

AN AUDIT OF MATTERS RELATING TO THE CONCESSION AWARDED TO VITALS GLOBAL HEALTHCARE BY GOVERNMENT

PART 1 | A REVIEW OF THE TENDER PROCESS – ADDENDUM

A REPORT BY THE
AUDITOR GENERAL



JULY 2020



An audit of matters relating to the concession awarded to
Vitals Global Healthcare by Government

Part 1 | A review of the tender process – Addendum

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List of abbreviations

GGH	Gozo General Hospital
KGRH	Karin Grech Rehabilitation Hospital
MEIB	Ministry for the Economy, Investment and Small Business
MoU	memorandum of understanding
NAO	National Audit Office
OPM	Office of the Prime Minister
RfP	Request for Proposals
SLH	St Luke's Hospital
VGH	Vitals Global Healthcare Ltd

Context

- 1 | This Addendum report complements the first part of the audit of matters relating to the concession awarded to Vitals Global Healthcare Ltd (VGH) by Government. The focus of this publication is a memorandum of understanding (MoU) submitted to the National Audit Office (NAO) by the Office of the Prime Minister (OPM) on 14 July 2020, shortly after the publication of the aforementioned report. The memorandum, dated 10 October 2014, essentially relates to the setting up of a Gozo Medical Complex. The signatories to the memorandum were Government, represented by the Hon. Christian Cardona, then Minister for the Economy, Investment and Small Business (hereinafter referred to as the Minister for the Economy), and three investors, two of whom would later form part of the VGH. Of relevance is that this document predates the Request for Proposals (RfP) that was issued in March 2015.
- 2 | Noted in the NAO's report on the matter was that this Office had sought to obtain information relating to this memorandum/agreement. The NAO's efforts in this regard were intended to establish an understanding of who the signatories representing Government were, which would then enable the sourcing of the agreement. Queries in this respect were addressed to various senior Government officials; however, despite the numerous requests made, very limited information and no copy of the relevant agreement were provided to the NAO.
- 3 | This Office's awareness of the prior agreement between Government and the eventual investors of the VGH could be traced to the court documents submitted by one of these investors on 19 December 2017 and 29 January 2018 when filing two warrants of prohibitory injunction against Bluestone Investments Malta Ltd and the VGH to prevent the sale of VGH to Steward Health Care. The filing of the prohibitory injunctions was related to a claim made by the investor, Dr Ashok Rattehalli, that he was entitled to five per cent of the shares of the VGH on the day of its entry into the concession agreement with the Government, and that such share allotment had not been effected. The investor's entitlement to the shares emanated from an agreement dated 12 May 2015 between himself and Bluestone Investments Malta Ltd. An agreement was eventually reached on 8 February 2018, when Dr Rattehalli was granted an offer of allotment of shares in the capital of VGH amounting to five per cent. Later that month, on 15 February 2018, the prohibitory injunction was withdrawn, allowing the VGH to proceed with the sale of 95 per cent of its shares to Steward Health Care.
- 4 | One of the documents presented by Dr Rattehalli in this judicial litigation was another MoU dated 23 November 2014 entered into by Dr Ambrish Gupta, AGMC Incorporated (represented by Dr Rattehalli), Portpool Investments Ltd (represented by Mr Ram Tumuluri) and Bluestone Special Situation 4 Ltd (the sole shareholder of Bluestone Investments Malta Ltd and represented by Mr Mark Edward Pawley). Noted in this MoU was that AGMC Incorporated, Portpool Investments Ltd and Bluestone Special Situation 4 Ltd had entered into an agreement with the Government to build, develop and manage a world class healthcare facility in Gozo. The purpose of the MoU was to form a partnership between these investors, who were in turn to own 70 per cent of the project, described as:
 - a | the takeover of the existing 210-bed general hospital in Gozo and the operation of the hospital as per the terms agreed with the Government;
 - b | the building of an additional 200-bed hospital at the Gozo General Hospital (GGH), so that it would be a 410-bed teaching hospital by the end of 2016;
 - c | the building of a 200-bed assisted living facility on the same premises;

- d | the building of a medical college as per the standards of Barts and the London School of Medicine and Dentistry; and
 - e | the potential acquisition of St Philip's Hospital and/or St Luke's Hospital (SLH).
- 5 | Through this MoU, it was agreed that Dr Ambrish Gupta was to invest \$300,000 into the venture in consideration of the equity participation in the project. Half of this amount was to be paid on the execution of the MoU, while the rest would be advanced right after visiting the project in Malta. This visit was anticipated to occur in December 2014. Meanwhile, AGMC Incorporated, Portpool Investments Ltd and Bluestone Special Situation 4 Ltd were to advance \$300,000 in January 2015 to cover pre-project costs of \$500,000. On 7 January 2015, an amendment to the MoU was signed, replacing the above-mentioned financial provisions. It was noted that Dr Ambrish Gupta had agreed to advance a loan of \$425,000 to Bluestone Special Situation 4 Ltd in consideration of the equity participation in the project. On 24 November 2014, \$150,000 had been paid while the remaining \$275,000 were to be provided as per a loan agreement also signed on 7 January 2015. Dr Ambrish Gupta was to hold 25 per cent of the shares of Bluestone Investments Malta Ltd. It is pertinent to keep in mind that all this happened prior to the issue of the RfP.
- 6 | Having considered these facts in its initial report, this Office noted the significant overlap between that cited in the project as agreed between Government and the eventual investors of the VGH, with the concession later awarded by Government to the VGH. The NAO specified that the link between this prior agreement and the concession was evident and created the utmost concern regarding the integrity of the eventual concession. Moreover, Government's reluctance to provide the NAO with a copy of this prior agreement had aggravated the Office's concerns and had served as further confirmation of its contentious relation to the concession eventually entered into. The NAO concluded that this casts a dark shadow of doubt over the validity of the concession awarded by Government, for in reality, all appeared to have been pre-agreed and the procurement process undertaken was merely a superficial exercise leading to an already determined outcome.
- 7 | Having briefly revisited the salient points made in this Office's reporting on the concession awarded by Government to the VGH in terms of prior agreement, attention now shifts to the submitted MoU. Hereunder is a detailed account of the provisions stipulated therein and this Office's analysis. In seeking to establish an understanding of the facts of the matter, the NAO held meetings with the former Minister for the Economy, the Principal Chief Officer Malta Enterprise responsible for foreign direct investment at the time of entry into the MoU, and the incumbent Chief Executive Officer Malta Enterprise. This Office also sought to obtain the views of the former Chief of Staff OPM; however, attempts made were to no avail. During the course of interviews held, the NAO established that the MoU was submitted to the OPM by the Principal Chief Officer Malta Enterprise.

The Memorandum of Understanding

- 8 | Representing Government in this MoU was the Hon. Dr Christian Cardona, then Minister for the Economy. The other party to the MoU were the developers and operators of the proposed project, represented by Mr Mark Edward Pawley in his capacity as Director of Bluestone Special Situation 4 Ltd, Dr Ashok Rattehalli in his capacity as Director of AGMC Incorporated and Mr Mohammad Shoib Walajahi and Mr Chaudhry Shaukat Ali in their capacity as Directors of Pivot Holdings Ltd (hereinafter collectively referred to as the Investors).

by the end of February 2015, or any extended period as mutually agreed, then the MoU was to be considered revoked and cancelled. Queries regarding possible extensions to the term of the MoU were submitted to the Permanent Secretary Ministry for the Economy, Investment and Small Business (MEIB) and the CEO Malta Enterprise. No information was received in this respect.

- 13 | Cited in the MoU was reference to a 'final deed', at times referred to as a 'final agreement'. In this context, the MoU was not to be construed as a legally binding document until the execution of the final deed. Queries regarding this final deed were addressed to the Permanent Secretary MEIB and the CEO Malta Enterprise; however, no information was provided.
- 14 | Of acute interest to the NAO was the conditionality imposed by Government, whereby the MoU was subject to Government receiving positive due diligence on the Investors. In turn, the Investors were to enable Government to carry out its due diligence and evaluation through the submission of a business plan by 15 January 2015. The business plan was to include the minimum facilities that were to be developed and the timeframes within which the project was to be realised. Instrumental to the compilation of the business plans and of concern to the NAO was that the Investors were to carry out research and gather market intelligence on the needs and scope of the project together with all the relevant Maltese authorities. This Office's consideration of these aspects of the MoU are addressed in the ensuing section of this report.
- 15 | Subject to entry into the final agreement, the Investors were to develop the Gozo Medical Complex on the site indicated in Figure 1. The site was to be granted by the Government to the Investors for a minimum period of thirty years under the terms and conditions mutually agreed to by the parties. The exact extent, as well as the terms and conditions of the grant of the site were to be determined after the Investors provided their business proposal for the project and this was deemed satisfactory by Government.
- 16 | On signature of the final agreement, the Investors were to provide a monetary guarantee equivalent to an amount that was to be agreed by the parties, which amount was not to exceed 10 per cent of the project costs. This guarantee was to be provided in the form of a performance bond in favour of Government and was to be valid until the completion date of the project, reducing as per the straight-line method from the date of the final agreement to the date of project completion.
- 17 | The project was to comprise:
 - a | the expansion of the existing facilities at the GGH from 210 beds to 410 beds;
 - b | the development of a 200-bed assisted living centre intended for aged and infirm patients who did not require constant medical attention and who occupied hospital beds that could be otherwise used to treat emergency and trauma patients; and
 - c | the construction of a medical school to be operated by Barts.
- 18 | Acknowledged in the MoU was that Government, the Investors and Barts would enter into separate negotiations on the terms and conditions for the grant of the medical school to be built by the Investors as per the specifications provided by Barts. These specifications were to be included in the final agreement.

On the sustainability of the project

- 19 | In terms of the sustainability of the project, the parties agreed in principle that the Investors would take over the operation and management of the GGH from the date of the final agreement or any other date mutually agreed to. This was subject to a service level agreement being concluded between the parties.
- 20 | On its part, Government was to transfer to the Investors an agreed annual operating expense budget for a mutually pre-agreed period of time. This budget was not to be less than the then current expenses borne by the Government with regard to the GGH. In addition, Government was to provide a guarantee to the Investors by committing to a capped number of patients at a pre-agreed rate that was to be in line with medical services provided in Malta. Government also agreed to deploy existing and/or assigned human resources from the public sector, while the Investors were to recruit the services of these employees. The terms and conditions relating to this agreement were to be mutually agreed to by the parties before the final agreement.
- 21 | The Investors were to ensure a constant flow of medical tourism into Malta to sustain the viability of the project in terms of the utilisation of the remaining beds not guaranteed by Government.
- 22 | Cited in the MoU was that the Government was to appoint a Medical Certification and Surveillance Board chaired by a person also appointed by Government, which Board was to ensure service quality. The composition and terms of reference of this Board were to be defined in the final agreement.
- 23 | Subject to a financial agreement between the Government and the Investors, the latter were to provide sufficient training placements commensurate with the requirements of Barts. The training requirements were to be provided to the Investors in due course and prior to the final agreement. To this end, the negotiations between the Investors and Barts were to be mediated by the Government.

The assistance to be provided by Government

- 24 | Stipulated in the MoU was the assistance that Government was to provide the Investors on several aspects of the project, encompassing the planning and operational phases. With regard to planning, and of evident concern to the NAO, was that Government committed to assist the Investors in obtaining the information required to determine the needs and scope of the project. In addition, and similarly disconcerting, was that Government was to assist the Investors in obtaining costing information relating to the construction of the proposed medical facilities, the required equipment and the determination of a mutually acceptable basis for charging the Government for all the medical services delivered to patients treated by the Barts Medical School.
- 25 | The Government also undertook to assist the Investors to understand Barts' requirements, which included:
 - a | the construction of a two-storey building, measuring approximately 4,000 square metres, intended for the students' academic needs;
 - b | understanding the level of support that Barts' students would require from doctors employed at the Barts Medical School;

- c | the treatment facilities to be used for student training; and
 - d | the manner and conditions, including financial, under which such services would be provided to the Barts Medical School.
- 26 | Through the MoU, Government further undertook to assist the Investors determine the scope of services to be provided at the Barts Medical School by coordinating with the Minister for Health and senior consulting doctors at Mater Dei Hospital and the GGH.
- 27 | The MoU also captured Government's commitment to facilitate certain operational aspects of the project. Stipulated in this respect was that permits relating to the construction, development, finishing and use of the project would be expeditiously processed according to law, with minimum bureaucracy and unnecessary delays. Furthermore, Government was to grant the Investors such exemptions, facilities and incentives for the execution and running of the project and the employment or hiring of personnel, as normally provided to similar investments.
- 28 | Subject to Malta's laws and international commitments, Government was to assist and expedite the application process for the right of entry into Malta of the project's patients (provided they were bona fide), Investors' employees, administrative and financial staff, as well as the advisors and consultants required for the development and running of the project. The Government also committed to assist and expedite the application process of all applications related to residency in Malta, whether temporary, permanent and/or right of entry, for patients, doctors and all workers (whether permanent or not, and including their escorts and immediate family) for the entire period of their treatment or work.

Matters of confidentiality

- 29 | Cited in the MoU were provisions relating to confidentiality. Government, the Investors, and each of the parties' affiliates, partners, advisors, contractors and consultants, were to treat the MoU and any information received, developed or obtained as a result of entering into or performing an obligation under the MoU or the project as strictly confidential and were not to disclose it.
- 30 | However, the MoU listed a couple of exceptions wherein confidential information could be disclosed, namely:
- a | if this was required by the law or regulation of any jurisdiction to which a party was subject, provided all reasonable practical legal steps were taken to prevent such disclosure if requested to do so by the other party; or
 - b | if the other party had given prior written approval for the disclosure.

Miscellaneous provisions

- 31 | Several other provisions, miscellaneous in nature, were captured in the MoU. One such provision regulated the transfer of shares. According to the MoU, share transfers resulting in a change in the ultimate ownership of the company in any form, or any material changes in the company's Memorandum and Articles of Association were prohibited, unless the prior written consent of Government was obtained. Also noted in this regard was that if the Investors wished

to involve additional partners, investors or operators in the execution of the project, they were to seek the immediate authorisation of Government prior to such involvement. In turn, Government could also introduce the Investors to other parties for possible collaboration, subject to their approval and subject to the collaboration being mutually beneficial to all parties.

- 32 | Another requirement specified in the MoU was that no part of the project was to be transferred separately under any title whatsoever. Furthermore, the land indicated in Figure 1 could only be used for purposes related to the project and no part of it could be transferred, under any title whatsoever, separately from the project. However, subject to Government's approval, the Investors could subcontract the management and/or operation of ancillary services related to the project to any third party.
- 33 | Reference was also made to the method that was to be adhered to in the finalisation of the detailed terms of the agreement. In this respect, the Government and the Investors were to nominate a team of representatives to finalise these terms of agreement, ensuring that the points and items provided for in the MoU were implemented in the most mutually beneficial manner possible. Finally, it was noted that the MoU superseded any other negotiations, discussions or understandings that could have been made prior to its execution.

Analysis

Origin of the project

- 34 | The 2015 Budget, dated 17 November 2014, represented the first public announcement of the components that would eventually form the basis of the concession of three public hospitals by Government to the VGH. However, by this date, Government had already entered into an MoU with the Investors for the setting up and operation of a medical complex in Gozo. The concession awarded to the VGH bore significant similarities in this respect, with the inclusion of the SLH and Karin Grech Rehabilitation Hospital (KGRH) merely augmenting a business model that had already been designed in the MoU. The majority of the Investors in the MoU would later constitute the VGH.
- 35 | It is in this context that the NAO sought to understand how Government's initiative for the setting up of a medical complex in Gozo originated. According to the Principal Chief Officer Malta Enterprise, this project was driven by Government's objective to reach an agreement with the renowned Barts Medical School. He stated that various attempts to attract a reputable medical school had been made prior to the agreement reached with Barts; however, these proved unsuccessful. The Principal Chief Officer maintained that the setting up of a medical school was to be of general benefit to the Maltese economy and was to be particularly advantageous to Gozo. Once the commitment of Barts was secured, Malta Enterprise sought to ensure that all requirements for this opportunity to materialise were met. In order for Barts to commit to the medical school, Government undertook to upgrade the facilities at the GGH and further develop the range of medical services provided at this Hospital. The NAO understood that Malta Enterprise acted as the interlocutor between Barts and Government in this respect.
- 36 | That stated by the Principal Chief Officer was consistent with testimony that the former Minister for Energy and Health had provided to this Office. In this regard, the Minister had indicated that Malta Enterprise was working to attract Barts Medical School to Malta. According to the Minister for Energy and Health, at the time, the OPM and Barts Medical School were presented with a proposal to redevelop the GGH by an interested third party.

- 37 | Seeking to better understand the role played by Malta Enterprise in relation to this project, the Principal Chief Officer Malta Enterprise stated that he recalled being informed of a meeting that was to be held at the OPM with the Investors regarding the GGH project. He emphasised that his involvement was to ensure that the requirements necessary for securing the commitment of Barts Medical School were addressed in the discussions held with the Investors. Additionally, the NAO was informed that the meeting was convened by the former Chief of Staff OPM and that it preceded the MoU dated 10 October 2014.
- 38 | In view of the information obtained, the NAO sought the views of the former Chief of Staff OPM. Attempts to contact the former Chief of Staff OPM were to no avail.
- 39 | Having established that Malta Enterprise was not involved in the identification of the project, the NAO directed queries to the Minister for the Economy. This Office sought to understand his involvement in the MoU and in relation to the project. Very limited information was obtained, as the Minister for the Economy maintained that he was not involved in the formulation of the project or in any negotiations leading to the MoU or negotiations held after entry thereto. The Minister for the Economy recalled that he was requested to sign the MoU on behalf of Government; however, reiterated that he was not involved in any other way. Of interest to the NAO was the emphasis made by the Minister for the Economy that the MoU was not signed at the MEIB, and indicated that in all probability it was signed at the OPM. He noted that other MoUs were signed at the OPM.
- 40 | The role played by the OPM in the formulation of the project assumed a more definite form based on the information provided to the NAO by the Minister for the Economy and the Principal Chief Officer Malta Enterprise. Notwithstanding this, many gaps persist in this Office's understanding of the process leading to the MoU. These gaps result from the fact that no records were retained by the OPM in relation to the MoU and attempts at sourcing information from the former Chief of Staff OPM proved to no avail. Despite the NAO's efforts at deciphering the active role played by the OPM, this remains obscure.

Determination of feasibility

- 41 | Another gap in understanding emerges in relation to the determination of feasibility of the Gozo project. Here, the NAO sought to understand if and how Government decided that the deliverables outlined in the MoU were deemed to be of benefit to the public, who identified these objectives and on what basis. No information was provided in this regard. The Minister for the Economy affirmed that neither he nor his Ministry was involved in this undertaking.
- 42 | The Principal Chief Officer Malta Enterprise reiterated that Malta Enterprise did not delve into the feasibility of the project. In fact, the only input of Malta Enterprise in the MoU was limited to ensuring that the requirements of Barts in terms of the setting up and operation of the medical school were included.
- 43 | Aside from enquiries made regarding the feasibility of the key project deliverables, that is, the extension and operation of the GGH, the construction and operation of an assisted-living centre and the construction of the Barts School of Medicine, the NAO also sought to establish whether any studies that supported the concept of medical tourism in Gozo were undertaken. This Office was not provided with any studies in this regard. While Malta Enterprise was not involved in any such studies, the Principal Chief Officer argued that the success of initiatives intended to attract medical tourism rested on the reputation of the medical service provider. In this context, he maintained that Barts fared highly in this regard.

- 44 | The NAO sought to ascertain what advantages Government was to gain through entry into this MoU rather than issue a public call for tenders. The Minister for the Economy argued that the MoU served to tap interest and ascertain the potential of investors, was a precursor to negotiations, and a means of assessing how Government could support the investor. Nonetheless, the Minister for the Economy maintained that Government did not prejudice the RfP as it retained the option not to pursue the MoU. In addition, and in this particular case, the Minister for the Economy stated that the MoU was contingent on the due diligence that was to be undertaken by Government on the Investors.
- 45 | This Office also enquired as to the benefit envisaged by Government in entering into such an arrangement when, through this MoU, it committed to pay the Investors at least the same amount that was already being incurred for the running of the GGH. One must also keep in mind that the risk to the Investors was limited further through Government's commitment to a guaranteed number of patients. The Minister for the Economy indicated that he could not comment in this regard as he was not involved in any significant way. Similarly, the Principal Chief Officer Malta Enterprise indicated that Malta Enterprise was not involved in assessing the viability of that to be gained by Government through the MoU.

Prior agreement between Government and the Investors

- 46 | Central to the line of inquiry of the NAO was why Government elected to transact with these particular Investors. This Office sought to determine how the parties that were to be entrusted with the project indicated in the MoU were identified. The Minister for the Economy maintained that he was not aware of how the Investors were identified and insisted that he was not involved in negotiations held prior to the MoU. The Principal Chief Officer Malta Enterprise informed the NAO that the Investors had approached Government with their proposal; however, he could only provide limited information as neither he, nor Malta Enterprise, were involved first hand. Notwithstanding this, the Chief Principal Officer specifically cited the role played by the former Chief of Staff OPM in this regard. As stated, enquiries with the former Chief of Staff OPM proved to no avail and therefore this Office was unable to determine how contact between Government and the Investors was established and how negotiations between the two parties ensued.
- 47 | While the NAO noted that stated by the Principal Chief Officer Malta Enterprise with regard to the Investors first approaching Government with their proposal, this Office maintains reservations in this respect. Although visibility of these critical initial interactions was limited by the lack of information provided, this Office deems the timing of the Investors' unsolicited interest in the GGH project with developments happening in parallel with Barts regarding the setting up of a medical school as highly improbable.
- 48 | Given the sequence of events, it is reasonable for this Office to assume that negotiations or discussions between the parties preceded, and possibly followed, the MoU. Queries to this effect were made with the Minister for the Economy and Malta Enterprise who maintained no involvement in this respect. The Principal Chief Officer Malta Enterprise also maintained that Malta Enterprise was not involved in any negotiations. He affirmed that his input in the process leading to the finalisation of the MoU was restricted to proposing the insertion of certain clauses that related to Government's commitment in relation to the Barts Medical School.
- 49 | The NAO noted certain discrepancies between the MoU dated 10 October 2014 and the agreement referred to in court proceedings in the MoU dated 23 November 2014 entered into

by a subset of the Investors also signatories to the October 2014 MoU. While in the November MoU it was indicated that AGMC Incorporated, Portpool Investments Ltd and Bluestone Special Situation 4 Ltd had entered into an agreement with the Government, the October MoU listed Bluestone Special Situation 4 Ltd, AGMC Incorporated and Pivot Holdings Ltd (represented by Mr Mohammad Shoaib Walajahi and Mr Chaudhry Shaukat Ali) as parties to the MoU with the Government.

- 50 | Aside from this discrepancy in some of the counterparties to Government, another divergence noted by this Office related to the scope of the project. The MoU signed by the Investors with the Government on 10 October 2014 only refers to the operation and redevelopment of GGH, whereas the MoU dated 23 November 2014 refers to the same GGH project but also to the potential acquisition of St Philip's Hospital and/or the SLH. This was deemed as indicative of possible negotiations underway between Government and the investors following the signing of the October MoU. Queried on these aspects, the Minister for the Economy noted that he was not aware of any negotiations held and therefore any changes to the Investors or the project. Similarly, the CEO Malta Enterprise and the Principal Chief Officer Malta Enterprise were unaware of any revisions or other MoUs entered into subsequent to that dated 10 October 2014.

Assessing the Investors

- 51 | The MoU was contingent on the Government receiving positive due diligence on the Investors. Queries to this effect were addressed to the Minister for the Economy, the CEO Malta Enterprise and the Principal Chief Officer Malta Enterprise. The CEO Malta Enterprise confirmed that due diligence on the Investors had been carried out by Malta Enterprise. This was confirmed by the Principal Chief Officer. However, of concern to the NAO was that Malta Enterprise did not provide the NAO with any documentation in this respect, citing provisions in the Business Promotion Act and legal advice obtained precluding it from disclosing such information. This Office maintains serious reservations in this regard, contending that provisions intended to safeguard confidentiality as a means to encourage investment should not prohibit scrutiny by the NAO, on behalf of Parliament, more so when the nature of the information sought is certainly not classified as commercially sensitive.
- 52 | Concern regarding the refusal to disclose information relating to the due diligence carried out by Malta Enterprise on the Investors is aggravated when one considers that stated to the NAO by the Minister for the Economy. In submissions made to this Office, the Minister for the Economy referred to the due diligence that Malta Enterprise had undertaken with respect to the Investors, noting that the negative outcome of this due diligence in a way led Malta Enterprise to revoke the MoU. The Minister for the Economy informed the NAO that he was not privy to the basis of this negative outcome, citing that this was confidential information that Malta Enterprise was prohibited from disclosing under the Business Promotion Act, unless otherwise instructed by the Prime Minister or by Court order. Despite the lack of visibility afforded to this Office regarding the nature of the negative outcome of the due diligence, the NAO's concerns emerge when one considers that, irrespective of the critical risks flagged, Government opted to persist in negotiations with investors that, for the most part, remained unchanged when bidding in reply to the RfP.
- 53 | Another requirement emanating from the MoU comprised the submission of a business plan for the Gozo project by the Investors by 15 January 2015. According to the CEO Malta Enterprise and the Principal Chief Officer Malta Enterprise, a business plan was not submitted by the Investors; however, both indicated that the presentation delivered at the OPM was intended to

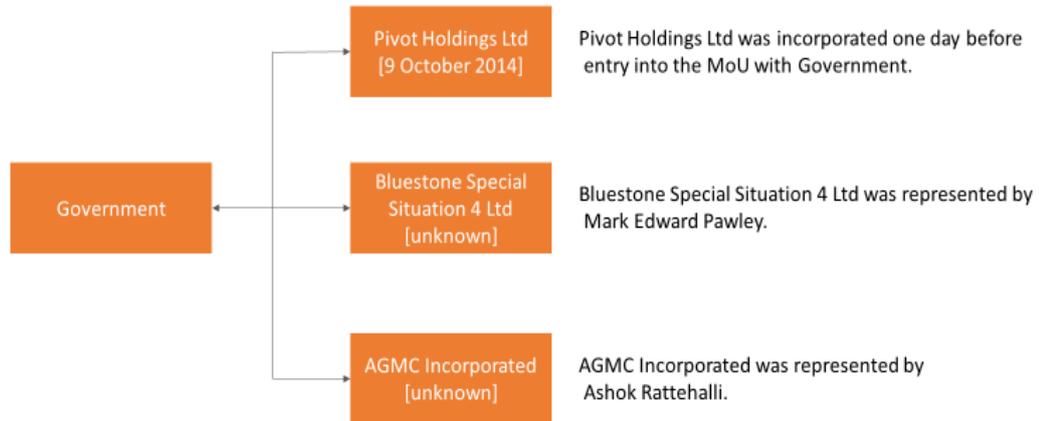
serve this purpose. The Principal Chief Officer could not recall the exact date of the presentation; however, noted that it coincided with the deadline for the submission of the business plan. The Minister for the Economy informed the NAO that he was not requested to attend this presentation.

- 54 | Since the Investors were to provide the investment required to finance the project and were also to be entrusted with its operation, the NAO sought to understand how Government ascertained that the Investors had the required financial resources and know-how. In view of the gaps that persist in the NAO's understanding of the process, this Office was unable to verify whether Government assessed the financial and technical capabilities of the Investors. Furthermore, given that Malta Enterprise did not provide the NAO with the due diligence carried out, it was not possible for this Office to determine whether Government undertook the required review of the Investors' capabilities to see the project through, and if such capabilities were assessed, what conclusion was reached.

A vitiated procurement process

- 55 | On 27 March 2015, Projects Malta Ltd issued an RfP for the concession of the SLH, the KGRH and the GGH. The Office enquired how the involvement of Malta Enterprise in relation to the project came to an end, with the process from the RfP onwards effectively taken over by Projects Malta Ltd. The CEO Malta Enterprise provided a letter dated 26 January 2015 sent by the Principal Chief Officer Malta Enterprise to one of the Investors. In this correspondence, the Principal Chief Officer informed the investor that the concept as presented for a 650-bed hospital for Government patients in Gozo was not aligned with the requirements of Government. According to the Principal Chief Officer Malta Enterprise, this correspondence represented the end of Malta Enterprise's involvement in the process. Of interest to the NAO was an assertion in this correspondence wherein it was indicated that Malta Enterprise together with the Ministry for Health would be working on developing an operating model that reflected Government's requirements.
- 56 | The NAO is of the opinion that the MoU and the RfP were a continuation of one process that evolved over time. This Office based this understanding on the fact that:
- a | the major shareholders remained the same; and
 - b | the nature of the project remained consistent in that it comprised:
 - i | the operation of a state-owned hospital;
 - ii | guaranteed revenue by Government;
 - iii | a business model that sought to attract medical tourism;
 - iv | a long-term agreement with Government; and
 - v | the construction of Barts Medical School.
- 57 | In order to understand how the majority shareholding of the Investors that entered into the October 2014 MoU with Government remained largely consistent with that of the VGH awarded the concession of three public hospitals, it is essential to trace how the shareholding evolved. On 10 October 2014, the Investors that signed the MoU with Government for the Gozo project were Bluestone Special Situation 4 Ltd represented by Mr Mark Edward Pawley, AGMC Incorporated represented by Dr Ashok Rattehalli, and Pivot Holdings Ltd represented by Mr Mohammad Shoaib Walajahi and Mr Chaudhry Shaukat Ali (Figure 2 refers). Of note to the NAO was that Pivot Holdings Ltd was incorporated on 9 October 2014, that is, the day before the MoU with Government was signed.

Figure 2 | The Investors that entered into the MoU with Government on 10 October 2014



Note | Dates of incorporation are denoted under each company.

58 | A private MoU between two investors (that were signatories to the MoU with Government) and other investors was entered into on 23 November 2014. Through this private MoU, Bluestone Special Situation 4 Ltd and AGMC Incorporated agreed that Dr Ambrish Gupta was to join them in their ownership of 70 per cent of the equity of the project. The NAO noted that the private MoU acknowledged that Portpool Investments Ltd represented by Mr Ram Tumuluri now formed part of the 70 per cent equity ownership (Figure 3 refers). This Office was not provided with any documentation indicating that Government was informed of these changes in investors, despite an obligation to this effect having been included in the October 2014 MoU.

Figure 3 | MoU entered into by the Investors on 23 November 2014 capturing a change in composition

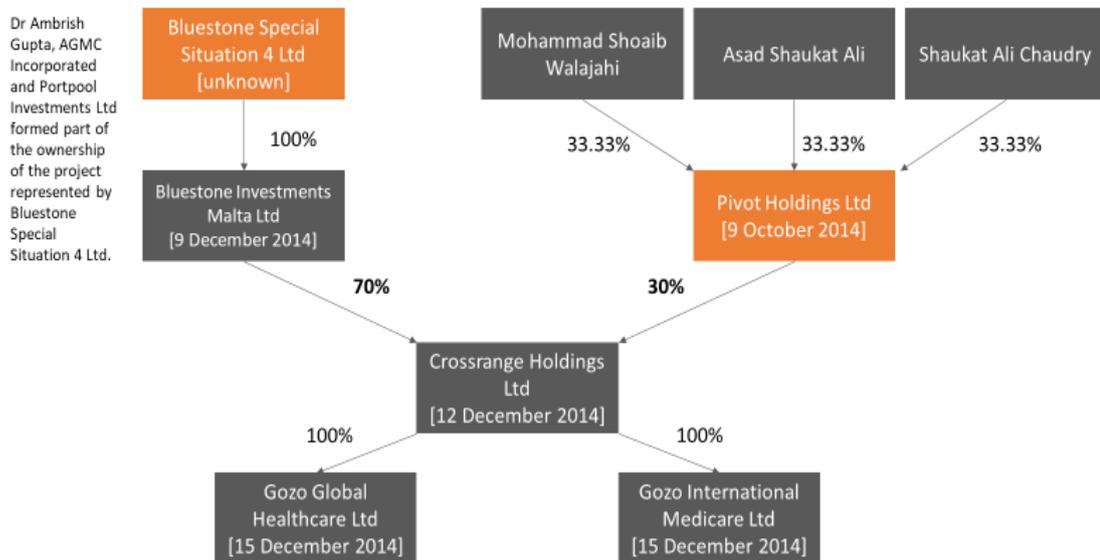


Note | Dates of incorporation are denoted under each company.

59 | Developments in the corporate structure that the Investors established in respect of the Gozo project were registered in December 2014. Bluestone Investments Malta Ltd was incorporated on 9 December 2014, with Mr Mark Edward Pawley appointed as Director. Bluestone Investments Malta Ltd was owned by Bluestone Special Situation 4 Ltd. Based on that stated in the private MoU dated 24 November 2014, the NAO understood that Dr Ambrish Gupta, AGMC Incorporated and Portpool Investments Ltd also formed part of the ownership of the project represented by Bluestone Special Situation 4 Ltd. In turn, Bluestone Investments Malta Ltd and

Pivot Holdings Ltd formed Crossrange Holdings Ltd on 12 December 2014. The ownership of Crossrange Holdings Ltd reflected that stated in the private MoU, with Bluestone Investments Malta Ltd owning 70 per cent and Pivot Holdings Ltd the remaining 30 per cent. Crossrange Holdings Ltd proceeded to set up two subsidiary companies on 15 December 2014, namely, Gozo Global Healthcare Ltd and Gozo International Medicare Ltd (Figure 4 refers).

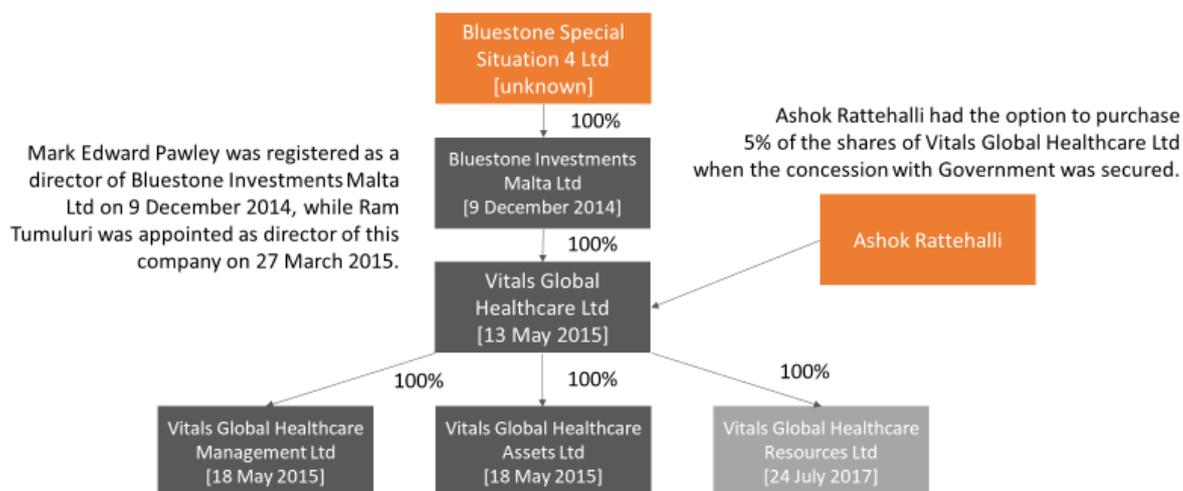
Figure 4 | Corporate structure set up by the Investors in December 2014 in respect of the MoU with Government



Note | Dates of incorporation are denoted under each company.

60 | The only significant change noted by the NAO when comparing the Investors behind the MoU entered into with Government in October 2014 with the corporate structure of the bidder awarded the concession was the absence of the minority shareholder Pivot Holdings Ltd. Otherwise, Bluestone Investments Malta Ltd, which was set up in view of the MoU, was the shareholder of the VGH, which company was incorporated on 13 May 2015. Dr Ashok Rattehalli, a party to the MoU with Government, continued to feature through his option to purchase five per cent of the share of the VGH when the concession with Government was secured (Figure 5 refers). In light of this, the NAO is of the opinion that there exists significant overlap between the Investors that entered into the MoU with Government and the owners of the VGH, the Company that Government subsequently awarded the concession to.

Figure 5 | VGH corporate structure as per RfP bid dated 19 May 2015



Note | Dates of incorporation are denoted under each company. It must be noted that Vitals Global Healthcare Resources Ltd was incorporated on 24 July 2017, that is, well after the RfP bid.

61 | Having established the continuity in terms of ownership, the NAO sought to address the contention that the nature of the project changed from the MoU entered into with respect to the Gozo project to the RfP for the concession of three public hospitals. The MoU addressed the redevelopment and operation of the GGH, essentially comprising the expansion of the existing facilities from 210 beds to 410 beds, a 200-bed assisted living centre, and the construction of a medical school to be operated by Barts. Cited in the RfP was that the concessionaire was to operate and upgrade the GGH through the development of a 200 to 250 acute bed hospital, the redevelopment of the existing building into a 200 bed long-term geriatric and rehabilitation facility, and the construction of the Barts Medical School (Figure 6 refers).

Figure 6 | Comparison of the GGH deliverables as per MoU and RfP

GGH	MoU	RfP
New facilities	210 to 410 beds	200 to 250 beds
Assisted living centre	200 beds	200 beds
Barts Medical School	included	included

62 | The only major difference between the MoU and the RfP was the inclusion of the SLH and the KGRH as part of the refurbish and operate model. The NAO contends that the inclusion of these two hospitals did not alter the nature of the project but merely expanded its scope and increased its value.

63 | Underpinning the refurbish and operate model in the MoU and in the RfP was the guarantee of revenue by Government. According to the MoU, Government was to transfer to the Investors an agreed annual operating expense budget for a mutually pre-agreed period of time, which budget was not to be less than the then current expenses borne by the Government with regard to the GGH. In addition, Government was to provide a guarantee to the Investors by committing to a capped number of patients at a pre-agreed rate that was to be in line with medical services provided in Malta. In turn, stipulated in the RfP was that the concessionaire was required to provide the Government with the stipulated services, and always be able to satisfy the minimum demands of Government as defined in the agreement on healthcare delivery and to do so for an agreed compensation. The agreement eventually entered into by Government and the VGH was based on a model that guaranteed revenue from Government irrespective of actual service

use. In the NAO's opinion, the model for revenue generation as proposed in the MoU entered into by Government and the Investors and that as defined in the RfP was in substance the same.

- 64 | The overlap in this respect can be extended to the centrality of efforts directed towards attracting medical tourism. Noted in the MoU was that the Investors were to ensure a constant flow of medical tourism into Malta to sustain the viability of the project in terms of the utilisation of the remaining beds not guaranteed by Government. Likewise, indicated in the RfP was that the concessionaire was to develop medical tourism in selected niches in the regions of Malta and Gozo to provide additional socio-economic improvements to the country.
- 65 | Similarities were also noted in terms of the envisaged duration of the project as defined in the MoU and the eventual concession. Both were for periods of 30 years, although it must be acknowledged that the latter could be extended by an additional 69 years. In both cases, no explanation as to how the term of the project was determined was provided.
- 66 | One final aspect of similarity in the project as envisaged in the MoU and defined in the RfP related to Barts Medical School. While the MoU listed the construction of a medical school to be operated by Barts as a fundamental element of the project, the RfP similarly stipulated that the concessionaire was "to provide for the necessary infrastructure for the operation of the Barts and London School of Medicine and Dentistry Medical School at GGH".
- 67 | In sum, after considering the information made available to the NAO, this Office refutes the assertion that the nature of the project changed from the MoU entered into with respect to the Gozo project to the RfP for the concession of three public hospitals. This Office's understanding is based on the fact that the refurbish and operate model remained essentially unchanged, revenue by Government was always guaranteed in the envisaged long-term agreements, medical tourism underpinned feasibility, and the construction of Barts Medical School remained a central requirement. The only major difference was the reduction in the intended number of beds at the GGH, which reduction was more than compensated for through the inclusion of the SLH and the KGRH. In essence, the project was not different, but more extensive.
- 68 | Having established the direct link between the Investors in the MoU and the VGH as the concessionaire, and the evident similarities between the Gozo project and the concession, the NAO's attention shifted to whether these factors vitiated the procurement process. The NAO maintains serious reservations in terms of the entire procurement process that led to the award of the concession to the VGH. This Office has grave concerns in terms of the design of the RfP. The review of the MoU and the clear links that emerge between this and the RfP, render the likelihood that the RfP was designed with a pre-determined outcome in mind all the more probable. In the NAO's opinion, the public procurement process was undertaken to lend the award of the concession a semblance of regularity and propriety when in fact the outcome of the process was a given.
- 69 | Strengthening concerns regarding the vitiation of the procurement process was the reference made in the MoU to the assistance that was to be provided to the Investors by Government in terms of access to information. Government committed to assist the Investors in obtaining the information required to determine the needs and scope of the project and costing information relating to the construction of the proposed medical facilities, the required equipment and the determination of a mutually acceptable basis for charging the Government for all the medical services delivered to patients treated by the Barts Medical School. Queries addressed to the Minister for the Economy and the Principal Chief Officer Malta Enterprise elicited similar responses, in that they claimed that this provision related to generic information made available

to all potential investors. On the other hand, the NAO maintains that the details cited in the MoU as to the nature of the information that was to be made available indicated that this was specific to the project. In view of the overlap between the MoU and the RfP, particularly in terms of the nature of the project, and the similarity between the Investors and the VGH, this Office considers access to such information as constituting an unfair competitive advantage in relation to the RfP, which advantage aggravates concerns relating to the vitiation of the procurement process.

Overall conclusion

- 70 | Having reviewed the MoU dated 10 October 2014, the NAO affirms that all findings and conclusions reached in its initial report on the matter remain unchanged. Concerns highlighted therein are substantiated by the facts brought to the fore in this regard.
- 71 | The NAO is of the opinion that the MoU entered into by Government and the Investors and the subsequently issued RfP can be considered as one process. First, there exists significant overlap between the Investors that entered into the MoU with Government and the owners of VGH that Government subsequently awarded the concession to. Second, the nature of the project remained unchanged as the refurbish and operate model was retained, revenue by Government always guaranteed in the envisaged long-term agreements, medical tourism underpinned feasibility, and the construction of Barts Medical School a central requirement throughout. The only major difference was the reduction in the intended number of beds at the GGH, which reduction was more than compensated for through the inclusion of the SLH and the KGRH. The overlap in terms of the nature of the project and the identity of the Investors is evident and strongly supports this Office's understanding of a process that was fraudulently contrived.
- 72 | Although the MoU provided an insight into certain developments that took place prior to the RfP, multiple gaps persist. Most notable of which related to the identification of the Investors, the negotiations held leading to the MoU and the negative outcome of the due diligence undertaken by Malta Enterprise with respect to the Investors. Despite the lack of visibility afforded to this Office regarding the nature of the negative outcome of the due diligence, the NAO's concerns emerge when one considers that, irrespective of the critical risks flagged, Government opted to persist in negotiations with investors that, for the most part, remained unchanged when granting a concession to operate three public hospitals a few months later.