

# **Agencies: Their Benefits and Risks**

by  
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## 1. Introduction

This paper is about the benefits and risks of setting up new public “agencies”, outside the mainstream of ministries and departments and working under different rules of central control and internal operations.<sup>1</sup> In the OECD area, in transition economies and in the developing world, a new fashion for agencies took hold in the 1980s and 1990s. “Agencies” are sometimes seen as a distinctly “Anglo” phenomenon, a New Public Management fashion epitomised by the Next Steps executive agencies in the United Kingdom. But most OECD countries have had several types of public organisation as well as ministries for a long time, and in several governments apart from the United Kingdom a minority of civil servants work in “core government”. Is this rich organisational variety simply a reflection of national administrative traditions, or are there lessons to be drawn about organisational form fit for purpose? What benefits and risks are there from genetic engineering of public organisation structures? Can transition economies and developing countries learn anything useful about the organisational forms in their own public sectors from the experience of the governments of OECD countries?

In most OECD countries, agencies generally work well and meet important needs of good governance. There is no evidence that agencies that have been created have resulted in a lower quality of governance in the governments of OECD countries. There is indeed some evidence (James, 2001) that in the appropriate roles they have improved both the quality and the credibility of public performance. On the other hand, the jury is still out on agency experiments in the developing world and transition economies. Some agencies appear to have created benefits; others have caused significant problems for public governance.

Overall there are concerns about the fragmentation of public governance that agencies may represent and the feasibility of directing and controlling complex public operations through specified agency agreements or contracts. Typical criticisms are:

- loss of control of agency operations;
- abrogation of political accountability;
- evasion of general rules for staffing and budgets;
- exposure of government to financial and employment risks;
- opportunities for political patronage and corruption.

## 2. Defining and classifying agencies

The term “agency” in this paper is shorthand for the variety of organisations that are outside of core government and that do not have a vertically integrated hierarchical relationship with a parent ministry or department.

Defining agencies by what they are not is problematic. In most of the governments of Western Europe, Asia and Africa, “core government” can be defined as the ministries or departments of the executive<sup>2</sup> under the direct hierarchical control of a minister or a president. In these governments, a ministry or department would generally be understood as an organisation that: 1) has no separate corporate status; 2) is predominantly funded from taxes; 3) is subject to the general provisions of civil service and public finance law; and 4) is headed by a member of the government.<sup>3</sup>

In a lot of the rest of the world, however, it is not as easy to distinguish a “core” which meets all four of these criteria. In much of Eastern Europe, the Balkans and the former Commonwealth of Independent States, ministries do have legal status and may not be predominantly funded from taxes and there may be no general civil service law.<sup>4</sup> In the United States, the term “agency” applies to all organisations of the executive branch. There are general laws applicable by default to all these entities but in practice there are a wide variety and extent of direction and control and degree of distance from direct oversight by the president or members of cabinet. Similarly in the presidential systems of Latin America, the idea of a “core” in the sense of a common form of ministerial department has less significance. What is important is the proximity of the organisation to direct control or influence by the president.

Severing vertically integrated hierarchical relationships with bodies in core government is generally undertaken in one of three ways:

- making a clear distinction between the internal governance (reporting and control arrangements) within the agency and that of the parent ministry;
- providing the agency with a separate legal identity under public law;
- providing the agency with a governing board – either under public law or as a corporation, trust or similar body under private law.

The OECD suggests three main types of organisation that can be distinguished from core government and that are not in a vertically integrated hierarchical relationship with core government organisations:<sup>5</sup>

- **Departmental agencies** are part of ministries and have no separate legal identity, but their internal governance is generally differentiated from that of their parent ministry.
- **Public law administrations** are generally created by a public statute so that they have a separate legal identity under public law. Their governance – both internal and external – will generally be different from that of a ministry; they may or may not have a governing board.
- **Private law bodies** are a variety of organisations including corporations, trusts and other organisational forms recognised in private law. They will usually have a governing board, and a minister will have only indirect control.

A further more detailed analysis of the categories of organisation is shown in Table 1. Trying to classify public organisations by their legal status is, however, not altogether useful for an analysis of benefits and risks. It is more important to focus on how organisations are directed and controlled and how that affects their behaviour.

### 3. Agencies in OECD countries

Agencies have a long history in many OECD countries. In Sweden, most famously, the establishment of agencies and boards originated in the 16th and 17th centuries, and agencies are today the basic form of public organisation in Sweden. The earliest national public agencies and authorities in Germany also date back to the 1870s. Many other OECD countries have long traditions of exercising important government functions outside the classical generic ministerial department.

In the last two decades, most OECD countries have experimented with new forms of agency, but the trend towards organisations outside core government has varied widely from country to country. In the Netherlands and the United Kingdom, the move towards agencies in the last decade has shifted significant numbers of civil servants from core ministries and departments into agencies. In New Zealand, there has been a proliferation of central “Crown entities” but also a significant increase in management authority delegated to core government departments. In other countries, such as Canada, France and the United States, the agency form as defined in this paper has had much more limited impact. The OECD concludes, however, that the number of autonomous bodies has significantly increased in most countries over time. During the last 50 years, it seems that only a few autonomous bodies have been drawn back under the core traditionally vertical integrated hierarchy.

Table 1. **Classification of agency types**

Attribute	Departmental agencies	Public law administrations	Private law bodies
Institutional and legal foundations	Part of ministries. No separate legal identity from the State. Function under public law.	Function mostly under public law, but can be partially separate or fully separate legal bodies.	Quasi-corporations and non-commercial private law bodies.
Governance structure and control	No governing board (although might have advisory boards). Director-general <sup>1</sup> is directly appointed by the minister. Minister has formal (but less direct) control while the director-general is responsible for management of the organisation.	May either have a governing board or single person authority, possibly with advisory board. Top governance has management responsibility, minister has indirect control.	Usually have a governing board, and minister has indirect control.
Financial management and personnel rules	Staff employed under general civil service rules for appointment, promotion and removal. Input controls on the price and quantity of labour are generally relaxed. Most funded through allocations from the State budget and budget is annually reviewed through the annual State budget process. Some are partially financed by user fees.	Staff rules vary between full civil service controls, differentiated controls, and outside civil service but subject to a general framework for State servants. Most PLAs are financed by tax revenue, and their budget is part of general budget law, although they often can carry forward surpluses.	Staff usually employed under general labour laws, with no (or limited) external controls on inputs. Usually mostly financed by sales revenue and can carry forward surpluses, borrow and lend. Budgets are separate from those of ministries.
Function	Usually delivery of non-commercial services to citizens and support services to other State sector bodies.	Created for a differentiated governance structure (governing board), allowing more management autonomy or policy independence in some cases, for a differentiated control environment, or for managerial autonomy.  Specific functions vary tremendously, from service delivery to regulatory and quasi-judicial functions.	Might have a full profit objective or mainly a service objective function.

1. Equivalent to the term "chief executive".

Source: Based on OECD (2002), *Distributed Public Governance: Agencies, Authorities and Other Government Bodies*.

#### 4. Agencies in developing and transition economies

A very few developing countries have embarked on systematic restructuring of their public sectors along agency lines. The research by Talbot *et al.* (2000) investigates case studies in Jamaica, Latvia and Tanzania. But references to agencies are also scattered throughout the World Bank and related literature and include the following:

- Parastatals: government trading enterprises that may be on the way to becoming fully corporatised or privatised businesses run according to corporate governance rules.
- AGETIPs:<sup>6</sup> non-profit, non-governmental agencies for executing public works, popular particularly in Francophone Africa.
- Social funds: organisations designed to fund a wide range of projects aimed at poverty alleviation, particularly in situations of structural adjustment; sometimes called “social investment funds”.
- Extrabudgetary fund administrations: examples are pension funds, health insurance funds, agricultural subsidy funds, etc.
- Independent revenue authorities (IRAs): agencies charged with tax collection and administration within general tax policy.

Recently also the Report on LICUS (low income countries under stress) (World Bank, 2002) has discussed the establishment of independent service authorities – with features analogous to independent revenue authorities – in LICUS countries, to fund and monitor basic service delivery through local providers when government provision is weak. Effective service delivery is considered more important than revenue collection in LICUS countries “precisely because LICUS governments are not effective in spending revenues to deliver services”. However, some features of IRAs which make them effective could be copied, according to the Report:

*... have adopted a number of the features desirable for a well-functioning organisation. They are autonomous agencies, with their own staff incentive systems and with intensive scrutiny of performance. However, the feature of particular pertinence here is that independent revenue authorities are not just responsible for the collection of new taxes; rather, they take over the entire system.*

(World Bank, 2002, p. 28-29)

## 5. Mixed results to date

In developing countries and in transition economies, then, agencies are quite often proposed as a means of protecting important functions from poor governance in core government. AGETIPs were seen as part of the answer to poor project implementation; low rates of revenue collection led to proposals for IRAs; failure to get social assistance directly to the poor led to the establishment of social funds. In transition economies, strong and independent regulatory authorities are seen as a requirement of efficient market institutions. Quite often, international agencies have actively promoted agency independence to protect their own interests in aid effectiveness. The LICUS Report suggests that, when the State cannot meet the basic development needs of its people, the crisis demands the radical if hopefully temporary solution of bypassing the public bureaucracy altogether, to deliver basic services. But in a wider range of countries where departments do not pay market wages or have no culture of performance, shifting functions into agencies with greater management autonomy may be seen as the only way to respond to major failures in public management.

History however gives mixed messages about setting up new organisations to evade general problems of governance in the public sector. First, it is very difficult for any public organisation to be completely insulated from relations with other public organisations. Except when agencies are entirely the clients of donors, they will depend on ministries of finance and other central organisations for some services or approvals. Second, experience suggests that it is not impossible but certainly very difficult to create a lasting performance culture in the midst of a non-performing government. Third, if corruption or patronage is pervasive in government, then setting up a new agency to create a *cordon sanitaire* around vital functions is risky. Whenever power is redistributed, as it is when a new organisation is created, somebody's interests are being affected, and he/she will react.

Fjeldstad (2002), for example, reports that the Tanzania Revenue Authority (TRA) was set up in 1996 to improve performance in revenue collection in Tanzania and insulate it from the endemic corruption in the Tanzanian public sector. The philosophy was twofold: "first to eliminate the direct political influence of the Ministry of Finance on the day-to-day operations of the tax administration. And second, to raise the salary of tax officials without parallel increases for the rest of the public sector" (Fjeldstad, 2002, p. 8).

Initially the TRA seemed to meet with success. During the first year of its operations, tax revenues grew by more than 30%, attributable almost entirely to the efforts of TRA officials. Nearly 300 officials were dismissed for corruption. The number of corrupt acts fell, although there is evidence that

the price per bribe rose because of the additional risk premium on bribes. However, after the initial successes, the rate of collection fell away and there was evidence that bribery and internal rent-seeking rose again. Fjeldstad asserts that the “assumption that higher salaries would boost productivity over time was most likely also exaggerated” (Fjeldstad, 2002, p. 9) and due to a “Hawthorne effect”. He notes also that for many workers, higher salaries may simply have resulted in larger obligations to family networks and perhaps even a net loss for the staff concerned, leading to greater incentives to augment income by rent-seeking.

There are similar gloomy stories from IRAs elsewhere: initial success, followed by a regrouping of existing political and bureaucratic interests and a reinfestation of endemic cultures of corruption. In Peru, the State revenue authority (SUNAT) was protected for a while from the depredations of its parent ministry by the influence of President Fujimori. Eventually, however, according to its founding chairman (Estela, 2000), the agency was undermined. “People astutely operating from the Ministry of Economy, adopted a two-pronged approach: at the verbal level, they praised SUNAT, while in the level of deeds they arranged a progressive dismantling of the institution, with the hidden purpose of returning her to the condition prior to the reform” (Estela, 2000, p. 7). Ghana and Uganda have similar stories to tell.

The moral for reformers is that any proposal for institutional re-design has to consider the political economy of public institutions. Reformers need to ask whose interests are affected adversely, where does support for reform originate, and what countervailing power will be exercised in defence of the new organisation (*e.g.* in terms of protection from powerful political figures, major stakeholders in the status quo like civil servants or local mafias). Reform is not impossible when this protection is provided, but continuing good performance demands continuing vigilance. The risks may be justified by the high stakes – collapse of State revenues or of basic services – but enclaving does not appear to be a long-term solution. More basic changes in core bureaucratic institutions are required.

## 6. Issues in agency creation

The risks of setting up agencies come under three broad headings:

- Creating new organisations without a clear public policy justification.
- Not getting the right rules and systems in place for external direction and control of new organisations, leading to:
  - ❖ problems of organisational “legibility”;
  - ❖ weak direction and oversight;
  - ❖ loss of political control.

- Creating organisations that are not set up to manage themselves properly.

These risks and the issues they raise for good governance are discussed in turn.

### **6.1. Being clear about the public policy reasons for agencies**

The two most common “good governance” reasons given by governments of OECD countries for setting up agencies are to improve the performance of the public sector or to make public decision making more credible by separating it from direct political intervention. Governments therefore give their agencies respectively relative **management autonomy** (the freedom to allocate resources to achieve given policy objectives) or **policy autonomy** to interpret or decide policy in specific cases. Gill (2002) has defined a parallel distinction: policy autonomy for an agency requires a specific public law power; management autonomy increases the agency’s powers of a natural person.<sup>7</sup>

**Better management:** The usual arguments for agencies delivering better results are that organisations with clear specific objectives and the freedom to make management decisions will out-perform those with multiple or unclear objectives and limited managerial freedom. The United Kingdom, for example, gave the chief executives of its Next Steps agencies performance objectives and the power to manage people and budgets to achieve them. Other OECD countries that have experimented with agencies cite “focus on results and performance” (Canada), “functional decentralisation” (France), “managerial differentiation in rules control” (Netherlands), “improved service delivery” (New Zealand), and “management flexibility” (Spain).

The New Public Management and the United Kingdom model of executive agencies have also had an influence on thinking about public organisations in some developing countries. The agency reforms in Jamaica and Tanzania both clearly bear the hallmark of the British model and some other NPM ideas such as customer responsiveness and “steering not rowing”. In addition, AGETIPs, social funds and IRAs have all been justified on the grounds that they require an extra degree of independence from central control to function effectively.

**More credible policy:** A second broad reason for agencies is to legitimate public decision making – sometimes neglected in debate but arguably as important as or more important than efficiency. Majone (2001) argues that some types of decision depend on the impartial administration of rules and that the public credibility of these decisions (*e.g.* of regulatory “fairness”) depends on them being seen to be made by a politically independent organisation. Even States with a constitutional basis for administrative decision making by civil servants may vest some decisions in authorities

outside ministries. Examples in OECD countries include the French AAIs<sup>8</sup> and authorities enforcing major administrative regulations in Germany. Agencies set up for these reasons include:

- central banks;
- general economic and financial regulators such as authorities for consumer protection, competition or financial markets;
- industry regulators as in telecommunications and energy;
- authorities for investigation and prosecution of human rights abuses, or public fraud and corruption.

There may therefore be good public policy arguments for new agencies. But agencies may also serve other objectives, sometimes simply to signal the importance of a particular political objective: arguably the establishment of a new agency in France to manage blood supplies in the wake of the “bad blood” scandal of the 1980s is an example (Tabuteau, 1996). Agencies may also be created to protect a function from legislative interference, pay off political allies or create power bases for specific factions, or to capture public assets or resources for private interests. Examples include sharing out political power among competing political factions in Croatia, vesting public assets in specific agencies in Latvia, or the many new agencies set up by the Marcos administration in the Philippines.

As in the case of the new blood agency in France, some specific political reasons for setting up agencies are not necessarily incompatible with good governance. Nevertheless, the question is legitimately asked: why cannot the functions of an agency be carried out in a line ministry or department? Other agencies, however, are clearly not set up for good public policy reasons. The general message is that the given reason for creating an agency is not necessarily the real reason; and that if the basic reason for an agency is incompatible with good governance, the safeguards discussed in this paper are unlikely to be effective.

## **6.2. Rules and systems for external direction and control of new organisations**

### **6.2.1. Avoid building in opacity**

Gill’s attempt to reduce the zoo of organisational forms in OECD countries to a manageable classification makes a more basic point (Gill, 2002). The fewer the categories of public organisation and the more uniform the rules applying to them, the more legible the public governance system is to politicians, civil servants and citizens alike. Some governments have created problems for themselves by setting up too many organisations, with too many different sets of rules. In the 1980s and 1990s for example, successive

New Zealand governments created a wide range of new agencies out of government departments, to serve a variety of service delivery and regulatory functions. Now the current Labour administration is introducing a bill to bring some order back to its zoo through “an umbrella statute containing consistent governance and accountability requirements for Crown entities [...] according to their relationship with the Crown” (New Zealand Government, 2003).

Having lots of agencies with different rules creates risks in two ways. First, it increases the risk that agencies will not work together on important common objectives (the Blair Government’s “joined-up government” initiative in the United Kingdom addresses this problem); that complex problems of public policy will “fall between the cracks” of agency responsibilities; or that agencies will have unclear boundaries between them – leading to overlapping responsibilities or clashing jurisdictions – and get into turf wars as a result. But it also makes it more difficult to manage from the centre: the span of control for parent ministries grows; and each new set of rules about agency operations creates precedents for others. For example there were many different provisions in New Zealand law governing investments by Crown organisations or the appointment of board members.

Problems of inter-agency rivalry and lack of joint effort will not be cured solely by harmonising legal provisions, but this is an important first step, as the New Zealand Government has recognised. At the least, a uniform framework law for public organisations is recommended – covering matters such as board and senior management appointments and responsibilities, rules governing financial management and external accountability, and general powers of and arrangements for political direction and control.<sup>9</sup> If agencies are to be set up under their own law, then a template model agency law is also desirable.

### 6.2.2. *Get the governance right*

The evidence is that organisational form **can** have an important part to play in getting the governance right, given that many other formal and informal factors are important as well. Three questions are to be asked:

- Does the agency need to be constituted under its own law? The British executive agency model offers an alternative, where the agency can be nominally a division of an existing ministry or department, operating under a specific performance agreement with its parent and having been delegated significant managerial autonomy. Arguably the Local Government Engineering Division in Bangladesh has operated effectively inside its parent Ministry of Works.<sup>10</sup>
- Should the agency be constituted under public law or private law? Private law bodies would normally be reserved for those where the government’s

principal interest was as owner: for example, parastatals on their way to becoming fully commercial trading activities, candidates for privatisation and subject to the discipline of market trading and market institutions. Inappropriate use of private law in other cases can put governments seriously at risk by limiting their ability to direct agencies, which can create quite significant contingent liabilities – financial and otherwise – for the public budget.<sup>11</sup>

- Does the agency need a board? In OECD countries, agencies frequently have boards inserted between the political executive and the management of the organisation. Boards can be either advisory (carrying some powers of supervision of policy execution or the right to be consulted by the agency head or to advise the minister on policy matters) or executive (carrying some direct authority over the policy and management of the agency). Christensen (1999) suggests that either an advisory or a management board can usefully blur political accountability, increase commitment to present policies and shield agencies from parliamentary interference. But boards – particularly executive boards – may be redundant if the actual policy-related steering of the organisation requires frequent intervention by a minister or a supervising ministry. If the minister or senior ministry officials need to take frequent day-to-day policy or operational decisions, then there is little justification for the agency to be anything more than a division of the parent ministry.

### 6.2.3. *Keep political control*

Governments are always and everywhere politically exposed to the quality of agency performance. They may expect agencies to carry quite significant policy and operational responsibilities, but unless governments are clear on how and when they can intervene, they may simply “lose political control” (Talbot *et al.*, 2000). Creating an agency can create a constituency for that agency that is politically difficult to reverse. When governments attempt to re-assert control over agencies, the most vocal opponents may well be the agencies themselves. Delegating freedom of management action requires careful attention to how the State’s broader interests in the operations of the agency will be protected. How will the government ensure that the agency is carrying out public policy or administering the law properly and that it is not creating new risks or unintended liabilities for the State?

**Powers of direction:** Under these circumstances, a minister or a president’s authority and power of direction over an agency needs to be made explicit from the outset. How will the mission and policy direction of the agency be set? Will there be a specific planning agreement with performance targets? What happens when the agency is making a mess of its management? How can the government intervene to direct changes? An

agency framework law may therefore need to cover three specific types of external political direction:

- the general arrangements for a planning agreement, regularly updated, between the political executive (and/or parent ministry) and the agency, covering mission, specific performance targets and budgets, and reporting arrangements;
- powers for the minister or other political authority to give policy or operational directives transparently (by public notice or tabling in the legislature);
- emergency powers – for the political executive to intervene to dismiss the board and/or the chief executive if and when there is a failure of management.

**Managing by the numbers:** The NPM approach of the United Kingdom and other countries replaces detailed hierarchical control of ministry divisions with arm’s-length performance agreements emphasising specified measurable targets. Many OECD countries now have at least some experience with performance agreements. In some cases (Netherlands, New Zealand, United Kingdom) they are the basis of a whole system of public management. In others (France, Germany) management by performance has made less impact, at least at a national level. But there is a body of experience now with some of the problems and advantages of performance contracting. In most OECD countries, learning how to specify results and how to supplement attenuated management through reports with other forms of surveillance has taken many years. It may be difficult to define measures that properly represent desired results and that are comprehensive in their coverage and reasonably parsimonious in number. Poor specification – and excessive reliance on inadequate measures – can lead to focusing on the measure rather than the desired outcome, and to “gaming” in the setting of performance targets or misrepresentation of performance statistics.

**Competent (and benign) parenting:** Getting the balance right in monitoring in the end comes back to the reporting relationship between agencies and their parents. In both OECD and developing country governments, failure of supervision is a problem. The agency framework law needs to define a clear formal line of accountability from the agency to the political executive. A parent ministry or the president’s office should be clearly responsible for transmitting policy requirements and monitoring implementation. But even with the right formal framework, a common problem is not getting the day-to-day supervision right. This is particularly a problem of the incentives and capability of parent ministries.

What is known about well-performing public organisations in Western countries<sup>12</sup> (and what little is known about successful performance in the

developing world<sup>13</sup>) suggests that this parenting relationship is both important and non-linear. Parent ministries need to take an interest and provide support without meddling too much in detail. Several OECD countries report nevertheless that supervising ministries can oscillate between micro-management of specific issues and inattention or neglect. The incentives for central ministries frequently lie in day-to-day political and policy management, rather than in operational oversight. Parent ministries may also lack the necessary competence to administer a performance management system which requires capabilities akin to the operational management skills of the agency itself (particularly given the agency's advantage of detailed knowledge of its own operations). The problems will be multiplied, of course, if the parent organisation has an interest in securing the non-performance of the agency.

**Safeguarding accountability for resources:** The two freedoms that public managers generally say they value most are to control their own spending and to manage their own staff. But what is good for managers may expose a government to wider financial and employment risks. If agencies are in part self-funding, they can reduce the ability of the government to control its overall spending and its fiscal impact on the economy, and they can disguise inefficiencies by extracting more revenues from their clients. If they are permitted to do their own borrowing or enter into leases, they may create contingent liabilities for governments. Freedom from general rules regarding hiring and remuneration for staff can compete away skilled staff from core government. In addition, the dark side of managerial autonomy is the opportunity it may represent for corruption and patronage.

Increasing managerial control over budgets and staff does not mean abrogating control: it means shifting away from a form of governance based on detailed external rules and individual transactions-based approvals to one based on strong external budget disciplines, monitoring, reporting and audit; and assurance through good systems of internal controls and internal audit. No government should delegate without being satisfied that it has both the internal and external frameworks for effective steering and control in place. If there is to be a board, how will appointments to it be made, and what rules will there be for dealing with conflict of interest? What rules are in place about internal policy setting, risk management, monitoring and review? What accounting standards are being adopted? What provisions are there for internal control and audit?<sup>14</sup>

### **6.3. Learning how to be free**

A further change theme emerges from concerns about management in agencies themselves. A shift from detailed external control of inputs to greater reliance on internal agency governance – and from there to a shift in

focus towards contracting for results – requires not only new management capabilities but a change in incentives and culture as well. To quote a Netherlands report:

*Becoming an agency is a complex and time-consuming process of change. Becoming an agency does not take place overnight. Organisations that have gone a long way in introducing results-oriented elements into their management can make the switch responsibly in two to three years. Organisations with a poorer starting position will sometimes follow a transitional path that will take a few more years. It is important not to rush the changes in order to guarantee cultural change within an organisation.*

(Oosterroom, 2002, p. 130-131)

Management in public organisations themselves may not have the skills or experience to assume the responsibilities of internal governance in terms of planning, task definition, hiring and reward of staff, procurement and contracting, reporting, internal control and audit. Failures in internal governance may either result in a *de facto* resumption of detailed control by supervisory ministries or in a vacuum in which there is no effective control of the organisation, either internal or external.

In Chile, for example, the external governance regime seems fairly stable and well developed, but there are challenges both for the quality of external surveillance and for agency internal governance:

*One of the important challenges for the future will be to increase the capacity of ministries to define public policies, monitor agencies, control and assess their results. At the same time, it will be important to improve communications on policies between agencies and ministries, and the understanding by the ministries of the activities and results of the agencies.*

*At the same time, it will be important to improve the agencies' capacity to manage themselves, especially in the context of recent reform which aims at increase technical, financial and personal flexibility of agencies and better define the roles and relationships between definition and implementation of a policy, what is expected of CEOs, their levels of management discretion, and the responsibilities of agency managers.*

(Pardo, 2000)

## 7. Lessons for agency creators

The evidence concerning good public management suggests that governments work better when their organisations have clear missions, strong support from the centre, visionary leadership, task motivation and professionalism among the staff, and managers with authority to get on and do the job. Sometimes agencies are the right form for supplying these

conditions. But there are some questions that governments and international agencies should address when considering the creation of new agencies:

- Be clear why the change is being made – and why it will be better than the status quo. Be particularly clear about motives: if they are not primarily for better governance, then it is unlikely that the formal rules will be effective.
- Ask what a specific change proposal implies for the quality of governance in the core public sector and what needs to be done to improve overall public management (financial management, public employment practices, performance management) – as well as or instead of trying to avoid the problem by ring-fencing particular functions in agencies. Basically, assume that enclaving will not last and is at best a temporary expedient when the real problems lie elsewhere.
- Understand also the environment and the risks it may present to a new agency. Where are the enemies of change? Who gains power and who loses it? Inside the public sector, look to powerful bureaucratic forces like existing line ministries or ministries of finance for significant opposition. The staff of existing organisations and their unions as well as the management may oppose change. Outside the civil service, there may be powerful stakeholder groups, politicians, business interests and mafias whose interests will be adversely affected. How will they react?
- On the obverse of the coin, consider who is supporting the change (the president? influential cabinet ministers?) and if they will continue to support and champion the organisation when things go wrong.
- Follow principles of good governance: generally what is appropriate in government departments to safeguard the basic interests of the State is appropriate for agencies. There are checklists for this purpose.
- Ask whether the mission of an agency really requires that it be constituted as a separate legal entity, with its own board and governing law; or whether some lesser degree of autonomy, perhaps under a parent ministry, will equally serve the purpose.
- Make sure that the incentive and capability exists in central ministries to manage the new relationships; that the politicians and legislators are clear on their powers and responsibilities of policy setting and surveillance; and that, in the agencies themselves, there are the management skills necessary to “learn to be free”.
- Expect a “Hawthorne effect” – a first burst of enthusiasm and motivation for the mission of the new organisation, maybe a charismatic leader with the strong support of a powerful politician, followed by a re-grouping of the forces of opposition and re-emergence of old habits and cultures of performance. How is improvement going to be embedded and thus survive beyond the pioneering phase?

## Notes

1. The research underpinning this paper is a study undertaken by the OECD of distributed public governance (OECD, 2002). There is no similar comprehensive review for either transition economies or developing countries. Specific mention should be made of the ongoing project of Professors Colin Talbot and Christopher Pollitt (Talbot et al., 2000). Other writers and references in some World Bank documents are cited in the paper.
2. For the remainder of this paper, these terms are used as if they are synonymous.
3. Manning, 2002.
4. Bonwitt, 2002.
5. Consistent with other OECD work, the definition excludes constitutional bodies (such as audit courts), State-owned enterprises, private companies and fully politically devolved bodies (such as regional or local government).
6. An acronym from the French term *agences d'exécution des travaux d'intérêt public*.
7. Christensen (1999) offers an alternative classification of "bureaucratic" autonomy (departures from clear and unequivocal ministerial direction and control of public organisations) into "structural" (where alternative top-level governance is inserted between minister and agency), "financial" (where agencies have some independence of control over financial resources) and "legal" (where the minister cannot interfere in individual decisions made by agency officials).
8. Autonomous administrative authorities which "act on behalf of the State without being subordinate to the government and enjoy, for the proper conduct of their assignments, guarantees which enable them to act in a fully autonomous fashion, such that their action may not be directed or censured except by the courts" (Conseil d'État, reported in Rochet et al., 2002, p. 76).
9. An example is the agency law developed in Latvia. See for example Maurina and Gray, 2003.
10. The LGED was cited for its efficiency in an otherwise depressingly underperforming civil bureaucracy (World Bank, 1996). The reasons given by a later case study were, among other things, the leadership qualities of its director, a team work ethic, a high degree of professionalism, decentralised management and community participation, decision making with the minimum of red tape, a high degree of autonomy from its parent ministry, and a unified sense of mission. See Pankaj, 2002.
11. Proskurovska (2003) suggests that in Latvia the *ad hoc* creation of State service delivery entities in the form of State non-profit shareholding companies created very significant risks for the government, particularly because of their ability to manage their own bank accounts and escape from central government financial controls.
12. See, for example, Rainey and Steinbauer, 1999.
13. For example, Grindle, 1997.
14. These aspects of the governance of agencies are discussed in more detail in Laking, 2002. Other discussions of public organisational governance requirements can be found in International Federation of Accountants, 2001.

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