

# Independence and Autonomy of Infrastructure Regulatory Agencies: Their Importance and Their Elements

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## Definition of Independence

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- Created by Law or Constitution (Not Decree)
- Ability to Make Decisions Without Obtaining Prior Approval
- Freedom from Short-Term Political Considerations/Repercussions
- Stable Financial Arrangements
- Ability to Make Subsidiary Policy

# Rationale for Independence: From Whom? For What? From Where?

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## ■ From Whom?

- From Government
- From Interest Groups and Vested Interests
- From Politics

## ■ For What?

- To Make Engage in De-Politicized, Deliberative Decision-Making
- To Assure Transparency and Integrity

## ■ From Where?

- Regulatory Agencies Are Part of All Branches of Government
  - Judicial
  - Executive
  - Legislative

# Elements for Achieving and Maintaining Independence

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- Institutional
- Financial
- Ethical
- Competence
- Process
- Public Education/Public Relations

## Institutional

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- Fixed, Staggered Terms for Commissioners (Directors)
- Legislative Approval of Executive Appointments
- Removal of Commissioners Only for Proven Good Cause
- Stable Terms and Conditions of Employment for Commissioners
- Final Decision-Making Authority
- Enforcement Powers

## Financial

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- Independent Source of Revenue (e.g., Regulatory Fees)
- Regulatory Fee Revenues Off Government Balance Sheet
- Revolving Fund/No Diversion Allowed
- No Discriminatory Mid-Cycle Budget Cuts Permitted
- Competitive Salaries and Benefits

# Ethical

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- Strict Rules Governing:
  - Conflicts of Interest
  - Financial Disclosures
  - Limits on Subsequent Employment
  - Prohibition of Gratuities and Favors

# Competence

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- Professional Qualifications of Commissioner and Staff
- Technical Expertise and Experience
- Effective Decision-Making
- Clarity in Policies and Reasoning

# Process

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- Necessity of Accepted and Respected Regulatory Forum
  - **Elements Required for Forum:**
    - Transparent Decision-Making Process
    - Encouragement and Facilitation of Meaningful Public Participation
    - Deliberative Decision-Making Process
    - Well-Articulated and Reasoned Decisions With Supporting Documentation

## Public Education/Public Relations

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- Maintain Effective Public Dialogue
- Promotion of Intellectual Infrastructure
- Maintain Equilibrium and Symmetry of Information Among Interest Groups
- Political Sophistication But Not Political

## Relationship Between Independence and Transparency

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- Transparency Requires that Regulatory Process be ***THE*** Process for Making Decisions
- There Must Be No Back Doors (Jeitinho Nao Existe)

## Social Control (Accountability)

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- A. Judicial (Retrospective)
- B. Legislative (Prospective)
- C. Executive
  - Retrospective on Administrative and Fiscal Only
  - Prospective on Administrative, Fiscal and Policy

## Judicial Social Control

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- Assure Compliance With Law and Policy
- Assures Procedural Fairness
- Protects Against Arbitrary and Unreasonable Decisions

## Legislative Social Control

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- Can Change Powers of Agency
- Can Change Policies and Methods Agency Must Follow and Use
- Can Disapprove Commissioner Appointments (If Law Allows)
- Can Approve Budget and Personnel Arrangements
- Can Conduct Oversight Hearings/Investigations
- Public Criticism

## Executive Social Control (Retrospective)

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- Fiscal Control and Oversight
- Administrative Oversight
- Public Criticism

## Executive Social Control (Prospective)

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- Can Change Policies Agency Must Follow (If Law Permits)
- Can Advocate Point of View
- Approves Budget