable for the performance of their duties and their use of the public funds entrusted to them. This is also part of a broader issue concerning the need for audit activity to be properly planned and reported on in a transparent manner.

The OAG develops audit plans. It has also been willing to make itself accountable by the production of an annual report on its operations, although due to lack of resources it has been unable to do so in 20xx. The SAI PMF assessment noted the importance of the OAG developing its capacity in both of these areas.

The draft Bill contains specific provisions in relation to planning and accountability (see xxx). They include a requirement for an annual plan, which is to be discussed with the [Public Accounts Committee]; a requirement to keep accounts and to appoint an independent auditor to audit them; and a requirement to produce an annual report to Parliament.

PASAI has assessed these provisions and has noted that they are consistent with international best practice.

## Providing for performance audits

A power to conduct performance audits is implied, rather than directly mandated, by the Constitution. The OAG has been carrying out some performance audits, and (significantly) has also participated in a number of regionally-based co-operative performance audits (including environmental audits) as part of its PASAI activities. However, the SAI PMF assessment noted that the OAG’s performance audit work is still at a developing stage and needs continued capacity development.

The draft Bill aims to confer a specific mandate to carry out performance audits. Part 4 of the draft Bill describes the mandate in comprehensive terms, including:

* audits of effectiveness, efficiency, and economy in the use of public resources;
* the ability to consider legal compliance, waste, and probity; and
* specific inclusion of environmental audits as part of this mandate.

Enactment of this provision will bring the [country] into line with international good practice in relation to the public sector auditing mandate, as noted above. It will also provide a strong basis for the Auditor-General to continue developing the OAG’s capacity in this area, in accordance with the results of the SAI PMF assessment.

[use this if the Auditor General Bill is to be carved off from a broader, omnibus PFM Bill]

## Repeal of Part xx of the xxx Act

Finally, the draft Bill will tidy up this part of the statute book by removing the Auditor-General’s legislation from the xxx Audit Act and placing it in a standalone Act. This is also in line with international best practice.

# Part B: Other matters

This part of the paper notes two sets of issues which are not addressed in the draft Bill.

## Appointment and security of tenure of the Auditor-General

The SAI PMF assessment included an assessment of the independence of the OAG and the Auditor-General as its head. The basis of the assessment was an international declaration on the independence of SAIs (as discussed in Part C and the Appendix).

The assessment noted with approval that the office of Auditor-General has constitutional status, and that section xxx) of the Constitution states expressly that the Auditor-General is not subject to direction or control by any other person or authority. However, it also noted that the provision regarding the appointment of the Auditor-General by xxxxx), are now inconsistent with international standards.

[The proposed new Constitution xxx x) provides for a term of 5 years and (xx) allows for a second consecutive term. Section xxx caps the age limit to 70 years for the Auditor-General.]

## Other matters not addressed in the draft bill

There are three other matters which the new Auditor-General proposes for inclusion in the draft Bill, subject to a consultation process which he proposes to undertake with Cabinet’s agreement.

### Staff employment provisions

The staff of the OAG are public servants, appointed and remunerated by the Public Service Commission. International standards on SAI independence (as discussed in Part C and the Appendix) call for the head of a SAI (in this case the Auditor-General) to have autonomy in relation to the employment and remuneration of staff.

It is proposed that consideration be given to establishing a separate Scheme of Service for the OAG, under the control of the Auditor-General and fully independent of the Public Service Commission. Under the proposal, the Auditor-General would have full responsibility for determining the staffing establishment, i.e., in relation to numbers of staff (including employees and contractors); their employment or engagement and the terms and conditions; and their remuneration and welfare. This would enhance the OAG’s ability to hire, and retain, people with appropriate skills and experience, especially professional accountants or auditors and technically qualified personnel, for the highly professional activity of public sector auditing. This could include seconding or engaging staff from other SAIs or recruiting from elsewhere in the Pacific region.

### Audit fees

Section XXX of the draft bill provides for the Auditor-General to charge fees for the audits of certain classes of entity. However, it is proposed that consideration also be given to extending this to ministries and provincial governments.

### A follow-up mechanism for recommendations

The existence of mechanisms to follow up on audit recommendations is regarded as a matter of practical independence of a SAI (see the discussion in Part C and the Appendix). Effective follow-up requires a mix of administrative processes and statutory requirements. It is proposed that the draft bill be amended, before introduction, to require the management of each audited entity to submit to the Auditor-General a quarterly report on the status of recommendations in previous audit reports.

# Part C: International assistance and assessment

Reference has been made in the introduction and Part A to the role of PASAI and the linkage of that organisation into the global community of SAIs. This Part will briefly describe:

* the work of PASAI and its support to the OAG; and
* how the independence of a SAI is understood in relation to international standards.

## PASAI and regional assistance

The Pacific Association of Supreme Audit Institutions (PASAI) is the official association of supreme audit institutions (SAIs) in the Pacific region. PASAI is one of the regional working groups belonging to the International Organization of Supreme Audit Institutions (INTOSAI). It has more than 20 member institutions and operates throughout the Pacific with a Secretariat based in Auckland, New Zealand.

PASAI promotes transparent, accountable, effective, and efficient use of public sector resources in the Pacific. It contributes to that goal by helping its member SAIs improve the quality of public sector auditing in the Pacific to recognised high standards

PASAI’s overall goal under its Charter is to promote transparent, accountable, effective, and efficient use of public sector resources in the Pacific. Under its 10-year Strategic Plan, PASAI works across the region to deliver programmes and activities aimed at meeting that goal, with the aim of improving the quality of public sector auditing in the Pacific to recognised high standards.

One of PASAI’s strategic priorities is to strengthen the independence of Pacific audit offices. A recent project giving effect to this objective involved the preparation of an Independence Resource Kit, primarily for use by member audit offices but also to be available to others. The kit is now on PASAI’s website (www.pasai.org). PASAI also has the support of legal consultants, who have experience of working in government audit offices and expertise in assisting PASAI’s members to develop proposals for law reform and discuss them with government officials.

## Principles of SAI independence

PASAI has also provided information about the principles of independence of government audit offices, why independence is important, and how it can be achieved in both a legal sense (that is, through the Constitution and enabling legislation) and more broadly through strengthened relationships, autonomy in operations, and ongoing development of capacity.

This information is presented in the attached Appendix YYY.

# Recommendations

It is recommended that:

1. the drafting of the Auditor-General Bill follows after consultations with stakeholders;
2. the draft bill strengthens the role and functions of the Auditor-General in accordance with international standards;
3. the draft bill also includes powers to report irregularities to the [Minister of Finance], and concerns about fraud, misconduct or other dishonest behaviour to other integrity authorities, thus strengthening the anti-corruption system;
4. the Bill being introduced to Parliament as part of the Government’s package of anti-corruption legislation, subject to consultation on possible additions before introduction;
5. the possible additions include establishing a separate Scheme of Service for the staff of the OAG; a widening of the power to charge audit fees; and the establishment of a statutory mechanism for the follow-up of previous audit reports and recommendations;
6. the Auditor-General will undertake consultation on whether the draft bill should be amended to address those matters, and invites the presentation of further submissions to Cabinet before final authority to introduce the Bill;
7. the matters relating to the appointment and tenure of the Auditor-General are provided in the Constitution, and therefore sit outside the scope of the Bill, but that amendment of those provisions would enhance the independence of the Auditor-General consistent with international standards; and
8. further work be undertaken to progress those matters as part of a future Constitutional reform.

# Appendix: Independence of supreme audit institutions

This Appendix contains a paper prepared by PASAI for the information of the Auditor-General, Ministers, and officials, in relation to the draft Bill.

The paper covers two areas:

1. Why audit office independence is important.
2. What audit office independence is and means in practice.

### 1. Why audit office independence is important

Public sector auditing is an important factor in making a difference to the lives of citizens.

The auditing of government and public sector entities by audit offices has a positive impact on trust in society because it focuses the minds of the custodians of public resources on how well they use those resources. Such awareness supports desirable values and underpins accountability mechanisms, which in turn leads to improved decisions.

Once audit office audit results have been made public, citizens are able to hold the custodians of public resources accountable. In this way audit offices promote the efficiency, accountability, effectiveness and transparency of public administration.[[9]](#footnote-9)

Accordingly, to ensure that elected officials act in the best interests of the citizens they represent, governments and public sector entities need to be accountable for their stewardship over, and use of, public resources. Audit offices strengthen the accountability, transparency and integrity of government, and government agencies, by auditing public sector operations and reporting on their findings.[[10]](#footnote-10)

However, an audit office can only be truly effective if it is *independent* from the Executive, Government and the audited entity. Independence is important because it allows an audit office to:

1. Undertake its functions and tasks free of outside interference and political influence;
2. Have sufficient financial and human resources to undertake all its functions;
3. Have sufficient authority to audit and investigate a wide range of government activity; and
4. Make public its audit findings and recommendations.

The importance of audit office independence is reflected by the fact that the United Nations General Assembly has, on two occasions (referred to *supra* in this paper}, adopted resolutions supporting independence for audit offices. The resolutions are:

* *Resolution A/66/209 “Promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions on SAI independence*”, adopted on 22 December 2011; and
* *Resolution A/69/228 “Promoting and fostering the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions*”, adopted on 19 December 2014.

These resolutions are binding on all states that are members of the United Nations.[[11]](#footnote-11)

The importance of audit office independence is also underlined by the Sustainable Development Goals (SDGs) contained in the United Nations Agenda 2030 and adopted in September 2015. Goal 16 of the SDGs provides for the building of “effective, accountable and inclusive institutions at all levels.” Target 16.6, which aims at developing “effective, accountable and transparent institutions at all levels,” is of particular importance for the contribution of independent audit offices to sustainable development.

### 2. What audit office independence is

Broadly, independence for audit offices means that the Auditor-General and audit office can accomplish their tasks free of undue pressure or influence. Independence is not a simple construct. It encapsulates all the features which enable a SAI to produce rigorous, high quality audits and reports. To be independent, and be seen to be independent, an audit office needs to:

* be protected by the Constitution and legislation which clearly mandates it to examine public funds wherever they are raised or spent, with unrestricted access to information;
* be able to choose auditing methods and ways of reporting which are consistent with best international professional auditing standards;
* be led by people of impeccable character and integrity;
* be supported by properly trained and rewarded staff;
* have the resources it needs to provide an adequate coverage of all public expenditure and income;
* be able to place its findings in the public domain in a timely manner of its choosing; and
* be able to follow up on its findings and recommendations to ensure appropriate action has been taken.

The concept has developed significantly in recent years and it is commonly accepted that there are eight core independence principles that illustrate the extent to which independence exists.

These factors are set out by the International Organization of Supreme Audit Institutions (INTOSAI), which operates as a global umbrella organisation for national audit offices, in the Mexico Declaration on Independence of Supreme Audit Institutions.[[12]](#footnote-12)

The eight principles provided for in the Mexico Declaration of Independence are:

1. The existence of an appropriate and effective legal framework. For example, an audit office should be established by a Constitution or other form of legislation, have legal protection from outside influence, and have its independence explicitly mandated or provided for.
2. The independence of the Auditor-General. For example, the Auditor-General should:

* be appointed and reappointed by a process ensuring independence from the Executive;
* be appointed for a sufficiently long period to allow them to carry out their mandate without fear of interference; and
* have legal immunity for activities carried out in the normal discharge of their duties.

1. A sufficiently broad mandate and full discretion to discharge its functions. It is important for an audit office to have a sufficiently broad functional and coverage mandate. A functional mandate refers to the type of audit work that an audit office can undertake. For example, audit opinions on financial statements and accounts, assurance on management reporting systems, compliance audits and performance audits. A coverage mandate refers to the type of organisation or entity an audit office can audit.
2. Unrestricted access to information**.** An audit office should have adequate powers to obtain timely, unfettered, direct and free access to relevant documents and information. For example, an audit office should have the ability to access relevant documents or information relevant to its work, have the ability to access premises under the control of government entities and can call persons to produce documents or give evidence orally, in writing, or under oath.
3. The right and obligation to report on work. An audit office should have the right and obligation to report on its work. For example, it is usually expected that an audit office should be required to report at least once a year on the results of their audit work and have the ability to report directly to the Legislature on their audit work.
4. The freedom to decide the content and timing of audit reports and to publish them. For example, an audit office should be free to include all relevant matters in audit reports, be free to distribute audit reports to the public and other relevant groups on a timely basis and be free to brief and interact with the public and media on the content of their audit reports.
5. The existence of effective follow-up mechanisms on recommendations**.** An audit office should have effective follow-up mechanisms to help ensure that audit recommendations are implemented. For example, have arrangements in place to allow the Legislature, or a legislative committee, to consider an audit report and recommendations. Also, an audit office should have a mandate to follow-up audit recommendations.
6. Financial, managerial and administrative autonomy. There are three aspects of an audit office’s independence under this principle:

* *Adequacy of resources*. An audit office should have sufficient financial resources to fulfil its mandate;
* *Financial independence.* An audit office’s budget setting process should be free from Executive control and the Legislature should play a significant role in reviewing a SAI’s budget proposal and determining the amount of the SAI’s budget, before it is finalised; and
* *Operational independence.* An audit office should have a significant level of practical independence in the way it operates and be free to use resources as they see fit. For example, it should have full responsibility in relation to the employment or engagement of staff.

It is noted that very few audit offices could say they fully satisfy all these eight principles. However, comparing the principles with existing legislation provides a useful guide to the range of independence safeguards in place, and where improvements could be made.

It is also noted that independence is not an absolute concept. An audit office, as a state institution, cannot be absolutely independent because they are part of the state as a whole. An audit office must keep in mind that independence is subject to country context. This can include political, constitutional or legislative, administrative, and resourcing constraints.

Finally, rules and/or legislation alone cannot guarantee independence. Rules may provide independence in theory but cannot guarantee it. Audit office independence is also a state of mind and can be largely determined by how the audit office conducts itself when discharging its duties and functions. For example, it needs to ‘practice what it preaches’, act ethically, and be an otherwise model public sector organisation.

1. <https://www.issai.org/pronouncements/intosai-p-1-the-lima-declaration/#:~:text=The%20Lima%20Declaration%20was%20signed,the%20foundation%20of%20public%20Control.&text=The%20chief%20aim%20of%20the,call%20for%20independent%20government%20auditing> [↑](#footnote-ref-1)
2. <https://www.issai.org/pronouncements/intosai-p-10-mexico-declaration-on-sai-independence/#:~:text=INTOSAI%2DP%20%2D%2010%20%2D%20Mexico%20Declaration%20on%20SAI%20Independence&text=The%20independence%20of%20SAI%20heads,the%20discharge%20of%20SAI%20functions> [↑](#footnote-ref-2)
3. The SAI PMF was developed by the International Organisation of Supreme Audit Institutions (INTOSAI), of which the OAG is a member. INTOSAI is the global organisation of SAIs, and PASAI is one of several regional working groups of INTOSAI. The SAI PMF assessment was undertaken as part of a PASAI-sponsored programme to implement the assessment framework across the Pacific region. The form of Assessment is attached as Annex XXX [↑](#footnote-ref-3)
4. <https://www.issai.org/pronouncements/intosai-p-1-the-lima-declaration/#:~:text=The%20Lima%20Declaration%20was%20signed,the%20foundation%20of%20public%20Control.&text=The%20chief%20aim%20of%20the,call%20for%20independent%20government%20auditing> accessed 12/12/2020 [↑](#footnote-ref-4)
5. <https://www.issai.org/pronouncements/intosai-p-10-mexico-declaration-on-sai-independence/#:~:text=INTOSAI%2DP%20%2D%2010%20%2D%20Mexico%20Declaration%20on%20SAI%20Independence&text=The%20independence%20of%20SAI%20heads,the%20discharge%20of%20SAI%20functions> accessed 12/12/2020 [↑](#footnote-ref-5)
6. Resolution A/66/209 (22 December 2011) [↑](#footnote-ref-6)
7. SAI PMF tool is an INTOSAI framework developed to support SAIs to evaluate their performance. The framework is based on the objectives set out in the International Auditing Standard – INTOSAI-P 12 which sets out how SAIs strengthen the accountability, transparency and integrity of government and public sector entities, showing relevance to citizens, Parliament and stakeholders. [↑](#footnote-ref-7)
8. PEFA Tool, <https://www.pefa.org/resources/pefa-2016-framework> [↑](#footnote-ref-8)
9. Refer INTOSAI-P 12, page 5 [↑](#footnote-ref-9)
10. Refer INTOSAI-P 12, page 7 [↑](#footnote-ref-10)
11. The importance of audit office independence is also recognised in the PEFA “Framework for assessing public financial management” February 2016, dimension 30.4 [↑](#footnote-ref-11)
12. Also known as INTOSAI-P 10 [↑](#footnote-ref-12)