



The Office of Comptroller & Auditor General  
Public Audit in Jersey

04/07/2013



JERSEY AUDIT OFFICE

# The Office of Comptroller and Auditor General

## Public Audit in Jersey

### 1 Introduction

1.1 The functions of Auditors General vary between jurisdictions and are enshrined in legislation. The Office of Comptroller and Auditor General (C&AG) was established in Jersey in 2005 and, as in the United Kingdom and many Commonwealth jurisdictions, it embraces:

- The audit of financial statements; and
- Wider considerations of the application of public funds, often expressed as 'value for money'.

1.2 The effectiveness of the Office of C&AG is dependent on building and maintaining the confidence of both the States of Jersey ('the States') and the people of Jersey in the independence and effectiveness of the Office.

1.3 The former C&AG resigned in July 2012. The position remained unfilled until 1 February 2013. Following my appointment, I have reviewed the remit, governance and management arrangements for the Office, with the following objectives:

- Ensuring independence of the C&AG;
- Ensuring clarity in the remit of the C&AG;
- Ensuring good governance of the Office and accountability of the C&AG without compromising their independence;
- Securing effective management arrangements for the Office of the C&AG to ensure efficiency, resilience, good internal control and compliance with the Public Finances (Jersey) Law 2005 ('the Law'); and
- Reflecting the specific circumstances of the States of Jersey.

1.4 In this review I have drawn upon:

- The experience of other jurisdictions, including the United Kingdom and its devolved administrations, the Isle of Man (where legislation has been enacted but not commenced), British dependent territories and regional audit institutions in the Commonwealth;
- The statements of the International Organisation of Supreme Audit Institutions (INTOSAI)<sup>1</sup>. INTOSAI is the professional organisation of Supreme Audit Institutions (SAI) in countries that belong to the United

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<sup>1</sup> For further information see: <http://www.intosai.org/>

Nations (UN) or its specialised agencies and is the recognised international body representing SAIs. It provides a forum for government auditors from around the world to discuss issues of mutual concern and keep abreast of the latest developments in auditing and other applicable professional standards and best practices; and

- The experiences of Jersey, particularly reflecting on the impact of the former C&AG's resignation.

1.5 Throughout this report I make recommendations that are summarised in Appendix 2. In Appendix 3 I draw together proposals for legislative changes and believe that the opportunity could be taken to place all legislation relevant to the C&AG in a single Law, as is the case, for example, in the Isle of Man.<sup>2</sup>

### **Recommendation**

**R1** When a legislative opportunity arises, consolidate and update Jersey's public audit legislation in a separate Law.

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<sup>2</sup> See Tynwald Auditor General Act 2011 (Appendix 4).

## 2 Independence

2.1 Effective public audit is rooted in independence, empowering the auditor to report without fear or favour.

2.2 The United Kingdom's Financial Reporting Council ('FRC') defines independence in these terms:

*Independence is freedom from situations and relationships which make it probable that a reasonable and informed third party would conclude that objectivity either is impaired or could be impaired. Independence is related to and underpins objectivity. However, whereas objectivity is a personal behavioural characteristic concerning the auditor's state of mind, independence relates to the circumstances surrounding the audit, including the financial, employment, business and personal relationships between the auditor and the audited entity and its connected parties.<sup>3</sup>*

The main threats to an auditor's independence are:

- Self-interest - where the auditor has financial or other interests, which may make them reluctant to take action, influence them to take action or affect the action they take;
- Self-review - where the auditor is reviewing areas on which they have previously provided advice or had a role other than as an auditor e.g. accounts preparation;
- Management - where the auditor has assumed a function of management;
- Advocacy - arises when the auditor undertakes work that involves acting as an advocate for an audited entity and supports a position taken by management in a contentious situation;
- Familiarity or 'trust' - where the auditor is predisposed to accept the audited entity's point of view as a result of over familiarity, for example where close personal relationships are developed due to long association with the audit; and
- Intimidation - where the auditor's conduct is influenced by fear or threats.

2.3 INTOSAI's Mexico Declaration on SAI Independence (2007)<sup>4</sup> established principles for the independence of SAIs:

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

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<sup>3</sup> See para 12 of Ethical Standard 1 (Revised) Integrity, Objectivity and Independence, Financial Reporting Council.



<http://www.frc.org.uk/Our-Work/Publications/>

<sup>4</sup> See <http://www.intosai.org/en/documents/intosai/general/declarations-of-lima-and-mexico/mexico-declaration-on-sai-independence.html>

- The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties;
- A sufficiently broad mandate and full discretion, in the discharge of SAI functions;
- Unrestricted access to information;
- The right and obligation to report on their work;
- The freedom to decide the content and timing of audit reports and to publish and disseminate them;
- The existence of effective follow-up mechanisms on SAI recommendations; and
- Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources.

2.4 I have considered these principles in the context of the role of C&AG. In many areas Jersey performs well and, indeed, has some provisions that compare favourably with those for much larger jurisdictions. However, there are some areas that warrant further consideration.

2.5 My evaluation is detailed below along with ‘traffic lights’ for the different principles; where principles are being met (green), where there are issues to be addressed (amber) and where principles are not being met and urgent action is required (red).

INTOSAI principle	Current position	Commentary	Evaluation
The existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework.	Public Finances (Jersey) Law 2005 contains detailed provisions on appointment and removal of the C&AG <sup>5</sup> and includes an explicit provision that they are not to be directed in the discharge of their functions. <sup>6</sup>	Complies with INTOSAI principles.	
The independence of SAI heads and members (of collegial institutions), including security	Public Finances (Jersey) Law 2005 gives strong protection from dismissal during tenure of office <sup>7</sup> but	Significant non-compliance with INTOSAI principles. Most other jurisdictions provide for appointments for a specified fixed term (10 years for the UK <sup>11</sup> , 8 years	

<sup>5</sup> See Articles 41, 42 and 44 of the Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>6</sup> See Article 52 of the Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>7</sup> See Article 44 of the Public Finances (Jersey) Law 2005 (Appendix 4).

INTOSAI principle	Current position	Commentary	Evaluation
of tenure and legal immunity in the normal discharge of their duties.	<p>does not prescribe the term of office.<sup>8</sup> The previous C&amp;AG was given a three-year contract and then a five-year contract. The contract with the current C&amp;AG is for a two-year period.</p> <p>No legal immunity or indemnity is provided for under the Public Finances (Jersey) Law 2005.<sup>9</sup> However, discussions on the wording of a contractual indemnity for the C&amp;AG, based on UK Legislation, are in progress. The Public Finances (Jersey) Law 2005, recognising that the appointment is not full time, puts in place a framework to regulate the other professional activities of the C&amp;AG to minimise the risk of conflicts of interest arising.<sup>10</sup></p> <p>There are no statutory provisions in respect of subsequent</p>	<p>for Wales<sup>12</sup> and 8 years for Scotland<sup>13</sup>). Such fixed term contracts balance the threats to independence from familiarity (from an open-ended contract) and from economic dependence (from a short-term renewable contract).</p> <p>Prescribing the duration of a fixed term in advance reduces the potential threats to independence from the post being politicised by alignment with the term of a legislature.</p> <p>In a small jurisdiction for an Auditor General with a small team, the familiarity threat is enhanced and I do not therefore recommend that a fixed term should exceed the maximum of seven years allowed in the UK for partners auditing listed companies.<sup>14</sup></p> <p>Many jurisdictions, consistent with the INTOSAI principles, provide an explicit absolute (for example, the UK)<sup>15</sup> or qualified (for example, the Isle of Man)<sup>16</sup> statutory indemnity to the Auditor</p>	

<sup>11</sup> See section 10(6), Budget Responsibility and National Audit Act 2011.

<http://www.legislation.gov.uk/ukpga/2011/4/section/11/enacted>

<sup>8</sup> See Article 42 of the Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>9</sup> See the Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>10</sup> See Article 43 of the Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>12</sup> See section 2(4), Public Audit (Wales) Act 2013.

<http://www.legislation.gov.uk/anaw/2013/3/section/2/enacted>

<sup>13</sup> See Section 13(5) of the Public Finance and Accountability (Scotland) Act 2000 as amended by Section 118 (4) of the Public Services Reform (Scotland) Act 20.


[http://www.legislation.gov.uk/asp/2010/8/pdfs/asp\\_20100008\\_en.pdf](http://www.legislation.gov.uk/asp/2010/8/pdfs/asp_20100008_en.pdf)

<sup>14</sup> See para 12 of Ethical Standard 3 (Revised) Long Association with the Audit Engagement published by the Financial Reporting Council. <http://www.frc.org.uk/Our-Work/Codes-Standards/Audit-and-assurance/Standards-and-guidance/Standards-and-guidance-for-auditors/Ethical-standards-for-auditors.aspx>

<sup>15</sup> See section 24 of the Budget Responsibility and National Audit Act 2011.

<http://www.legislation.gov.uk/ukpga/2011/4/section/24/enacted>

<sup>16</sup> See section 3, Personal Liability (Ministers, Members and Officers) Act 2007 as amended by Schedule 2 of the Tynwald Auditor General Act 2011 (Appendix 4).

INTOSAI principle	Current position	Commentary	Evaluation
	<p>employment. However, it has been agreed that a revised contract will contain such a prohibition.</p>	<p>General to remove the risk of the Auditor General feeling constrained by the threat of challenge, the defence of which might have to be met personally. The threat is heightened in situations of self-employment (as in the case in Jersey) as opposed to employment (which is the norm for Auditors General). Provision of an indemnity to an Auditor General by the employer is distinct from the employer securing insurance cover against any claims against a current or former Auditor General.</p> <p>Consistent with Ethical Standards issued by the FRC, some jurisdictions, including the UK<sup>17</sup> and Wales<sup>18</sup>, place statutory restrictions on the employment and offices that a former C&amp;AG can accept within two years of leaving office.</p>	
<p>A sufficiently broad mandate and full discretion, in the discharge of SAI functions.</p>	<p>There is a wide mandate in the Public Finances (Jersey) Law 2005 relating to:</p> <ul style="list-style-type: none"> <li>• Financial statements;</li> <li>• Internal control;</li> <li>• Value for money;</li> <li>• Corporate governance; and</li> <li>• Regularity.<sup>19</sup></li> </ul>	<p>Complies in most respects with the INTOSAI principle. Importantly, although there is an explicit and entirely appropriate duty to liaise with the Public Accounts Committee<sup>21</sup>, there is no power of direction (as there is in the Isle of Man).<sup>22</sup></p> <p>However:</p> <ul style="list-style-type: none"> <li>• There is a different scope of responsibilities in respect of different</li> </ul>	

<sup>17</sup> See section 15, Budget Responsibility and National Audit Act 2011.

<http://www.legislation.gov.uk/ukpga/2011/4/section/15/enacted>




<sup>18</sup> See section 5, Public Audit (Wales) Act 2013.

<http://www.legislation.gov.uk/anaw/2013/3/section/5/enacted>

<sup>19</sup> See Articles 46 and 47, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>21</sup> See Article 52(2), Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>22</sup> See section 10(7), Tynwald Auditor General Act 2011 (Appendix 4).

INTOSAI principle	Current position	Commentary	Evaluation
	<p>In common with public audit agencies in the United Kingdom, there is no role in respect of the development or critique of policy.</p> <p>There is freedom to determine the work programme.<sup>20</sup></p>	<p>entities<sup>23</sup>; and</p> <ul style="list-style-type: none"> <li>Responsibilities in respect of some entities (such as the Health Insurance Fund and Social Security Fund) are contained in legislation where provisions are very brief and do not express the breadth of mandate provided for by the Public Finances (Jersey) Law 2005.<sup>24</sup></li> </ul>	
Unrestricted access to information.	Public Finances (Jersey) Law 2005 gives wide powers of access to documents and rights to obtain information <sup>25</sup> .	Complies in most respects with INTOSAI principle. However, there are no explicit powers about rights to secure information in electronic format and interrogate computer systems, as has been enacted in some jurisdictions.	
The right and obligation to report on their work.	Public Finances (Jersey) Law 2005 imposes duties and discretions on the C&AG to report to the States, including the obligation to prepare an annual report to the States.	Complies in most respects with INTOSAI principle. However, reporting responsibilities in respect of other entities, such as the Social Security Fund <sup>26</sup> , the Social Security (Reserve) Fund <sup>27</sup> and the Health Insurance Fund <sup>28</sup> are not specified and are unclear.	
The freedom to decide the content and timing of audit reports and to publish and disseminate them.	<p>Public Finances (Jersey) Law 2005 does not:</p> <ul style="list-style-type: none"> <li>impose constraints on content or timing of reporting;</li> </ul>	Complies with INTOSAI principles.	

<sup>20</sup> See Article 52, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>23</sup> See Article 46(3), Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>24</sup> See Article 46, Public Finances (Jersey) Law 2005 (Appendix 4).



<sup>25</sup> See Article 54, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>26</sup> See Article 30(4), Social Security (Jersey) Law 1974 (Appendix 4).

<sup>27</sup> See Article 31(2), Social Security (Jersey) Law 1974 (Appendix 4).

<sup>28</sup> See Article 21(2), Health Insurance (Jersey) Law 1967 (Appendix 4).



INTOSAI principle	Current position	Commentary	Evaluation
	<p>or</p> <ul style="list-style-type: none"> <li>prevent publication by the Auditor General (in addition to laying before the States).<sup>29</sup></li> </ul>		
The existence of effective follow-up mechanisms on SAI recommendations.	Public Finances (Jersey) Law 2005 does not impose a specific duty on the C&AG or PAC to follow up implementation of recommendations.	Complies in most respects with INTOSAI principle. In practice follow up of recommendations is under-developed but rigorous follow up by the C&AG can be established without a change in legislation.	
Financial and managerial/ administrative autonomy and the availability of appropriate human, material, and monetary resources.	Public Finances (Jersey) Law 2005 requires the Chief Minister to provide sufficient resources <sup>30</sup> to the C&AG for them to discharge their functions but does not make any specific provisions in respect of managerial or administrative autonomy.	Complies in most respects with INTOSAI principles. However, the duty for provision of resources rests with the Chief Minister as part of the Executive (i.e. those subject to audit) rather than the Legislature (i.e. those scrutinising the Executive), presenting a potential threat to independence of the C&AG <sup>31</sup> . In most jurisdictions (including the UK <sup>32</sup> and its devolved administrations <sup>33</sup> ) responsibility rests with the Legislature. In a number of other jurisdictions, including the UK <sup>34</sup> and the Isle of Man <sup>35</sup> , the Auditor General is explicitly an officer of the Legislature. Such a designation in Jersey would bring budget setting within	

<sup>29</sup> See Article 54, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>30</sup> See Article 50, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>31</sup> See Article 50, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>32</sup> See section 4, National Audit Office Act 1983.

<http://www.legislation.gov.uk/ukpga/1983/44/section/4>

<sup>33</sup> See for example, Article 6, Audit (Northern Ireland) Order 1987.

<http://www.legislation.gov.uk/nisi/1987/460/article/6>

<sup>34</sup> See section 12(2), Budget Responsibility and National Audit Act 2011.

<http://www.legislation.gov.uk/ukpga/2011/4/section/12/enacted>

<sup>35</sup> See section 4(2), Tynwald Auditor General Act 2011 (Appendix 4).

INTOSAI principle	Current position	Commentary	Evaluation
		the scope of the specific provisions for the States Assembly. <sup>36</sup>	

2.6 I have also identified a legislative provision that is inconsistent with the independence of auditors and not replicated in legislation within the United Kingdom. The C&AG must receive and has the power to comment on estimates for the States Assembly<sup>37</sup>. It is unclear on what basis the C&AG would comment, as this power does not relate to any specified audit responsibilities<sup>38</sup>. The budget setting process is potentially subject to review by the C&AG. Commenting during the process might give rise to a self-review threat and could compromise the independence of the C&AG.

### Recommendations

**R2** Adopt a non-renewable seven-year term of office for the C&AG (with appropriate transitional arrangements).

**R3** When a legislative opportunity arises, provide an explicit statutory indemnity to current and previous C&AGs and their staff in respect of any actions or claims arising from the discharge of their functions.

**R4** When a legislative opportunity arises, prohibit the C&AG accepting any employment or office with the States of Jersey or any entity controlled by the States within two years of leaving office.

**R5** Where a legislative opportunity arises:

- Make specific provision about rights of access to computers;
- Extend the comprehensive provisions relating to the role and powers of the C&AG to all entities for the audit of which they have a responsibility (including the Health Insurance Fund and Social Security Funds).

**R6** Support a rigorous approach to the follow up of previous recommendations by the C&AG, possibly through the Code discussed below.

**R7** When a legislative opportunity arises, amend the Law to remove the power of the C&AG to comment on the States Assembly estimates.

**R8** Secure the financial/managerial autonomy of the C&AG by making them an officer of the States Assembly, subject to the budget setting provisions applicable to it.

<sup>36</sup> See Article 24B, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>37</sup> See Article 24B(4)(b), Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>38</sup> See Articles 46 – 49, Public Finances (Jersey) Law 2005 (Appendix 4).

### **3 The remit of the C&AG**

- 3.1 The role of SAIs varies between jurisdictions. However, in Jersey, as in the United Kingdom and many Commonwealth jurisdictions, it embraces:
- The audit of financial statements; and
  - Wider considerations of the application of public funds, often expressed as 'value for money'.

#### **The audit of financial statements**

- 3.2 The audit of financial statements is common to private sector and public audit. The preparation of financial statements is an important means of demonstrating accountability for the stewardship of funds and audit provides assurance about how management has discharged its responsibilities.
- 3.3 The scope and nature of the responsibilities of the C&AG differs in respect of different accounts and how, in practice, the responsibilities are discharged:

	<b>Responsibility</b>	<b>Timescale</b>	<b>Discharged by</b>
<b>States</b> <sup>39</sup>	<p>Ensuring that 'an audit' is undertaken stating:</p> <ul style="list-style-type: none"> <li>• Whether financial statements properly represent the financial activities of the States; and</li> <li>• Whether they were prepared in accordance with prescribed accounting standards.</li> </ul>	Within five months of year end.	Engagement of PwC to provide 'true and fair' view opinion.
<b>Social Security Fund</b> <sup>40</sup> <b>Social Security (Reserve) Fund</b> <sup>41</sup> <b>Health Insurance Fund</b> <sup>42</sup>	'Examine and certify' the financial statements.	None.	<p>Engagement of PwC to provide 'true and fair' view opinion.</p> <p>Certificate and, as appropriate, report of the C&amp;AG.</p>
<b>Independently audited States bodies</b> <sup>43</sup>	Right to 'report on' the accounts.	None.	Not applicable.

<sup>39</sup> See Article 47, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>40</sup> See Article 30(4), Social Security (Jersey) Law 1974 (Appendix 4).

<sup>41</sup> See Article 31(2), Social Security (Jersey) Law 1974 (Appendix 4).

<sup>42</sup> See Article 21(2), Health Insurance (Jersey) Law 1967 (Appendix 4).

<sup>43</sup> See Article 48, Public Finances (Jersey) Law 2005 (Appendix 4).

3.4 From this analysis it is apparent that:

- The Public Finances (Jersey) Law 2005 appropriately allows the responsibility for an audit under auditing standards to be undertaken by auditors appointed by the C&AG<sup>44</sup>. It would not be feasible for the C&AG's office to maintain the necessary infrastructure to perform this role. In respect of other funds there is a duty on the C&AG to examine the accounts but, given the wording of the legislation, it has been possible for the C&AG to move to a position where they do not themselves give the opinion but do certify completeness; and
- A number of bodies, such as the pension funds, are not subject to audit by auditors appointed by the C&AG. This exclusion is unusual. The direction of travel in the UK has been for Auditors General to assume direct responsibility for more work including:
  - The audit of companies controlled by government<sup>45</sup>; and
  - In some jurisdictions (e.g. Wales<sup>46</sup> and the Isle of Man<sup>47</sup>) the audit of local government bodies.

3.5 The Law does not require an expression of opinion on the 'regularity' of accounts (i.e. conformance of income and expenditure to legislation and other 'governing authorities') and in practice none has been given. This is despite the overarching responsibility of the C&AG to provide assurance that money withdrawn from the consolidated fund, the strategic reserve fund or the currency fund was used for the purpose for which it was authorised to be withdrawn, and that all income due to the States has been collected or otherwise duly accounted for. In the UK and its devolved administrations expression of regularity opinion is a routine part of reporting on funds voted by the legislature and would support this overall objective. No such opinion is required or given in Jersey. I have been in dialogue with PwC as to the appropriate approach in the future.

#### **Other responsibilities**

3.6 In most jurisdictions the non-opinion responsibilities are expressed in very general terms. In the UK and its devolved administrations they are expressed in terms of 'economy, efficiency and effectiveness'.

3.7 The Public Finances (Jersey) Law 2005 expresses the responsibilities in a commendably concise way that focuses the non-opinion work of the C&AG more clearly than in other jurisdictions. However, the scope of responsibilities varies between different entities<sup>48</sup>:

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<sup>44</sup> See Article 47, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>45</sup> See section 1226ff, Companies Act 2006.

<http://www.legislation.gov.uk/ukpga/2006/46/part/42/chapter/3>

<sup>46</sup> See section 13, Public Audit (Wales) Act 2013 as amended by section 11, Public Audit (Wales) Act 2004.

<http://www.legislation.gov.uk/anaw/2013/3/section/11/enacted>

<sup>47</sup> See section 5, Tynwald Auditor General Act 2011 (Appendix 4).

<sup>48</sup> See Articles 1 and 46, Public Finances (Jersey) Law 2005 (Appendix 4).

Type of Body	Definition of Body	C&AG's Scope of Responsibilities		
		Effectiveness of internal financial controls & internal auditing	Economy, efficiency and effectiveness in the use of resources	General corporate governance arrangements
<b>States funded bodies</b>	<i>Ministry, Department of the States, Committee or other body established by Act of the States or under Standing Orders, holder of Crown or States appointment funded by the States</i>	✓	✓	✓
<b>Independently audited States bodies (not companies)</b>	<i>Person, office or body (not being a company) established by enactment of the States where establishing Act requires audit other than by the C&amp;AG</i>		✓	✓
<b>Independently audited States bodies (companies)</b>	<i>Company established by enactment of the States where establishing Act requires audit other than by the C&amp;AG</i>			✓
<b>States aided independent bodies</b>	<i>Body funded by the States that receives either £5,000 or at least half its income is from the States</i>		✓	✓

### 3.8 Considering these provisions:

- The wording of the legislation<sup>49</sup> does not fully reflect recent developments. In the UK there has been a shift away from a narrow consideration of internal financial controls to a wider consideration of internal controls. This is reflected in the replacement of the Statement of Internal Control with a wider Governance Statement for central government in the UK<sup>50</sup>, the scope of internal audit and in consequence the responsibilities of external auditors;
- The concept of the States aided independent body, and the associated powers in the Public Finances (Jersey) Law 2005, reflect a powerful commitment to following the public pound. However, the definition<sup>51</sup> might be read to exclude bodies in which the States have a significant interest but do not fund; and
- The rationale for the different bodies to which responsibilities fall under the three different responsibilities is not clear. However, there is an inter-relationship between wider elements of internal control and corporate governance. Good corporate governance and internal control are prerequisites for being able to demonstrate securing value for money. Therefore, whilst the responsibilities provide a useful framework for planning and reporting work, distinguishing the C&AG's remit for the different types of entity could be difficult to do in practice;
- In practice it has proven difficult to establish which bodies fall within the categories of independently audited States bodies. Indeed, it is not clear how the powers of the C&AG relate to bodies which appoint auditors where there is no obvious legislative provision relating to the appointment of auditors, such as the Public Employees Contributory Retirement Scheme; and
- It is not clear whether the C&AG has responsibilities or rights in respect of bodies which the States do not fund but in which they have some form of ownership interest.

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<sup>49</sup> See Article 46(3)(a), Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>50</sup> See Annex 3.1 to Managing Public Money.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/179695/mpm\\_whole.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/179695/mpm_whole.pdf)

<sup>51</sup> See Article 49(7), Public Finances (Jersey) Law 2005 (Appendix 4).

3.9 A simpler, intelligible and coherent framework could be:

<b>C&amp;AG's Scope of Responsibilities</b>	<b>States bodies other than companies</b>	<b>Companies controlled by the States</b>
Appointment of auditors to audit financial statements	✓	✗
Internal control	✓	To the extent relevant to the States' ownership interest
Value for money	✓	To the extent relevant to the States' ownership interest
Corporate governance	✓	To the extent relevant to the States' ownership interest

### **Discharge of responsibilities**

3.10 Legislation prescribes what an Auditor General should do. But it does not prescribe in much detail how they should discharge their responsibilities. In some cases where there is provision for appointment of auditors to perform functions (as is the case for local authorities and NHS bodies in England to which the Audit Commission appoints auditors<sup>52</sup> and for local authorities in Wales to which the Auditor General for Wales appoints auditors<sup>53</sup>), there is a duty to prepare a Code specifying how auditors perform their functions. In Wales the Code was extended on a voluntary basis to audits undertaken by the Auditor General for Wales and that wider Code is to be given statutory force. A similar non-statutory Code has been prepared in Scotland.<sup>54</sup>

3.11 Such a Code is a useful document that sets out clear expectations for the Auditor General, legislature and executive on, for example:

- The process of planning and undertaking of work;
- The principles for reporting of work, based on accessibility and action focus;
- The way in which the C&AG will follow up the implementation of recommendations;
- The factors to be taken into account in the exercise of discretion;

<sup>52</sup> See section 4, Audit Commission Act 1998.

<http://www.legislation.gov.uk/ukpga/1998/18/section/4>

<sup>53</sup> See section 10, Public Audit (Wales) Act 2013.

<http://www.legislation.gov.uk/anaw/2013/3/section/10/enacted>

<sup>54</sup> See The Code of Audit Practice.

[http://www.audit-scotland.gov.uk/utilities/search\\_report.php?id=1](http://www.audit-scotland.gov.uk/utilities/search_report.php?id=1)



- The inter-relationship between the C&AG and the Public Accounts Committee, the Audit Committee and Scrutiny Committees;
- How the C&AG would consider information received, including as a result of 'whistleblowing';
- The scope and nature of the C&AG's annual report to the States; and
- How the C&AG would determine whether any potential work might compromise their independence.

3.12 I therefore intend to prepare a non-statutory Code.

### **Recommendations**

**R9** Where a legislative opportunity arises, align the opinion responsibilities of the C&AG for the Social Security Fund, the Social Security (Reserve) Fund and the Health Insurance Fund with those for the States accounts.

**R10** Give the C&AG the power to appoint auditors to all States bodies that are not States' owned companies.

**R11** Give the C&AG the power to consider financial control, value for money and corporate governance in respect of States' owned companies to the extent relevant to the audit of the States.

**R12** Extend the internal financial control responsibility to wider issues of internal control.

**R13** Support preparation of a Code for the C&AG's work, placing it on a statutory footing when a legislative opportunity arises.

**R14** When a legislative opportunity arises, place a duty on auditors appointed by the C&AG to express an opinion on the regularity of income and expenditure.

## 4 Governance of the Office of the C&AG

4.1 There is an inherent challenge in securing the accountability of an Auditor General for the use of resources, the internal organisation of their Office and their arrangements for ensuring audit quality, whilst at the same time not affecting their professional independence. The extent and mechanisms by which this is achieved differ between jurisdictions:

- In the UK and Scotland there are two separate committees of the legislature. One receives audit reports from the Auditor General. A separate one:
  - scrutinises the allocation of resources to the Auditor General; and
  - holds the Auditor General to account for the use of those resources by, for example, receipt of accounts and audit reports<sup>55</sup>.
- In the UK and Wales, following well-publicised failings in governance, the offices of the Auditors General were constituted as separate legal entities from their offices, with executive and non-executive members<sup>56</sup>. Such arrangements enhance accountability but also put an element of distance between politicians and the Auditor General; and
- In most jurisdictions, including the Isle of Man<sup>57</sup>, the Auditor General or public audit agency is required to prepare accounts that are subject to independent audit.

4.2 Jersey is a small jurisdiction. Any governance arrangements should be proportionate to the resources expended. But that does not mean that there should not be:

- A small Board, independent of but reporting to the States and meeting only a few times a year, to which the C&AG has an accountability for the internal management of the Office, including for financial resources, human resources and quality control; and
- A duty on the C&AG to prepare accounts and lay them before the States.

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<sup>55</sup> See section 2, National Audit Office Act 1983.

<http://www.legislation.gov.uk/ukpga/1983/44/section/2>

<sup>56</sup> See section 20ff, Budget Responsibility and National Audit Act 2011.

<http://www.legislation.gov.uk/ukpga/2011/4/contents/enacted> and section 13ff, Public Audit (Wales) Act 2013. <http://www.legislation.gov.uk/anaw/2013/3/contents/enacted>

<sup>57</sup> See para 17, Schedule 1, Tynwlad Auditor General Act 2011 (Appendix 4).

## **Recommendations**

**R15** Establish a small Board, comprising the C&AG, a Chair who is not based in Jersey and two Non-Executive Directors, independent of but reporting to the States, to provide a mechanism to secure the accountability of the Office of the C&AG.

**R16** Replicate the appointment arrangements for the C&AG for appointment of the Chair and Non-Executive Directors of the Board.

**R17** Invite a senior figure from public audit in the United Kingdom to establish the terms of reference of the Board.

**R18** Require the C&AG to prepare accounts and lay them before the States Assembly.

## 5 The management of the Office of the C&AG

- 5.1 As highlighted above, the Public Finances (Jersey) Law 2005 makes no provision for staff of the Office of the C&AG or for contracts to be entered into by the C&AG. It merely provides for the provision by the Chief Minister of adequate resources for the C&AG<sup>58</sup>. In contrast, in most jurisdictions, the C&AG or separate corporate body is empowered to employ staff and enter into contracts.<sup>59</sup>
- 5.2 Even in some of the smaller jurisdictions, such as Bermuda and the Cayman Islands, the Auditor General is supported by a number of staff. In Jersey, the former C&AG undertook much work himself and bought in resources to provide professional support as necessary, including from an accounting firm to undertake the audit of financial statements. This meant that, even though the Public Finances (Jersey) Law 2005 allowed for the making of regulations to delegate the functions of the C&AG<sup>60</sup>, and such delegation is common in other jurisdictions, no such regulations were made.
- 5.3 The vacancy prior to my appointment highlighted the lack of resilience inherent in having a C&AG operating largely alone: the Value For Money audit programme stopped and the giving of opinions on the Health Insurance Fund and Social Security Fund accounts were delayed.
- 5.4 To build resilience for the future I am establishing an Audit Office in Jersey (the 'Jersey Audit Office'), as the Office of C&AG is wider than the person undertaking the role. In doing so I am committed to following the principles for good management of an audit practice, using standards developed by the UK Financial Reporting Council<sup>61</sup>.
- 5.5 The Public Finances (Jersey) Law 2005 lacks the specific provisions that are found in much other public audit law around the internal management of the office including:
- Budget setting<sup>62</sup>;
  - Determination of staffing<sup>63</sup>;
  - Terms and conditions (for example the objective of keeping them broadly comparable to those of the civil service)<sup>64</sup>; and
  - The appointment of an Accounting Officer (sometimes specifying that the Auditor General performs this role)<sup>65</sup>.

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<sup>58</sup> See Article 50, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>59</sup> See, for example, sections 12 and 13, Tynwlad Auditor General Act 2011 (Appendix 4).

<sup>60</sup> See Article 51, Public Finances (Jersey) Law 2005 (Appendix 4).

<sup>61</sup> See International Standard on Quality Control (United Kingdom and Ireland) 1 published by the Financial Reporting Council.

<http://www.frc.org.uk/Our-Work/Codes-Standards/Audit-and-assurance/Standards-and-guidance/Standards-and-guidance-for-auditors/Auditing-standards.aspx>

<sup>62</sup> See, for example, section 4, National Audit Office Act 1983.

<http://www.legislation.gov.uk/ukpga/1983/44/section/3>

<sup>63</sup> See, for example, section 3, National Audit Office Act 1983.

<http://www.legislation.gov.uk/ukpga/1983/44/section/3>

<sup>64</sup> See, for example, para 17 of Schedule 2, Budget Responsibility and National Audit Act 2011.

<http://www.legislation.gov.uk/ukpga/2011/4/schedule/2/enacted>

<sup>65</sup> See, for example, para 24 of Schedule 2, Budget Responsibility and National Audit Act 2011.

- 5.6 Despite the absence of detailed provisions in these areas, I have been working with the assistance of Officers of the States to establish a more resilient, collegiate and outward looking 'Audit Office' through:
- Engagement of a peer to support and challenge me, and deputise for me;
  - Strengthening resources available, by the appointment of a Professional Assistant to be based in Jersey and commencing the process to establish a pool of affiliates;
  - Continuing to engage contractors or support from firms to provide professional support and external challenge to reports;
  - Obtaining suitable premises for an office in St Helier;
  - Development of a new website;
  - Putting in place an appropriate IT infrastructure including document storage;
  - Engaging assistance to develop permanent audit documentation; and
  - Identifying the scope and nature of the policies and procedures for securing audit quality required for a small office.
- 5.7 I am also working to develop not only an annual audit plan but also a three-year strategic plan and to engage appropriate specialist skills to undertake specific pieces of work identified within those plans.
- 5.8 I am committed to:
- Undertaking a zero base budgeting exercise for 2014;
  - Establishing and maintaining a risk register; and
  - Compliance with States procedures on purchasing.

## **Recommendations**

**R19** Make Regulations to enable the C&AG formally to delegate functions to a deputy.

**R20** Support the 'Jersey Audit Office' vision outlined above.

## INTOSAI principles on independence for Supreme Audit Institutions<sup>66</sup>

### General

Supreme Audit Institutions generally recognize eight core principles, which flow from the Lima Declaration and decisions made at the XVIIth Congress of INTOSAI (in Seoul, Korea), as essential requirements of proper public sector auditing.

### Principle 1

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

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

### 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**

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 (see ISSAI-11 Guidelines and Good Practices Related to SAI Independence);

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 as the case may be.

### Principle 3

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

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;
- quality of financial management and reporting; and
- economy, efficiency, and effectiveness of government or public entities operations.

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<sup>66</sup> See <http://www.intosai.org/issai-executive-summaries/view/article/issai-10-the-mexico-declaration-on-sai-independence-eger.html>

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 their 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 they remain objective and appear objective.

SAI 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.

SAI 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.

#### **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 5**

##### **The right and obligation to report on their work**

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.

#### **Principle 6**

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

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, or 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.

### **Principle 7**

#### **The existence of effective follow-up mechanisms on SAI recommendations**

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.

### **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.

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.



### Summary of recommendations

**R1** When a legislative opportunity arises, consolidate and update Jersey's public audit legislation in a separate Law.

**R2** Adopt a non-renewable seven-year term of office for the C&AG (with appropriate transitional arrangements).

**R3** When a legislative opportunity arises, provide an explicit statutory indemnity to current and previous C&AGs and their staff in respect of any actions or claims arising from the discharge of their functions.

**R4** When a legislative opportunity arises, prohibit the C&AG accepting any employment or office with the States of Jersey or any entity controlled by the States within two years of leaving office.

**R5** Where a legislative opportunity arises:

- Make specific provision about rights of access to computers;
- extend the comprehensive provisions relating to the role and powers of the C&AG to all entities for the audit of which they have a responsibility (including the Health Insurance Fund and Social Security Funds).

**R6** Support a rigorous approach to the follow up of previous recommendations by the C&AG, possibly through the Code discussed below.

**R7** When a legislative opportunity arises, amend the Law to remove the power of the C&AG to comment on the States Assembly estimates.

**R8** Secure the financial/managerial autonomy of the C&AG by making them an officer of the States Assembly subject to the budget setting provisions applicable to it.

**R9** Where a legislative opportunity arises, align the opinion responsibilities of the C&AG for the Social Security Fund, the Social Security (Reserve) Fund and the Health Insurance Fund with those for the States accounts.

**R10** Give the C&AG the power to appoint auditors to all States bodies that are not States' owned companies.

**R11** Give the C&AG the power to consider financial control, value for money and corporate governance in respect of States' owned companies to the extent relevant to the audit of the States.

**R12** Extend the internal financial control responsibility to wider issues of internal control.

**R13** Support preparation of a Code for the C&AG's work, placing it on a statutory footing when a legislative opportunity arises.

**R14** When a legislative opportunity arises, place a duty on auditors appointed by the C&AG to express an opinion on the regularity of income and expenditure.

**R15** Establish a small Board, comprising the C&AG, a Chair who is not based in Jersey and two Non-Executive Directors, independent of but reporting to the

States, to provide a mechanism to secure the accountability of the Office of the C&AG.

**R16** Replicate the appointment arrangements for the C&AG for appointment of the Chair and Non-Executive Directors of the Board.

**R17** Invite a senior figure from public audit in the United Kingdom to establish the terms of reference of the Board.

**R18** Require the C&AG to prepare accounts and lay them before the States Assembly.

**R19** Make Regulations to enable the C&AG formally to delegate functions to a deputy.

**R20** Support the 'Jersey Audit Office' vision outlined above.

## Summary of proposed changes to legislation

## Public Finances (Jersey) Law 2005

Article	Proposed change	Recommendation
24B	Remove the power of the C&AG to comment on the estimates for the States Assembly.	R7
42	Amend to provide for a non-renewable term of office of seven years for the C&AG.	R2
43	Amend to prohibit the C&AG from accepting any employment of office with the States of Jersey or any entity controlled by the States within two years of leaving office.	R4
46	Amend to extend the C&AG's duties in respect of financial control to wider issues of control.	R12
46 & 48	Amend to give the C&AG the power to consider financial control, value for money and corporate governance in respect of States' owned companies to the extent relevant to the audit of the States.	R11
47 & 48	Amend to give the C&AG the power to appoint auditors to all States bodies that are not States' owned companies.	R10
47 & 48	Amend to impose a duty to express an opinion on the regularity of income and expenditure.	R14
50	Replace with provision that the C&AG is an officer of the States Assembly and subject to the budget setting provisions applicable to it set out in Article 24B of the Public Finances (Jersey) Law 2005.	R8
56	Amend to make specific provision about rights of access to computers	R5
-	Make specific provision for granting of an indemnity to the current and previous C&AGs and their staff in respect of any actions or claims arising from the discharge of their functions.	R3
-	Make specific provision for a Code specifying	R13

<b>Article</b>	<b>Proposed change</b>	<b>Recommendation</b>
	how the C&AG discharges their functions.	
-	Make provision for a Board comprising the C&AG a Chair who is not based in Jersey and two Non-Executive Directors.	R15
-	Make provision for appointment of the Chair and two Non-Executive Directors paralleling those for appointment of the C&AG.	R16
-	Require the C&AG to prepare accounts and lay them before the States Assembly.	R18

#### **Health Insurance (Jersey) Law 1967**

<b>Article</b>	<b>Proposed change</b>	<b>Recommendation</b>
21	Amend to align responsibilities in respect of the financial statements with those for the States accounts in the Public Finances (Jersey) Law 2005.	R9
21	Amend to impose a duty to express an opinion on the regularity of income and expenditure.	R14

#### **Social Security (Jersey) Law 1974**

<b>Article</b>	<b>Proposed change</b>	<b>Recommendation</b>
30 & 31	Amend to align responsibilities in respect of the financial statements with those for the States accounts in the Public Finances (Jersey) Law 2005.	R9
30 & 31	Amend to impose a duty to express an opinion on the regularity of income and expenditure.	R14

#### **Regulations under Article 51, Public Finances (Jersey) Law 2005**

	<b>Proposed change</b>	<b>Recommendation</b>
-	Make Regulations allowing for delegation of functions of the C&AG.	R19

**Legislation referred to in this report**

**Health Insurance (Jersey) Law 1967**

[http://www.jerseylaw.je/law/display.aspx?url=lawsinforce/consolidated/26/26.500\\_HealthInsuranceLaw1967\\_RevisedEdition\\_1January2013.htm](http://www.jerseylaw.je/law/display.aspx?url=lawsinforce/consolidated/26/26.500_HealthInsuranceLaw1967_RevisedEdition_1January2013.htm)

**Public Finances (Jersey) Law 2005**

[http://www.jerseylaw.je/law/display.aspx?url=lawsinforce/consolidated/24/24.900\\_PublicFinancesLaw2005\\_RevisedEdition\\_1January2012.htm](http://www.jerseylaw.je/law/display.aspx?url=lawsinforce/consolidated/24/24.900_PublicFinancesLaw2005_RevisedEdition_1January2012.htm)

**Social Security (Jersey) Law 1974**

[http://www.jerseylaw.je/law/display.aspx?url=lawsinforce/consolidated/26/26.900\\_SocialSecurityLaw1974\\_RevisedEdition\\_1January2013.htm](http://www.jerseylaw.je/law/display.aspx?url=lawsinforce/consolidated/26/26.900_SocialSecurityLaw1974_RevisedEdition_1January2013.htm)

**Tynwald Auditor General Act 2011**

[http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0012/TynwaldAuditorGeneralAct2011\\_1.pdf](http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0012/TynwaldAuditorGeneralAct2011_1.pdf)

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**END**



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