

An Investigation of Property Transfers between 2006 and 2013:
The Acquisition of 233, 236 and 237 Republic Street, Valletta



An Investigation of Property Transfers between 2006 and 2013: The Acquisition of 233, 236 and 237 Republic Street, Valletta

Table of Contents

| | |
|--|-----------|
| List of Tables and Boxes | 4 |
| List of Abbreviations | 6 |
| Executive Summary | 7 |
| Chapter 1 – Introduction | 11 |
| 1.1 Request for Investigation | 12 |
| 1.2 Media Allegations | 13 |
| 1.3 Background to 233, 236 and 237 Republic Street, Valletta | 14 |
| 1.4 Methodology | 14 |
| Chapter 2 – Acquisition of the Properties at 233, 236 and 237 Republic Street, Valletta | 17 |
| 2.1 Identification of the Properties for Acquisition by Government | 18 |
| 2.2 Valuation of Properties 233, 236 and 237 | 22 |
| <i>The Valuations by Consultant Architect A</i> | 23 |
| <i>The Valuations by Consultant Architect B</i> | 26 |
| <i>HSBC Valuation and Terms</i> | 28 |
| 2.3 Negotiations for the Properties | 28 |
| <i>Negotiation Aide Memoire</i> | 29 |
| <i>Report on potential acquisition of Properties 233, 236 and 237</i> | 32 |
| <i>Agreement on Price with HSBC and the Negotiation Group Final Report</i> | 36 |
| 2.4 Other Issues following Initial Price Accord | 39 |
| <i>Restoring Property 233 to its Original Condition</i> | 39 |
| <i>Claim for Compensation in terms of the War Damage Ordinance</i> | 44 |
| <i>Other Issues</i> | 45 |
| 2.5 The Draft Promise of Sale Agreement | 45 |
| 2.6 The Movables, M&E and Power Supply Issues | 49 |
| 2.7 Promise of Sale Agreement Negotiations | 58 |
| 2.8 Finalisation of the Promise of Sale Agreement and Issues Arising Therefrom | 65 |
| 2.9 The Contract of Sale | 69 |
| 2.10 Post Contract Developments | 70 |
| <i>Refurbishment Works: Extent, Cost and Time</i> | 71 |
| <i>The Present Use of the Properties</i> | 73 |
| Chapter 3 – Analysis and Conclusions | 75 |
| 3.1 Overview of the Process of Acquisition | 76 |
| 3.2 Analysis of Aspects of the Acquisition | 79 |
| <i>Legal Basis for the Acquisition</i> | 80 |
| <i>On the Specific Identification of Properties 233, 236 and 237</i> | 81 |
| <i>Immediate Occupation and the Extent of Refurbishment Required</i> | 83 |
| <i>Establishing Value</i> | 84 |
| <i>The Process of Negotiation</i> | 92 |
| <i>Consideration of Expropriation</i> | 93 |
| <i>Issues of Governance</i> | 94 |
| 3.3 Conclusions | 95 |
| Appendix: Public Accounts Committee Request | 99 |

List of Tables and Boxes

| | |
|---|----|
| Table 1: Valuations of Properties 233, 236 and 237 | 23 |
| Table 2: Valuation of Property 233 by Consultant Architect A | 25 |
| Table 3: Valuation of Properties 236 and 237 by Consultant Architect A | 25 |
| Table 4: Valuation of Property 233 by Consultant Architect B | 26 |
| Table 5: Valuation of Properties 236 and 237 by Consultant Architect B | 28 |
| Table 6: Negotiation scenarios for Property 233 | 31 |
| Table 7: Negotiation scenarios for Properties 236 and 237 | 32 |
| Table 8: Revised negotiation value for Property 233 | 34 |
| Table 9: Revised negotiation values for Properties 236 and 237 | 35 |
| Table 10: Comparison of values in reports to Permanent Secretary MFEI | 39 |
| Table 11: Rent payable for Property 233 as indicated to Permanent Secretary MFEI | 48 |
| Table 12: Timeline of key developments in the acquisition of 233, 236 and 237 Republic Street, Valletta | 76 |
| Table 13: Key developments in price negotiations | 79 |
| Table 14: Market Value of Properties 233, 236 and 237 | 85 |
| Table 15: Differences in areas established by the NAO and Consultant Architects | 87 |
| Table 16: Property 233 – Areas established by the NAO and Consultant Architects | 87 |
| Table 17: Properties 236 and 237 – Areas established by the NAO and Consultant Architects | 87 |
| Table 18: Property 233 – Division of floor areas into different uses | 87 |
| Table 19: Property 233 - Annual notional rent receivable | 88 |
| Table 20: Properties 236 and 237 - Division of floor areas into different uses | 88 |
| Table 21: Properties 236 and 237 - Annual rent | 89 |
| Table 22: Difference in value of Property 233 arising from discrepancy in area | 90 |
| Table 23: Difference in values of Properties 236 and 237 arising from discrepancy in area | 91 |
| Table 24: Comparison of NAO valuation and contract value | 91 |
| | |
| Box 1: Agreed price structure as indicated to Permanent Secretary MFEI | 48 |
| Box 2: Capital gains tax payable on Properties 233, 236 and 237 | 69 |

This report has been prepared under sub-paragraph 9(a) of the First Schedule of the Auditor General and National Audit Office Act, 1997 for presentation to the House of Representatives in accordance with sub-paragraph 9(b) of the First Schedule of the said Act.

Charles Deguara
Auditor General

December 2016

List of Abbreviations

| | |
|------|---|
| AADG | Access for All Design Guidelines |
| AG | Auditor General |
| CAJ | Commission for the Administration of Justice |
| CoL | Commissioner of Land |
| DCS | Director Corporate Services |
| DG | Director General |
| GPD | Government Property Department |
| KNPD | Kummissjoni Nazzjonali Persuni b'Dizabilità |
| M&E | Mechanical & Electrical |
| MECW | Ministry for Energy and the Conservation of Water |
| MEPA | Malta Environment and Planning Authority |
| MFCC | Ministry for Fair Competition, Small Business and Consumers |
| MFEI | Ministry of Finance, the Economy and Investment |
| MJDF | Ministry for Justice, Dialogue and the Family |
| MOT | Ministry for Tourism |
| MRRA | Ministry for Resources and Rural Affairs |
| NAO | National Audit Office |
| OPM | Office of the Prime Minister |
| PAC | Public Accounts Committee |
| PCAC | Permanent Commission Against Corruption |
| PS | Parliamentary Secretary |
| PSC | Public Service Commission |
| WID | Works and Infrastructure Department |

Executive Summary

Executive Summary

1. On 23 June 2015, the four Government Members of Parliament on the Public Accounts Committee (PAC) requested the Auditor General to investigate the acquisition of the temporary emphyteusis of 233 Republic Street and the purchase of the freehold property at 236 and 237 Republic Street, Valletta. The PAC specifically requested the National Audit Office (NAO) to ascertain whether the principles of good governance, value for money, transparency and accountability were respected and whether any political pressure was exerted with respect to this acquisition. Aside from the properties in Republic Street, Valletta, reference was made to another three property transfers involving Government undertaken between 2006 and 2013; however, these are reported on separately.
2. The property at 233 Republic Street was held on temporary emphyteusis by HSBC until 30 June 2023, with ground rent payable to the direct owners amounting to €69,071 annually. Property 233 had a total floor area of 1,030 square metres, spread over three floors. On the other hand, the properties at 236 and 237 Republic Street were held under freehold title by the Bank. Properties 236 and 237 were spread over four floors, with a total floor area of 537 square metres. Properties 233, 236 and 237 were interconnected and adjacent to one another.
3. In essence, the acquisition of these Properties may be traced to Government's plans to relocate entities housed within the President's Palace. To this end, the Prime Minister entrusted the Parliamentary Secretary (PS) for Revenues and Land with oversight of this relocation. In early 2011, the Office of the Prime Minister (OPM) informed the PS Revenues and Land of the possible availability of Properties 233, 236 and 237. On 11 March 2011, the PS Revenues and Land submitted a memorandum to the Prime Minister and the Minister of Finance, the Economy and Investment (Minister MFEI) requesting authorisation to initiate negotiations. Cited in the memorandum was the asking price of €2,750,000 set by HSBC.
4. Following the Prime Minister's endorsement, the Minister MFEI informed the Permanent Secretary MFEI of developments, who in turn requested the Director General Government Property Department (DG GPD) to obtain two valuations of these Properties. The valuations provided by the two architects engaged by the GPD were of €1,565,000 and €2,544,000. Subsequent to this, the Permanent Secretary MFEI appointed a Negotiation Group to undertake negotiations on behalf of Government, chaired by the DG GPD.

5. Initial negotiations were brought to a conclusion on 13 April 2011, when HSBC accepted Government's offer of €2,360,000. However, concerns later emerged regarding the state of the Properties, with specific reference made to the mechanical and electrical (M&E) systems. The initial agreement, on the acquisition of the Properties *tale quale*, was based on the assumption that these were in good working condition, as claimed by the Bank. Subsequent verifications carried out by the Negotiation Group indicated otherwise, with estimates of works required amounting to €250,000. As a consequence, negotiations between Government and HSBC stalled, with the Permanent Secretary MFEI indicating, in writing, that he felt duty-bound not to recommend the acquisition on grounds that Government would not be paying fair value. This led to reductions by HSBC amounting to €140,000, which Government deemed acceptable. Therefore, on 22 December 2011, Government and HSBC entered into a contract for the transfer of Properties 233, 236 and 237 for €2,220,000. Hereunder are the NAO's conclusions on the matter.
6. The NAO is of the opinion that the process of identification of the Properties 233, 236 and 237 lacked the transparency that would have been ensured through a more open process of acquisition. Government's plans to relocate the entities housed in the President's Palace were well in anticipation of the broader plans relating to the Valletta 2018 European Capital of Culture and therefore should have been appropriately planned for in this manner. While this Office acknowledges that the Properties adequately met Government's requirements, this does not justify the shortcomings noted in terms of planning and the analysis of suitable alternatives. It is in this context that the NAO considers the role of the OPM as pivotal in the initial identification of the Properties, yet unwarranted as Government could have resorted to a more open procedure for the acquisition of property in Valletta.
7. These concerns are further accentuated by the fact that the acquisition of immovable property by government from the open market is, in this Office's opinion, insufficiently regulated. Although this provides government with a degree of flexibility, this should not be at the expense of public funds. In the NAO's understanding, the risk inherent in such flexibility may be mitigated through scrutiny. In this case, the decision for the possible acquisition of the properties at 233, 236 and 237 Republic Street, Valletta was reportedly raised at Cabinet, yet this could not be verified. Although it could be argued that referral to Cabinet constituted oversight, the NAO maintains that this level of scrutiny was insufficient. This opinion draws on comparisons to oversight exercised in other types of property transactions involving government, captured in specific legislation, parliamentary resolutions or calls for tender. While the principles of good governance provide an element of guidance, these principles ought to be supported by acts of law, parliamentary scrutiny, or an open and transparent process of acquisition, respectively.
8. While shortcomings were noted in the process of identification, the NAO deemed the setting up of the Negotiation Group and its reporting arrangements as positive. Notwithstanding the encouraging initial management of the process, the execution of negotiations, as undertaken by the Negotiation Group, was flawed in various aspects. Aside from shortcomings in terms of documentation retained by the Negotiation Group, which detracted from the overall accountability expected in transactions of this nature, this Office's attention was drawn to the Negotiation Group's role in leading Government to agree to acquire the Properties on a *tale quale* basis for €2,360,000. This agreement in principle was reached on the understanding that, as stated by the Bank, the premises had until recently been occupied and that the M&E services were in good working order. However, the Negotiation Group failed to establish the true condition of the Properties, relying solely on that stated by HSBC. In this Office's opinion, this constituted a significant shortcoming in the process of negotiation, critically and negatively conditioning Government's negotiating position.

9. This serious shortcoming was reflected in concerns raised by the Permanent Secretary MFEI, who maintained that this procedural error would result in an inflated transaction value. The NAO deemed what was asserted by the Permanent Secretary MFEI, that the procedure adopted by the Negotiation Group would remain flawed irrespective of whatever subsequent corrective measures were taken, as valid. This Office deemed the determination of the condition of the Properties prior to agreement on price on a tale quale basis as a basic and obvious requirement that was to be established in the course of negotiations. Failure in this respect by the Negotiation Group represented a fundamental weakness in the process of negotiation, effectively limiting Government's bargaining power and indirectly impeding the conclusion of the acquisition.
10. Notwithstanding the shortcomings evident throughout the negotiation process, in this Office's opinion, Government acquired the Properties at fair value. While Government paid HSBC €2,220,000, on the basis of advice obtained, the NAO determined the value of the Properties as €2,610,000. Although the value of the transaction was favourable to Government, this does not necessarily imply that value for money was ascertained, which is also contingent on factors other than price. In this case, value for money could have been better ensured through a more open and competitive procurement process. Also bearing impact are the shortcomings noted by the NAO throughout the negotiation process, with Government agreeing to acquire the Properties on a tale quale basis without verifying the actual condition of the Properties. Although provisions in terms of price were later made for this failure, the extent of refurbishment required and the time taken to carry out the required works persisted as an adverse effect in terms of value for money. This consideration assumes greater relevance with respect to Property 233, given that this was acquired by Government for a definite period, up to 2023. It is in this context that the NAO expresses reservations regarding whether value for money was ascertained by Government, for the factors indicated all potentially bore an adverse impact in this regard.
11. In response to the request to determine whether political pressure was exerted, the NAO did not obtain conclusive evidence in this regard. However, the NAO established that political direction was manifested in terms of the identification of the Properties. The role of the OPM was central in this regard, effectively triggering a series of actions that ultimately led to Government's acquisition of the Properties. This initial identification was followed by a memorandum submitted by the PS Revenues and Land to the Prime Minister and the Minister MFEI. While the NAO was informed by the Minister MFEI and the PS Revenues and Land that the matter was discussed at Cabinet, no Cabinet decision on the issue was traced despite requests made to the Cabinet Office and the Permanent Secretary MFEI. Subsequent interventions by the Prime Minister and the PS Revenues and Land made later on in the process, despite the concerns raised by the Permanent Secretary MFEI as to whether Government was paying a fair price, were noted by the NAO. These interventions were intended to see the acquisition through following a reduction in price proposed by HSBC, which reduction was perceived as addressing the concerns raised by the Permanent Secretary MFEI. Although the Permanent Secretary MFEI maintained his position, irrespective of the reductions in price, he acknowledged that disagreement on his part did not preclude the Minister MFEI or the PS Revenues and Land from assuming responsibility for the endorsement of the acquisition. The NAO considers the decision to overrule the Permanent Secretary MFEI as within the remit of the Minister MFEI and the PS Revenues and Land; however, this Office is also cognisant of the fact that the concerns of the Permanent Secretary MFEI extended beyond the mere reduction in price, but focused on procedural shortcomings in negotiations that could not be rectified.

Chapter 1

Introduction

Chapter 1 – Introduction

1.1 Request for Investigation

1.1.1 During the Public Accounts Committee (PAC) sitting of 22 June 2015, Hon. Dr Owen Bonnici, Minister for Justice, Culture and Local Government (hereinafter referred to as Minister MJCL), and a member on the Committee, made reference to the request for the investigation of the expropriation of two one-fourth undivided shares of the property at 36 Old Mint Street Valletta made on 5 June 2015. In this context, Minister MJCL requested the Auditor General (AG) to undertake another investigation of properties that had been expropriated or exchanged by Government between 2006 and 2013.

1.1.2 Correspondence to this effect, dated 23 June 2015, was received by the AG, duly signed by the four Government Members of Parliament on the PAC, namely, the Hon. Dr Owen Bonnici, Minister MJCL, the Hon. Dr Edward Zammit Lewis, Minister for Tourism, the Hon. Chris Agius, Parliamentary Secretary for Research, Innovation, Youth and Sport, and the Hon. Dr Charles Mangion (Appendix refers). In seeking to ascertain that the principles of good governance, value for money, transparency and accountability were always respected, and whether any political pressure was exerted, the AG was to investigate expropriations and exchanges of property undertaken by the Government Property Department (GPD) between 2006 and 2013. Specifically indicated were:

- a. the site at Fekruna Bay, St Paul's Bay;
- b. the purchase of the freehold property at 236 and 237 Republic Street and the temporary emphyteusis of 233 Republic Street, Valletta;
- c. the property at Spinola Road, St Julians, property of Eighty Two Company Limited; and
- d. the site of the former Löwenbräu brewery at Qormi.

1.1.3 The AG acknowledged this request in correspondence submitted to the Chair PAC on 11 August 2015. It was indicated that the National Audit Office (NAO) would be adopting that cited in the request as the basis for its terms of reference.

1.1.4 Considering the complexity of the transfer of each of the properties indicated in paragraph 1.1.2 (a) to (d), the NAO is separately reporting thereon. This report focuses

on Government's acquisition of the temporary emphyteusis of 233 Republic Street and the purchase of the freehold property at 236 and 237 Republic Street, Valletta.

1.2 Media Allegations

- 1.2.1 The request by the PAC led to considerable media coverage on the matter. According to media reports, Government, under the previous Administration, had purchased the property in Republic Street, Valletta with the intention of allocating it as premises for the Office of the Attorney General, as well as a number of Commissions housed in the President's Palace. The property was previously occupied by HSBC Bank Malta plc (hereinafter referred to as HSBC).
- 1.2.2 It was reported that the original asking price requested by HSBC was €2,750,000, subsequently reduced to €2,200,000. According to press coverage on the matter, two architects had independently valued the HSBC property, with the resultant valuations varying by approximately €100,000, with the GPD opting to utilise the higher valuation of €2,500,000 'for a solid offer to HSBC', as this was closer to HSBC's valuation.
- 1.2.3 Reproduced in press coverage was a memorandum sent by the Permanent Secretary Ministry of Finance, the Economy and Investment (MFEI) to the Hon. Tonio Fenech, Minister MFEI, through the Parliamentary Secretary (PS) Revenues and Land, the Hon. Dr Jason Azzopardi. Reports on the matter indicated that the Permanent Secretary MFEI had opposed the acquisition of these premises, citing that Government would be paying more than it should for this acquisition. Moreover, the Permanent Secretary MFEI had warned that 'the way these negotiations developed and their outcome, if agreed to, would likely result in adverse comment by any third party observer and most likely would not escape the negative censure of the NAO and the PAC.
- 1.2.4 According to the press, the Permanent Secretary MFEI had also expressed concern that the purchase of the property was agreed to on a 'tale quale' basis, on the understanding that the mechanical and electrical (M&E) systems were in good working order, and that the property was ready for immediate occupation without suitable due diligence being performed first. Moreover, the Permanent Secretary MFEI argued that agreement to this clause would render any ensuing claims futile. Media coverage indicated that an engineering report commissioned following the commencement of the negotiations disproved the assumption that the M&E plant was in good working order, and that an additional €250,000 was required to upgrade these installations. According to that reported on the matter, the Permanent Secretary MFEI had suggested that the agreed price had been overstated by 11 per cent, given the further expense to render the property operational for government purposes.
- 1.2.5 It was further alleged by the media that HSBC sought to apportion the agreed €2,200,000 between immovables and movables, requesting the apportionment of €350,000 as movables. The Director General (DG) GPD suggested that the decreased sum relating to the immovable property would 'look better on the contract of transfer', but the Permanent Secretary MFEI had urged the GPD to wait until all reports had been concluded as acting hastily would be 'imprudent and wrong'. According to press coverage, the GPD corroborated the concerns expressed by the Permanent Secretary MFEI when the Department sought the approval of the Minister MFEI for an 'adequate budgetary provision' to upgrade the M&E plant and carry out other alterations. The relevant endorsement was provided shortly thereafter.
- 1.2.6 The press also reported that, while the negotiations had started in early 2011 with the intention that the aforementioned relocation be completed by July 2011, the agreement was only finalised in October 2011, following the approval of the Minister

MFEI. Consequently, the use by Government of the property for the 12-year term of the emphyteusis was curtailed by a year. Furthermore, it was indicated that refurbishment works had to be undertaken and the property remained vacant until the eventual occupation by the Ministry for Tourism (MOT).

1.2.7 Commenting on the case, Dr Toni Abela, Deputy Leader of the Labour Party, and the Hon. Silvio Schembri questioned why the previous Administration had purchased a building requiring costly refurbishment when the reason for the purchase was the urgent relocation of the Office of the Attorney General. The Deputy Leader of the Labour Party and the Member of Parliament stated that the Minister MFEI had approved the acquisition despite the concerns raised by the Permanent Secretary MFEI with the PS Revenues and Land. Dr Abela further stated that the claim that the premises were purchased for immediate occupation was unsound as the report commissioned after agreement indicated that maintenance costing €250,000 was required. Additionally, it was reported that Hon. Schembri enquired why the property had not been acquired outright, what the reason for the urgency was and why it was kept vacant for more than two years.

1.2.8 In response, the PS Revenues and Land stated that the acquisition included the freehold purchase of almost half of the property and denied his involvement, as well as that of the Minister MFEI, in the negotiations held. Furthermore, the PS Revenues and Land claimed that the concerns expressed by the Permanent Secretary MFEI had been taken into account and addressed, and that, by the conclusion of the agreement, the Permanent Secretary had given his consent.

1.3 Background to 233, 236 and 237 Republic Street, Valletta

1.3.1 The property at 233 Republic Street (hereinafter referred to as 'Property 233'), formerly 232, 232D, 233, 234 and 235, was held on temporary emphyteusis by HSBC until 30 June 2023, with ground rent amounting to €69,071 annually. Property 233, spread over three floors, had a ground floor retail area of 340 square metres, as well as an additional 50 square metres of ancillary and storage space. The first and second floor had an office area of 275 square metres each, and an ancillary area of 45 square metres per floor.

1.3.2 The properties at 236 and 237 Republic Street (hereinafter referred to as 'Properties 236 and 237') were held under freehold title by the Bank. Property 236 was formerly used as a retail outlet, and was situated between doors numbered 236A and 232 Republic Street, while Property 237 was formerly a house. Properties 236 and 237 were spread over four floors, an intermediate floor and a basement. The floor area of Properties 236 and 237 was estimated as 537 square metres, including a basement of approximately 100 square metres.

1.3.3 The Properties were interconnected and adjacent to one another. Furthermore, according to the Malta Environment and Planning Authority (MEPA) Local Plan (2006), future extensions to the Properties were not permitted.

1.4 Methodology

1.4.1 This investigation was conducted in accordance with Para 9(a) of the First Schedule of the Auditor General and National Audit Office Act (Act XVI of 1997), and in terms of practices adopted by the NAO.

- 1.4.2 Findings presented in this report are based on interviews, taken under oath, with persons who were directly involved in the process of acquisition. These included the Minister MFEI, PS Revenues and Land, Permanent Secretary MFEI, DG GPD and a GPD-appointed Consultant Architect. All the interviews held were transcribed by the NAO and a copy submitted to the interviewee involved, who was requested to endorse the transcript and submit clarifications, if required.
- 1.4.3 This Office also sought clarifications from the former Prime Minister, the Head Corporate Services at the Office of the Attorney General, officials at the then Ministry for Resources and Rural Affairs (MRRRA), the Acting DG GPD, a former Principal Officer GPD and a GPD-appointed Consultant Engineer. Furthermore, the NAO made enquiries with the Chair Permanent Commission Against Corruption (PCAC), the Executive Secretary Public Service Commission (PSC) and the Secretary Commission for the Administration of Justice (CAJ). In addition, in seeking to establish details relating to the eventual occupation of the property, the NAO obtained information from the Permanent Secretary Office of the Prime Minister (Energy and Projects) and the Permanent Secretary MOT. Public officers cited throughout the report are referred to by their designation at the time reported on.
- 1.4.4 Queries relating to the transfer of the property were also addressed to the Chief Executive Officer HSBC, while matters relating to when the property was vacated by the Bank were raised with the Head of Corporate Real Estate HSBC. This latter point was in turn verified through information obtained from ARMS Ltd.
- 1.4.5 Aside from interviews held and written submissions obtained, the NAO examined all the documentation retained by the GPD and MFEI relating to the acquisition of 233, 236 and 237 Republic Street, Valletta. Particular attention was directed toward the valuations established by the GPD-appointed Architects as well as that determined by HSBC. Key in this respect was the engagement of a technical consultant by the NAO, essential in assisting the Office in its review of valuation-related aspects deemed relevant to the investigation. In addressing technical matters relating to the legal basis of the acquisition of property by Government, the Office sought the advice of the Attorney General and the Commissioner of Land (CoL), while the assistance of the Commissioner for Revenue was sought with respect to issues relating to tax payable on transactions of this nature. This Office also examined all other documentation and information provided by the interviewees during the course of the audit.
- 1.4.6 Allegations brought to the attention of the NAO were duly scrutinised and the resultant findings reported on. Relevant documentation and information required were, in most cases and to the best of the NAO's knowledge, made available to this Office by the various parties. The NAO's findings and conclusions are based on the evaluation of such documentation and information supplied, which was thoroughly analysed by the investigating team.
- 1.4.7 In line with its guiding principles of independence, fairness and objectivity, the NAO sought to ensure that the allegations brought to its attention were evaluated, investigated and objectively reported on. The investigating team sought to establish the facts based solely and exclusively on evidence at its disposal. The NAO sought to identify any possible shortcoming or irregularity and put forward recommendations essentially meant to ensure that the best use of public resources is made.

Chapter 2
Acquisition of the Properties at
233, 236 and 237 Republic Street, Valletta

Chapter 2 – Acquisition of the Properties at 233, 236 and 237 Republic Street, Valletta

2.0.1 HSBC and Government entered into a promise of sale agreement for 233, 236 and 237 Republic Street, Valletta on 31 October 2011. The total sum to be paid by Government was €2,220,000, €926,482 of which was for Property 233 and €1,293,518 for Properties 236 and 237. With respect to Property 233, Government was to purchase the temporary utile dominium until 31 January 2023. In addition, Government was to pay HSBC the yearly temporary sub-ground rent of €69,071 quarterly in advance. The ground rent was reviewable every five years and was to be proportionally revised according to the Index of Inflation established by the Principal Government Statistician under the 1959 Housing Decontrol Ordinance. While a minimum increase of 10 per cent would always be payable by Government, each increase was not to exceed 30 per cent. In the case of Properties 236 and 237, Government was to acquire the freehold property. The contract of sale for the premises was signed by HSBC and the Government on 22 December 2011.

2.1 Identification of the Properties for Acquisition by Government

2.1.1 The NAO sought to establish an understanding of the manner by which the properties at 233, 236 and 237 Republic Street, Valletta were identified for acquisition by Government. To this end, the Minister MFEI, the PS Revenues and Land and the DG GPD indicated the involvement of the Office of the Prime Minister (OPM), making particular reference to the Prime Minister and officials within his Secretariat. Queries in this regard were addressed to the Prime Minister, who confirmed this understanding and provided further clarification on the matter.

2.1.2 The Prime Minister noted that between 2008 and 2011, Government deemed the acquisition of properties in Valletta as central to its broader economic, social and cultural objectives and provided direction to all Ministers, Parliamentary Secretaries and senior officials in this respect. In this context, reference was made to various major projects intended to contribute towards the regeneration of Valletta. Among others, the Prime Minister made reference to the City Gate project, on which the relocation of Parliament from the President's Palace was contingent. Moreover, the restoration of the President's Palace necessitated the relocation of all entities housed therein, bar the Office of the President. One of the entities housed in the President's Palace, the Office of the Attorney General, also occupied the Main Guard in Palace Square. This property was also to be vacated for the relocation of the Valletta Local Council.

- 2.1.3 According to the Prime Minister, responsibility for the identification of alternative sites to house these entities was entrusted to the PS Revenues and Land. Indicated were the tight timeframes and high priority assigned to this project, deemed by the Prime Minister as being of national importance. The Prime Minister referred to the considerable difficulties encountered in identifying alternative properties, specifically citing the case of the PSC, where, despite a call for tenders, no suitable premises were found. Several other sites were considered with respect to the broader relocation of entities, including St Albert the Great College, Palazzo Verdelin, the Civil Service Sports Club and parts of the City Arcade. Also considered were sites outside of Valletta; however, these too were not deemed suitable.
- 2.1.4 The NAO reviewed documentation retained by the GPD with respect to these properties to determine what action was taken by the GPD, if any, in assessing these alternatives. Documentation relating to a valuation of the property occupied by the Civil Service Sports Club, dated February 2011, confirmed its consideration as a possible option for the relocation of the Office of the Attorney General. On the other hand, Palazzo Verdelin was assigned to the Malta Police Force in March 2011 in view of the planned alternate use of the site previously occupied in South Street, Valletta. While reference was made to the possible acquisition of St Albert the Great College in correspondence dated May 2010, the NAO was not provided with evidence that this was related to the relocation of the entities housed in the President's Palace. Finally, no documentation was provided by the GPD indicating the consideration of parts of the City Arcade as a possible alternative in this respect.
- 2.1.5 That stated by the Prime Minister was corroborated by the PS Revenues and Land during a meeting held with the NAO. The PS Revenues and Land indicated that, towards end 2010, the Head of Secretariat and the Personal Assistant of the Prime Minister had informed him that the Valletta Local Council was to move to the Main Guard in Palace Square, Valletta, which at the time was occupied by the Attorney General. Furthermore, alternative premises were to be identified for the entities housed within the President's Palace as these were also to be vacated and relocated elsewhere. The PS Revenues and Land indicated that this relocation was part of the broader plans relating to the Valletta 2018 European Capital of Culture. Oversight of the relocation process was entrusted to the PS Revenues and Land. For this reason, the PS Revenues and Land tasked the DG GPD with the identification of suitable government-owned properties in Valletta that could house the entities that were to be relocated. However, according to the PS Revenues and Land, the DG GPD had informed him that adequate premises were not available.
- 2.1.6 The Prime Minister indicated that HSBC's intention to vacate their Head Office in Valletta and put the property on the market was a known fact among the business community. In this context, the Prime Minister argued that it was reasonable to assume that Government had been informed of this development from multiple sources, particularly in view of the fact that Government had been attempting to acquire property in Valletta for a considerable time. According to the Prime Minister, the property formerly occupied by the Bank was deemed suitable to house the Office of the Attorney General and the other entities occupying the President's Palace. The conditions deemed essential by the Office of the Attorney General were that the property was to be situated in Valletta, located close to the Law Courts, accessible to the public and able to house all employees of the Office. Although the Prime Minister deemed these requirements as reasonable, these rendered the identification of a suitable property more challenging. It was in this sense that the premises vacated by HSBC were deemed the only property that addressed all requirements.

- 2.1.7 This Office sought clarifications from HSBC in relation to the initial contact with Government in this respect. The Bank stated that an informal first contact was made in the early part of 2011 during a conversation between HSBC and Government officials, with the latter happening to mention that the Government was looking for a property in Valletta, which was ready to move into, in order to relocate the Office of the Attorney General from the President's Palace. The Bank also noted that it had marketed the properties through a number of local estate agents.
- 2.1.8 Subsequently, according to that stated by the PS Revenues and Land, sometime in February 2011, an OPM official, possibly the Personal Assistant of the Prime Minister, informed him that the HSBC premises in Republic Street, Valletta had been, or were to be shortly, vacated and the possible acquisition of these properties by Government was to be looked into. The PS Revenues and Land discussed the matter with the Minister MFEI, informing him of that communicated by OPM. It was agreed that Government was to nominate a person or persons to approach HSBC and, if warranted, initiate discussions and commence negotiations. Subsequently, the Permanent Secretary MFEI was informed that Government was actively considering the acquisition of the HSBC premises in Republic Street. To this end, the Permanent Secretary was to appoint a person or persons to approach the Bank and initiate negotiations. Imparted to this Office by the PS Revenues and Land was the sense of urgency with which the matter was to be addressed, particularly in view of the broader plans that bore an element of contingency.
- 2.1.9 In a meeting with the NAO, the Minister MFEI confirmed that stated by the PS Revenues and Land. The Minister MFEI made reference to another point raised by the PS Revenues and Land when stating that the identification of alternative premises for the Office of the Attorney General was constrained to properties situated in Valletta, owing to the required proximity to the Law Courts. Moreover, the Minister MFEI indicated that no other property had been considered by Government, citing that no suitable alternatives had been identified. In substantiating this assertion, the Minister MFEI made reference to the call for tenders issued for premises required by the PSC, also referred to by the Prime Minister. Despite this call for tenders, no suitable premises in Valletta had been identified.
- 2.1.10 In effect, according to the Head of Corporate Services at the Office of the Attorney General, a property in Strait Street, Valletta had been earmarked for their relocation some 25 years prior. However, this property was in a dilapidated state requiring an estimated €6,000,000 in refurbishment. The Head of Corporate Services indicated that technical difficulties and delays in the issuance of planning permits by MEPA further compounded matters, rendering the relocation to these premises unlikely.
- 2.1.11 Queried in this respect, the DG GPD indicated that the GPD was tasked with identifying suitable premises to house the Office of the Attorney General, which was to vacate the President's Palace as part of Government's plans for the regeneration and upgrading of Valletta. Contingent on the plans for the Office of the Attorney General was the relocation of the Valletta Local Council, which was to move to a property in Palace Square, the Main Guard, then also occupied by the Office of the Attorney General. According to that stated by the DG GPD, the Department had surveyed government-owned properties in Valletta able to house approximately 200 employees, yet was unable to identify any suitable alternatives. The DG GPD was somewhat inconsistent in indicating who had provided him with direction on the matter. At times, the DG GPD cited the involvement of the Permanent Secretary MFEI; however, in other instances, the DG GPD indicated that of the PS Revenues and Land. According to the DG GPD, the PS Revenues and Land had possibly indicated that the direction to approach HSBC was provided by the Prime Minister. While the DG GPD acknowledged that no

other properties had been considered to rehouse the Office of the Attorney General, property for sale or lease in Valletta was not often available. Moreover, attesting to that stated by the PS Revenues and Land, the DG GPD noted that the matter was deemed urgent.

2.1.12 On 11 March 2011, the PS Revenues and Land submitted a memorandum to the Prime Minister and Minister MFEI regarding the acquisition of the Properties. According to the memorandum, this acquisition was part of the relocation exercise intended to accommodate the Office of the Attorney General, the PSC, the PCAC and the CAJ. Also stated was the fact that an on-site visit had been carried out at the Properties, formerly the HSBC Head Office, that had lately been vacated. The Properties had served as offices for the Bank's CEO and housed a number of HSBC departments. It was further estimated that the Properties were occupied by 180 persons and were deemed suitable for the relocation of the 75 government officials attached to the aforementioned entities.

2.1.13 According to the memorandum, Property 233 was held by HSBC on a temporary emphyteusis that was to expire on 30 June 2023. Annual ground rent of €69,071 was revisable every five years, with the next review set for 2013. Revisions to ground rent were not to exceed 15 per cent. On the other hand, Properties 236 and 237 were owned by HSBC on a freehold basis. Noted in the memorandum was the sale premium of €800,000 set by HSBC with respect to Property 233 and the payment of subsequent ground rent due directly to the directum dominium holders. Although the option of an annual rent charge of €180,000 was put forward by HSBC, the Bank preferred the option entailing the payment of the sale premium. With respect to Properties 236 and 237, HSBC set a sale price of €300,000 and €1,650,000, respectively. Indicated in the memorandum was the fact that up to a month earlier, the Properties were still in use by the Bank; therefore, the general condition and functionality of electrical and mechanical connections seemed to be in good order. It was noted that the air conditioning system was in good working order. Cited in the memorandum was that, other than a thorough clean-up and white-washing, the Properties could be immediately occupied.

2.1.14 In clarifications made to this Office, HSBC noted that the last day the Bank had operated from the Properties was 14 February 2011. The NAO sought to verify this through reference to utility consumption data retained by ARMS Ltd; however, this Office could not ascertain the accuracy of that stated, or otherwise, as consumption related to Properties 233, 236 and 237 was metered together with that of other interconnected properties retained and occupied by the Bank.

2.1.15 The PS Revenues and Land noted that there were other interested parties and that immediate intervention was required to ensure competitive advantage. Through the submission of this memorandum, authorisation was being sought to proceed with negotiations with HSBC. In addition, clear indication on whether to opt for rent or outright purchase, where possible, was requested.

2.1.16 Following queries raised by the NAO regarding the authorisation to initiate negotiations, the PS Revenues and Land indicated that the Prime Minister had provided endorsement in this respect. According to the PS Revenues and Land, the Prime Minister had informed Cabinet of this matter sometime after the submission of the 11 March 2011 memorandum. Subsequently, the Minister MFEI notified the Permanent Secretary MFEI of the possible acquisition, by Government, of Properties 233, 236 and 237. It was further indicated to the NAO that it was normal procedure for the Minister MFEI and/or the PS Revenues and Land to inform, where required, the Permanent Secretary MFEI of the outcome of any Cabinet item that had an impact

or involved the respective ministerial/secretarial portfolios. According to that stated by the PS Revenues and Land, the Minister MFEI had informed him that he had requested the Permanent Secretary MFEI to set in motion the negotiation process by appointing a team of negotiators on behalf of Government.

2.1.17 The Minister MFEI corroborated that stated by the PS Revenues and Land in a meeting with the NAO. According to the Minister MFEI, the matter was referred to Cabinet, wherein a decision to acquire the premises in view of the relocation of the Office of the Attorney General was taken. The Minister MFEI stated that, initially, the Prime Minister had discussed the matter with him and that subsequently, the PS Revenues and Land had informed him that the Prime Minister had entrusted the PS with the responsibility of oversight of the relocation process.

2.1.18 The NAO was unable to verify whether the acquisition of Properties 233, 236 and 237 was discussed by Cabinet, or otherwise. In view of that stated by the Minister MFEI and the PS Revenues and Land, this Office directed queries relating to any Cabinet decision taken in this regard to the Cabinet Office. In response, the Cabinet Office indicated that no record of any Cabinet decision relating to this acquisition could be traced. This was, to an extent, corroborated by the Permanent Secretary MFEI, who stated that he did not recall receiving any Cabinet decision on the matter.

2.2 Valuation of Properties 233, 236 and 237

2.2.1 On 17 March 2011, the Permanent Secretary MFEI informed the DG GPD that Government was interested in the possible use of the premises previously occupied by HSBC in Republic Street, Valletta. To this end, the Permanent Secretary MFEI requested the DG GPD to appoint two architects to view these premises, report on their condition and draw up a fair valuation report. The matter was to be considered as urgent. In clarifications provided to the NAO, the Permanent Secretary MFEI stated that two valuations were to be sourced given the element of subjectivity inherent when estimating the value of property, resulting in substantial differences in valuations. The Permanent Secretary MFEI indicated that multiple valuations ensured an element of quality control.

2.2.2 In this context, two architects were appointed by the GPD (hereinafter referred to as Consultant Architect A and Consultant Architect B) to draw up valuation reports to establish and report on:

- a. the fair value of the premium payable to HSBC for Property 233 for the utile dominium of the remaining period of temporary emphyteusis under the conditions of the current lease;
- b. the current freehold market value of Properties 236 and 237; and
- c. the condition of Properties 233, 236 and 237.

A third valuation of these Properties was compiled by HSBC.

2.2.3 The NAO sought to establish the terms of engagement of the Consultant Architects; however, both failed to provide documentation in this respect, indicating that engagements of this nature were normally verbally communicated by the GPD. In clarifications provided to this Office, the DG GPD noted that the Department outsourced the valuations due to a lack of internal resources and the timeframe within which these were required. The DG GPD indicated that the Department had engaged Consultant Architect A and Consultant Architect B, among others, on other

valuations required by the GPD. With specific reference to the Consultant Architect A, the DG GPD stated that his engagement may have been made on the basis of his role in the Secretariat of the PS Revenues and Land, or his involvement as member in the GPD Tender Committee. The PS Revenues and Land stated that, to his knowledge, the Consultant Architect A was regularly engaged by the GPD. However, the PS Revenues and Land indicated that he was not involved in the engagement of the Consultant Architect A yet could not rule out having consulted the DG GPD on the matter.

2.2.4 On 21 March 2011, the DG GPD reported on the aforementioned valuations to the Permanent Secretary MFEI. Table 1 provides a summary of the valuations, with further details outlined in the ensuing sections.

Table 1: Valuations of Properties 233, 236 and 237

| Valuation | Property 233 | Properties 236/7 | Total Value |
|------------------------|---|--|-------------------------|
| Consultant Architect A | €640,000 | €925,000 | €1,565,000 |
| Consultant Architect B | €768,000 | €1,776,000 | €2,544,000 |
| HSBC Architect | €800,000 premium + €69,071 ground rent/annum or €180,000 rent/annum | €300,000 (Property 236) €1,650,000 (Property 237) | €2,750,000 ^a |

Note:

a. The total value presented takes into account the €800,000 premium and the freehold value of Properties 236 and 237, €300,000 and €1,650,000, respectively.

2.2.5 The NAO noted that the rental option proposed by the HSBC Architect and referred to in the memorandum addressed to the Prime Minister and Minister MFEI was not indicated in the correspondence submitted to the Permanent Secretary MFEI. In clarifications made to this Office, the DG GPD noted that the rental option was not considered in view of the upgrading works required. The Permanent Secretary MFEI corroborated that stated by the DG GPD, in that the Properties were not required as a stopgap measure, but as part of a more permanent arrangement.

2.2.6 The NAO analysed the rental option proposed by HSBC through comparison with the cost of the acquisition of the temporary emphyteusis. The payment of an annual rent of €180,000 up to end 2022 would have resulted in a disbursement of €2,160,000. On the other hand, aggregation of the €800,000 premium and ground rent payable up to 2022 would have resulted in an outlay of €1,730,827. In view of the fact that the Properties were not to be utilised as a stopgap measure, then the acquisition of the temporary emphyteusis represents a more cost-effective option.

2.2.7 The NAO reviewed other correspondence, also submitted on 21 March 2011, by the Consultant Architect A to the PS Revenues and Land, the Head of Secretariat of PS for Revenues and Land, the DG GPD and a Principal Officer in the office of the DG GPD. Attached therewith was a valuation prepared by the Consultant Architect A with respect to Properties 233, 236 and 237.¹

The Valuations by Consultant Architect A

2.2.8 Although the report drawn up by the Consultant Architect A was undated, the NAO established that this was submitted to the GPD by 21 March 2011. This understanding

¹ The values quoted in this correspondence differed to those indicated to the Permanent Secretary MFEI; however, the NAO established that the difference was attributable to an oversight in the application of factors. The erroneous value established by Consultant Architect A was of €2,422,446. This was subsequently corrected in the correspondence submitted to the Permanent Secretary MFEI. In a meeting with the NAO, the PS Revenues and Land indicated that he was uncertain whether he had received the correct version of the valuation. Consultant Architect A was unable to address queries raised by this Office, citing the considerable lapse of time.

was based on the correspondence referred to in the preceding paragraph. In this report, the Consultant Architect A listed two assumptions that were conditions determining further negotiations with HSBC, that:

- a. the property complied with the existing permits²; and
- b. a separate power and water meter at Properties 233, 236 and 237 would be installed (as the power supply meter in use was installed in another building, unrelated to the potential acquisition, that HSBC was to retain).

2.2.9 According to the report, the Properties' condition was fair with no structural damage. Cited was the fact that the condition of M&E systems appeared satisfactory. While the Properties had a fire alarm system installed, not all doors had electronic door control. Notwithstanding this, the report listed the necessary refurbishing and finishing works required at each level. These entailed the repair of minor damages, the whitewashing of walls, the laying of carpets because of extensive floor wear, as well as the removal of a bank safe and resulting alteration works.

2.2.10 The report also noted that Properties 236 and 237 included a small passenger lift and an internal staircase linking it to Property 233. The importance of this staircase was highlighted, as otherwise, access to the different levels of Properties 236 and 237 would be difficult. Furthermore, these Properties were built pre-1967 and included office space with a floor to ceiling height of less than 2.75 metres. The Consultant Architect A noted that this matter could be an issue in obtaining the required compliance certificate. In addition, the basement level of Properties 236 and 237 was not included in the plans made available. Notwithstanding this, the Consultant Architect A noted that a diesel storage tank for the power generator located on the roof of Property 233 was housed at this level. The Consultant Architect A recommended a safety plan and risk assessment should the diesel storage be retained. Queried by the NAO on the omission of the basement level of Properties 236 and 237, the Consultant Architect A specified that the basement area was not accessible when the site inspection was carried out, hence justifying this omission in this respect.

2.2.11 In seeking to establish the freehold value of office space in Valletta, the Consultant Architect A compiled a list of similar properties as advertised by estate agents. Properties were categorised as either converted or unconverted and a rate per square metre corresponding to each category was established. The final value was adjusted to reflect 95 per cent of the average rate per square metre, hence removing the estate agent's commission. In the case of converted properties, the value arrived at was that of €3,115 per square metre, which was to be utilised as a base rate in establishing the freehold value of the Properties. The Consultant Architect A applied a factor to each floor level, ranging from a factor of 1 applied to ground floor area and 0.6 applied to the third floor level. Moreover, a factor of 0.25 was adopted for secondary spaces, such as storage and corridors.

2.2.12 Since HSBC held Property 233 on temporary emphyteusis, the value was determined by first calculating the freehold value, established as €2,624,388 (Table 2 refers). This value was arrived at through the application of the base rate and factor to the area of each floor. The area at ground floor level was of 340 square metres, while that at the first and second floors was of 275 square metres each. An additional 140 square metres of secondary space was spread over the three levels.

² When compiling his valuation report, Consultant Architect A did not have access to documentation regarding compliance with existing permits, which was to be submitted by HSBC.

2.2.13 The current redemption value of €1,985,489, was established by the Consultant Architect A through the application of the formula specified in the Ministerial Directive MFEI 007/09.³ The factors taken into account in this respect were the freehold value of the site, the yearly emphyteusis, the number of years remaining till the expiry of the emphyteusis and the inflation rate. In this case, taken in consideration was the fact that the emphyteusis was to expire on 30 June 2023 and that the annual ground rent payable, of €69,071, was revisable every five years with the next revision due in 2013. The difference between the freehold value and the redemption price of Property 233, established as €640,000, was deemed the property's fair value.

Table 2: Valuation of Property 233 by Consultant Architect A

| Floor | Area (m ²) | Factor | Rate (€/m ²) | Freehold value (€) |
|--------------|------------------------|--------|--------------------------|--------------------|
| Ground floor | 340 | 1.00 | 3,115 | 1,059,100 |
| Ground floor | 50 | 0.25 | 3,115 | 38,938 |
| First floor | 275 | 0.90 | 3,115 | 770,962 |
| First floor | 45 | 0.25 | 3,115 | 35,044 |
| Second floor | 275 | 0.80 | 3,115 | 685,300 |
| Second floor | 45 | 0.25 | 3,115 | 35,044 |
| Total | 1,030 | | | 2,624,388 |

2.2.14 Applied to Properties 236 and 237, the freehold value established by the Consultant Architect A was €921,566 (Table 3 refers). The NAO noted that contrary to the base rate of €3,115 per square metre, a rate of €5,000 was utilised in determining the value of the ground floor level. When queried on this point, the Consultant Architect A indicated that the rate of €3,115 was deemed too low for the ground floor levels, which were deemed to have a higher value due to their significant importance as a retail/office area. Queries addressed to the Consultant Architect A with regard to the different rates applied to the ground floor levels of Property 233 (€3,115 per square metre) and Properties 236 and 237 (€5,000 per square metre) remained unaddressed. The Consultant Architect A indicated that he had no records of the reasoning employed in establishing these rates.

Table 3: Valuation of Properties 236 and 237 by Consultant Architect A

| Floor | Area (m ²) | Factor | Rate (€/m ²) | Freehold value (€) |
|--------------|------------------------|--------|--------------------------|--------------------|
| Ground floor | 34 | 1.00 | 5,000 | 170,000 |
| Ground floor | 57 | 0.25 | 5,000 | 71,250 |
| Intermediate | 43 | 0.90 | 3,115 | 120,550 |
| First floor | 70 | 0.80 | 3,115 | 174,440 |
| First floor | 30 | 0.25 | 3,115 | 23,363 |
| Second floor | 68 | 0.70 | 3,115 | 148,274 |
| Second floor | 32 | 0.25 | 3,115 | 24,920 |
| Third floor | 101 | 0.60 | 3,115 | 188,769 |
| Total | 435 | | | 921,566 |

2.2.15 According to the Consultant Architect A, the premium payable to HSBC for Property 233 was €640,000, while the freehold value for Properties 236 and 237 amounted to €925,000. In sum, the amount payable by Government was €1,565,000, which excluded the ground rent payable for Property 233.

³ Ministerial Directive 007/09, titled 'Policy Direction in connection with Ministerial Direction MFEI 004/08 in order to establish a fair value of Government commercial property for the disposal of Public Land by way of sale of the Temporary Directum Dominion and relative ground rent', was issued on 28 July 2009.

The Valuations by Consultant Architect B

2.2.16 In response to the request by the Permanent Secretary MFEI, dated 17 March 2011 and addressed to the DG GPD, a valuation compiled by the Consultant Architect B was submitted on 18 March 2011. Cited in the report by the Consultant Architect B was the fact that the valuation was to consist of the following:

- a. the fair value of the premium to be paid to the current tenant of Property 233 to acquire the utile dominium of the remaining period of temporary emphyteusis under its current conditions; and
- b. the freehold market value of Properties 236 and 237.

Noted was the fact that a site inspection of the Properties was carried out on 18 March 2011.

2.2.17 In this context, the Consultant Architect B noted that Property 233 was located towards the lower part of Republic Street, close to the central business district. Also cited was the fact that the Property, which was laid out on three levels, was connected to Properties 236 and 237. According to the Consultant Architect B, the total floor area was 1,030 square metres, with 390 square metres at ground floor level and 320 square metres on each of the first and second floors. As per plans reviewed, the approved development permission indicated that the Property was to be used as offices.

2.2.18 Following the inspection of the Property, the Consultant Architect B noted no manifest signs of structural damage, yet commented that all floor slabs were concealed by false ceilings. Furthermore, the finishes within the building exhibited signs of wear and tear that would require refurbishment prior to ulterior accommodation. Also noted was the fact that, considered independently from the adjacent Properties, Property 233 was not serviced with a lift, indicating that substantial structural alterations would be required to ensure an acceptable standard of vertical circulation.

2.2.19 The Consultant Architect B applied different commercial unit rates, ranging from €5,000 to €3,000 per square metre to the different floor areas (Table 4 refers). In total the freehold value arrived at was €4,320,000; however, an adjustment to compensate for the inadequate means of vertical circulation was made, resulting in an estimated value of €4,200,000. In a meeting with the NAO, the Consultant Architect B noted that the rates utilised in the valuation of the Properties were similar to those of other closely located office buildings. Specific reference was made to comparisons drawn with another property situated in Melita Street, Valletta, also subject to negotiations by Government at the time. Despite requests for supporting documentation substantiating rates applied raised by the NAO, the Consultant Architect B did not provide such documentation; however, he indicated that he was aware of going rates based on interactions with owners of other properties.

Table 4: Valuation of Property 233 by Consultant Architect B

| Space | Area (m ²) | Rate (€/m ²) | Freehold value (€) |
|---------------------------|------------------------|--------------------------|--------------------|
| Ground floor office space | 340 | 5,000 | 1,700,000 |
| Upper floors office space | 550 | 4,000 | 2,200,000 |
| Service areas | 140 | 3,000 | 420,000 |
| Total | 1,030 | | 4,320,000 |

2.2.20 Citing occupation under the title of emphyteusis, the ground rent payable and revisions due, the Consultant Architect B indicated that for the purposes of this valuation, the assumed average inflation rate was to be 2.5 per cent per annum. The rent payable by HSBC over the remaining emphyteutical period, 2011 to 2023, was estimated at €664,701. A 5.5 per cent discount rate was applied for the year of purchase as well as to the deferred present value calculations. Based on the freehold value of €4,200,000, the annual commercial emphyteutical rent for a period of 13 years, representing the remaining period of the original emphyteutical concession granted on Property 233, was calculated by the Consultant Architect B as €151,990. In clarifications provided to this Office, the Consultant Architect B stated that this estimation of value was based on the principle that the value of a temporary emphyteutical rent derived from the consideration that the owner of a property would be in a comparable position by granting a temporary emphyteusis, and regaining possession of the property at the end of the emphyteutical grant, as if the property were sold and the sum received alternatively invested.

2.2.21 This stream of annual payments for the next 13 years, discounted at 5.5 per cent, had a present value of €1,395,541. Hence, the present value of the difference between the expected commercial rental income, if the property was sub-let by the current tenant at the said commercial rent, and the rent payable to the landlord over a period of 13 years was €730,840. A disturbance factor of five per cent was applied to this amount. Hence, the fair market value of the premium that was to be paid for tenancy of Property 233, under identical conditions of the current temporary emphyteusis and for the remaining period of the emphyteutical grant, was €768,000. The Consultant Architect B noted that in arriving at this value, due consideration had been given to the location, size and layout, construction date, property condition, the standard of finishes and building services installed, current market conditions, the conditions of the title under which the property was currently held and other issues.

2.2.22 With respect to Properties 236 and 237, the Consultant Architect B noted that the total floor area amounted to 537 square metres. The Properties had a site footprint area of 101 square metres, laid out over five floors above street level and a basement. The NAO noted that the basement level was not taken into consideration in the valuation prepared by the Consultant Architect A. Based on plans reviewed, the Consultant Architect B noted that the approved development permission indicated that the use of a number of rooms as offices was contingent on the fact that these were connected to Property 233.

2.2.23 Subject to the visual inspection undertaken, the Consultant Architect B noted no manifest signs of structural damage, although he indicated that all floor slabs were concealed by false ceilings. Considered independently, Properties 236 and 237 did not have an acceptable means of vertical circulation through a staircase. Furthermore, the lift within the Properties did not conform to the minimum standards recommended by the National Commission Persons with Disability (KNPD)⁴ in terms of the Access for All Design Guidelines (AADG). The Consultant Architect B noted that, given these circumstances, substantial structural alterations would be required to achieve an acceptable standard of vertical circulation and accessibility with respect to the Properties. Also noted was the fact that the finishes exhibited signs of wear and tear and would have to be refurbished prior to ulterior accommodation.

2.2.24 In establishing value, the Consultant Architect B applied a commercial unit rate per square metre to each floor, with the rates utilised ranging from €5,000 for ground

⁴ Kummissjoni Nazzjonali Persuni b' Dizabilità

floor to €2,500 for the basement level (Table 5 refers). In total, the freehold value of Properties 236 and 237 was €1,926,000; however, an adjustment was factored in to compensate for the provision of an adequate means of vertical circulation. This expenditure was estimated at €150,000, hence resulting in a revised freehold value of €1,776,000.

Table 5: Valuation of Properties 236 and 237 by Consultant Architect B

| Space | Area (m ²) | Rate (€/m ²) | Freehold value (€) |
|--|------------------------|--------------------------|--------------------|
| Ground floor office space | 41 | 5,000 | 205,000 |
| Upper floors office space | 283 | 4,000 | 1,132,000 |
| Service areas | 113 | 3,000 | 339,000 |
| Basement | 100 | 2,500 | 250,000 |
| Total | 537 | | 1,926,000 |
| Less adjustment for vertical circulation | | | (150,000) |
| Revised freehold value | | | 1,776,000 |

HSBC Valuation and Terms

2.2.25 The valuation prepared by the HSBC Architect was also submitted to the Permanent Secretary MFEI by the DG GPD. Cited in this valuation report was the fact that Property 233 was held by means of a temporary emphyteusis that was to expire on 30 June 2023 and that the annual current ground rent was €69,071, revisable every five years with the next revision due in 2013. The floor areas indicated by the HSBC Architect were consistent with those cited by the Consultant Architects. In this context, the HSBC Architect proposed two options, of which the first was preferred:

- a. payment of a premium of €800,000, with Government paying annual ground rent directly to the direct dominus; or
- b. an annual rental charge of €180,000.

2.2.26 With respect to Properties 236 and 237, the HSBC Architect indicated an asking price of €300,000 and €1,650,000, respectively. Hence, the total value of these Properties was €1,950,000. In factoring the premium payable with respect to Property 233, the value of the transaction was €2,750,000.

2.3 Negotiations for the Properties

2.3.1 In the correspondence sent by the DG GPD to the Permanent Secretary MFEI on 21 March 2011 (referred to in paragraph 2.2.4), the DG recommended that the valuation prepared by the Consultant Architect B was to be adopted as the basis for an offer to HSBC. The DG GPD advocated this approach since the valuation by the Consultant Architect B was based on a detailed assessment of the Properties, included net present value and discounted revenue streams, and was close to the valuation provided by the HSBC Architect. The NAO questioned the rationale behind the decision to adopt the valuation by the Consultant Architect B in negotiations with HSBC, particularly in view of the substantial variation between this valuation and that submitted by the Consultant Architect A. In clarifications made to this Office, the DG GPD stated that although both Consultant Architects had provided the rationale on which their valuations were based, differences were unavoidable. Furthermore, the DG GPD indicated that the valuation by the Consultant Architect A varied significantly to that by HSBC, rendering agreement less likely. Notwithstanding this, the DG GPD maintained that this did not imply that Government would accept HSBC's asking price regardless. This matter was also raised with the Permanent Secretary MFEI,

who corroborated that stated by the DG GPD and argued that differences in property valuations were inevitable and commissioning another valuation would have probably resulted in another significant variation.

- 2.3.2 On 23 March 2011, the Permanent Secretary MFEI instructed the DG GPD and the Director Corporate Services (DCS) MFEI to initiate discussions with HSBC regarding the possible acquisition by Government of the premises in Republic Street, Valletta that the Bank formerly occupied. The DG GDP was appointed Chair of the Negotiation Group while the DCS MFEI and the Consultant Architect B were appointed members.⁵ All discussions were to be subject to the Government's final approval. According to the DG GPD, the Consultant Architect B was tasked with assisting in negotiations due to the limited internal resources available to the Department.
- 2.3.3 During a meeting with the NAO, the Permanent Secretary MFEI stated that it was either the Minister MFEI or the PS Revenues and Land who had instructed him to commence negotiations with HSBC, failing to recall who had specifically issued instructions. Nonetheless, the Permanent Secretary MFEI asserted that the Minister MFEI would have invariably been informed. Furthermore, the Permanent Secretary MFEI noted that the members of the Negotiation Group were appointed possibly following consultation with the Minister MFEI.

Negotiation Aide Memoire

- 2.3.4 On 28 March 2011, the Consultant Architect B submitted an aide memoire to the DG GPD in anticipation of the forthcoming negotiations with HSBC. The aide memoire provided an overview of the interests of each party to the transaction, facts relating to the Properties and the possible scope of the negotiations between HSBC and Government. An overview of this document, presented in the following paragraphs, provides relevant background against which an understanding of later developments may be formed.
- 2.3.5 Stated in the aide memoire was that Government's interest in this transaction was to acquire property to accommodate a department until refurbishment works on another property were completed. While Government's interest was the acquisition at fair value, that of HSBC was the sale of the Properties at maximum profit. This disparity in interests was the scope of the negotiations.
- 2.3.6 According to the aide memoire, all Properties were in dire need of refurbishment. Furthermore, the separation of the Properties from other properties owned by the Bank, yet not part of this transaction, rendered them AADG non-compliant and therefore could not be utilised without structural alterations. Reference was also made to Planning Application 2494/04, dated 19 April 2005, the sanctioning of which was dependent on accessibility issues being resolved. Moreover, the compliance certificate required in obtaining new utility services was considered a major issue.
- 2.3.7 Noted was the fact that from HSBC's perspective, Property 233 was a diminishing asset, with 12 years remaining of its temporary emphyteusis. This consideration was equally applicable to Government were it to assume ownership of the leasehold. On the other hand, Properties 236 and 237 were vacant and therefore a superfluous asset in HSBC's portfolio. Otherwise, there was note of a convergence of interests with regard to the liability incurred by both parties in terms of accessibility requirements and refurbishment works. Also stated was that it was in the interest of both parties that the Properties be considered as one transaction.

⁵ Unless otherwise specified, reference to the DG GPD, DCS MFEI and Consultant Architect B is to be understood in terms of their role of Chair and Members of the Negotiation Group, respectively.

- 2.3.8 Aside from matters addressed in the valuation of Properties 233, 236 and 237 prepared by the Consultant Architect B, other issues were raised in the aide memoire. Although the Properties were centrally located, parking in the vicinity was problematic. Furthermore, the structural works required to address accessibility issues would reduce the usable floor area. In addition, the Properties could not be utilised immediately due to a pending MEPA application, the necessary structural alterations and required finishing works, essential in refurbishment. These issues were to be resolved prior to occupation of the Properties and applied irrespective of whether the buildings were acquired independently or in conjunction with one another.
- 2.3.9 The aide memoire also delved into the financial considerations deemed relevant to the negotiations. With respect to Property 233, the Consultant Architect B reiterated that the present value of the stream of ground rents payable to the property owner by HSBC, estimated at €664,701 using a 5.5 per cent discount rate, was the Bank's current cost and would be assumed by Government on taking over the lease. The memoire also listed three types of potential income that could be earned by HSBC from the Property, namely, use for own activities, sub-letting, or liquidation of the utile dominium. For the latter two options, the alterations and refurbishment required with respect to Property 233 would have to be carried out. During negotiations, Government was to establish the rental and freehold value estimated by HSBC.
- 2.3.10 The aide memoire presented two scenarios for the freehold valuation of Property 233 when in a rentable state, with the difference being the commercial unit rate per square metre utilised for the office space on upper floors and the service areas. The first scenario estimated a freehold value of €3,630,000. Based on this value, the annual commercial emphyteutical rent for a period of 13 years was calculated at €123,245. This stream of annual payments for the following 13 years, discounted at 5.5 per cent, had a present value of €1,062,186. The second scenario, consistent with that put forward by the Consultant Architect B in his original valuation, established a freehold value of €4,320,000, revised to €4,200,000 for reasons cited in paragraph 2.2.19. Adopting a similar method as employed in the first scenario, the Consultant Architect B established that the annual commercial emphyteutical rent for a period of 13 years was €151,990. Discounted at 5.5 per cent, this stream of rent resulted in a present value of €1,395,541. For both scenarios, €664,701 (that is, the present value of the stream of ground rents payable by HSBC) was deducted from the resulting present values. This established revised values of €397,485 and €731,000. The lower value represented Government's starting position in the negotiations. The memoire noted that these figures did not account for refurbishment and structural alteration costs, which HSBC would have to carry out if the Bank was to rent out or utilise the Property. A conservative estimate of the cost of these works ranged between €150,000 and €200,000. Therefore, the starting position for the negotiations with respect to the first scenario was €250,000. The same reasoning was applied to the second scenario, resulting in a maximum value of €550,000 (Table 6 refers).

Table 6: Negotiation scenarios for Property 233

| Space | Area (m ²) | Scenario 1 | | Scenario 2 | |
|---|------------------------|--|--------------------|--|--------------------|
| | | Commercial unit rate (€/m ²) | Freehold value (€) | Commercial unit rate (€/m ²) | Freehold value (€) |
| Ground floor office space | 340 | 5,000 | 1,700,000 | 5,000 | 1,700,000 |
| Upper floors office space | 550 | 3,000 | 1,650,000 | 4,000 | 2,200,000 |
| Service areas | 140 | 2,000 | 280,000 | 3,000 | 420,000 |
| Total | 1,030 | | 3,630,000 | | 4,320,000 |
| Annual emphyteutical rent | | | 123,245 | | 151,990 |
| Present value of 13 years rental income (discounted) | | | 1,062,186 | | 1,395,541 |
| Less 13 years rent payable (discounted) | | | 664,701 | | 664,701 |
| Revised value | | | 397,485 | | 731,000 |
| Less cost of refurbishment and structural alterations | | | 150,000 | | 150,000 |
| Final value ^a | | | 250,000 | | 550,000 |

Note:

a. The values presented do not always tally but provide approximate indications as in fact presented in the aide memoire.

2.3.11 Other noteworthy considerations were raised in the aide memoire. First, according to the calculations prepared by the Consultant Architect B, although the value of Property 233 to HSBC ranged between €250,000 and €550,000, this was dependent on the condition that the Bank could immediately rent out the Property. The Consultant Architect B noted that this was hardly the case, as refurbishment was required prior to this possibility. The forfeiture of one year of rent would account for unrealised revenue of €151,990, less the rent payable of €69,071, resulting in a potential loss of revenue of €82,919. This was equivalent to 15 per cent of the higher bracket (€550,000), which equated to HSBC's profit on the transaction. Second, noted in the aide memoire was the fact that the final price for Government was €550,000 and €664,701 (the present value of the stream of ground rents for 13 years), resulting in a total disbursement of €1,214,710. Considering the required conversion costs of approximately €200,000, the commercial value of the Property was €1,400,000.

2.3.12 Similarly, two scenarios were presented with respect to Properties 236 and 237. Essentially, the two scenarios indicated a lower and upper value resulting from the different commercial unit rates per square metre applied. It must be noted that the upper limit corresponded to the valuation prepared by the Consultant Architect B, referred to in paragraph 2.2.24. The first scenario estimated a value of €1,480,000, while the second scenario presented a value of €1,926,000. Since the Properties required €150,000 worth of refurbishment, the scenarios were accordingly revised, resulting in valuations of €1,330,000 and €1,780,000, respectively. According to the aide memoire, the rentable space would decrease by about 10 to 15 square metres per floor to cater for the staircase and the lift required. As a provision for this loss in rentable space, the Consultant Architect B estimated a five per cent reduction in value, resulting in revised valuations of €1,260,000 and €1,690,000, respectively (Table 7 refers).

Table 7: Negotiation scenarios for Properties 236 and 237

| Space | Area (m ²) | Scenario 1 | | Scenario 2 | |
|--|------------------------|--|--------------------|--|--------------------|
| | | Commercial unit rate (€/m ²) | Freehold value (€) | Commercial unit rate (€/m ²) | Freehold value (€) |
| Ground floor office space | 41 | 5,000 | 205,000 | 5,000 | 205,000 |
| Upper floors office space | 283 | 3,000 | 849,000 | 4,000 | 1,132,000 |
| Service areas | 113 | 2,000 | 226,000 | 3,000 | 339,000 |
| Basement | 100 | 2,000 | 200,000 | 2,500 | 250,000 |
| Total | 537 | | 1,480,000 | | 1,926,000 |
| Less cost of refurbishment and structural alterations | | | 150,000 | | 150,000 |
| Revised value ^a | | | 1,330,000 | | 1,780,000 |
| Provision for reduction in rentable space (five per cent) ^a | | | 70,000 | | 90,000 |
| Final value ^a | | | 1,260,000 | | 1,690,000 |

Note:

a. The values presented do not always tally but provide approximate indications as in fact presented in the aide memoire.

2.3.13 Also indicated in the aide memoire was that the Properties could not be immediately utilised by HSBC or a potential purchaser due to the required refurbishment. Based on the value of €1,690,000, the annual rental income was estimated as €85,000. Decreasing this amount to account for the period required to complete the necessary refurbishment works would result in a starting negotiating position for Government of €1,175,000, with an upper limit of €1,600,000.

2.3.14 In conclusion, the aide memoire noted that HSBC was divesting of the surplus properties at 233, 236 and 237, Republic Street. Furthermore, Government would be acquiring a property (Property 233) that could only be held for 13 years on the current terms, which was in fact a depreciating asset for HSBC. Moreover, Government was paying premium rates for office space in Valletta for properties that could not be utilised immediately, was limited in terms of parking, required substantial structural alterations to allow for vertical access and entailed coordination with MEPA with respect to permits and compliance issues. In sum, the value established with respect to Properties 233, 236 and 237 was €2,150,000, which represented the upper values cited in the second set of scenarios.

Report on potential acquisition of Properties 233, 236 and 237

2.3.15 On 1 April 2011, the DG GPD, in his capacity as Chair of the Negotiation Group, submitted to the PS Revenues and Land a report that was based on the aide memoire that was prepared by the Consultant Architect B. In this sense, the DG GPD requested the direction of PS Revenues and Land on the matter. Copied in this correspondence were the Permanent Secretary MFEI and the members of the Negotiation Group. In response, the PS Revenues and Land indicated to the DG GPD that the appropriate process was for the Permanent Secretary MFEI to provide suitable parameters for negotiations, keeping in view that in June/July 2011 the offices housed at the President's Palace in Republic Street, Valletta had to be relocated. Moreover, the PS Revenues and Land stated that it would have been inappropriate for him to be involved in the establishment of these parameters. Copied in this correspondence was the Head of Secretariat of PS for Revenues and Land, as well as the previous recipients.

- 2.3.16** Following this exchange, the matter was referred to the Permanent Secretary MFEI by the DG GPD on 2 April 2011. Attached to this correspondence was the report submitted to the PS Revenues and Land on 1 April 2011, albeit modified to correct for a minor error noted in the transposition of data.⁶ Copied in this correspondence were the PS Revenues and Land, his Head of Secretariat and the members of the Negotiation Group.
- 2.3.17** According to this report, Government was seeking to acquire a centrally located property in Valletta at a fair value in order to accommodate a government department while another building was being refurbished. Noted in the report was the fact that a stocktaking exercise of government-owned vacant premises indicated 117 vacant premises. However, of these, only one property, for which there were countless demands, was in a condition to provide alternative accommodation to government departments without substantial infrastructural interventions, the duration of which could take a number of years. In addition, the large majority of tenements were relatively small, dispersed and unfit to house a government unit.
- 2.3.18** Apart from presenting details relating to the analysis of the Properties, which were largely based on the aide memoire drawn up by the Consultant Architect B, the report provided an overview of the initial negotiations held. According to the report, the asking price by HSBC for Properties 233, 236 and 237 was €2,750,000, whereas the Negotiation Group's offer at the time stood at €2,045,000. In conclusion, the report reiterated that the Properties were in a strategic position and offered Government an opportunity to relocate around 200 of its personnel. This provided a potential solution within the short and medium term, in the absence of which Government would still need to recur to third parties to accommodate government departments that had to vacate their premises. On the other hand, the report highlighted the fact that Government was paying the highest rates in the Valletta office market for property that could only be utilised after approximately six months. Furthermore, indicated as major hurdles were the remodelling of the vertical access and the issue of the permit in respect of access for all compliance. Nonetheless, the report reiterated the fact that the Properties provided a one time opportunity and that a substantial amount of stamp duty payable on the acquisition would revert to Government. Finally, the direction of the Permanent Secretary MFEI was requested with regard to the way forward.
- 2.3.19** It was in this context that the DG GPD drew the attention of Permanent Secretary MFEI to the fact that even if Government reached its upper limit, €2,160,000, it would still be €600,000 short of the asking price set by HSBC. To this end, the DG GPD recommended that the offer made by Government be increased by €115,000, thereby reaching the upper limit. Documentation reviewed by this Office indicated that endorsement by the Permanent Secretary MFEI was verbally provided to the DG GPD. According to an office note by the Permanent Secretary MFEI, dated 4 April 2011, the DG GPD was authorised to increase Government's offer by up to 10 per cent.
- 2.3.20** The NAO reviewed the aide memoire submitted by the Consultant Architect B to the DG GPD on 28 March 2011 and compared this document to that submitted to the Permanent Secretary MFEI by the DG GPD on 2 April 2011. A number of discrepancies were noted:

⁶ The NAO reviewed the valuation report submitted to the PS Revenues and Land on 1 April 2011 and that submitted to the Permanent Secretary MFEI on 2 April 2011. This Office confirmed that cited, with one minor discrepancy relating to the rate applied to the basement level of Properties 236 and 237 identified.

- a. While the Consultant Architect B indicated that the Properties were in dire need of refurbishment, the DG GPD stated that the condition of the Properties was fair and that these could be utilised as offices after ‘some’ refurbishment works were undertaken.
- b. According to the aide memoire prepared by the Consultant Architect B, the issue of the required compliance certificate – necessary in obtaining utilities services – was a major concern. On the other hand, the DG GPD did not refer to this matter in the report submitted to the Permanent Secretary MFEI.
- c. Although not indicated in the report submitted by the DG GPD, the aide memoire prepared by the Consultant Architect B highlighted the fact that, while the location of the Properties was good, parking in the vicinity was problematic. Furthermore, the report did not indicate that the basement of Properties 236 and 237 was used to store fuel for the generator utilised in Property 233.
- d. The freehold value of Property 233, as presented to the Permanent Secretary MFEI, differed to that indicated in the aide memoire originally submitted by the Consultant Architect B. This was due to revisions in the rates applied, which were sourced from the two scenarios presented in paragraph 2.3.10. While the commercial unit rate per square metre at ground floor level was unchanged, those applied at the upper floors and service areas were €4,000 (previously €3,000/€4,000) and €2,000 (previously €2,000/€3,000), respectively. As a result of the revisions in rates, the freehold value of Property 233 was established at €4,180,000, rounded to €4,200,000. Applying the same considerations utilised in the first and second scenarios, the Government’s negotiating position with respect to Property 233 was set at €581,000 (Table 8 refers).

Table 8: Revised negotiation value for Property 233

| Space | Area (m ²) | Commercial unit rate (€/m ²) | Freehold value (€) |
|---|------------------------|--|--------------------|
| Ground floor office space | 340 | 5,000 | 1,700,000 |
| Upper floors office space | 550 | 4,000 | 2,200,000 |
| Service areas | 140 | 2,000 | 280,000 |
| Total ^a | 1,030 | | 4,180,000 |
| Annual emphyteutical rent | | | 151,990 |
| Present value of 13 years rental income (discounted) | | | 1,395,541 |
| Less 13 years rent payable (discounted) | | | 664,701 |
| Revised value ^b | | | 731,000 |
| Less cost of refurbishment and structural alterations | | | 150,000 |
| Final value | | | 581,000 |

Notes:

- a. The total freehold value was rounded to €4,200,000.
- b. The value is an approximation, as presented in the report to the Permanent Secretary MFEI.

- e. With respect to Properties 236 and 237, while the first scenario remained unchanged, the second scenario was revised. The commercial unit rate per square metre for service areas was reduced from €3,000 to €2,000, resulting in a revised freehold value of €1,813,000 from €1,926,000. Taking into consideration the cost of refurbishment and structural alterations, as well as the reduction in rentable space, the Government’s negotiating position with respect to Properties 236 and 237 ranged from €1,260,000 to €1,580,000 (Table 9 refers).

Table 9: Revised negotiation values for Properties 236 and 237

| Space | Area (m ²) | Scenario 1 | | Scenario 2 (revised) | |
|---|------------------------|--|--------------------|--|--------------------|
| | | Commercial unit rate (€/m ²) | Freehold value (€) | Commercial unit rate (€/m ²) | Freehold value (€) |
| Ground floor office space | 41 | 5,000 | 205,000 | 5,000 | 205,000 |
| Upper floors office space | 283 | 3,000 | 849,000 | 4,000 | 1,132,000 |
| Service areas | 113 | 2,000 | 226,000 | 2,000 | 226,000 |
| Basement | 100 | 2,000 | 200,000 | 2,500 | 250,000 |
| Total | 537 | | 1,480,000 | | 1,813,000 |
| Less cost of refurbishment and structural alterations | | | 150,000 | | 150,000 |
| Revised value ^a | | | 1,330,000 | | 1,660,000 |
| Less provision for reduction in rentable space (five per cent) ^a | | | 70,000 | | 83,000 |
| Final value ^a | | | 1,260,000 | | 1,580,000 |

Note:

a. The value is an approximation, as presented in the report to the Permanent Secretary MFEI.

- f. Taking into consideration the revisions in the values of Properties 233, 236 and 237 indicated in (d) and (e) above, the report submitted to the Permanent Secretary MFEI indicated that the targeted negotiation price for the Properties was not to exceed €2,160,000. This differed slightly from the aggregate price of €2,150,000 presented in the aide memoire by the Consultant Architect B.

2.3.21 When queried on the differences noted, the DG GPD indicated that the aide memoire served to highlight the negative aspects of the Properties, essential in providing Government with grounds for negotiation. Regarding the discrepancy noted in terms of refurbishment works required, the DG GPD stated that the extent of refurbishment varied according to needs and expectations, hence justifying the inconsistency noted. In a meeting with this Office, the Consultant Architect B also indicated that the aide memoire was intended as a negotiating tool to be used by Government in driving the value of the property in its favour, hence explaining the critical stance adopted in listing all the refurbishment works required. Nonetheless, the Consultant Architect B maintained that the Properties had been operational in the recent past and were in fact functional.

2.3.22 Of interest to the NAO was the reference to the offer of €2,045,000 cited in the report submitted to the Permanent Secretary MFEI by the DG GPD. This Office sought to establish the basis of this offer and its authorisation, and obtain supporting documentation in this respect. Queries to this effect were made to the Minister MFEI, PS Revenues and Land, the Permanent Secretary MFEI, the DG GPD and the Consultant Architect B. In essence, the NAO was not provided with explanations justifying the basis of the offer made as well as the relevant authorisation.

2.3.23 The Minister MFEI and the PS Revenues and Land categorically denied any involvement in establishing the parameters of negotiation or in determining the offer made to HSBC. In this regard, the PS Revenues and Land stated that he was not competent in matters relating to property valuations and considered it unethical for ministers and parliamentary secretaries to engage in such matters.

2.3.24 When queried about the offer of €2,045,000 made by the Negotiation Group, the Permanent Secretary MFEI emphasised that he was not directly involved in the negotiations held with HSBC. The Permanent Secretary MFEI confirmed that his role

was limited to providing guidance to the Negotiation Group, yet could not recall authorising the offer made to HSBC. In this context, the Permanent Secretary MFEI reiterated that he was not informed of all action taken by the Negotiation Group, including offers made and counter-offers received.

2.3.25 That asserted by the Minister MFEI, the PS Revenues and Land and the Permanent Secretary MFEI was reflected in that stated by the DG GPD, who maintained that the offer of €2,045,000 was decided by the Negotiation Group. The DG GPD acknowledged that the authorisation of the Permanent Secretary MFEI was not obtained with respect to this offer, yet sought to justify this by stating that a starting point for negotiations had to be determined. Furthermore, the DG GPD indicated that the Negotiation Group had probably commenced negotiations at the minimum value proposed by the Consultant Architect B, and had progressively increased the offers made to HSBC. Notwithstanding this, the DG GPD contended that the authorisation of the Permanent Secretary MFEI was sought in later negotiations held.

2.3.26 Also queried on the matter, the Consultant Architect B provided a somewhat contrasting account to that stated by the DG GPD. The Consultant Architect B asserted that he was not involved in the setting of offers made and that these were handled by the DG GPD and the GPD administration. Nevertheless, the Consultant Architect B indicated that he was informed of the offers that were being made. According to the Consultant Architect B, his role in the Negotiation Group was to provide assistance with respect to valuations and related issues during negotiations.

2.3.27 Elaborating on this matter, the Consultant Architect B emphasised the fact that the Negotiation Group was not vested with final executive authority to acquire the Properties, and that this was subject to approval by 'higher authorities'. The Minister MFEI, the PS Revenues and Land and the Permanent Secretary MFEI confirmed this understanding. Indeed, the Permanent Secretary MFEI further stated that the Negotiation Group was not required to seek his advice during the negotiating process and when in fact consulted, his input was to be viewed as recommendations that the Negotiation Group could choose to take on board, or otherwise.

2.3.28 Deemed essential in terms of the negotiations highlighted in the preceding paragraphs were minutes of meetings held by the Negotiation Group with HSBC. Following queries raised with the incumbent Acting DG GPD, the DG GPD and the Consultant Architect B with respect to the availability of such minutes, the NAO established that no records of meetings held were maintained.

Agreement on Price with HSBC and the Negotiation Group Final Report

2.3.29 On 5 April 2011, the DG GPD submitted correspondence to the Permanent Secretary MFEI, wherein it was stated that, in line with his direction, the offer made by the Government was increased by €115,000, which was the targeted maximum. Despite increasing the offer by this amount, the DG GPD reported that this was rejected by HSBC as this was deemed €600,000 short of that expected for serious consideration by the Bank. In the circumstances, the DG GPD proposed the possibility of Government increasing its offer to HSBC by €200,000. This was in line with the parameter of around 10 per cent that had previously been approved by the Permanent Secretary MFEI. Although this amount was still €400,000 short of the asking price set by HSBC, the DG GPD was of the opinion that the Bank would favourably consider this offer. In this regard, the DG GPD requested the direction of the Permanent Secretary MFEI whether a formal offer of an additional €200,000, or otherwise, was to be made, subject to MFEI's final approval. Copied in this correspondence were the PS Revenues and Land, his Head of Secretariat and the members of the Negotiation Group.

2.3.30 On 5 April 2011, the Permanent Secretary MFEI replied to the correspondence submitted by the DG GPD, providing the requested direction. In essence, the Permanent Secretary MFEI stated that Government's offer was not to exceed an increase of more than 15 per cent. Again, copied in this correspondence were the PS Revenues and Land, his Head of Secretariat and the members of the Negotiation Group.

2.3.31 The revised offer submitted by Government was accepted by HSBC on 13 April 2011 following a meeting held with the Negotiation Group. On 18 April 2011, the DG GPD informed the Permanent Secretary MFEI of this development, stating that the accepted offer made by Government was that of €2,360,000 as against HSBC's asking price of €2,750,000. Submitted with this correspondence were the valuations prepared by the Consultant Architect A and Consultant Architect B. The attention of the Permanent Secretary MFEI was drawn to a number of key tasks that were to be carried out. These were the:

- a. immediate submission of an application to MEPA for the replacement of the lift with one that was in accordance with AADG and related structural alterations;
- b. light plastering and whitewashing of the premises;
- c. washing/removal of carpets and polishing of tiles underneath;
- d. purchase of office furniture;
- e. separation of water and electricity installation at HSBC's expense;
- f. servicing of air-conditioning plants; and
- g. installation of information technology infrastructure.

Aside from these tasks, the DG GPD noted that the premises seemed to be in good condition, of a reasonably high standard, and able to immediately serve as alternative premises for 180 government employees. The DG GPD requested the Permanent Secretary MFEI to indicate the way forward. The PS Revenues and Land, his Head of Secretariat and the member of the Negotiation Group were copied in this correspondence.

2.3.32 The Permanent Secretary MFEI enquired with the DG GPD whether there were other accessibility issues aside from that relating to the lift before agreeing to this transaction on 20 April 2011. This matter was referred for the consideration of the Consultant Architect B. Furthermore, on 21 April 2011, the Permanent Secretary MFEI requested the DG GPD to provide a copy of the Negotiation Group final report.

2.3.33 The matter relating to the accessibility of the Properties to be acquired was addressed by the DG GPD, in agreement with the other members of the Negotiation Group, through correspondence submitted on 28 April 2011. In this regard, the Permanent Secretary MFEI was advised that the ground floor could be rendered immediately accessible through some minor alterations. The Negotiation Group anticipated that the KNPD would sanction the immediate use of the building if assurance was provided that the process for rendering the Properties accessible was commenced immediately. The Negotiation Group was to meet the KNPD to obtain formal comfort to this end. The direction of the Permanent Secretary MFEI was requested.

2.3.34 The final version of the report prepared by the Negotiation Group was also submitted to the Permanent Secretary MFEI on 28 April 2011. Prior to this submission, the DG GPD, as Chair of the Negotiation Group, obtained the endorsement of the members of the Group. In essence, the final report was based on that submitted to the Permanent Secretary MFEI on 2 April 2011 (paragraph 2.3.16 refers). The final report provided an element of context with respect to the reason for acquisition of the Properties. A description of these Properties, the necessary interventions required in refurbishment and the financial considerations related to the acquisition were listed. Also outlined was the process of negotiations undertaken with reference to the offers and counter-offers made.

2.3.35 Notwithstanding the similarities between the two reports, the NAO noted a number of differences. Salient points identified in this respect are:

- a. While the report initially presented to the Permanent Secretary MFEI indicated the need for some refurbishment, the final report termed the refurbishment required as minor. This discrepancy was also manifest in references to the finishes, with the initial report indicating that these exhibited signs of wear and tear, requiring refurbishment prior to ulterior accommodation. On the other hand, the final report stated that the finishes were in a fair state of repair and in good condition, recommending the whitewashing of walls and minor repairs to floor finishes. Specific reference was made to the poor condition of the carpet floor covering in Property 233, particularly on the second floor.
- b. In the final report, reference was made to the fact that the Properties had been used as HSBC's head office within the previous 12 months.
- c. The final report indicated that the M&E plant appeared to be in good condition although the servicing of air conditioning units was recommended. On the other hand, no reference to M&E was made in the initial report.
- d. Although the initial report made reference to the structural alterations required to ensure accessibility, the final report provided further details in this respect. It was recommended that the lift be installed within Properties 236 and 237, as this building was to be potentially purchased under a freehold title. The lift shaft was to be constructed in the same location of the existing one, which would necessitate the remodelling of the emergency staircase and restrooms.
- e. Other accessibility-related alterations presented in the final report entailed the construction of an internal entrance ramp and the installation of vertical platform lifts to compensate for the disparity in floor levels of the Properties.
- f. Reference was made to the valuations prepared by the Consultant Architect A and Consultant Architect B in the final report submitted to the Permanent Secretary MFEI. However, the NAO noted that one of the values, that corresponding to Consultant Architect A, was erroneously cited as €2,422,446 instead of €1,565,000. This matter was addressed by the NAO in paragraph 2.2.7.
- g. Noted in the final report was the fact that a series of meetings were held between the parties and that in the penultimate meeting, Government's offer of €2,160,000 was not accepted by HSBC. Agreement was reached on 13 April 2011, when this offer was revised to €2,360,000.
- h. Appended to the final report were the financial considerations taken into account during negotiations. The NAO noted discrepancies between the values cited in

this report when compared to the initial report submitted to the Permanent Secretary MFEI on 2 April 2011. The overall increase in terms of the valuation of the Properties amounted to €268,000 (Table 10 refers). In the case of Property 233, the deduction of €150,000 in refurbishment costs was reversed. Furthermore, the five per cent disturbance factor cited in the original valuation by the Consultant Architect B (paragraph 2.2.21 refers), but not included in the initial report, was reintroduced resulting in an approximate increase of the remaining €38,000. It must be noted that although these considerations were not reflected in the initial report submitted to the Permanent Secretary, these were consistent with the original valuation prepared by the Consultant Architect B. With respect to Properties 236 and 237, the variance was attributable to the reversal of the reduction of rentable space, which provision was approximately equivalent to €80,000.

Table 10: Comparison of values in reports to Permanent Secretary MFEI

| Property | Initial report (€) | Final report (€) | Variance (€) |
|-------------|--------------------|------------------|--------------|
| 233 | 580,000 | 768,000 | 188,000 |
| 236 and 237 | 1,580,000 | 1,660,000 | 80,000 |
| Total | 2,160,000 | 2,428,000 | 268,000 |

2.3.36 When queried in this respect, the DG GPD indicated to the NAO that he was unable to recall details accounting for the differences cited but that these were probably negotiating positions that were erroneously being referred to as property valuations. This was also stated by the Consultant Architect B, who indicated that given the nature of the negotiation, it was inevitable that the values ascribed by the parties would change throughout the process. Moreover, the Consultant Architect B explained these differences in terms of various issues considered during the negotiation process, such as whether the Properties could be immediately occupied, the adequacy of the structure, the condition of electrical services, power supply and the level of refurbishment required. Making specific reference to the changes noted with respect to accessibility issues, the Consultant Architect B noted that this matter was raised by Government in efforts at securing a more favourable price. According to the Permanent Secretary MFEI, the differences cited in the preceding paragraph were attributed to the fact that the Negotiation Group was confounding the valuation of the Properties with the price being negotiated.

2.3.37 In its review of records made available, the NAO found no documented reply by the Permanent Secretary MFEI to the correspondence submitted by the DG GPD on 28 April 2011, referred to in paragraph 2.3.33. The subsequent correspondence exchanged between the two was that submitted by the DG GPD on 3 May 2011, discussed in the ensuing paragraphs.

2.4 Other Issues following Initial Price Accord

2.4.1 Following the agreement reached regarding the value of the transaction, discussions commenced regarding the drafting of a promise of sale agreement. However, in the interim, a number of issues, directly or indirectly relating to the conditions of the transaction, arose. Despite the overlap of certain aspects, these issues are presented separately for ease of reference.

Restoring Property 233 to its Original Condition

2.4.2 An exchange of correspondence, dated 3 May 2011, between the DG GPD and a GPD Legal Officer highlighted the fact that a proviso in the emphyteutical deed regarding

Property 233 stipulated that, at the end of the emphyteutical grant, the Property was to be restored, by the emphyteuta, to its original state in 1900. At the time, the Property consisted of five separate premises of one storey each. Over the years, it was upgraded and consolidated into one building, spread over three floors.⁷ The DG GPD questioned whether the fact that, on 21 December 1988, the direct owners had recognised Mid-Med Bank Limited as the new emphyteuta and extended the temporary grant of Property 233 to 30 June 2023 implied that the direct owners had tacitly agreed to all alterations prior to that date. In addition, the DG GPD enquired whether, if the direct owners agreed to recognise Government as the new emphyteuta with amended plans, this indicated an implicit acceptance of any modifications made thereto. The DG GPD requested the GPD Legal Officer to seek the advice of HSBC and subsequently that of the Attorney General in this respect. Furthermore, the DG GPD indicated that the Consultant Architect B was to verify the extent, if any, of any structural alterations from 1988 to date following consultation with the HSBC Architect.

2.4.3 On 4 May 2011, the GPD Legal Officer informed the DG GPD of the advice provided by the Attorney General. Copied in this correspondence were the PS Revenues and Land, his Head of Secretariat and the Attorney General. According to this correspondence, the Attorney General was of the opinion that Government was to safeguard its interests from any possible attempt, by the direct owners, to invoke on expiry, the aforementioned proviso. The first possible solution discussed was that the Government would only acquire the Property in sub-emphyteusis from HSBC for a period of time, just short of the expiry date of the original emphyteusis. An alternative solution discussed was the possible expropriation of the direct ownership immediately on acquiring the Property on emphyteusis. The utile dominium and direct ownership would thereby be consolidated and the proviso would cease to have effect. However, the expropriation would come at a cost, as the shortening term of the emphyteusis resulted in an increasing value of the Property to the direct owners. For this reason, if the course of expropriation was to be pursued, then this was to be effected at the earliest. The GPD Legal Officer indicated that the freehold value of the Property was to be established in order to determine an approximate cost of the expropriation. It was further noted that the Attorney General had also raised the issue of the utility of the Property to Government on the expiry of the emphyteutical grant in twelve years' time. The decision to expropriate was to be considered in terms of the cost of expropriation and the use that Government would be making of this Property, if any, in twelve years' time. The GPD Legal Officer was unsure whether it was possible to simultaneously proceed with both alternatives, as this would create an ambiguous legal situation if Government acquired the Property on sub-emphyteusis for a period just short of the original concession, and then expropriated the direct ownership. In essence, the ambiguity arose from the fact that the Property would revert to HSBC even if for a brief period of time.

2.4.4 In clarifications made to this Office, the DG GPD highlighted other concerns relating to expropriation, including referral to the Land Arbitration Board, as well as the European Court of Justice, which could potentially take years to be resolved and result in a greater disbursement by Government. Similar concerns were expressed by the Minister MFEI, who also indicated budgetary constraints as possible influence in the decision-making process.

⁷ This condition was included in a lease agreement dated 1 March 1910 wherein the Anglo-Egyptian Bank Ltd was granted a 30-year emphyteutical grant at the price of £360 per annum. The third provision of this agreement provided that: *'The Anglo-Egyptian Bank Limited will be obliged to deliver the building in its present shape, distribution and size as shown on the annexed five plans'* and the Bank undertook *'... to remove, undo and demolish all structural alterations, that may have been made, should the owners (domini directi) require the Bank to do so.'*

- 2.4.5 Subsequent to the legal advice obtained, on 5 May 2011, the DG GPD submitted correspondence to the PS Revenues and Land and the Permanent Secretary MFEI. Copied in this correspondence were the Attorney General and the Head of Secretariat of PS Revenues and Land. According to that put forward by the DG GPD, there were two viable options available to Government. The first entailed Government's acquisition, from HSBC, of the temporary sub-emphyteusis of Property 233 until 28 June 2023, which was two days short of the expiry of the temporary emphyteusis. The DG GPD noted that this would require agreement with HSBC and would complicate any subsequent decision to expropriate. The second option was for Government to expropriate the direct ownership immediately on acquiring the Property on emphyteusis. According to the DG GPD, two freehold valuations of the Property established a value of €2,900,000 and €4,000,000, respectively. The DG GPD noted that midway between both would result in an additional disbursement of €3,500,000. It was in this context that the direction of the PS Revenues and Land and the Permanent Secretary MFEI was sought.
- 2.4.6 In reply, the Permanent Secretary MFEI stated that this was a delicate situation. The Permanent Secretary MFEI indicated that he was not convinced that an expropriation was appropriate and that Government should opt for a sub-emphyteusis. The Head of Secretariat of PS Revenues and Land proposed that the condition, whereby the tenant was to restore the Property to its original state, was not to be transferred to Government, with HSBC accepting responsibility to honour this condition, if the case arises. In response, the Permanent Secretary MFEI maintained that Government was not to be exposed to any significant contingent liabilities. The Head of Secretariat of PS Revenues and Land noted agreement with that stated by the Permanent Secretary MFEI and that his suggestion was precisely intended to ensure this. Copied in all the exchanges were the PS Revenues and Land, the Attorney General and the DG GPD.
- 2.4.7 The views of the Attorney General on the matter were communicated on 8 May 2011. The Attorney General argued that if Mid-Med Bank (acquired by HSBC in 1999), in attaching the actual 1988 plans to the 1988 emphyteutical deed with the direct owners, intended to at least create a basis for an argument to the effect that the 1910 reintegration condition had been superseded, but accepted to stop short of removing the condition from the deed, it would appear fair that it should be the successor of Mid-Med Bank that should carry the legal risk of that argument and not Government. This was particularly so in view of the fact that Government was actually paying a premium in addition to the annual ground rent for the acquisition of the Property. However, the situation was factually complicated, as if HSBC carried the burden of the condition after having transferred the Property, the condition would give the direct owners a strong position to insist that the Property be converted to its original state or obtain financial compensation from HSBC in return for renouncing this right. Furthermore, if at the time of expiry of the temporary emphyteusis, the Property was occupied by Government, HSBC's obligation to undertake reconversion works prior to the termination of the emphyteusis would disrupt the peaceful occupation of the Property for some time. On the other hand, if Government assumed the burden of this condition, the Government would be exposed to the aforementioned contingent liability, whereas if Government expropriated the building the 'value' of the condition might also be taken into consideration in establishing the value of the Property. Moreover, under this scenario, the Attorney General noted that the direct owners might argue that with expropriation, they would have been deprived not only of the Property in its present state, but also of their right to demand its reconversion to its original state. This could lead to the value of the Property being based on a reconverted premises. The Attorney General argued that it would be prudent to obtain an estimate of the works that would have to be carried out and what expense

would be incurred in order to comply with this condition.

2.4.8 The Attorney General indicated that, in the circumstances, unless HSBC managed to cancel the condition before it transferred the Property to Government, the options available to Government were either:

- a. to acquire the Property on lease from HSBC, with the Bank remaining the emphyteuta, possibly with an option available to Government for the acquisition of the emphyteusis at any time during the lease at a nominal price; or
- b. to acquire the emphyteusis from HSBC with a clear condition in the contract that the Bank would indemnify Government against all effects of the reintegration condition, whenever they arise.

2.4.9 In a reply dated 8 May 2011, the DG GPD noted that, although the first option was not that preferred by HSBC, the Bank had originally cited an annual charge that it was willing to accept should Government decide to lease the Property. However, this option was deemed more costly to Government and the DG GPD considered this as viable only if it was the intention of Government to utilise the Property on a temporary basis while the refurbishment of another government-owned property was carried out. Furthermore, resorting to this option would somewhat complicate the negotiating process as Properties 233, 236 and 237 were being negotiated as one. The DG GPD recommended resorting to the second option proposed by the Attorney General. In correspondence submitted later that day, the PS Revenues and Land also indicated his agreement with the second option. To this end, the PS Revenues and Land instructed the DG GPD to discuss this way forward with HSBC.

2.4.10 In correspondence submitted to the Permanent Secretary MFEI prior to, or on 1 June 2011,⁸ the DG GPD indicated that, following the financial negotiations with HSBC, it transpired that a proviso in the emphyteutical deed regarding Property 233 stipulated that, at the end of the emphyteutical grant, the Property was to be restored, by the emphyteuta, to its original state in 1900.

2.4.11 The DG GPD further stated that, even though the likelihood of the owners requesting that the Property be restored to its original state was remote, it was still a contingent liability that could not be ignored. Therefore, in a meeting with the Attorney General, two possible options were identified:

- a. either that the GPD and HSBC carry out a joint estimate of the costs involved to revert the Property, in thirteen years' time, to its 1900 state. A side letter would be drafted where HSBC would agree to indemnify this amount to Government; or
- b. HSBC would inform the owners of the Bank's intention to transfer the remaining term of the emphyteusis to Government and request the deletion of this condition. Such a course of action would result in a consideration that was to be agreed between HSBC and the owners.

The DG also noted that, assuming that HSBC agreed with the second option, but that the amount requested by the owners was considered prohibitive by the Bank, then the direction of the Permanent Secretary MFEI would be requested as to whether the Negotiation Group was to proceed with the first option.

⁸ The date of this email was not shown in the GPD file provided to this Office; however, it must have been submitted either prior to or on 1 June 2011, that is, the date of the reply by the Permanent Secretary MFEI.

2.4.12 On 1 June 2011, the Permanent Secretary MFEI replied stating that the second alternative was preferred, as the first option would give the 'opters' a strong bargaining position. In case the first option was adopted, the Permanent Secretary MFEI stated that HSBC would have to guarantee all uncapped costs as otherwise Government would be exposed in this respect. The Permanent Secretary MFEI was of the opinion that it was difficult to draw up a reliable estimate of the cost involved to restore the Property to its original state 13 years hence. Most likely, the estimate would be on the low side. Furthermore, the first option would work in favour of HSBC and would expose Government to harsh and justified criticism. Therefore, unless a full, uncapped and irrevocable indemnity was provided, Government would not agree to this option. The DG GPD acknowledged that stated by the Permanent Secretary MFEI.

2.4.13 This matter was followed up on 8 June 2011, when the DG GPD informed the Permanent Secretary MFEI that HSBC had verbally indicated that the Bank was willing to cover any potential financial claims raised by the owners at the end of the lease period for all or any structural changes made to the Property to date. On 10 June 2011, the Permanent Secretary MFEI requested that a written declaration to this effect be provided by HSBC and that the Negotiation Group was to submit its final report, presumably capturing these developments since a final report had already been submitted. On the same day, the Head of Secretariat of the PS Revenues and Land who, together with the PS for Revenues and Land and the Attorney General, had been copied in this exchange of correspondence, enquired with the DG GPD whether he would be following up the matter with HSBC. The DG GPD indicated to the Head of Secretariat that HSBC was to obtain formal permission from its Head Office, yet instructed a GPD Legal Officer to draft the provision ensuring that HSBC extended a full, uncapped and irrevocable indemnity, which draft was to be forwarded to the Attorney General for review and approval. This was to be submitted to HSBC for insertion in the eventual contract of sale.

2.4.14 On 11 June 2011, the DG GPD submitted the requested final report to the Permanent Secretary MFEI, duly endorsed by the Negotiation Group. A number of salient points were outlined in the correspondence submitted by the DG GPD. Of relevance to this matter was the reiteration of developments relating to the issue of indemnity by the DG GPD to the Permanent Secretary. According to the DG GPD, HSBC had indicated that the Bank would provide an unqualified guarantee to cover any financial contingency. However, HSBC also stated that the Bank would cover all alterations up to the date of the property transfer to the Government and indemnity-related responsibility for any alterations carried out thereafter would be borne by Government. The DG GPD confirmed that HSBC were still awaiting formal approval from Head Office and that he had instructed a GPD Legal Officer to draft a provision for inclusion in the contract of sale to this effect. In addition, the DG GPD recommended that a detailed assessment of the building's structure be carried out in order to establish a record of the state of the Properties at the time.

2.4.15 The NAO reviewed the report submitted by the DG GPD on 11 June 2011 against that submitted on 28 April 2011. This Office established that both versions of the report were consistent, barring reference to the valuation drawn up by the Consultant Architect A. In the 28 April 2011 report, reference to this valuation was made, albeit erroneously cited, as elaborated in paragraph 2.2.7. However, reference to this valuation was omitted in the report submitted to the Permanent Secretary MFEI on 11 June 2011. It was in this context that the DG GPD sought the direction of the Permanent Secretary MFEI on whether an assessment of the building structure was to be carried out and whether in agreement with the intended course of action regarding the issue of indemnity (referred to in paragraph 2.4.13).

- 2.4.16 On 12 June 2011, the Permanent Secretary MFEI acknowledged receipt of the final report submitted by the DG GPD and raised a number of issues relating to the acquisition. This correspondence was also submitted to the Minister MFEI, the PS Revenues and Land and the latter's Head of Secretariat. The Permanent Secretary MFEI insisted that Government was not to proceed prior to securing the required indemnity by HSBC in favour of Government. Also indicated was that the Permanent Secretary MFEI would inform the Minister MFEI of the outcome of the negotiations and instructed the DG GPD to prepare a draft Cabinet Memorandum in the event that the Minister sought the approval of Cabinet.
- 2.4.17 The matter of referral to Cabinet was again brought up by the Permanent Secretary MFEI in correspondence subsequently submitted to the Minister MFEI, the PS Revenues and Land, the latter's Head of Secretariat and the DG GPD on 13 June 2011. In essence, the Permanent Secretary MFEI reiterated that a Cabinet Memorandum was to be prepared if the matter was to be accordingly referred. The Permanent Secretary MFEI indicated that, in his opinion, the issue was to be referred to Cabinet.
- 2.4.18 Of importance was an additional point raised by the Permanent Secretary MFEI regarding the condition of the Properties cited in the correspondence of 12 June 2011. The Permanent Secretary MFEI made reference to that stated in the report submitted by the DG GPD, wherein it was indicated that the Properties were in a good condition and that only minor repair and upkeep works were required. However, in covering correspondence submitted therewith, the DG GPD indicated that a detailed assessment of the Properties was to be carried out in order to crystallise the existing situation. The Permanent Secretary MFEI remarked that, in his understanding, such an assessment would have already been carried out as part of the acquisition negotiations. To this end, and prior to providing final approval for the proposed transaction, the Permanent Secretary MFEI instructed the DG GPD to immediately carry out the required survey. It must be noted that this issue assumes central importance in renewed negotiations between Government and HSBC and is addressed in section 2.6 of the report.
- 2.4.19 Subsequent clarifications were provided by the DG GPD, wherein he indicated that the existing condition of the Property was to be established in order to safeguard Government's position regarding the obligation of reconverting the Property to its original state. The DG GPD argued that any structural alterations undertaken by Government during its occupation of the Property would not be covered by HSBC. This was the reason why a report on the existing structure was required. In this context, the DG GPD indicated that the services of the Consultant Architect A and the Consultant Architect B would be sought in drawing up the said report. Discussions in this and subsequent correspondence centred on whether Government was to enter into a promise of sale agreement or directly proceed to a contract for the acquisition of the Properties. However, this matter is addressed in section 2.5 of this report.

Claim for Compensation in terms of the War Damage Ordinance

- 2.4.20 According to correspondence dated 13 May 2011 submitted by a GPD Legal Officer to the DG GPD, searches undertaken in the registers of the war damage fund unearthed a claim that had been made by Barclays Bank Ltd for compensation in respect of Property 233 in terms of Section 62 of the War Damage Ordinance. This claim had been approved on 31 May 1944 for works to be carried out on tenement 233 Kingsway (now Republic Street), Valletta to a total value of £427 (valued at approximately €8,000 in today's terms). However, there was no plan or detailed description of the works on file. Copied in this email was the Attorney General.

2.4.21 In the reply submitted on the same day, the DG GPD indicated that this, and the fact that the original owners had never contested these improvements, further decreased the probability of a negative outcome should the owners seek to obtain any form of damages for not restoring Property 233 to the 1900 state on the expiry of the emphyteutical term. The DG GPD recommended that this matter was not to be brought to the attention of HSBC. Again, the correspondence was copied to the Attorney General.

Other Issues

2.4.22 In the correspondence submitted by the DG GPD on 11 June 2011, paragraph 2.4.14 refers, issues relating to accessibility were raised. The DG GPD indicated that the Negotiation Group had the tacit approval of the Consultant Architect B, a member of the Group, regarding the required sanctioning by the KNPD. Although the NAO was not provided with documentation indicating the requested guidance, the Permanent Secretary MFEI informed this Office that in his opinion, matters of this nature were to be guided through ensuring compliance with applicable legislation and not through his authorisation.

2.5 The Draft Promise of Sale Agreement

2.5.1 Also stated in the correspondence submitted on 11 June 2011 by the DG GPD to the Permanent Secretary MFEI was the fact that HSBC preferred to enter directly into a contract of sale, thereby bypassing the interim promise of sale agreement. The DG GPD requested further direction from the Permanent Secretary MFEI regarding the course of action to be pursued in this respect. Copied in this and subsequent exchanges were the Minister MFEI, the PS Revenues and Land and the latter's Head of Secretariat.

2.5.2 In response, on 12 June 2011, the Permanent Secretary MFEI indicated preference to enter into a promise of sale agreement for a few months. Notwithstanding this, the DG GPD stated that, since the agreement was with a bank, in all probability, all searches would be in order and up to date. Moreover, the DG GPD added that, provided funds were not a problem, there was nothing to be gained from a promise of sale, especially if Government was not allowed to start refurbishing works during this period.

2.5.3 The PS Revenues and Land replied later that day, commenting that while, ideally, the contract would be entered into immediately, it would be prudent to first enter into a promise of sale agreement. Further commenting in this respect, the PS Revenues and Land indicated that when the GPD ascertained that all searches were in order, the contract could be finalised shortly thereafter. With respect to the contract of emphyteusis of Property 233, the PS Revenues and Land asserted that a promise of sale was not entered into in contracts of this nature. Therefore, the PS Revenues and Land recommended that a contract be entered into after securing the guarantees and indemnity requested by the Permanent Secretary MFEI. On 13 June 2011, the Permanent Secretary MFEI reiterated that Government was to ascertain that all was in order irrespective of the fact that the third party was a bank.

2.5.4 Following guidance provided by the Permanent Secretary MFEI regarding Government's preference to enter into a promise of sale agreement, a draft was submitted by HSBC to the DG GPD on 20 June 2011. According to the draft promise of sale agreement, the Bank bound itself to grant on sub-emphyteusis and sell and transfer to Government, as Purchaser:

- a. the temporary utile dominium until 30 May 2023 of the property at 233 Republic Street, Valletta, with all its rights and appurtenances and with vacant possession; and
- b. the properties at 236 and 237 Republic Street, Valletta, free and unencumbered with all their rights and appurtenances.

2.5.5 The consideration for the sale of the Properties was indicated as:

- a. for Property 233, the sum of €1,066,482; and
- b. for Properties 236 and 237, the sum of €1,293,518.

A deposit of €236,000 was to be paid by Government on the signing of the promise of sale agreement. The deposit would be forfeited in favour of the Bank by way of pre-liquidated damages should the Purchaser fail to appear on the final contract of sale for no valid reason at law before the expiry date of this agreement. The balance of price, amounting to €2,124,000, was to be paid by Government on the final contract of sale.

2.5.6 According to the draft promise of sale agreement, the sale of the temporary utile dominium of Property 233 was subject to a number of conditions. These were that:

- a. the property was subject to the annual temporary ground rent of €69,071, payable in advance and reviewable every five years. HSBC had paid the ground rent due up to 30 June 2011; Government was to be responsible for the payment of the lease as from 1 July 2011 onwards;
- b. Government was aware and accepted the terms and conditions of the original deed of temporary emphyteusis dated 1 March 1910, as extended by the deeds of 1 March 1926 and 21 December 1988;
- c. Government was to insure the Property at its expense against damage/ destruction by fire and/or other perils, as normally covered under a standard fire insurance policy. Furthermore, a public liability insurance cover in respect of the Property was to be obtained. The Government was to furnish HSBC with a copy of the relative insurance policies and endorsements showing that the policies were in force. The insurers were to notify the Bank in writing 60 days before such insurances were cancelled or materially altered. If the Government was in default in taking out or in maintaining any policy, then HSBC was entitled to take out or renew the required policy itself at the cost of Government;
- d. Government could not effect any structural alterations to Property 233 without the written consent of HSBC. These, however, did not include any works related to the regular upkeep, maintenance or internal removable partitioning of the Property. Notwithstanding this, any improvements effected by Government would accrue to the benefit of the Bank without any right of compensation;
- e. Government agreed to waive all immunity including:
 - i. the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
 - ii. the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.

- 2.5.7 On its part, HSBC was warranting the peaceful possession and real enjoyment of all the Properties in terms of law by means of a general hypothec over all its property, in favour of Government. The warranty for peaceful possession was to be limited to the consideration paid. In case of a partial eviction from any one of the Properties, the maximum liability of the Bank would be reduced pro rata to the percentage of the consideration equivalent to the percentage loss in value due to the partial eviction from the particular Property.
- 2.5.8 The Properties were being sold tale quale in their present state and condition, as seen and examined by Government as the Purchaser. All outstanding bills for rentals and consumption of utilities supplied to the Properties up to the date of publication of the final contract of sale were to be at the charge of the Bank. Moreover, no brokerage fees were due. While the fees and expenses in connection with the final contract of sale and duty on documents and transfers were to be borne by the Purchaser, the Bank was to pay capital gains tax.
- 2.5.9 The sale of the Properties included all furniture, fittings and fixtures on site, which were being sold tale quale. HSBC gave no warranty concerning these movables and excluded the warranty for latent defects. A list of all movable property was to be drawn up and included in the contract of sale. The value of the movable property was established as €350,050, and this amount was included in the consideration.⁹ The NAO noted that no reference to movables had been made prior to the inclusion of this clause in the draft agreement. Moreover, this Office has reservations regarding the fact that the value of the movables was determined even before a list of such items was drawn up and their condition ascertained.
- 2.5.10 On 6 July 2011, the DG GPD sent the revised draft of the promise of sale agreement to the Attorney General for review, reflecting a number of corrections and modifications that had been agreed to in a prior meeting. The DG GPD also indicated that, in the meantime, an engineer was to be commissioned to inspect and report on the state of repair of the movables and that a detailed plan to reflect the present structure was to be prepared.
- 2.5.11 The Attorney General submitted the revised draft to the DG GPD on 11 July 2011. In sum, the salient amendments made by the GPD and the Attorney General to the draft promise of sale agreement were:
- a. that the consideration for the grant of the sub-utile dominium of Property 233 was €511,499, for the sale of Properties 236 and 237 was €1,498,451, while the sum payable for the movable property was €350,050;
 - b. that Government was to be responsible for the payment of the ground rent in respect of Property 233 as from 1 August 2011;
 - c. the inclusion that Government was aware and accepted the terms and conditions of the original deed of temporary emphyteusis dated 1 March 1910, and as subsequently extended only insofar as these are relevant to Government's situation as sub-emphyteuta;
 - d. the deletion of the clause indicating Government's obligation to insure the Properties and obtain public liability insurance cover;

⁹ The draft promise of sale included other conditions that were eventually removed following internal consultation by Government. One condition related to Government's obligation to inform the landlord and be acknowledged as the emphyteuta. Another related to the imposition that the Properties be transferred together unless otherwise agreed by the parties.

- e. the deletion of the immunity clause (cited in paragraph 2.5.6(e));
- f. the addition that the Bank was to hand over the keys of the Properties to Government on the signing of the contract of sale; and
- g. the deletion that the warranty for the peaceful possession of the Properties by the Purchaser was limited to the consideration. In case of a partial eviction from any one of the properties, the maximum liability of the Bank was to be reduced pro rata to the percentage of the consideration equivalent to the percentage loss in value due to the partial eviction from that particular property.

2.5.12 A significant revision made to the draft agreement by the GPD and the Attorney General related to the asking price. Although, in total, the asking price of €2,360,000 remained unchanged, the consideration payable in respect of the Properties differed to that stated by HSBC. In respect of Property 233, the value cited by HSBC in its draft promise of sale was €1,066,482, while that indicated by the GPD and the Attorney General was reduced to €511,499. On the other hand, in the case of Properties 236 and 237, the value was increased from the €1,293,518 proposed by HSBC to €1,498,451 as revised by the GPD and the Attorney General. Moreover, the cost of the movable property was cited independently from that of the immovable properties following the revisions made by the GPD and the Attorney General. Queries addressed to the DG GPD regarding the rationale behind these changes remained unanswered, as the DG could not recall relevant details.

2.5.13 On 12 July 2011, the DG GPD submitted a draft promise of sale agreement for the acquisition of Property 233 on a sub-emphyteutical basis and Properties 236 and 237 on a freehold basis to the Permanent Secretary MFEI. With respect to Property 233, the DG GPD indicated that the remaining duration of the lease was 12 years and would terminate on 30 May 2023, wherein the tenement would revert to HSBC. Further to the final report on the acquisition endorsed by the Negotiating Committee, the DG GPD indicated that the agreed price for the Properties was as follows (Box 1 refers):

Box 1: Agreed price structure as indicated to Permanent Secretary MFEI

| | | |
|---------------------------------------|------------|---------------------|
| 233 Republic Street, Valletta | €511,499 | (premium) |
| 236 and 237 Republic Street, Valletta | €1,498,451 | (outright purchase) |
| | €350,050 | (movables) |
| Agreed price | €2,360,000 | |

2.5.14 The DG GPD also included a list of the payments in respect of ground rent that would have to be made relating to Property 233. In total, these amounted to €930,827 until 2023, payable as follows (Table 11 refers):

Table 11: Rent payable for Property 233 as indicated to the Permanent Secretary MFEI

| Years | Emphyteusis 'rent' per annum (€) | Total (€) |
|-----------|----------------------------------|-----------|
| 2012-2013 | 69,071 | 138,141 |
| 2014-2018 | 74,381 | 371,907 |
| 2019-2023 | 84,156 | 420,779 |
| Total | | 930,827 |

2.5.15 According to the DG GPD, a report was being drawn up on the state of the M&E plant by the competent experts, which was to be completed prior to the final acquisition. The DG GPD also indicated that a list of movables, with a book value of €350,050,

would be annexed to the contract. It was also noted that, up to a few weeks before, the premises had been utilised by HSBC and that the Properties required some renovation and needed to be rendered fully KNPD-compliant. However, according to the DG GPD, these matters had been factored in the financial consideration. The DG GPD also underlined the fact that Government had to vacate Property 233 by 30 May 2023, failing which, Government would be exposed to unquantified liability for the structural alterations made during the last circa 130 years. Finally, the direction of the Permanent Secretary MFEI as to the way forward was requested.

2.5.16 On 13 July 2011, the Permanent Secretary MFEI replied to the request for guidance made by the DG GPD, seeking to establish whether the provision for movables was an additional cost to Government or otherwise. Furthermore, the Permanent Secretary MFEI enquired about the anticipated impact that the M&E report was likely to have on Government's final position, commenting that this issue was to be actively considered.

2.5.17 In response, on 15 July 2011, the DG GPD informed the Permanent Secretary MFEI that the price of the movables was included in the overall consideration. Providing additional context in this respect, the DG GPD indicated that after agreement on price was reached, HSBC apportioned the amount into immovables and movables. The DG GPD attributed this to two possible motives: to reduce tax payable or to account for the true book value of the movable property. According to the DG GPD, this apportionment was of benefit to Government since the overall final consideration for the immovable property would be considerably reduced and commented that this would '*look better on the contract of transfer.*' With respect to the M&E report, the DG GPD indicated that this had been commissioned. The report was to ascertain whether the M&E fixtures were in good working order, in effect verifying that claimed by HSBC. Should the report prove otherwise, then the DG GPD maintained that the Bank would have to rectify matters. Acknowledging the importance of this process, the DG GPD stated that the report could be compiled within the promise of sale agreement period. Implied in that stated by the DG GPD was that the promise of sale would be subject to this condition – that the fittings were in good working order – particularly so in view of the fact that a value for these fittings (€350,050) had been assigned by HSBC.

2.5.18 In guidance submitted to the DG GPD on 25 July 2011, the Permanent Secretary stated that the Government's position on the price for the movable property was to be based on the M&E report. The Permanent Secretary MFEI further noted that it would be imprudent to commit before having all the required reports, particularly when the moveable property constituted 15 per cent of the final price.

2.6 The Movables, M&E and Power Supply Issues

2.6.1 In the interim, the DG GPD sought the assistance of the Consultant Architect B in formulating the terms of reference for the M&E plant survey. On 22 July 2011, the Consultant Architect B submitted the proposed terms of reference to the DG GPD. These comprised:

- a. the identification of all M&E plant servicing the properties;
- b. a general description of the plant;
- c. the adequacy of the existing plant to service the operational requirements of the building to accommodate general office use;

- d. a general description of the condition of the plant including its (approximate) age and serviceable life;
- e. identification of any repairs;
- f. identification of maintenance regimes and programmes for the plant;
- g. the estimated plant's current value;
- h. the estimated cost for the replacement of any item of plant;
- i. the estimated cost of any additional items of plant necessary for the building's operational requirements; and
- j. the estimated cost of the maintenance programme.

The report was to be concluded within one week from commissioning. The NAO established that the M&E report was to be compiled by a Consultant Engineer engaged by the DCS MFEI following consultation with the DG GPD on 26 July 2011.

- 2.6.2 Simultaneously, a GPD Architect was tasked with the responsibility for the evaluation and verification of the inventory listed by HSBC and submitted to the GPD. According to this inventory list, the value of movables was €352,126. According to correspondence submitted by the DG GPD on 28 July 2011, the GPD Architect was to be assisted by the DCS MFEI and the Head of Corporate Services at the Office of the Attorney General.¹⁰ To this end, a meeting was held on site on 2 August 2011.
- 2.6.3 The report, titled 'Survey of Electrical, Extra Low Voltage and Mechanical Installations at Properties Nos. 236/237 and 233 Republic Street Valletta', dated 8 August 2011, was submitted to the DG GPD on 11 August 2011. The report detailed the inspection of the plant, highlighting any shortcomings and establishing present condition, expected remaining service of life, costs for repairs, upgrades and replacements necessary in providing a fully functional and reliable service installation. The report also established the extent of maintenance required, essential in retaining the plant in good working order.
- 2.6.4 In sum, the estimated value of M&E plant was just over €500,000; however, due to the condition of the services, the current value was revised to €191,019. Reference was made to the fact that a number of services required major or minor intervention for an acceptable and reliable service to be ensured, as well as replacements resulting from the expiry of systems. In total, the cost of replacement and necessary upgrades amounted to €269,600 (excluding VAT). The major cost components related to the replacement of obsolete air-conditioning units, the installation of a lift and the modification/upgrade of lighting luminaires. The projections made no provision for the reinstatement and set up of systems for access control, building management, security surveillance as well as energy monitoring and management.
- 2.6.5 Following the submission of the M&E report by the Consultant Engineer, the DG GPD enquired whether €269,000 was required to render the plant to an acceptable operating level. The Consultant Engineer confirmed this understanding yet made reference to other exclusions aside from those cited in the report. The additional exclusions related to voice and data networks, mainly, the re-routing of data cabling

¹⁰ The official referred to as Head of Corporate Services was Head of Administration prior to end 2011; however, is referred to as Head of Corporate Services throughout the report.

and the provision of active equipment.

2.6.6 The Negotiation Group and the GPD Architect met on 12 August 2011 to discuss the implications of the M&E report. Following this meeting, the Consultant Engineer was requested to categorise the items that required replacement or upgrading as follows:

- a. items that were not legally compliant, and when they became so in order to establish if they were so when occupied by HSBC;
- b. items that were unsafe;
- c. items that did not necessarily need to be changed except to upgrade for efficiency's sake; and
- d. obsolete items.

2.6.7 In reply, the Consultant Engineer specified that:

- a. Not legally compliant
At the time of installation all the plant was legally compliant; however, since most of the installations had exceeded their lifespan, these had become redundant. Specifically, reference in this respect was made to the air-conditioning systems and the residual current device protection absent on 80 per cent of the installations. While the lighting fixtures were not power factor corrected and equipped with magnetic ballast, this was not illegal. On the other hand, the installations above the soffit were not properly terminated, hence illegal.
- b. Unsafe installations
The unsafe installations listed comprised the lack of residual current device protection, improper installations above soffit, missing internal components of floor recessed power outlets and roof level electrical installation.
- c. Installations recommended for efficiency upgrade
The installations recommended for change in this respect addressed the reliability and security of service. Such upgrades entailed the replacement of these services with updated technology that would eventually result in a desirable efficiency operational level in accordance with current practices.
- d. Non-operational installations
A number of non-operational installations were noted, yet these were isolated and did not have an overall effect on the entire installation. These were brought to the attention of the Bank's servicing department, who took immediate action to rectify matters. These included split type air-conditioning units, lighting units and air-conditioning controllers. Nonetheless, the Consultant Engineer expected frequent breakdowns of these installations and equipment given that their lifespan had been exceeded.

2.6.8 Following further discussions by the Negotiation Group, the DG GPD reported developments regarding movables, M&E plant and power supply to the Permanent Secretary MFEI on 27 August 2011. Also in copy were the other members of the Negotiation Group, the Head of Corporate Services at the Office of the Attorney General and the GPD Architect. With regard to movables, the DG GPD stated that HSBC had submitted a detailed list of the movable property and corresponding values (paragraph 2.6.2 refers). After review, the Negotiation Group deemed the movable items worth less than €20,000. The remaining inventory was termed as immovable

by the DG GPD and understood as comprising fixtures and fittings. In this context, the DG GPD argued that it would be erroneous and misleading to consider the €352,000 worth of items as movable property in the proposed acquisition contract.

2.6.9 With respect to M&E plant, the DG GPD informed the Permanent Secretary MFEI that the report prepared by the Consultant Engineer on the electrical, extra low voltage and mechanical installations at Properties 233, 236 and 237 had exposed a number of shortcomings. According to this report, the budgeted cost to upgrade the systems amounted to €269,600; however, some upgrades were optional, addressing environmental consideration and energy efficiency issues. Excluding these optional upgrades, the cost of replacement and essential upgrades to the M&E systems amounted to €195,200. In this sense, the DG GPD stated that an additional expense of approximately €200,000 would be required, although this did not take into consideration the costs of optional upgrades and the increased cost of maintenance. This situation contrasted with the understanding conveyed by HSBC to the Negotiation Group. While the Negotiation Group was aware that the Properties were to be acquired in a tale quale condition, the Bank had stated that the M&E services were in good working order and that HSBC had been using the premises until very recently. To the Negotiation Group, this implied that, should Government relocate employees to the Properties, this would be possible as the M&E systems were safe, in working order and compliant to the prevailing regulations, and would be so for a considerable period given the appropriate maintenance.

2.6.10 Finally, the attention of the Permanent Secretary MFEI was drawn to the Bank's intention to downgrade the electricity supply of the Properties from 250 to 200 amps utilising an old feeder cable, the condition of which was unknown. The DG GPD indicated that this downgrade could render the Properties prone to power failures, especially during the peak summer months. HSBC had also indicated that a recent substation constructed on its adjacent property was to be utilised exclusively by the Bank.

2.6.11 The direction of the Permanent Secretary MFEI was requested in relation to the above concerns. Specifically, the DG GPD sought guidance relating to:

- a. which party was to fund the €200,000 additional expense required to ensure the proper basic functioning of the M&E plant;
- b. the issue of power supply, requesting confirmation, or otherwise, that the acquisition be subject to HSBC ascertaining adequate power supply to the Properties; and
- c. the consideration being included as one amount, with no distinction between the movables and immovables.

2.6.12 The Permanent Secretary MFEI provided guidance to the DG GPD on 28 August 2011, copying in the recipients included in earlier exchanges. In essence, the Permanent Secretary MFEI stated that no distinction between movable and immovable property should be made in the final contract. Given the outcome of the enquiries carried out by the Negotiation Group, the Permanent Secretary MFEI indicated his unease with such a distinction, maintaining that this made no sense whatsoever. Furthermore, the Permanent Secretary MFEI stated that the price should be reduced by €250,000 to account for the inadequacies in the M&E installations. In the strongest of terms, the Permanent Secretary MFEI indicated that the Negotiation Group was misled to believe that these services did not require any upgrading whereas in fact they did.

2.6.13 The DG GPD agreed with the guidance provided by the Permanent Secretary MFEI and discussed the way forward, possibly through the submission of a memo to HSBC or a meeting with the Bank. The latter option was preferred and according to that stated by the DG GPD in correspondence submitted to the PS Revenues and Land and his Head of Secretariat, a meeting was scheduled for 30 August 2011.

2.6.14 Following this meeting, a summary of outstanding issues was submitted to HSBC by the DG GPD on 31 August 2011, subsequently forwarded to the Permanent Secretary MFEI. The DG GPD noted that the Properties were being acquired on a tale quale basis, with an understanding that the M&E plant was in good working order and that the Properties were fit for immediate occupation. Notwithstanding this, the understanding imparted by HSBC proved to be inconsistent with that established following a survey by Government's Consultant Engineer. First, HSBC had requested that a portion of the purchase price be attributed to movable items and had provided the Government with an inventory of these items. Following a survey of the building and an analysis of the movable items, the Government deemed that only about €10,000 worth of items could be classified as movable. Furthermore, the Consultant Engineer's report regarding the M&E plant specified that, contrary to what was being assumed, the plant was not in a safe and/or operational condition. A list of the items deemed unsafe, non-operational, not installed to current regulations, or missing, and the costs involved to rectify such shortcomings, amounting to €195,200, was provided. Aside from these required replacements and essential upgrades, reference was made to the fact that upgrading all M&E systems (including optional upgrades) would cost €269,600. In addition, the report outlined that HSBC intended to downgrade the Properties' electricity supply from 250 to 200 amps, which could result in an increased likelihood of power failures.

2.6.15 In view of the above, the Government requested that:

- a. the price of movable items be incorporated in the overall consideration;
- b. the final offer of €2,360,000 be reduced by €270,000 to account for the inadequacies in the M&E installations; and
- c. the acquisition be made on condition that an adequate power supply is provided.

2.6.16 Based on correspondence reviewed, the NAO established that the Negotiation Group and HSBC met on 5 September 2011. The outcome of this meeting was reported to the Permanent Secretary MFEI in correspondence submitted by the DG GPD that same day, copying other members of the Negotiation Group. According to the DG GPD:

- a. HSBC accepted that the price for movable items be incorporated in the overall consideration;
- b. HSBC maintained that the proposed supply was adequate to meet the energy demands of the proposed offices. Nevertheless, the Government's Consultant Engineer and the HSBC Engineer were to liaise regarding this matter; and
- c. HSBC strongly objected to the proposed reduction of €270,000 to account for deficiencies identified with respect to the M&E plant. HSBC argued that negotiations were carried out on a tale quale basis. The DG GPD stated that he had reiterated that the Negotiation Group was given the impression that the plant was in good working order. Although HSBC agreed to fund some minor expenses,

amounting to €25,000, the Bank did not agree to shoulder expenses relating to the installation of a new air-conditioning system and the rewiring of the passive data network, estimated at €165,000.

- 2.6.17 Also cited in the correspondence submitted by the DG GPD on 5 September 2011 was the fact that HSBC had indicated that should the deal not be concluded by the end of September 2011, the Bank would actively seek other tenants. The direction of the Permanent Secretary MFEI was requested.
- 2.6.18 On 6 September 2011, the DG GPD informed the PS Revenues and Land that, following direction provided by the Permanent Secretary MFEI, the costs relating to the replacement and essential upgrades to the M&E systems, amounting to €195,200, were to be borne by HSBC. The attention of the PS Revenues and Land was also drawn by the Head of Secretariat to the possibility that the cost to upgrade all M&E systems would amount to €270,000. Also in copy in this correspondence was the DG GPD.
- 2.6.19 The Government's position was communicated by the DG GPD to HSBC on 6 September 2011. Here, it was indicated that Government was limiting its claim to those items that had been identified by its Consultant Engineer as not legally compliant, reliable or usable. Therefore, Government proposed a reduction of €195,000 from the final offer to make good for the items that were to be replaced or upgraded at the outset, should Government acquire the Properties. In addition, the DG GPD confirmed Government's agreement to that proposed by HSBC with respect to the means of resolution of this outstanding issue and the matter relating to the adequacy of power supply. In this regard, the Bank's Engineer and Government's Consultant Engineer were to meet and resolve matters on a technical level. To this end, a copy of the M&E report was made available to HSBC on 7 September 2011 following a request made by the Bank.
- 2.6.20 The meeting was held on 14 September 2011, for which the DCS MFEI was also present. Points raised during this meeting were reported on by the DCS MFEI to the Permanent Secretary MFEI and the DG GPD. In essence, the DCS MFEI stated that:
- a. HSBC insisted that the Properties were being sold tale quale and that the expenses for the necessary upgrades in the M&E services were to be borne by Government. HSBC reiterated that all these services were in working order yet refrained from providing a minimum of one-year guarantee on their operation. In the opinion of the DCS MFEI, the services would have to be replaced prior to the relocation of employees, or else a management by crisis situation with respect to services would exist. This implied that an additional expense of approximately €250,000 would have to be incurred by Government in order to render the Properties functional and that this would result in a delay of approximately six months before the Properties could be relocated to;
 - b. the Engineers representing both parties agreed that the feeder cable to be utilised was at least 25 years old and its condition was unknown. HSBC was in the process of shifting the power supply feeding the Properties onto this cable and it was only then that the exact amperage and condition could be determined. According to the Consultant Engineer, although it was possible that this cable supplied more than 200 amps, there would be no room for possible expansion should this not be the case;
 - c. removed fire extinguishers would not be replaced by HSBC; and
 - d. the increase of office floor space was possible through the construction of platforms at each floor level in the atrium area.

2.6.21 On 15 September 2011, the Permanent Secretary MFEI informed the DCS MFEI that Government was to acquire the Properties tale quale but at a reduced price as in fact indicated in earlier correspondence. A summary of these matters was noted by the DG GPD in a minute to the Permanent Secretary MFEI dated 18 September 2011. According to that stated by the DG GPD, the only remaining outstanding issue was that relating to the replacement and essential upgrades to the M&E systems, estimated at €250,000 and representing a delay in relocation of around six months. In this context, the DG GPD questioned whether Government considered the accruing benefits to justify the additional costs of acquisition or whether the Negotiation Group should insist that the acquisition price be reduced by the amount required to render the M&E systems reliable.

2.6.22 Of particular interest to the NAO was correspondence exchanged between the DG GPD and the Permanent Secretary MFEI prior to this minute, that is, on 15 September 2011. In response to the direction afforded by the Permanent Secretary MFEI, that Government was to acquire the Properties tale quale but at a reduced price, the DG GPD noted that this course of action would be challenging. The Permanent Secretary MFEI emphasised the importance of pursuing this line of action, particularly in view of the procedural shortcomings manifest in negotiations undertaken by Government. Specific reference was made to the fact that after a price had been agreed to with the understanding that there were no matters of concern, this was later disproved. The Permanent Secretary MFEI maintained that this was procedurally unacceptable and would find it difficult to approve this transaction as this was indefensible. In reply, the DG GPD indicated agreement with that stated by the Permanent Secretary MFEI and claimed to have already vociferously expressed concerns in this respect. The DG GPD contended that objections raised by them would be construed, by the Administration, as having hindered and delayed the project. Of concern to the NAO was that subsequently submitted by the Permanent Secretary MFEI to the DG GPD, wherein it was stated that the Minister MFEI was in agreement with the Permanent Secretary and was not willing to assume responsibility for this decision.

2.6.23 On 20 September 2011, the PS Revenues and Land made enquiries regarding the status of the relocation with the Permanent Secretary MFEI in view of queries raised by the OPM. Cited in this correspondence was that the Prime Minister was insisting that the relocation of entities from the President's Palace was to be completed prior to the coming election. The PS Revenues and Land also indicated that he had been informed by the DG GPD that the final report by the Negotiation Group had been or was to be shortly submitted to the Permanent Secretary MFEI. It was in this context that the PS Revenues and Land requested the Permanent Secretary MFEI to indicate any developments registered, as these were to be brought to the attention of the Prime Minister prior to a final decision on the matter. In reply, the Permanent Secretary MFEI maintained that he was not prepared to approve the report that had been sent; however, he indicated that the PS Revenues and Land and the Minister MFEI were free to approve the transaction. In response, the PS Revenues and Land acknowledged that stated by the Permanent Secretary MFEI and suggested that a copy of the Negotiation Group report be submitted to the Minister MFEI and himself, for onward transmission to the Prime Minister, who was to provide relative guidance. The Permanent Secretary MFEI agreed with that proposed by the PS Revenues and Land yet reiterated that he would not recommend this transaction as matters were not in order. Moreover, the Permanent Secretary MFEI noted that the Negotiation Group was aware of these concerns and argued that the public ought not to pay approximately €300,000 needlessly. The Permanent Secretary MFEI argued that his stance on the transaction had long been declared and that he had raised concerns about the matter much earlier in the process. Finally, the Permanent Secretary MFEI stated that he would provide the PS Revenues and Land with a copy of the Negotiation

Group report on the following day, that is, 21 September 2011.

- 2.6.24 The concerns expressed by the Permanent Secretary MFEI in the preceding paragraphs were captured in a minute to the Minister MFEI, through the PS Revenues and Land, on 21 September 2011. The Permanent Secretary MFEI expressed concerns with respect to the process of acquisition of the Properties. Citing previous instances where these concerns were raised, the Permanent Secretary MFEI noted that the Negotiation Group had agreed to acquire the Properties *'tale quale on an understanding that all M&E plant was in good working order and the property was fit for immediate occupation'* for the all-inclusive value of €2,360,000. After having agreed to this acquisition, the Negotiation Group engaged an Engineer to report on the state of repair of the M&E installations. In order to repair and/or upgrade these installations, Government was to incur an estimated additional amount of €250,000. The Permanent Secretary MFEI concluded his statement of facts by stating that the assumption that the Properties were available for immediate occupation had been disproved. Furthermore, unless the repairs and/or upgrading works were carried out, the Properties were not likely to have the necessary operational efficiency required by Government.
- 2.6.25 Elaborating on concerns raised, the Permanent Secretary MFEI stated that the engineering report should have been commissioned prior to any agreement with HSBC. This report was a pre-requisite for informed negotiations and would have avoided the inherent contradiction evident in the condition set by the Negotiation Group of a *'tale quale'* acquisition *'on an understanding that the M&E plant was in good working condition...'*. The Permanent Secretary MFEI maintained that this position was legally untenable because once it was agreed to acquire *tale quale*, that acceptance would render any subsequent claims futile. The agreement to the acquisition in a *tale quale* condition prior to the commissioning of the engineering report was procedurally incorrect. This procedural error would result in an inflated acquisition price and represent an additional expense for Government in order to render the Properties amenable for their intended use. One could argue that the negotiated price was overstated by around 11 per cent. The Permanent Secretary MFEI observed that the way the negotiations developed and their outcome would likely result in adverse comments by any third party observer and most likely would not escape the censure of the NAO and the PAC. Moreover, the Permanent Secretary MFEI noted that once this situation was brought to his attention, he had instructed the Chair of the Negotiation Group to enter into further negotiations with HSBC in order to lower the proposed acquisition price by €270,000. However, HSBC was reluctant to do so because agreement for the acquisition of these premises in a *tale quale* state had already been reached; therefore, the Government was trying to re-negotiate from a very weak position. The claimed *'understanding that all M&E plant were in good working order'* proved more than irrelevant when confronted with the stronger *'tale quale'* condition that was agreed to. In the circumstances, the Permanent Secretary MFEI stated that he was not convinced that Government was paying a fair price for the acquisition and felt duty-bound not to recommend the approval of this transaction.
- 2.6.26 In clarifications provided to the NAO, the Minister MFEI stated that the Permanent Secretary MFEI had discussed this impasse with him, indicating that this was the only instance when he had been informed of the negotiation proceedings. According to the Minister MFEI, although he was in agreement with the stance taken by the Permanent Secretary MFEI, Government required the Property and therefore negotiations could not be abandoned.
- 2.6.27 According to the DG GPD, following this minute, the Permanent Secretary MFEI had almost certainly instructed him to halt negotiations, which development was communicated to HSBC. Notwithstanding this, the DG GPD indicated that the Bank had subsequently contacted him and reduced the asking price by €100,000. The

DG GPD stated that he had informed the PS Revenues and Land and, possibly, the Permanent Secretary MFEI of this development.

2.6.28 Although the minute submitted by the Permanent Secretary MFEI was addressed to the Minister MFEI through the PS Revenues and Land, this was not acknowledged. Instead, the ensuing record on file was a minute by the PS Revenues and Land addressed to the DG GPD dated 3 October 2011. Therein, the PS Revenues and Land indicated that in view of the information provided in the interim by the DG GPD, that HSBC had lowered the requested price to account for the M&E works required, this fact was to be recorded on file prior to referral to the Minister MFEI. The NAO enquired whether referral by the DG GPD to the PS Revenues and Land of the €100,000 reduction contradicted that noted in paragraph 2.3.16, that direction was to be sought from the Permanent Secretary MFEI. In clarifications provided to this Office, the PS Revenues and Land stated that the fact that the DG GPD had informed him of this was not discordant with his previous direction, as such intervention did not equate to providing guidelines for negotiations. In addition, the NAO enquired whether the PS Revenues and Land was involved in negotiations leading to this reduction in asking price. The PS Revenues and Land categorically denied any involvement in this respect.

2.6.29 The DG GPD attended to that noted by the PS Revenues and Land and, on 4 October 2011, submitted a minute to the Minister MFEI, through the PS Revenues and Land and the Permanent Secretary MFEI. According to this minute, HSBC had verbally agreed to reduce the price by €100,000. The DG GPD made reference to the Consultant Engineer's report, citing that €195,000 was required to render the M&E plant legally compliant, usable and to an extent, ensure reliable operations. An additional €75,000 was needed to upgrade the M&E systems, including a KNPD-compliant lift and energy-saving lighting, which expense had been foreseen in the initial assessment. Therefore, the DG GPD noted that the remaining sum in dispute was €95,000. HSBC had also indicated that the Bank had submitted this offer on the understanding that the contract would be imminently finalised and that the ground rent would be paid pro rata until the date of agreement. HSBC stated that, unless Government agreed to these terms, the Bank would put the property on the market with immediate effect. The DG GPD stated that he had informed HSBC that an additional reduction of €95,000 would be required for closure of the transaction.

2.6.30 Although the Permanent Secretary MFEI endorsed the minute by the DG GPD, he insisted that this did not imply a reconsideration of his position on the matter but acknowledgement of the fact that the price had been revised downwards. This was categorically stated to the NAO, as the Permanent Secretary MFEI maintained that he had never revised his initial stance and had he done so, then this would be minuted in the file. The Permanent Secretary MFEI stated that his concerns related to the negotiation procedure, and that this could not be changed. In his opinion, the Negotiation Group had to inspect the condition and the state of repair of the premises and commission experts in matters where it lacked expertise before agreeing on a tale quale purchase, thereby weakening the Government's position unnecessarily. While acknowledging that the subsequent reduction in price was important and unavoidable in the circumstances, this did not rectify the fact that negotiations on behalf of Government were poorly managed.

2.6.31 On 6 October 2011, the Prime Minister submitted correspondence to the Minister MFEI and the Permanent Secretary MFEI regarding the issues that had arisen with respect to Government's acquisition of the Properties. Specific reference was made to the estimated cost of €250,000 required for the replacement and essential upgrades to the M&E installations. The Prime Minister noted that this amount was in question because, in negotiations with HSBC, the M&E plant was termed as in good working

order. However, a compromise solution had been proposed, wherein HSBC had agreed to lower the asking price by an amount that reduces the difference by approximately 50 per cent. In this context, the Prime Minister drew the urgent attention of the Minister MFEI and the Permanent Secretary MFEI to the matter, since the availability of these Properties would determine the commencement of a number of processes related to the refurbishment of the President's Palace.

2.6.32 In correspondence submitted by HSBC to the DG GPD on 6 October 2011, the Bank expressed its frustration that the negotiations had not been concluded notwithstanding the verbal agreement reached in April 2011 on the discounted price of €2,360,000 from the original price of €2,750,000. HSBC noted its disappointment with the fact that no developments had been registered despite the Bank's recent gesture to further discount the agreed price by an additional €100,000 in order to help upgrade the Properties to Government's requirements notwithstanding that the Properties had been on the market *tale quale* from the start. This had left HSBC with no option but to put the Properties back on the market. Nevertheless, HSBC indicated its hope that Government would consider this final offer favourably.

2.6.33 The DG GPD replied on 7 October 2011, copying the Permanent Secretary MFEI, effectively reiterating Government's position. Although the offer by HSBC to reduce the price by €100,000 was appreciated, this was not sufficient to address all expenses outlined in the Consultant Engineer's report. Should HSBC be willing to reduce the consideration by a further €95,000, then the DG GPD indicated that Government would be in a position to conclude the contract of acquisition in a matter of days.

2.6.34 The next development noted was captured in correspondence submitted by HSBC to the DG GPD on 19 October 2011. Here, HSBC indicated that following the earlier exchange of correspondence and discussions held with the DG GPD and the Permanent Secretary MFEI, the price was being reduced by a further €40,000, bringing the Properties' sale price to €2,220,000. HSBC declared this as their final offer and expected a swift short-term preliminary agreement, preferably by not later than 24 October 2011, immediately followed by a contract of sale within two weeks. Based on the verbal agreement reached, HSBC had instructed its lawyer to prepare an updated preliminary agreement, which was to be shortly forwarded to the DG GPD.

2.6.35 In clarifications sought with respect to the further reduction of €40,000 by HSBC, the DG GPD stated that following his letter dated 7 October 2011, the process had stalled. According to the DG GPD, in a meeting with the Permanent Secretary MFEI, the latter had contacted HSBC and reached agreement on a further reduction of €40,000. Notwithstanding that stated by the DG GPD and that indicated in the correspondence submitted by HSBC on 19 October 2011, the Permanent Secretary MFEI maintained that he had not contacted HSBC in this respect.

2.7 Promise of Sale Agreement Negotiations

2.7.1 A promise of sale agreement was submitted to the DG GPD by HSBC on 21 October 2011. The promise of sale was deemed valid until 7 November 2011. The agreement largely reflected that originally submitted by HSBC on 20 June 2011; however, it took into account the developments and changing circumstances resulting from negotiations relating to the M&E plant and movables. In essence, the differences between the two promise of sale agreements submitted by HSBC were the following:

- a. an updated consideration of €2,220,000 instead of €2,360,000 for all Properties. While the value of Properties 236 and 237 remained unchanged, that of Property 233 was revised to €926,482 from the previous value of €1,066,482;

- b. whereas originally, the sale of the Properties included all furniture, fittings and fixtures, this was now limited to Property 233;
- c. the value of the movables was revised in accordance with that discussed, from €350,050 to €11,975. This amount was included in the overall consideration; and
- d. a change in the payment of ground rent by HSBC, now paid up to 31 December 2011, whereas this had previously been paid up to 30 June 2011. The Government was to reimburse the Bank the ground rent payable from the date of contract of sale to 31 December 2011.

2.7.2 Aside from these changes, the NAO noted that the termination of the sub-emphyteusis with respect to Property 233 was to expire on 31 December 2022, instead of that originally stipulated, that is, 30 May 2023. This matter had been the subject of internal consultation by Government and the change in date of expiry was brought about following concerns regarding Government's obligation to revert the Property to its original state.

2.7.3 The NAO also noted that a clause specifying that the Properties were to be sold together, unless otherwise agreed by the parties, was included in the draft promise of sale. This condition had featured in earlier versions of the draft promise of sale agreement.

2.7.4 Following the submission of the draft promise of sale agreement by HSBC, the DG GPD, acting on behalf of the Negotiation Group, informed the Minister MFEI, through the PS Revenues and Land and the Permanent Secretary MFEI, of developments registered in negotiations with the Bank. Also copied were the Head of Secretariat of PS Revenues and Land as well as the members of the Negotiation Group. In this correspondence, dated 24 October 2011, the DG GPD stated that HSBC had initially agreed to discount the requested price by €100,000. Subsequent to Government's insistence that the acquisition could not be favourably considered at that price (€2,360,000 less the €100,000 deduction), the Bank consented to an additional deduction of €40,000. This was contingent on Government's agreement to a short-term promise of sale agreement, followed by the contract of sale.

2.7.5 The DG GPD recommended that Government proceed with the acquisition as the remaining difference between the offers made by HSBC and Government was €55,000, citing that this amounted to a mere 2.4 per cent of the proposed consideration. Given that the initial asking price of €2,750,000 was reduced to €2,220,000, the Negotiation Group was recommending that Government proceed with the acquisition. Subject to ministerial approval, it was requested that adequate budgetary provision be made for upgrading the M&E plant, together with the relevant alterations required to house the Attorney General and any other units. Finally, in order to maximise efficiency in terms of time and office space, the DG GPD recommended that a unit within Government, not the GPD, be identified to provide an estimate of works, plan and oversee the execution of such works, and plan the migration of staff.

2.7.6 The Minister MFEI granted his approval to the acquisition on the same date, copying in all previous recipients. In clarifications provided to this Office, the Minister MFEI noted that the fact that he approved through email denoted that the approval was urgent as he ordinarily endorsed such matters through a minute in the relevant file. Elaborating on the context of the authorisation granted, the Minister MFEI stated that he would not have endorsed the transaction had this not been approved by the Permanent Secretary MFEI. According to the Minister MFEI, this had been made clear to the Permanent Secretary MFEI, who had never contacted the Minister to inform him of the fact that

he did not approve of this transaction. In the understanding of the Minister MFEI, the technical issue that the Permanent Secretary MFEI had brought up had eventually been solved through a reduction in price. The Minister MFEI asserted that he consulted with the Permanent Secretary MFEI prior to the granting of approval and that the Permanent Secretary had indicated his agreement. Furthermore, the Minister MFEI indicated that, had the Permanent Secretary MFEI not approved the transaction, then he would have sought the authorisation of the Prime Minister or Cabinet.

- 2.7.7 Notwithstanding that stated by the Minister MFEI, the Permanent Secretary MFEI maintained that he had never revised his position on the matter. The Permanent Secretary MFEI argued that, had he agreed, he would have been required to retract objections raised in writing. Furthermore, the Permanent Secretary MFEI asserted that the Minister MFEI should have requested him to indicate the developments that influenced his changed stance, thereby retracting reservations previously expressed. Notwithstanding this, the Permanent Secretary MFEI noted that he had neither been requested to document this change, nor had he taken the initiative to do so. Finally, the Permanent Secretary MFEI indicated that had he been requested to revise his position in writing, he would have refused.
- 2.7.8 Following the approval of the Minister MFEI, the DG GPD sought the advice of the Attorney General with respect to the draft promise of sale agreement proposed by HSBC. This was submitted to the Attorney General in correspondence dated 24 October 2011, copied to the members of the Negotiation Group, the Assistant Director (Land Directorate) GPD, a GPD Legal Officer and a GPD Notary. The DG GPD indicated that the promise of sale agreement was to be shortly followed by the contract of sale, specifying a two-week period.
- 2.7.9 The GPD Legal Officer raised a number of points in correspondence dated 24 October 2011, submitted to the DG GPD and the Attorney General. In this sense, the GPD Legal Officer:
- a. questioned whether the temporary utile dominium acquired until 31 December 2022 was all the remaining period or the remaining period less a number of months;
 - b. expressed disagreement with the condition that Government was to refund HSBC with the ground rent already paid, on a pro rata basis, from the date of agreement until 31 December 2011. As an alternative, the GPD Legal Officer proposed that the contract of sale be published on 31 December 2011, or thereabouts;
 - c. deemed that Government did not need to insure its property;
 - d. remarked that the condition relating to Government's waiver of immunity should not be included;
 - e. noted that it would be very difficult to carry out the required searches as to the root of title and liabilities within two weeks;
 - f. questioned the inclusion of the condition stipulating that the Properties must be sold together;
 - g. indicated that the term of the promise of sale agreement was too short; and
 - h. recommended the inclusion of a condition whereby Government would have access to the Properties on signing of the promise of sale agreement.

2.7.10 In response to the issues raised by the GPD Legal Officer, the DG GPD put forward his comments to the Attorney General on 26 October 2011. While requesting the approval of the Attorney General to proceed with the signing of the promise of sale agreement, the DG GPD:

- a. confirmed that the sub-emphyteutical agreement between HSBC and Government would expire six months prior to the emphyteutical term;
- b. indicated no objection to the condition that Government was to refund HSBC the ground rent already paid, on a pro rata basis, from the date of agreement until 31 December 2011. However, this was subject to HSBC's agreement to hand over the keys to the Properties to Government on the signing of the promise of sale agreement;
- c. confirmed that Government did not need to insure its property;
- d. agreed that the condition relating to Government's waiver of immunity should not be included;
- e. enquired as to what would be considered a reasonable period to conclude the required searches;
- f. agreed to the recommendation of the inclusion of a condition whereby Government would have access to the Properties on signing the promise of sale agreement, particularly in view of Government's possible obligation to refund ground rent on a pro rata basis; and
- g. recommended the inclusion of another condition whereby, prior to the signing of the contract of sale, the relative water and electricity meters be in place.

The DG GPD requested feedback from the Attorney General, indicating that the promise of sale agreement was expected to be signed on 28 October 2011.

2.7.11 The Attorney General replied on 26 October 2011, addressing his correspondence to the Permanent Secretary MFEI and the DG GPD. At the outset, the Attorney General noted that the draft promise of sale agreement included conditions that had already been deemed unacceptable. However, it must be noted that the original amendments proposed by the Attorney General had not been transmitted to HSBC, hence explaining points raised by the Attorney General. This understanding was confirmed by the DG GPD following queries raised by the NAO. The Attorney General cited a number of objections, including:

- a. that the fact that Government was renouncing to all immunity was humiliating and unacceptable;
- b. the need for Government to approach the owners of Property 233 to obtain acknowledgment as emphyteuta and questioned the timing of this acknowledgement, only to be sought after Government concluded the transaction;
- c. that the warranty of peaceful possession was limited to the amount of the consideration, but it was already known that Government would be incurring considerable expense to effect the necessary alterations to enable the use of the Properties. Although the warranty was to be reduced pro rata in case of partial eviction, the manner by which this reduction was to be determined was not specified;

- d. that Government would be declaring its acceptance of the terms and conditions of the original temporary emphyteusis deed of 1 March 1910. Of specific concern was Government's exposure to the condition that the owners may demand that the Property be returned in its original state. This would involve a considerable expense and was the reason for Government not purchasing the whole period of the emphyteusis. This exposure was not regulated in the draft promise of sale and the fact that Government was accepting all the 1910 deed conditions favoured the interpretation that it was also accepting this condition;
- e. that Government was being obligated to insure the Property for the duration of the emphyteusis. While this made sense for the seller, it implied an additional unknown cost for Government that could also include alterations to the premises that the insurer could demand; and
- f. that no rebate was granted with respect to Government's obligation to pay ground rent for the period required to convert the premises.

2.7.12 Moreover, the Attorney General drew attention to the fact that an extremely short and most unusual deadline was given for the conclusion of property searches and the signing of the contract. This implied that Government would '*practically be taking a leap in the dark and making itself hostage to the unknown when signing*'. Finally, although the Attorney General acknowledged the urgency, he concluded by stating that under the circumstances, he could not approve the draft promise of sale.

2.7.13 The DG GPD replied to that stated by the Attorney General, addressing points raised. In essence, the DG GPD:

- a. agreed that Government renouncing to all immunity was unacceptable;
- b. agreed with that stated by the Attorney General regarding Government's acknowledgment as emphyteuta;
- c. indicated that the risk presented with respect to the reduction in warranty on a pro rata basis in case of partial eviction was one that Government was possibly willing to assume. However, the guidance of the Permanent Secretary MFEI was sought in this respect;
- d. was under the impression that Government had averted the risk associated with the condition that the owners may demand that the Property be returned in its original state when HSBC had accepted a term of sub-emphyteusis that was to expire before the original term. The DG GPD requested additional clarification from the Attorney General in this respect; and
- e. agreed that Government did not insure its property.

Furthermore, the DG GPD enquired with the Attorney General whether a period of three weeks was sufficient to conduct all searches.

2.7.14 In correspondence also submitted on 26 October 2011 to the DG GPD, the Permanent Secretary MFEI indicated that he was under the impression that the issues raised by the Attorney General had already been addressed and, if not, these were to be looked into. Moreover, the Permanent Secretary MFEI asserted that the matter was to be brought to the attention of Minister MFEI, insisting that things are done properly. With specific reference to the warranty, the Permanent Secretary MFEI proposed that the warranty be in respect of the consideration, plus any verifiable

expenditure, possibly up to €400,000. The Permanent Secretary MFEI recommended the introduction of a formula to be applied in case of partial eviction, which would stipulate the amortisation of the consideration plus the initial capital expenditure using a straight-line method. In response, the DG GPD stated that he would be requesting a meeting with HSBC, in the presence of a representative of the Attorney General, planned for 27 October 2011.

2.7.15 Based on the documentation reviewed, the NAO established that a meeting was in fact held on 27 October 2011. Subsequent to this meeting, HSBC submitted a revised draft promise of sale agreement to the DG GPD. Changes noted comprised:

- a. an extension in the period of the temporary sub-emphyteusis with respect to Property 233, from 31 December 2022 to 31 January 2023;
- b. that Government was not to be bound by the third condition of the original deed of temporary emphyteusis dated 1 March 1910, relating to the obligation to reinstate the Property to its original state, unless Government purchased the period of the temporary utile dominium of Property 233 from 31 January 2023 until 30 May 2023, in which case the performance of this clause would be assumed by the Government. Government reserved the right to purchase the remaining temporary utile dominium, and HSBC accepted, subject to the following terms and conditions:
 - i. for the agreed consideration of €100;
 - ii. that Government would notify the Bank in writing by 15 November 2022; and
 - iii. that Government would hold the Bank harmless on account of any capital gains and/or penalties incurred and would undertake to reimburse any sums paid by HSBC on the Bank's first demand in writing.
- c. that with respect to the conditions under which the sale of the utile dominium of Property 233 was being made, the Government was to declare that this was a commercial transaction and accepted that, to the fullest extent allowed by law, the Bank retained all rights against the Government as it would have against any other purchaser. This clause was to replace the immunity clause;
- d. the deletion of the condition that the warrant for peaceful possession was limited to the consideration. Moreover, in the case of partial eviction, the condition stipulating that the maximum liability of the Bank was to be reduced pro rata to the percentage of the consideration equivalent to the percentage loss in value was eliminated; and
- e. the extension of the validity of the promise of sale to 21 November 2011 (previously 7 November 2011).

2.7.16 These amendments were proposed to Government in correspondence submitted by HSBC on 27 October 2011. Also addressed in this correspondence was the matter relating to the insurance policy of Property 233. HSBC stated that it was not possible to insure the Property under its block policy and that a quotation for the reinstatement of the building had been obtained. Citing a reinstatement value of €750,000, the annual insurance cover would cost €830. Finally, the Bank noted that all amendments proposed by Government had been agreed to and that the contract of sale was to be signed three weeks after the promise of sale agreement.

2.7.17 The DG GPD forwarded the draft promise of sale agreement to the Attorney General and the GPD Legal Officer later that day, copying in the Permanent Secretary MFEI, for their feedback. According to the DG GPD, HSBC had addressed all pending issues, yet

requested confirmation of this understanding. Although HSBC increased the promise of sale agreement period by one week, it was noted that this still fell short of the minimum four-week period required by Government. As a possible solution, the DG GPD proposed that the relevant searches be outsourced if necessary. With regard to the cable and power issues, the Government had been provided with a copy of a declaration from Enemalta plc to HSBC, wherein it was stated that Enemalta plc would energise the cable as soon as a compliance certificate was provided. Enemalta plc was of the understanding that the load required would not exceed 200 amps, as per original loading. The DG GPD reported that he had been verbally informed by HSBC that obtaining the compliance certificate would not be a problem since MEPA was to consider the Properties as an 'old building'. However, the DG GPD maintained that this assurance was to be reflected in the promise of sale agreement or a side letter drawn up as comfort in this regard.

2.7.18 The Attorney General reviewed the amended promise of sale agreement and submitted minor amendments for the attention of the Permanent Secretary MFEI, the DG GPD and the GPD Legal Officer on 28 October 2011. The changes proposed were:

- a. that Government was to approach the owners of Property 233 on completion of the transaction in order to request, rather than obtain, the owners' acknowledgement as emphyteuta;
- b. with respect to the option to acquire the remaining period of the temporary utile dominium of Property 233, the Government was to hold HSBC harmless on account of any capital gains tax incurred and undertook to reimburse the Bank with any sums paid by the Bank to the Commissioner of Inland Revenue, or other revenue authority, within 30 days of the Bank's first demand in writing;
- c. that aside from the agreement being subject to the searches as to the root of title and liabilities, the Properties were to be in accordance with all the required planning permits, have a compliance certificate and also have the required permits to be used as offices;
- d. that the agreement was also subject to the condition that the Properties were adequately supplied with electricity of not less than 200 amps and included a separate electricity meter;
- e. that the promise of sale was to be valid until 25 November 2011; and
- f. that the Bank would allow Government access to the Properties at all reasonable times when so requested.

The DG GPD submitted the amended promise of sale agreement to HSBC on 28 October 2011 and stated that, should the draft agreement be acceptable, this was to be signed on 31 October 2011.

2.7.19 Following this, also on 28 October 2011, the DG GPD requested the authorisation of the Permanent Secretary MFEI for a GPD official to appear on the deed on behalf of the CoL and an allocation of €222,000 to be able to effect the deposit on the signing of the promise of sale. The Permanent Secretary MFEI endorsed this request on 30 October 2010.

2.7.20 The proposals made by Government were deemed acceptable by HSBC; however, one final change was put forward by the Bank on 31 October 2011. This related

to Government's obligation to upgrade the Properties in conformity with KNPD regulations. An element of discussion ensued in this respect, ultimately resolved when the Consultant Architect B proposed the revision of a condition whereby Government, as Purchaser, agreed to upgrade the combined Properties to render them conformant with KNPD regulations. Furthermore, Government was not obligated to undertake or concede that each Property, separately and in their own right, be brought up to conformity to KNPD regulations.

2.7.21 The NAO also noted that on 31 October 2011, the DG GPD sought and obtained the approval of the Permanent Secretary MFEI with respect to the insurance of Property 233. The Permanent Secretary MFEI stated that although Government did not normally insure its property, an annual insurance cost of €830 was deemed acceptable.

2.8 Finalisation of the Promise of Sale Agreement and Issues Arising Therefrom

2.8.1 The promise of sale agreement between HSBC and Government was signed on 31 October 2011. Through this agreement, the Bank bound itself to sell and transfer and the Government accepted, promised and bound itself to purchase and acquire the temporary utile dominium until 31 January 2023 of 233 Republic Street, Valletta with all its rights and appurtenances and with vacant possession, and 236 and 237 Republic Street, Valletta free and unencumbered with all their rights and appurtenances. The consideration for Property 233 was €926,482 and for Properties 236 and 237 was €1,293,518. Out of the consideration, the sum of €222,000 was paid as deposit on account of the price by the Government to HSBC. According to the promise of sale agreement, the deposit would be forfeited by the Government in favour of HSBC by way of pre-liquidated damages should Government fail to appear on the final contract of sale for no valid reason at law before the expiry date of the promise of sale agreement. The balance of €1,998,000 was to be paid by Government to HSBC on the final contract of sale of the Properties.

2.8.2 The salient conditions for the sale of the temporary utile dominium of Property 233 were that the:

- a. temporary ground rent of €69,071 per annum was paid quarterly in advance and was reviewable as per the deed of 21 December 1988. HSBC declared that ground rent was paid till 31 December 2011 and that the Government agreed to refund the Bank with the amount of ground rent already paid pro rata as from the date of this agreement;
- b. Government was aware and accepted the terms and conditions of the original deed of temporary emphyteusis, dated 1 March 2010, as extended by two further deeds of 1 March 1926 and 21 December 1988. However, the Government was not bound by the condition in the 1910 contract, relating to the obligation to re-instate the Property to its original state, unless Government exercised the option to purchase the remaining temporary utile dominium (referred to in paragraph 3.7.3), in which case the obligation, if applicable, would be assumed by Government;
- c. Government was to insure the Property, at its expense, against damage/destruction by fire and/or other perils as normally covered under a standard fire insurance policy up to the amount of €750,000 for the purpose of covering the reinstatement of the building in the event of such damage/destruction;
- d. Government was not to effect any structural alterations to the Property without the written consent of the Bank. Any such improvements effected would not give

rise to any right of compensation in favour of Government; and

- e. Government declared that this was a commercial transaction and accepted that HSBC retained all rights against Government as the Bank would have against any other purchaser to the fullest extent allowed by law.

2.8.3 Furthermore, the Government reserved the right, and the Bank accepted, to purchase the remaining period of the utile dominium of Property 233 from 31 January 2023 to 30 May 2023 for the agreed consideration of €100. In this case, the Government had to notify HSBC in writing by 15 November 2022. Furthermore, the Government would hold the Bank harmless on account of any capital gains tax incurred as a result of any said further transfer and would undertake to reimburse the Bank with any sums paid by the Bank to the Commissioner of Inland Revenue or other revenue authority within 30 days of the Bank's first demand in writing.

2.8.4 Other conditions included in the promise of sale agreement were that the Bank warranted the peaceful possession and real enjoyment by means of a general hypothec over all its properties. Furthermore, the Properties were to be sold tale quale subject to the following:

- a. searches as to the root of title and liabilities are carried out and found to be in order with all the required planning permits and covered by a 'Compliance Certificate' issued by MEPA, and may be legally used as offices;
- b. Properties are supplied with electricity of not less than 200 amps and include a separate electricity meter; and
- c. Government agreed that after the transfer of the Properties, it would be responsible towards the competent public authorities to comply with any legal obligation to upgrade the Properties, if necessary. These upgrades were intended to bring the Properties in conformity with KNPD regulations as in force from time to time in the period during which the Government would be holding title to the Properties collectively. The Government would not be obligated to leave any of the Properties in a state of KNPD compliance at the end of Government's title to the Properties, however caused.

2.8.5 In addition, the sale of Property 233 included all furniture, fixtures and fittings present in the Property at the date of this agreement. These were being sold tale quale and the Bank gave no warranty concerning these movables and excluded warranty for latent defects. The price for the movable property, included in the consideration, was €11,975. Furthermore, on the final contract, the Properties were to be sold together unless the parties specifically agreed otherwise. Other conditions stipulated in the promise of sale agreement were that:

- a. all outstanding bills for the rental and consumption of any service were to be borne by the Bank up to the date of the contract of sale;
- b. no brokerage fees were due;
- c. notarial fees and expenses incurred with respect to duty on documents and transfers were to be borne by Government; and
- d. the Bank was to pay capital gains tax.

The promise of sale was valid until 25 November 2011. Lastly, from the signing of this agreement, the Bank was to grant access to the Government at all reasonable times when the Government so requested.

- 2.8.6 Subsequently, on 2 November 2011, a copy of the promise of sale agreement was submitted to the PS Revenues and Land on instructions of the DG GPD. Furthermore, the NAO established that the searches required in anticipation of the acquisition of the Properties were outsourced to a legal firm.
- 2.8.7 In correspondence dated 21 November 2011, the DG GPD informed the Permanent Secretary MFEI that in order for Enemalta plc to energise the power cable, a compliance certificate was requested from MEPA by HSBC. In order for MEPA to issue the compliance certificate, KNPD clearance was required. The KNPD had agreed not to object subject to a guarantee that the Properties were upgraded within a given timeframe, still to be agreed on. In turn, HSBC had informed Government of this requirement and requested that Government propose a reasonable plan of action within a specified period for clearance by the KNPD. In this respect, the DG GPD proposed that an application be lodged for works to render the Properties accessible within six months from the date of issuance of the compliance certificate by MEPA. The works that were to render the Properties accessible were to be completed within two years from obtaining the relevant development permission. These works were to include the provision of a KNPD-compliant lift, a steps-lift to connect the two buildings, an accessible toilet and an accessible entrance. The DG GPD stated that these works had been envisaged in the original assessment undertaken by the Government-appointed architects. The approval of the Permanent Secretary MFEI with respect to the proposed plan of action was requested. On 22 November 2011, the Permanent Secretary MFEI agreed to that outlined by the DG GPD; however, he indicated that the responsibility to follow up on this commitment was to be honoured by whoever was to take charge of the Properties. Copied in this exchange of correspondence were the Minister MFEI, the PS Revenues and Land, the Head of Secretariat of PS for Revenues and Land, and the members of the Negotiation Group.
- 2.8.8 The plan of action proposed by the DG GPD and endorsed by the Permanent Secretary MFEI was sent to HSBC on 22 November 2011. Later that day, HSBC submitted that proposed by Government to the KNPD. The KNPD was requested to provide clearance to MEPA for the issuance of the compliance certificate, essential in securing the supply of water and electricity.
- 2.8.9 Notwithstanding the action taken, on 23 November 2011, following a meeting with the DG GPD, a GPD Notary informed HSBC that the compliance certificate had not yet been issued despite the Department's considerable efforts. As a result, an extension of the promise of sale agreement was required. To this end, on 25 November 2011, the promise of sale agreement was extended to 15 December 2011. This was captured in correspondence submitted by the GPD Notary to the DG GPD, who subsequently informed the PS Revenues and Land, his Head of Secretariat, the Permanent Secretary MFEI and the Attorney General.
- 2.8.10 Having secured an extension to the promise of sale agreement, attention was diverted back to the required compliance certificate. To this end, on 28 November 2011, the KNPD informed HSBC that its sanctioning was contingent on an earlier deadline for the completion of works, shortened from the originally proposed two-year period to 18 months. According to the KNPD, the DG GPD had given his verbal approval to this revised deadline; however, a request was made to reflect this development in an agreement between HSBC and Government. The DG GPD confirmed this agreement on 1 December 2011 in correspondence to HSBC, wherein it was indicated that

Government was to apply for MEPA development permission within six months of the signing of the contract of sale and was to carry out the required alterations to render the Properties accessible for all within 18 months. HSBC forwarded Government's agreement to the KNPD later that day, requesting KNPD clearance necessary for MEPA to issue the compliance certificate. On 14 December 2011, HSBC submitted a copy of the report prepared on behalf of the KNPD to the DG GPD. This report, dated 7 December 2011, indicated that the KNPD had no objection to the issuance of the compliance certificate.

- 2.8.11** Based on the documentation reviewed, the NAO established that the KNPD appointed Consultant Architect B to carry out the verifications required prior to KNPD's statement of no objection to the issuance of the compliance certificate. This Office noted that the Consultant Architect B had an integral role in the valuation of the Properties and was a member of the Negotiation Group, which circumstances possibly gave rise to a conflict of interest on his part. Following queries raised by the NAO, the Consultant Architect B stated that this did not constitute a conflict of interest as in both cases he was representing Government and maintained that he never acted or represented the interests of HSBC at any point in time. Moreover, the Consultant Architect B indicated that he had flagged KNPD approval-related issues during the negotiation process as leverage for Government. In supporting the argument made, the Consultant Architect B noted that the report prepared on behalf of the KNPD was consistent with that compiled on behalf of the Negotiation Group, highlighting the same issues in both instances. Finally, the Consultant Architect B noted that this matter would in all probability, have been brought to the attention of the Chair KNPD. Queries in this respect were also addressed to the DG GPD, who stated that the dual role of Consultant Architect B was an asset to the Government.
- 2.8.12** According to correspondence submitted by HSBC to the DG GPD on 15 December 2011, the case relating to Properties 233, 236 and 237 was to be reviewed by MEPA on 16 December 2011, following which the compliance certificate would be issued. Due to the delay in securing the compliance certificate, the promise of sale agreement was again extended, from 15 December 2011 to 23 December 2011, while the signing of the contract of sale was set for 22 December 2011. The MEPA compliance certificate (PA/02494/04) was eventually issued on 16 December 2011 and the Properties were subsequently energised by Enemalta plc on 22 December 2011, bringing the matter to a close.
- 2.8.13** One final issue addressed prior to the signing of the contract of sale related to the tax payable by HSBC. In this context, on 1 December 2011, the GPD Notary submitted queries regarding the capital gains tax payable on the transfer to the Inland Revenue Department. The Notary GPD enquired whether the capital gains tax to be charged on the contract of sub-empyteusis amounted to 12 per cent of the one-time consideration to be paid on the contract, and whether capital gains tax was to be charged on the annual payment of the sub-ground rent to be paid by Government to HSBC. In response, the Inland Revenue Department outlined that the transfer was to be taxed at 12 per cent of the consideration, and that no capital gains tax on the sub-ground rent was to be charged, as such income was to be declared by HSBC and brought to charge on an annual basis through the Bank's tax return.
- 2.8.14** Based on this advice, on 19 December 2011, the Notary GPD informed HSBC that the tax payable amounted to €264,963. Of this total, €109,741 was the tax payable with regard to the transfer of Property 233 and €155,222 due in respect of Properties 236 and 237. The workings applied by the GPD Notary in arriving at the amount of tax payable are presented in Box 2.

Box 2: Capital gains tax payable on Properties 233, 236 and 237

Property 233

€926,482 (consideration) - €11,975 (movables) = €914,507 (taxable amount) x 12% (tax rate) = €109,741

Properties 236 and 237

€1,293,518 (taxable amount) x 12% (tax rate) = €155,222

Total capital gains tax payable

€109,741 + €155,222 = €264,963

2.9 The Contract of Sale

2.9.1 The contract of sale for 233, 236 and 237 Republic Street, Valletta, between HSBC and Government was signed on 22 December 2011. The signatories to the contract of sale were the Chief Technology and Services Officer HSBC, the CoL and the GPD Notary.

2.9.2 The conditions stipulated in the contract of sale reflected those of the promise of sale agreement, except for those relating to developments registered after the signing of the promise of sale. The changes noted entailed:

- a. the apportionment of the deposit of €222,000 paid by Government on the signing of the promise of sale to the Properties. In the case of Property 233, this was equivalent to €74,000, while in the case of Properties 236 and 237, this amounted to €148,000. Accounting for the amounts already paid, the balance due with respect to Property 233 was €852,482 (€926,482 less €74,000). That of Properties 236 and 237 amounted to €1,145,518 (€1,293,518 less €148,000);
- b. the deletion of the condition relating to the reimbursement by Government of ground rent paid by HSBC from the date of the contract of sale to 31 December 2011. The reason for this omission evidently related to the delay in the signing of the contract of sale, which rendered this provision superfluous;
- c. that with respect to Property 233, HSBC reserved in its favour the right of special privilege granted to it by law over the property being transferred, in warranty of the punctual payment of the sub-ground rent and the faithful performance by Government of all the obligations and the observation of the terms and conditions stipulated in this contract;
- d. that HSBC guaranteed that the Properties were in order, in accordance with all the required planning permits, covered by a compliance certificate issued by MEPA and could legally be used as offices. The Bank also confirmed and warranted that the Properties were provided with an electricity supply of not less than 200 amps and included a separate electricity meter;
- e. specific reference to the tax payable by HSBC for the purposes of the Income Tax Act (Chapter 123) and the Income Tax Management Act (Chapter 372), which was determined as €264,963; and
- f. other general clauses including the referral to the Malta Arbitration Centre of any disputes or claims arising with respect to this contract, that no duty on documents was payable by Government, and that the Properties did not fall in a Registration Area.

- 2.9.3 This Office's attention was drawn to the value assigned to Property 233. The value of the Property, set at €926,482, was incongruent with the understanding that negotiations had set off with an initial asking price set by HSBC at €800,000. Notwithstanding this anomalous change in the value apportioned to Property 233, it must be stated that the aggregate value of the acquisition was negotiated from €2,750,000 in March 2011 to €2,220,000 in December 2011. In seeking to establish the reason for this incongruence, the NAO addressed queries to the Permanent Secretary MFEI, the DG GPD and the incumbent Acting DG GPD. Despite queries made, no explanation regarding the change in the apportionment of values was forthcoming.
- 2.9.4 An element of assurance, that Government's interests in terms of tax payable were not adversely affected, was provided by the Commissioner for Revenue. In information provided to this Office, the Commissioner for Revenue confirmed that capital gains tax payable on the overall amount was charged at a rate of 12 per cent. In this context, the NAO is of the understanding that the apportionment of values between Properties 233, 236 and 237 bore no negative impact on Government revenue.
- 2.9.5 The NAO noted that payments, as regulated by the contract of sale, were effected on the signing of the contract. The Government paid HSBC the sum of €1,998,000, while the Bank paid the Commissioner of Inland Revenue €264,963.
- 2.9.6 The requisite Form A was duly completed by the GPD Notary and submitted to the Land Registry on 30 January 2012. Through the submission of this Form, Government was applying for recognition as the title holder of the Properties. The NAO noted an error in the value cited in respect of Property 233; however, this was an oversight by the GPD and bore no impact on the registration process.

2.10 Post Contract Developments

- 2.10.1 On 20 December 2011, the Head of Secretariat of PS Revenues and Land informed the Office of the Attorney General, the PSC, the PCAC and the CAJ that alternative premises had been identified and that a contract of acquisition was to be shortly finalised. Reference was made to previous correspondence submitted by the CoL on 20 April 2011, wherein it was stated that the office space occupied by these entities was to be vacated by 30 May 2011. The entities were informed that the relocation was to be overseen by the Works and Infrastructure Department (WID).¹¹ Entities were to furnish the WID with details regarding liaison officers, plans of their existing premises and a brief outlining the requirements of each entity. Submissions were to be made by mid-January 2012.
- 2.10.2 In clarifications submitted to this Office, HSBC noted that from their records, the handing over of the keys of the Properties took place on 21 February 2012. The Bank stated that it maintained the property until the day prior to handing over the keys and that it delivered a building with all systems in good working condition, as stated in the contract.
- 2.10.3 Between January and August 2012, the WID collated the information submitted by the entities that were to be relocated, prepared drawings and plans with respect to the allocation of office space, formulated a preliminary budget estimate of works required

¹¹ The NAO noted that discussions regarding the engagement of a project manager commenced in August 2011, when the Head of Secretariat of PS Revenues and Land raised the matter with the DG GPD. Subsequently, on 25 October 2011, a memorandum was referred to the Permanent Secretary MFEI by the Head of Secretariat, wherein the matter was once again referred to. A specific project manager was identified; however, this course was not pursued any further. The Permanent Secretary MFEI indicated to the NAO that the engagement of a project manager was the responsibility of the entity/entities relocating to the Properties.

and submitted a project timeline. Based on the documentation reviewed, the NAO established that the entities that were to occupy the Properties were coordinating with the WID throughout 2012 and early 2013. The PSC submitted proposals and recommendations with respect to the Commission's requirements to the WID between February and March 2012. However, on 13 July 2012, the PSC was informed that the space available at the Properties was not sufficient to house the four entities relocating from the President's Palace and therefore, alternative premises were to be identified for this Commission.

2.10.4 While the plans relating to the relocation of the PSC and the CAJ to the Properties changed, those relating to the Office of the Attorney General and the PCAC remained valid. In fact, on 28 February 2013, the Office of the Attorney General and the PCAC notified the GPD of their intention to submit an application for development permission to MEPA. According to this notification, the developments entailed alteration to the Properties in order to house these entities.

Refurbishment Works: Extent, Cost and Time

2.10.5 The extent of works required was indicated in correspondence submitted by the WID to the Head of Corporate Services at the Office of the Attorney General on 2 August 2012. Here, the WID provided a preliminary budget estimate for the works required. The estimate corresponding to the Properties amounted to €640,185. This estimate included a 15 per cent contingency for any unforeseen works or works that, at that stage, could not be fully quantified. However, these estimates did not include the M&E works required, which estimate, according to that stated by the WID, was to be augmented by 15 per cent to factor the cost of removal and carting away of existing M&E services.

2.10.6 Queries raised by the NAO regarding the discrepancy between the cost of works required as initially envisaged by the Negotiation Group, estimated at between €300,000 and €350,000, and that established by the WID, at €640,185, were addressed to the PS Revenues and Land, the DG GPD and Consultant Architect B. In this respect, the PS Revenues and Land contended that the cost of refurbishment was determined by the planned level of finishing, which may have varied in this case. The DG GPD maintained that the Properties were still in use as offices by HSBC a few weeks prior to the commencement of negotiations and additionally asserted that there were different levels of refurbishment that could be undertaken. Moreover, the DG GPD noted that the Properties were in good condition and could have been utilised as is; however, Government considered it essential to effect substantial refurbishment. Finally, the Consultant Architect B stated that he was not involved or aware of the basis of the estimate compiled by the WID and therefore could not comment in this respect.

2.10.7 The NAO is of the understanding that the extent of works indicated was reflected in the planned duration of works. In fact, shortly after submitting the estimated cost of works, the WID presented a timeline indicating the key stages of the refurbishment project with respect to the Properties. The plan of works was submitted by the WID to the Head of Corporate Services at the Office of the Attorney General on 8 August 2012, subject to the approval of the Head of Secretariat at the Ministry for Fair Competition, Small Business and Consumers (MFCC).¹²

¹² The Head of Secretariat MFCC was, earlier in this report, referred to as the Head of Secretariat of PS Revenues and Land, essentially reflecting changes in the allocation of ministerial responsibilities.

2.10.8 In the interim, on 5 July 2012, the Head of Corporate Services at the Office of the Attorney General presented the case for the allocation of funds with respect to the refurbishment of the Properties in correspondence submitted to the DCS Ministry for Justice, Dialogue and the Family (MJDF). This request was referred to the DG Budget Office MFEI, who raised additional queries on the matter. On 19 July 2012, the Head of Corporate Services informed the DCS MJDF that funds had been allocated to a capital vote item; however, no disbursements had yet been effected. Citing the required MEPA permits, the Head of Corporate Services expressed doubts regarding the commencement of works, stating that these were unlikely to begin in 2012 and that even if this was the case, payments would not be settled this year. In response, on 27 July 2012, the DG Budget Office indicated that a provisional budgetary allocation was to be made in the 2013 capital vote.

2.10.9 Following other correspondence on the matter, on 6 August 2012, the Head of Corporate Services at the Office of the Attorney General informed the DCS MJDF that infrastructural works required for the offices of the Attorney General were estimated by the WID at €387,231. Furthermore, M&E works for the Properties to house the Office of the Attorney General and the PCAC, amounting to €534,520, were required. Indicated was the fact that this amount included the previously cited estimate of M&E works required, €269,200, established by the Consultant Engineer. On 7 August 2012, following queries raised by the DG Budget Office regarding the overall budgetary requirement for the refurbishment of the Properties, the Head of Corporate Services reiterated that €387,231 were required for infrastructural works at the offices of the Attorney General while an additional €534,520 were required for M&E services in respect of Properties 233, 236 and 237, including the part of the Properties that was to house the PCAC.

2.10.10 According to the plan of works prepared by the WID, the project was to commence in October 2012 and conclude in June 2014. More specifically, the key stages of the timeline proposed by the WID were:

- a. October 2012 to March 2013: processing of MEPA application;
- b. January 2013 to March 2013: preparation of tender document;
- c. April 2013 to September 2013: tendering process; and
- d. October 2013 to June 2014: execution of works.

2.10.11 The Permanent Secretary Ministry for Justice and Home Affairs was informed of the preliminary plans regarding the relocation of the Office of the Attorney General to the Properties on 1 September 2011. Included in this correspondence submitted by the Head of Corporate Services at the Office of the Attorney General was a list prioritising works that were to be undertaken, specifying the electrical supply, a new data network and the removal of fitted carpets as essential. Other works were planned to be undertaken following the relocation.

2.10.12 The planning process came to a conclusion on 5 April 2013, when the application for development permission was submitted to MEPA by the WID. The application related to alterations to the existing premises situated at 233 and 236 Republic Street, Valletta to accommodate the Office of the Attorney General. According to records retained by MEPA, this application was eventually withdrawn. This reflected developments relating to the intended use of the Properties, which were no longer to be allocated to the Office of the Attorney General, but were earmarked as offices for the Ministry for Energy and the Conservation of Water (MECW) following a change in Administration.

The Present Use of the Properties

- 2.10.13** The extent of works required were reflected in correspondence submitted by the Head of Corporate Services at the Office of the Attorney General to the Minister for Home Affairs and Security, the Hon. Dr Owen Bonnici, on 22 March 2013. The Head of Corporate Services informed the Minister that the Properties were identified by the former Minister MFCC, the Hon. Dr Jason Azzopardi, and that considerable expenses were required to refurbish the Properties. Concerns regarding the state of repair were expressed by the Office of the Attorney General following a site visit. The Head of Corporate Services indicated that an estimated €700,000 worth of upgrading works were required. Despite these observations, the acquisition process went ahead. The Minister for Home Affairs and Security was informed that the Office of the Attorney General was to be relocated to Property 233, while the PCAC was to be housed in Property 236. The Minister's attention was drawn to the fact that Government had paid €926,482 as a one-time payment for Property 233 and was paying €69,071 as annual ground rent, revisable every five years. Furthermore, Government's freehold acquisition of Property 236 amounted to €1,293,518.¹³
- 2.10.14** The decision to allocate the Properties to the Office of the Attorney General and the PCAC was reversed shortly thereafter as an office note by the Director Estate Management GPD, dated 11 April 2013, indicated that the keys to the premises were handed over to the Permanent Secretary MECW on instructions received that day from the PS for Planning and Administrative Simplification OPM.
- 2.10.15** On 25 April 2013, the Director Project Design and Engineering WID subsequently informed the Head of Corporate Services at the Office of the Attorney General that the Properties were earmarked for the offices of the MECW. Copied in this correspondence were the Attorney General, the Permanent Secretary MECW, the Assistant Director Corporate Services MECW and various officials within the WID.
- 2.10.16** In mid-December 2013, the MECW became cognisant of the fact that the Properties were not to be retained by the Ministry, which development resulted in the suspension of planned refurbishment works except for those in progress. In early 2014, the process for the reallocation of the Properties to the MOT was initiated, with the remaining works resuming. Notwithstanding the actual occupation by the MOT, according to information provided by the GPD in August 2016, the formal allocation of the Properties to the Ministry had not been concluded.
- 2.10.17** Although the NAO is cognisant of the fact that the general election and the subsequent change in intended use could have resulted in delays to the refurbishment of the Properties, this was mitigated through recourse to direct contracts for the works required. The NAO established that works were completed by mid 2014 and cost an estimated €1,500,000.
- 2.10.18** While the properties at 233, 236 and 237 Republic Street, Valletta were allocated to the MOT, alternative premises were identified for the Office of the Attorney General and the PCAC. The Office of the Attorney General was to be allocated Admiralty House, a historic building situated at the intersection of South Street and Old Mint Street, Valletta. On the other hand, the PCAC was relocated to a property in Archbishop Street, Valletta. Finally, while the PSC was rehoused at offices located in St Christopher Street, Valletta, the CAJ remains at the President's Palace.

¹³ Although reference is only made to Property 236, the amount cited in fact corresponds to the acquisition of Properties 236 and 237 by Government from the HSBC on a freehold basis.

Chapter 3

Analysis and Conclusions

Chapter 3 – Analysis and Conclusions

3.1 Overview of the Process of Acquisition

3.1.1 Hereunder are the key developments relating to Government’s acquisition of the properties at 233, 236 and 237 Republic Street, Valletta. Indicated are the salient events that characterised negotiations between the Government and HSBC, which eventually culminated in a contract of sale on 22 December 2011, whereby Government acquired the Properties for €2,220,000. This transaction comprised the purchase of the temporary sub-emphyteusis of Property 233 until January 2023, as well as the freehold acquisition of Properties 236 and 237 (Table 12 refers).

Table 12: Timeline of key developments in the acquisition of 233, 236 and 237 Republic Street, Valletta

| Date | Event |
|---------------|--|
| February 2011 | An official from the Secretariat of the Prime Minister informed the PS Revenues and Land that the HSBC premises in Republic Street, Valletta had been, or were to be shortly, vacated and the possible acquisition of these properties by Government was to be looked into. |
| 11 March 2011 | The PS Revenues and Land submitted a memorandum to the Prime Minister and Minister MFEI regarding the acquisition of the Properties. According to the memorandum, this acquisition was part of the relocation exercise intended to accommodate the Office of the Attorney General, the PSC, the PCAC and the CAJ. |
| 17 March 2011 | The Permanent Secretary MFEI informed the DG GPD that Government was interested in the possible use of the properties previously occupied by HSBC in Republic Street, Valletta. The DG GPD was requested to appoint two architects to report on the condition of the Properties and draw up a fair valuation report. |
| 21 March 2011 | The DG GPD reported to the Permanent Secretary MFEI on the valuations provided by the two GPD-appointed architects. The Consultant Architect A valued the Properties at €1,565,000 while the Consultant Architect B indicated a value of €2,544,000. Also provided was another valuation by an HSBC-appointed architect who valued the Properties at €2,750,000, representing the Bank’s asking price. |
| 23 March 2011 | The Permanent Secretary MFEI instructed the DG GPD to commence discussions with HSBC regarding the possible acquisition of the Properties by Government. The DG GPD was appointed Chair of the Negotiation Group. The DCS MFEI and the Consultant Architect B were appointed members. |
| undated | Government submitted an offer of €2,045,000 for the Properties. |
| 1 April 2011 | The DG GPD submitted a report to the PS Revenues and Land that was to serve as the basis for negotiations with HSBC. |
| 1 April 2011 | The PS Revenues and Land informed the DG GPD that the appropriate process was for the Permanent Secretary MFEI to provide the parameters for negotiation. |

| | |
|-------------------|--|
| 2 April 2011 | The DG GPD provided a report on the potential acquisition of the Properties to the Permanent Secretary MFEI, and stated that even if Government reached its upper limit (€2,160,000) it would still be €600,000 short of HSBC's asking price. Therefore, the DG GPD recommended an increase in Government's offer by €115,000, thereby reaching the upper limit. |
| 5 April 2011 | The DG GPD informed the Permanent Secretary MFEI that Government's offer was increased by €115,000; however, HSBC stated that this was unacceptable as the offer was €600,000 short of that expected for serious consideration. The DG GPD proposed the possible increase of Government's offer by €200,000. |
| 5 April 2011 | The Permanent Secretary MFEI instructed the DG GPD that Government's offer was not to exceed an increase of 15 per cent. |
| 13 April 2011 | HSBC accepted Government's offer of €2,360,000. |
| 18 April 2011 | The DG GPD informed the Permanent Secretary MFEI of this development. The attention of the Permanent Secretary MFEI was drawn to the refurbishment and upgrading works required. Aside from these tasks, the DG GPD noted that the Properties seemed to be in good condition and of a reasonably high standard, and able to immediately serve as alternative premises. |
| 20 June 2011 | HSBC submitted a draft promise of sale agreement to the DG GPD. Aside from other relevant clauses, the Bank indicated that a list of all the movable property was to be drawn up and included in the contract of sale. The value assigned to this movable property by HSBC was €350,050. This was included in the agreed consideration of €2,360,000. |
| 12 July 2011 | The DG GPD indicated to the Permanent Secretary MFEI that, following the latter's instructions, a report regarding the M&E plant was being drawn up. |
| 22 July 2011 | The Consultant Architect B established the terms of reference for the M&E plant survey, which were duly endorsed by the DG GPD. The M&E report was to be compiled by a Consultant Engineer. |
| 25 July 2011 | The Permanent Secretary MFEI stated that the Government's position on the price for the movable property had to be informed by the M&E report. |
| 28 July 2011 | A committee was appointed by the DG GPD to evaluate and verify the inventory list submitted by HSBC. According to this inventory list, the value of movables was €352,126. |
| 8 August 2011 | The Consultant Engineer finalised the M&E report, which was submitted to the DG GPD on 11 August 2011. The report detailed the inspection of the plant, highlighted shortcomings and established the present condition, expected remaining service of life, cost for repairs, as well as the upgrades and replacements necessary. In sum, the estimated value of M&E plant was €500,000; however, due to the condition of the services, the current value was revised to €191,019. In total, the cost of replacement and necessary upgrades was estimated at €269,600. |
| 27 August 2011 | The committee tasked with evaluation and verification of the movables deemed the value of these items as less than €20,000. |
| 28 August 2011 | The Permanent Secretary MFEI indicated that no distinction between the movable and immovable property should be made in the final contract. Furthermore, the price was to be reduced by €250,000 to account for the inadequacies in the M&E installations. |
| 6 September 2011 | The DG GPD informed the PS Revenues and Land that, following direction provided by the Permanent Secretary MFEI, the costs relating to the replacement and essential upgrades to the M&E systems, amounting to €195,200, were to be borne by HSBC. The Bank was informed of this requisite. |
| 21 September 2011 | The Permanent Secretary MFEI addressed a minute to the Minister MFEI, through the PS Revenues and Land, wherein he expressed concerns relating to the process of negotiation. The Permanent Secretary MFEI indicated that he felt duty-bound not to recommend the acquisition. |
| 4 October 2011 | The DG GPD informed the Minister MFEI, through the PS Revenues and Land and the Permanent Secretary MFEI, that HSBC had verbally agreed to reduce the asking price by €100,000. Moreover, the DG GPD indicated that the Bank was to reduce the price by a further €95,000 for the closure of the transaction. |

| | |
|------------------|---|
| 6 October 2011 | The Prime Minister submitted correspondence to the Minister MFEI and the Permanent Secretary MFEI, referring to the reduction in asking price proposed by HSBC and requesting their urgent attention to the matter. |
| 6 October 2011 | HSBC noted its disappointment with the fact that no developments had been registered despite the discount offered and therefore, the Bank had no option but to put the Properties back on the market. |
| 7 October 2011 | The DG GPD reiterated Government's position that, although the offer by HSBC to reduce the price by €100,000 was appreciated, this was not sufficient to address all expenses outlined in the Consultant Engineer's report. Should HSBC be willing to reduce the consideration by a further €95,000, then Government would be in a position to conclude the contract of acquisition in a matter of days. In copy was the Permanent Secretary MFEI. |
| 19 October 2011 | In correspondence submitted by HSBC to the DG GPD, the Bank indicated that following the earlier exchange of correspondence and discussions held with the DG GPD and the Permanent Secretary MFEI, the price was being reduced by a further €40,000, bringing the Properties' sale price to €2,220,000. HSBC declared this as their final offer and expected a swift short-term preliminary agreement, preferably by not later than 24 October 2011, immediately followed by a contract of sale within two weeks. |
| 21 October 2011 | A draft promise of sale agreement was submitted to the DG GPD by HSBC. The promise of sale was deemed valid until 7 November 2011. |
| 24 October 2011 | The DG GPD informed the Minister MFEI, through the PS Revenues and Land and the Permanent Secretary MFEI, of developments registered in negotiations with the Bank. The DG GPD recommended that Government proceed with the acquisition as the remaining difference between the offers made by HSBC and Government was €55,000, citing that this amounted to a mere 2.4 per cent of the proposed consideration. Subject to ministerial approval, it was requested that adequate budgetary provision be made for upgrading the M&E plant, together with the relevant alterations required to house the Attorney General and any other units. |
| 24 October 2011 | The Minister MFEI granted approval for the acquisition in correspondence submitted to the DG GPD. Also in copy were the PS Revenues and Land, his Head of Secretariat, the Permanent Secretary MFEI, as well as members of the Negotiation Group. |
| 31 October 2011 | HSBC and Government entered into a promise of sale agreement valid until 25 November 2011. |
| 25 November 2011 | The promise of sale agreement was extended to 15 December 2011 due to delays in securing the required MEPA compliance certificate. |
| 15 December 2011 | The promise of sale agreement was again extended to 23 December 2011 due to delays in securing the required MEPA compliance certificate. |
| 22 December 2011 | HSBC and Government signed the final contract of sale. The total sum to be paid by Government for this acquisition was €2,220,000, €926,482 of which was for Property 233 and €1,293,518 for Properties 236 and 237. |

3.1.2 A detailed account of negotiations in terms of price between Government and HSBC is presented in Table 13. This overview illustrates the starting position assumed by HSBC, wherein the Properties were valued at €2,750,000. Following initial negotiations, agreement was reached on a transaction value of €2,360,000; however, the Government requested further revisions to the agreed price in view of the state of repair of M&E systems at the Properties. Agreement was eventually reached, with a final value of €2,220,000.

Table 13: Key developments in price negotiations

| Date | Source | Value/Offer (€) | | |
|--------------------------------------|---------------------------------------|--|------------------------|------------------------|
| | | Property 233 | Properties 236 and 237 | Total |
| undated (submitted on 21 March 2011) | Consultant Architect A | 640,000 | 925,000 | 1,565,000 |
| 18 March 2011 | Consultant Architect B | 768,000 | 1,776,000 | 2,544,000 |
| undated (submitted on 21 March 2011) | HSBC Architect | 800,000 + 69,071 annual ground rent OR 180,000 annual rent | 1,950,000 | 2,750,000 ^a |
| 27 March 2011 | Negotiation Aide Memoire ^b | 250,000 – 550,000 | 1,175,000 – 1,600,000 | 1,425,000 – 2,150,000 |
| 2 April 2011 | Negotiation Group | 581,000 | 1,260,000 – 1,580,000 | 1,841,000 – 2,161,000 |
| undated | Negotiation Group | - | - | 2,045,000 |
| 5 April 2011 | Negotiation Group | - | - | 2,160,000 |
| 5 April 2011 | Negotiation Group | - | - | 2,360,000 |
| 13 April 2011 | HSBC | - | - | 2,360,000 |
| 28 April 2011 | Negotiation Group ^c | 768,000 | 1,330,000 – 1,660,000 | 2,098,000 – 2,428,000 |
| 20 June 2011 | HSBC Draft Promise of Sale | 1,066,482 | 1,293,518 | 2,360,000 ^d |
| 11 July 2011 | Government Draft Promise of Sale | 511,499 | 1,498,451 | 2,360,000 ^d |
| 31 August 2011 | Negotiation Group ^e | - | - | 2,090,000 |
| 4 October 2011 | HSBC | - | - | 2,260,000 |
| 19 October 2011 | HSBC | - | - | 2,220,000 |
| 31 October 2011 | Promise of Sale | 926,482 | 1,293,518 | 2,220,000 |
| 22 December 2011 | Contract of Sale | 926,482 | 1,293,518 | 2,220,000 |

Notes:

- The total of €2,750,000 comprises the €800,000 premium payable with respect to Property 233 and the value of Properties 236 and 237.
- The figures cited in the negotiation aide memoire represented lower and upper limits for negotiations, taking into account the cost of refurbishment and structural alterations.
- The Negotiation Group submitted its final report to the Permanent Secretary MFEI after agreement on price had been reached. In the final report, the values of the Properties were revised from those previously cited by the Negotiation Group, with the agreed price now falling within the adjusted range.
- The total amount included €350,050 in respect of movable property.
- Price negotiations recommenced following the assessment of M&E systems at the Properties.

3.2 Analysis of Aspects of the Acquisition

3.2.1 Having provided a detailed account of the facts of the acquisition, this section of the report focuses on this Office's analysis of findings and any concerns emerging therefrom. The NAO's analysis delves into the legal basis for the acquisition, in this case, an outright purchase from the open market, rather than the more common resort to expropriation. This, together with other issues of governance are explored, particularly in terms of how the shortcomings registered during the negotiation process effectively constrained possible Government action. This Office's attention was also drawn to how Properties 233, 236 and 237 were identified, and whether the assumptions of immediate occupation and the limited refurbishment required were sound. In addition, concerns relating to the establishment of value were explored by the NAO, an integral component in this Office's determination of whether value

for money was ascertained. Central to this analysis was the process of negotiation undertaken on behalf of Government, which at times, was inadequate, failing to safeguard Government's interests.

Legal Basis for the Acquisition

- 3.2.2 Of particular interest to the NAO was the legal basis that rendered possible Government's acquisition of the properties at 233, 236 and 237 Republic Street, Valletta. The documentation reviewed by this Office made no reference to specific legal provisions in this regard, hence necessitating the address of queries to the key officials involved in the process of acquisition.
- 3.2.3 The DG GPD informed the NAO that, in his understanding, the legal basis for this transaction emanated from the Commissioner of Land Ordinance (Chapter 169). Specific reference was made to Article 2, that is, *'All rights and liabilities, whether vested or contingent, relating to immovable property belonging to, or possessed, held or administered by the Government, or relating to the administration thereof, to which the Accountant General was entitled or subject immediately before the date of commencement of this Ordinance shall by virtue of this Ordinance be transferred to the Commissioner of Land...'*. While this Ordinance provides an element of understanding with respect to the rights assumed by the Commissioner of Land, it fails to address, with any precision, that sought by the NAO.
- 3.2.4 An element of clarification was in fact provided by the Permanent Secretary MFEI, who drew this Office's attention to Article 17(1) of the Public Procurement Regulations (Subsidiary Legislation 174.04). Stated in this respect was that, *'These regulations shall not apply to: ... (f) public service contracts for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon...'*. Having established that the regulations governing public procurement do not apply in cases of acquisition of immovable property, the NAO sought further assurance in determining which legal framework regulated transactions of this nature. When queried in this respect, the PS Revenues and Land made reference to the fact that the contract of acquisition was vetted by the Attorney General and was therefore assured that the requisite legal basis had in fact been ascertained through this review.
- 3.2.5 It was in this context that the NAO subsequently directed queries to the Attorney General. Commenting in this regard, the Attorney General affirmed that the legal basis for the acquisition of immovable property by Government, which is not expropriated but which is purchased on the open market and which is not covered by the regulations on public procurement, is ordinary contract law. Moreover, the Attorney General noted that compliance with the financial administration legislation would require that the purchase and the expenditure thereon be approved by the Ministry for Finance. Aside from reference to contract law and legislation relating to financial administration, the Attorney General argued that, on a general level, the principles of good administration would require that attempts are made to test the market as to whether comparable property meeting the particular needs of Government is also available at a more advantageous cost.
- 3.2.6 In this Office's understanding, immovable property acquired by government should invariably serve a public purpose. In fact, acquisitions intended to serve a public purpose are ordinarily transacted through the application of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), which provides the legal framework regulating government action in this respect. This Ordinance, aside from setting

procedural parameters, fulfils a key role in the safeguarding of public funds. In this case, the acquisition was not pursued through the path of expropriation and instead procured directly from the open market. Based on the advice provided by the Attorney General, this was a legitimate course of action by Government, effectively acting within the parameters established through ordinary contract law. In this Office's opinion, although contract law provides general safeguards for the contracting parties, it does not address the nuanced nature of disbursements of public funds.

3.2.7 It is in this context that the NAO considers the acquisition of immovable property by government from the open market as insufficiently regulated. While this Office acknowledges that this situation affords government a degree of flexibility, this should not be at the expense of public funds. In this Office's understanding, flexibility presents an element of risk that may be countered through scrutiny. While the principles of good governance provide guidance in this respect, disbursements of public funds of the magnitude generally involved in the acquisition of immovable property necessitate more rigorous oversight.

3.2.8 In this case, the decision for the possible acquisition of the properties at 233, 236 and 237 Republic Street, Valletta was reportedly raised at Cabinet, yet this could not be verified. Although it could be argued that referral to Cabinet constitutes oversight, the NAO maintains that this level of scrutiny was insufficient. This opinion is based on comparisons drawn to the oversight exercised in other types of property transactions involving government, which range from adherence to specific legislation, to parliamentary resolutions or calls for tender. In these cases, the principles of good governance are supported by acts of law, parliamentary scrutiny or an open and transparent process of acquisition, respectively.

On the Specific Identification of Properties 233, 236 and 237

3.2.9 Based on information obtained by the NAO, this Office established that the Properties were initially identified for possible acquisition by Government by the OPM. The Minister MFEI, the PS Revenues and Land and the DG GPD indicated the involvement of the Prime Minister and officials within his Secretariat. The Prime Minister noted that between 2008 and 2011, Government deemed the acquisition of properties in Valletta as central to its broader economic, social and cultural objectives. In this context, reference was made to various major projects intended to contribute towards the regeneration of Valletta. Among others, the Prime Minister made reference to the City Gate project, on which the relocation of Parliament from the President's Palace was contingent. Moreover, the restoration of the President's Palace necessitated the relocation of all entities housed therein, bar the Office of the President.

3.2.10 According to that stated by the Prime Minister, direction in this respect was provided to all Ministers, Parliamentary Secretaries and senior officials. However, specific responsibility for the identification of alternative sites to house these entities was entrusted to the PS Revenues and Land. Indicated were the tight timeframes and high priority assigned to this project, deemed by the Prime Minister as being of national importance. The Prime Minister referred to the considerable difficulties encountered in identifying alternative properties, specifically citing a call for tenders that proved unsuccessful and the consideration of other sites that were also deemed unsuitable.

3.2.11 This was corroborated by that stated by the PS Revenues and Land during a meeting held with the NAO. The PS Revenues and Land indicated that, towards end 2010, an official from the Secretariat of the Prime Minister had informed him that alternative premises were to be identified for the entities housed within the President's Palace, as these were to be vacated and relocated elsewhere. The PS Revenues and Land

confirmed that oversight of the process was entrusted to him and for this reason, tasked the DG GPD with identifying suitable government-owned properties in Valletta. A stocktaking exercise was carried out by the GPD, following which the DG GPD informed the PS Revenues and Land that no adequate premises were available. However, despite requests addressed to the DG GPD and the Department, no documentation was provided in this respect. Therefore, this Office could not verify that stated. In view of this lack of documentation, the NAO was unable to ascertain the extent of detail of the stocktaking exercise and the nature of the analysis undertaken. This shortcoming was of concern to the NAO as this information was deemed integral, effectively the only justification cited for Government's decision to resort to the open market.

- 3.2.12 Queried on the specific identification of Properties 233, 236 and 237, the Prime Minister indicated that HSBC's intention to vacate their Head Office in Valletta and put the property on the market was a known fact among the business community. The Prime Minister argued that it was reasonable to assume that Government had been informed of this development from multiple sources, particularly in view of the fact that Government had been attempting to acquire property in Valletta for considerable time. According to the Prime Minister, the property formerly occupied by the Bank was deemed suitable to house the Office of the Attorney General and the other entities occupying the President's Palace. The conditions deemed essential by the Office of the Attorney General were that the property was to be situated in Valletta, located close to the Law Courts, accessible to the public and able to house all employees of the Office. Although the Prime Minister deemed these requirements as reasonable, these rendered the identification of a suitable property more challenging. It was in this sense that the premises vacated by HSBC was deemed the only property that addressed all the requirements.
- 3.2.13 The PS Revenues and Land confirmed that stated by the Prime Minister and that, sometime in February 2011, an official from the Prime Minister's Secretariat had informed him that the HSBC premises in Republic Street, Valletta had been, or were to be shortly, vacated and the possible acquisition of these properties by Government was to be looked into. This was discussed with the Minister MFEI and subsequently, the Permanent Secretary MFEI was informed of the matter and tasked with the appointment of an official or officials to approach the Bank and initiate negotiations.
- 3.2.14 This Office sought clarifications from HSBC in relation to the initial contact with Government in this respect. The Bank stated that an informal first contact was made in the early part of 2011 during a conversation between HSBC and Government officials, with the latter happening to mention that the Government was looking for a property in Valletta, which was ready to move into, in order to relocate the Office of the Attorney General from the President's Palace. The Bank also noted that it had marketed the properties through a number of local estate agents.
- 3.2.15 On 11 March 2011, the PS Revenues and Land prepared a memorandum to the Prime Minister and Minister MFEI regarding the acquisition of the Properties. According to the memorandum, Property 233 was held by HSBC on a temporary emphyteusis that was to expire on 30 June 2023. Annual ground rent of €69,071 was revisable every five years, with the next review set for 2013. Revisions to the ground rent were not to exceed 15 per cent. On the other hand, Properties 236 and 237 were owned by HSBC on a freehold basis. Noted in the memorandum was the sale premium of €800,000 set by HSBC with respect to Property 233 and the payment of subsequent ground rent due directly to the directum dominium holders. Furthermore, the option of an annual rental charge of €180,000 was also put forward by HSBC for Property 233. With respect to Properties 236 and 237, the Bank set a sale price of €300,000

and €1,650,000, respectively. Through the submission of this memorandum, the PS Revenues and Land sought authorisation to proceed with negotiations with HSBC. In addition, clear indication on whether to opt for rent or outright purchase, where possible, was requested. According to the PS Revenues and Land, the Prime Minister had informed Cabinet of the matter sometime after the submission of the 11 March 2011 memorandum and the Prime Minister had provided endorsement in this respect. Subsequently, the Minister MFEI notified the Permanent Secretary MFEI of the possible acquisition by Government of Properties 233, 236 and 237.

3.2.16 In effect, the correspondence submitted by the Permanent Secretary MFEI to the DG GPD on 17 March 2011 indicated that the Properties had already been identified. The remit given to the DG GPD was to specifically evaluate the properties at 233, 236 and 237 Republic Street, Valletta and not to consider any other alternatives. The Prime Minister and the PS Revenues and Land claimed that Government had in fact considered the acquisition of other privately-owned property in Valletta. However, neither the Permanent Secretary MFEI nor the DG GPD had indicated their involvement in such an exercise. The NAO sought to establish whether the GPD was aware of the alternative properties being considered by Government. Documentation made available to this Office indicated that only one of the sites made reference to was considered as an alternative for the relocation of the entities housed within the President's Palace. It is in this context that the NAO expresses its reservations that the Department responsible for the management of government's estate was not entrusted with a more active role. Irrespective of the consideration of the acquisition of other properties by Government, the extent of which cannot be fully determined, the NAO maintains that the identification of alternatives could have been rendered more transparent through a more open process.

Immediate Occupation and the Extent of Refurbishment Required

3.2.17 A key factor in Government's decision to acquire the properties at 233, 236 and 237 Republic Street, Valletta was that these were in a fairly good condition, allowing for the immediate relocation of the entities that were to vacate the President's Palace. In this context, the condition of the Properties was to be of adequate standard to allow for occupation by Government within a reasonably short timeframe, yet allowing for the required refurbishment works to be undertaken. In fact, the initial plans communicated by the PS Revenues and Land envisaged that the relocation was to be finalised by June/July 2011. Other perspectives were provided by the Negotiation Group, which first indicated that a six-month period of refurbishment was anticipated and later noted that the properties were in a fair state of repair and could be utilised as government offices after some minor refurbishment. A contrasting viewpoint was captured in the aide memoire, which indicated that the Properties were in dire need of refurbishment; however, the Negotiation Group maintained that this emphasis was intended as a negotiation strategy in driving the price downwards. Other than that stated in the aide memoire, the Negotiation Group invariably claimed that the state of the Properties was fair.

3.2.18 In this Office's opinion, the understanding of the possible immediate occupation of the Properties was rendered dubious in light of the issue that arose with respect to the state of M&E systems. Although the Negotiation Group had originally indicated that the M&E systems were in a fair condition, the Consultant Engineer had subsequently drawn up a considerable list of non-optional M&E upgrades that were required in order to render the Properties adequate. Although the net cost of these upgrades, estimated by the Consultant Engineer at €195,200, was partially addressed in subsequent reductions in the price negotiated with HSBC, this issue negatively influenced the anticipated relocation of the offices housed in the President's

Palace. The immediate occupation of the Properties became more unlikely, not only contingent on the duration of the execution of refurbishment works but also on the required upgrades to the M&E systems.

3.2.19 The cost of refurbishment works as initially envisaged by the Negotiation Group was estimated at between €300,000 and €350,000; on the other hand, that established by the WID was €640,185. Both estimates excluded the cost of M&E works required. Although it could be contended that the cost of refurbishment is determined by the planned level of finishing, the estimated outlay would indicate that the refurbishment works required were considerable, in either of the two scenarios. Although the Negotiation Group had indicated a six-month period for the completion of the refurbishment works, the NAO noted that six months after the December 2011 contract, works had not yet commenced. While this Office acknowledges that the Negotiation Group bore no responsibility in the implementation of works, the lack of any progress registered in this respect contradicts the urgency originally cited for the acquisition of these Properties. The NAO noted that according to the plan of works presented by the WID, the project was to commence in October 2012 and conclude in June 2014, a far lengthier period than that envisaged by the Negotiation Group. Therefore, the premise that the Properties were to be acquired in view of the possibility of immediate occupation was disproved.

3.2.20 Considering that the cost of non-optional M&E systems upgrades cited by the Consultant Engineer amounted to €195,200, application of the 15 per cent provision to factor the cost of removal and carting away of existing M&E services, would result in a total cost of €224,480. Adding this to the estimated cost of refurbishment works by the WID would result in a total outlay of €864,665. In the NAO's opinion, the cost required to render the Properties of adequate standard for use as offices represented a considerable disbursement to Government, equivalent to approximately 40 per cent of the cost of acquisition. Compounding matters was the fact that Property 233 was to be held under title of sub-emphyteusis for a relatively short period of time, with approximately 10 years of the leasehold remaining at this stage of the process.

Establishing Value

3.2.21 The NAO noted the substantial difference between the two valuations obtained by Government with respect to Properties 233, 236 and 237. The Consultant Architect A estimated the premium payable to HSBC for Property 233 as €640,000 and the freehold value of Properties 236 and 237 at €925,000. In aggregate, the value assigned by the Consultant Architect A was €1,565,000. On the other hand, the Consultant Architect B established an aggregate value of €2,544,000. Of this amount, €768,000 corresponded to Property 233, while €1,776,000 related to Properties 236 and 237. Immediately evident is the disparity in valuations, amounting to €979,000. The most significant difference in value was that in respect of Properties 236 and 237, which amounted to €851,000. Although the difference in the case of Property 233 was less significant, this still amounted to €128,000. Comparison of the valuations sourced by the GPD with that established by HSBC was deemed a moot point by the NAO, as the value assigned to the Properties by the Bank would have naturally accounted for the inevitable revisions arising following negotiation.

3.2.22 Notwithstanding the notable discrepancy in the values established by the Consultant Architects, the DG GPD recommended that the valuation determined by the Consultant Architect B be utilised as the basis for an initial offer to HSBC. Without going into the merits of whether this valuation reflected a fair market value or otherwise, the NAO questioned this reasoning, particularly in view of the aforementioned considerable divergence in values assigned and the impact that this might have bore on negotiations

and the final price agreed to.

3.2.23 In seeking to establish whether Government’s negotiating position was based on a sound foundation, the NAO engaged a technical consultant. In this context, the NAO obtained an independent valuation of the Properties, hence allowing this Office to comment on whether Government based its negotiations and eventually acquired the Properties for a fair value. The NAO estimated the market value of the Properties as at 1 January 2011, and based this estimate on an assessment of the Properties with reference to their existing use, as well as the title acquired by Government. As illustrated in Table 14, the market value of the Properties was estimated by the NAO as €2,610,000.

Table 14: Market Value of Properties 233, 236 and 237

| Summary Valuation (€) | |
|---|------------------|
| Premium for 12.5 years temporary emphyteusis for Property 233 | 1,259,498 |
| Freehold value for Properties 236 and 237 | 1,733,604 |
| Total | 2,993,102 |
| Less: Cost of M&E works | (229,600) |
| Less: Provision to improve vertical circulation | (150,000) |
| Total | 2,613,502 |
| Rounded to | 2,610,000 |

3.2.24 In the NAO valuation, the internal area per floor was assessed in relation to its respective use through referral to site plans and an onsite visit. The onsite visit was carried out in order for the NAO Consultant to familiarise with the layout and design of the Properties, and in particular to determine the specific use of the different areas of every floor. Furthermore, the market value of the Properties was estimated at the highest and best use for each Property, principally using the income approach. This approach is based on the estimated income that an asset is likely to generate over its remaining useful life or during a specified period. Where data relating to the historical performance and/or forecast income was not available, the single period capitalisation method, which estimates the value of an asset by capitalising maintainable income, was applied instead. The resulting valuation of the Properties was benchmarked by applying the sales comparison approach, which establishes the market value of a property based on a comparison of the appraised property with similar and comparable properties that have either been sold or were advertised for sale. In applying this approach, adjustments were made for factors such as the specific characteristics of the property under appraisal and expected differences between advertised and transacted prices.

3.2.25 In determining the value of Properties 233, 236 and 237 as at 1 January 2011, the NAO considered the following:

- a. since property prices have increased at a significantly faster pace than the rate of inflation from 2011 to date, it was not possible for the NAO to assess the value of the Properties by valuing them at current market rates and then discounting back to 2011 at the inflation rate;
- b. it was not possible to determine the latent structural works and M&E improvements that were required to render the Properties to their current state;
- c. the value of the Properties was determined on the basis of their current and allowed use;

- d. the size and layout of the Properties, their location, and their current condition were taken into consideration. However, the NAO Consultant was not in a position to assess their condition as at 2011;
- e. the value of Property 233 was solely attributed to the premium payable to acquire the utile dominium from HSBC in 2011;
- f. Properties 236 and 237 were valued on a freehold basis;
- g. the premium to be paid by the Government to acquire the sub-emphyteusis was calculated using a discounted cash flow model based on the estimated market rent for the premises, which was reflective of the opportunity cost to HSBC, less the ground rent obligation assumed by Government. Essentially, the future cash flows from the ground rent payable were deducted from the theoretical future cash flows of the annual rental income forgone by the Bank. The annual rent was determined by applying market rental rates to the area of the Property. The future cash flows were discounted to present value using an appropriate discount rate to arrive at the consideration payable by the Government to acquire the title of temporary sub-emphyteusis;
- h. a 12.5 year remaining term of emphyteusis was assumed; and
- i. an annual rate of inflation of 1.93 per cent was assumed in line with the escalation clause set out in the deed of emphyteusis entered into on 21 December 1988 by Mid-Med Bank Limited, referred to in this report in paragraph 2.4.2, for the extension of the temporary grant of Property 233. The rate represents the minimum escalation of 10 per cent every five years, as established in the deed. The rate of inflation applied in the valuation was also benchmarked with the annual inflation rate between 2011 and 2015, published by the National Statistics Office, which varied between 2.72 per cent in 2011 and 0.31 per cent in 2014.

3.2.26 The NAO was unable to establish how the net internal areas utilised by the Consultant Architects A and B as the basis of their valuations were calculated. Queries raised in this respect were to no avail as the Consultant Architect A was unable to provide the drawings utilised, while the Consultant Architect B failed to provide a reply. Consequently, the NAO could not verify the areas on which the Consultant Architects A and B based their valuations. Therefore, this Office based its valuation on the measurements established in drawings appended to a planning application that had been submitted by HSBC in 2004, a sample of which was subsequently verified on site.

3.2.27 As indicated in Table 15, the net internal areas as measured and applied in the 2011 valuations differed to those established by the NAO by 241 square metres, which accounts for approximately 16 per cent of the total area. A per property and per floor basis account is provided in Tables 16 and 17. It must be noted that the basement level of Properties 236 and 237, measuring 100 square metres, was not considered in the valuation compiled by the NAO as this was deemed to have several limitations in terms of use. This decision was based on the understanding that from a commercial perspective, a potential tenant would not be able to rent out this space, since it could not be utilised as storage for retail operations and less so as office space. These examples in terms of the limitation of use of the basement level reflected the principle of prudence adopted in the NAO valuation.

Table 15: Differences in areas established by the NAO and Consultant Architects

| Property | NAO (m ²) | Consultant Architects (m ²) | Difference (m ²) | Difference (percentage) |
|-------------|-----------------------|---|------------------------------|-------------------------|
| 233 | 1,184 | 1,030 | 154 | 15% |
| 236 and 237 | 524 | 437 | 87 | 20% |
| Total | 1,708 | 1,467 | 241 | 16% |

Table 16: Property 233 - Areas established by the NAO and Consultant Architects

| Floor | NAO (m ²) | Consultant Architects (m ²) | Difference (m ²) | Difference (percentage) |
|--------|-----------------------|---|------------------------------|-------------------------|
| Ground | 443 | 390 | 53 | 14% |
| First | 350 | 320 | 30 | 9% |
| Second | 391 | 320 | 71 | 22% |
| Total | 1,184 | 1,030 | 154 | 15% |

Table 17: Properties 236 and 237 - Areas established by the NAO and Consultant Architects

| Floor | NAO (m ²) | Consultant Architects (m ²) | Difference (m ²) | Difference (percentage) |
|--------------|-----------------------|---|------------------------------|-------------------------|
| Ground | 97 | 91 | 6 | 7% |
| First | 121 | 101 | 20 | 20% |
| Second | 121 | 101 | 20 | 20% |
| Third | 121 | 101 | 20 | 20% |
| Intermediate | 64 | 43 | 21 | 49% |
| Total | 524 | 437 | 87 | 20% |

Property 233

3.2.28 For the purpose of the valuation of Property 233, the total area of each floor was subdivided into different uses as summarised in Table 18. The NAO assumed that 981 square metres would be utilised as office space, whereas 123 square metres would be allocated to the services and internal circulation areas. The footprint of the internal courtyard/atrium was measured at 80 square metres.

Table 18: Property 233 - Division of floor areas into different uses

| Floor | Office (m ²) | Atrium (m ²) | Services and internal circulation (m ²) | Total (m ²) |
|--------|--------------------------|--------------------------|---|-------------------------|
| Ground | 313 | 80 | 50 | 443 |
| First | 300 | - | 50 | 350 |
| Second | 368 | - | 23 | 391 |
| Total | 981 | 80 | 123 | 1,184 |

3.2.29 The NAO established that rates for office space varied between €120 and €250 (mid-point of €185) per square metre per annum. In determining the value of Property 233, an annual rate of €180 per square metre was applied to office areas, while the rate for service areas was subject to a factor of 0.5 of the office rental rate utilised. Despite the landmark nature of the former HSBC premises, the rates applied were similar to the mid-point rather than the higher end of the market rates as the building was not a dedicated office building as in the case of a new build. The resulting annual rent achievable in 2011 was therefore estimated at €202,050 (and assumed to be revisable

by 1.93 per cent every year, in line with the revision applicable on the ground rent payable), representing an average annual rental rate of €171 per square metre, as illustrated in Table 19.

Table 19: Property 233 - Annual notional rent receivable

| Floor | Offices | Atrium | Services and internal circulation | Total |
|--|----------|---------|-----------------------------------|----------|
| Factor | - | - | 0.5 | - |
| Annual rental rate/m ² | €180 | €180 | €90 | - |
| Ground | €56,340 | €14,400 | €4,500 | €75,240 |
| First | €54,000 | - | €4,500 | €58,500 |
| Second | €66,240 | - | €2,070 | €68,310 |
| Total | €176,580 | €14,400 | €11,070 | €202,050 |
| Annual rental rate/m ² based on a total area of 1,184m ² | | | | €171 |

3.2.30 The net cash flows receivable were discounted to present value, using a discount rate of 6.6 per cent, in order to arrive at the consideration payable by Government to acquire the title of temporary sub-emphyteusis. The value of the premium, as at 1 January 2011, was estimated to be in the region of €1,260,000 (gross of adjustments related to works required to render the property to its current state).

Properties 236 and 237

3.2.31 With respect to Properties 236 and 237, the total area per floor was categorised according to use, as indicated in Table 20. In line with the principle of the highest and best use for each Property, the NAO considered that the ground floor could be utilised as a retail or catering space, with 30 square metres of prime retail area and 28 square metres with respect to the inner area of the floor. The remaining ground floor area, which included a back yard, was classified as a service area. Furthermore, the first, second and third floors, totalling 263 square metres, were designated as office space, while 24 square metres on each floor were to be utilised for services and internal circulation.

Table 20: Properties 236 and 237 - Division of floor areas into different uses

| Floor | Retail (m ²) | Retail back (m ²) | Offices (m ²) | Terrace (m ²) | Mezzanine (m ²) | Services and internal circulation (m ²) | Total (m ²) |
|-----------|--------------------------|-------------------------------|---------------------------|---------------------------|-----------------------------|---|-------------------------|
| Ground | 30 | 28 | - | - | - | 39 | 97 |
| First | - | - | 97 | - | - | 24 | 121 |
| Second | - | - | 97 | - | - | 24 | 121 |
| Third | - | - | 69 | 28 | - | 24 | 121 |
| Mezzanine | - | - | - | - | 40 | 24 | 64 |
| Total | 30 | 28 | 263 | 28 | 40 | 135 | 524 |

3.2.32 The rates considered by the NAO in determining value with respect to the potential different uses of the Properties were as follows:

- a. for retail and catering, the annual rates varied between €200 and €550 (mid-point of €375) per square metre; and
- b. for office accommodation, the rates varied between €120 and €250 (mid-point of €185) per square metre per annum.

In the case of the front retail space of the Properties, an annual rental rate of €325 per square metre was considered, which is slightly lower than the mid-point for catering and retail establishments. As with Property 233, a rate of €180 per square metre per annum was set for the office areas, which is in line with the mid-point of the 2011 market rates. For the inner retail area and mezzanine level, the NAO applied a factor of 0.5 of the retail rental rate, since these carried a lower value than the main area. With respect to the terrace and service areas, a factor of 0.15 and 0.5 of the office rental rate, respectively, was applied. Table 21 illustrates the annual rent for Properties 236 and 237. The resulting annual rent achievable in 2011 was therefore estimated at €81,046, representing an annual average rental rate of €155 per square metre, excluding the basement area.

Table 21: Properties 236 and 237 - Annual rent

| | Retail | Retail back | Offices | Terrace | Mezzanine | Services and internal circulation | Total |
|--|--------|-------------|---------|---------|-----------|-----------------------------------|---------|
| Factor | - | 0.5 | - | 0.15 | 0.5 | 0.5 | - |
| Annual rental rate/m ² | €325 | €163 | €180 | €27 | €163 | €90 | - |
| Ground | €9,750 | €4,550 | - | - | - | €3,510 | €17,810 |
| First | - | - | €17,460 | - | - | €2,160 | €19,620 |
| Second | - | - | €17,460 | - | - | €2,160 | €19,620 |
| Third | - | - | €12,420 | €756 | - | €2,160 | €15,336 |
| Mezzanine | - | - | - | - | €6,500 | €2,160 | €8,660 |
| Total | €9,750 | €4,550 | €47,340 | €756 | €6,500 | €12,150 | €81,046 |
| Annual rental rate/m ² based on a total area of 524m ² | | | | | | | €155 |

3.2.33 It is important to note that the NAO applied rates that were similar to the mid-point of the respective categories of use rather than to the higher end of the market rates due to the following considerations:

- a. the building is not a dedicated office building as in the case of a new build. The original use of Property 237 was that of a residential dwelling and although the building has been converted for office use, it still has certain limitations when compared to prime office property; and
- b. the property is located towards the lower part of Republic Street, past Palace Square.

3.2.34 A capitalisation rate of 4.68 per cent was determined by using a discount rate of 6.6 per cent and an inflation rate of 1.93 per cent. The determination of the discount rate applied was based on the risk-free rate, on a general risk associated with property developments and on a specific risk premium related directly to the property being valued. The risk-free rate is based on the yield to maturity of a 10-year Malta Government Stock, which as at 3 January 2011 stood at 4.35 per cent. This represents the base rate of return for an investor and is generally based on the current yield on long-term bonds. A premium of 1.25 per cent was applied to the risk-free rate to take into account the risks inherent in property investment, including:

- a. property market risk, which represents the lack of liquidity caused by high transaction costs and the complexity of arranging finance; and

- b. tenant risk, which represents the risk of default on lease terms, particularly with respect to the payment of rent but also in terms of repair and other obligations, and the risk of the tenant not renewing the lease. An execution risk premium of 1 per cent was also applied to the risk-free rate to take into account the specific risk associated with the investment in the Properties. Furthermore, the discount rate applied to value the Properties was benchmarked against the yield to maturity in 2011 on a reference corporate bond with the same tenure.¹⁴ An execution risk premium of 1 per cent is appropriate when considering the higher risk associated with investing directly in a property, compared with an investment in a property holding company that is established to fund major mixed-use real estate development.

3.2.35 The application of the 4.68 per cent capitalisation rate to the annual chargeable rent of €81,046 results in a freehold valuation of Properties 236 and 237 of €1,733,604, rounded to €1,730,000. Through use of the sales comparison approach, the NAO benchmarked this valuation with similar properties in Valletta bearing comparable characteristics. Based on this assessment, a similar property would have realised an annual rate in the region of €3,000 to €5,000 per square metre in 2011. Given that the NAO estimate of the market value of Properties 236 and 237 as at 1 January 2011 was in the region of €1,730,000, this represented a rate per square metre of €3,302. This value is gross of adjustments related to works required to refurbish the Properties.

Discrepancy in Areas

3.2.36 Given the significant difference in areas established by the NAO and the Consultant Architects, the NAO sought to establish the value of the Properties according to the area utilised in the valuations by the Consultant Architects. Applying the rates established by the NAO to the areas utilised by the Consultant Architects resulted in an overall reduction in value of approximately €492,084. Of this, €279,416 corresponded to Property 233 and €212,668 corresponded to Properties 236 and 237, which implies a revised aggregate value of €2,117,916. Tables 22 and 23 illustrate the workings utilised by the NAO in determining the difference in values arrived at by this Office and the Consultant Architects.

Table 22: Difference in value of Property 233 arising from discrepancy in area

| Floor | Office | Atrium | Services and internal circulation | Total |
|--|---------------------|------------------|-----------------------------------|-------------------|
| Ground | (27m ²) | 80m ² | - | 53m ² |
| First | 25m ² | - | 5m ² | 30m ² |
| Second | 93m ² | - | (22m ²) | 71m ² |
| Total | 91m ² | 80m ² | (17m ²) | 154m ² |
| Rate/m ² | €180 | €180 | €90 | |
| Additional rent | | | | €29,250 |
| Rent as per NAO valuation | | | | €202,050 |
| Rent per annum (calculated according to area cited by Consultant Architects) | | | | €172,800 |

3.2.37 The application of a discount rate of 6.60 per cent to the ground rent payable and the rent receivable resulted in a present value of net cash flows, equivalent to the value of Property 233, of €980,083. This revised value is based on the area of Property 233 cited in the valuations drawn up by the Consultant Architects. Given that the present value estimated by the NAO was €1,259,498, the revision to €980,083 results in a discrepancy of €279,416, attributable to the increase in area noted by this Office.

¹⁴ Tumas Investments plc 2017-2020: yield to maturity of 5.6%

Table 23: Difference in values of Properties 236 and 237 arising from discrepancy in area

| Floor | Retail | Retail Back | Offices | Terrace | Mezzanine | Services and internal circulation | Total |
|---|------------------|-----------------|---------------------|------------------|------------------|-----------------------------------|------------------|
| Ground | 10m ² | 8m ² | - | - | - | (11m ²) | 6m ² |
| First | - | - | 27m ² | - | - | (7m ²) | 20m ² |
| Second | - | - | 28m ² | - | - | (8m ²) | 20m ² |
| Third | - | - | (32m ²) | 28m ² | - | 24m ² | 20m ² |
| Mezzanine | - | - | (43m ²) | - | 40m ² | 24m ² | 21m ² |
| Total | 10m ² | 8m ² | (20m ²) | 28m ² | 40m ² | 22m ² | 87m ² |
| Annual rental rate/m ² | €325 | €163 | €180 | €27 | €163 | €90 | |
| Additional rent | €3,088 | €1,219 | (€3,600) | €756 | €6,500 | €1,980 | €9,942 |
| Capitalisation factor | | | | | | | 4.68% |
| Discrepancy in value due to additional area | | | | | | | €212,668 |

3.2.38 Notwithstanding these considerations, the NAO is of the understanding that the areas cited by the Consultant Architects in their respective valuation reports were factually incorrect, rendering the above irrelevant. The establishment of site area is not a matter subject to any debate or doubt, as this was an aspect that could and should have been determined during the valuation of the Properties.

Overall Considerations and Value for Money Implications

3.2.39 Comparison of the values of the Properties as established by the NAO with those cited in the contract between Government and HSBC resulted in a variance of €393,502 in favour of Government. With respect to the cost of M&E works of €229,600, the NAO utilised the estimated cost of M&E works determined by the Consultant Engineer, as referred to in paragraph 2.6.4, and excluded the estimated €40,000 required for the upgrade of the lift since this was included in the cost to improve vertical circulation. Meanwhile, the cost estimate of €150,000 for remedial works required to improve vertical circulation at Properties 236 and 237 was taken from the valuation report of the Consultant Architect B, which figure was referred to in this report in paragraph 2.2.24. After considering provisions intended to account for M&E works required and vertical circulation costs, accordingly apportioned, the variance with respect to Property 233 amounted to €173,855 and that for Properties 236 and 237 was €219,647.

Table 24: Comparison of NAO valuation and contract value

| Property | NAO valuation (€) | Apportionment of M&E and vertical circulation costs (€) ^a | Revised NAO valuation (€) | Contract value (€) | Variance (€) |
|-------------|-------------------|--|---------------------------|--------------------|--------------|
| 233 | 1,259,498 | 159,161 | 1,100,337 | 926,482 | 173,855 |
| 236 and 237 | 1,733,604 | 220,439 | 1,513,165 | 1,293,518 | 219,647 |
| Total | 2,993,102 | 379,600 | 2,613,502 | 2,220,000 | 393,502 |

Note:

a. M&E costs were apportioned to the Properties based on area while the cost to improve vertical circulation was allocated to Properties 236 and 237.

3.2.40 On the basis of its valuation, the NAO established that Government paid a fair value for the acquisition of the Properties. While Government paid HSBC €2,220,000, the valuation established by this Office was that of €2,610,000, which estimate took into

account a provision of €379,600 for the envisaged M&E replacements and upgrades as well as vertical circulation-related improvements.

3.2.41 This Office reserves an element of concern with regard to the discrepancy in areas noted, with the area cited by the Consultant Architects A and B being 241 square metres less than that established by the NAO. While this discrepancy favoured Government, the NAO could not establish the source of this difference as the plans, on which the Consultant Architects A and B based their valuations, were not made available.

3.2.42 An anomaly noted by the NAO related to the value assigned to Property 233 in the contract of acquisition. The initial asking price set by HSBC in March 2011 with respect to the premium was €800,000. Following negotiations, the agreed price for this Property, as captured in the December 2011 contract, increased to €926,482. Notwithstanding this anomalous change in the value apportioned to Property 233, it must be stated that the aggregate value of the acquisition was negotiated from €2,750,000 in March 2011 to €2,220,000 in December 2011. In seeking to establish the reason for this incongruence, the NAO addressed queries to the Permanent Secretary MFEI, the DG GPD and the incumbent Acting DG GPD. Despite queries made, no explanation regarding the change in the apportionment of values was forthcoming. Although the Commissioner for Revenue provided an element of assurance that Government's interests in terms of tax payable were not adversely affected, this Office deems Government's inability to explain the anomaly arising from the apportionment of values as a shortcoming of note.

The Process of Negotiation

3.2.43 In this Office's understanding, the sourcing of the two valuation reports and the appointment of the Negotiation Group represented the commencement of the process of negotiation. Based on documentation reviewed, the NAO established that the Permanent Secretary MFEI appointed the Negotiation Group and that guidance, when sought, was provided by the Permanent Secretary. In terms of governance, the NAO deems the setting up and reporting arrangements of the Negotiation Group as positive. However, while the authorisation of the Permanent Secretary MFEI was sought prior to the submission of later offers by Government, the NAO established that such authorisation was not sought with respect to the first documented offer of €2,045,000, or others, if previously made. According to that stated by the DG GPD, this offer was determined by the Negotiation Group.

3.2.44 The NAO's review of the process of negotiation was hindered by the lack of documentation maintained by the Negotiation Group. No minutes of meetings held between the Negotiation Group and HSBC were made available to this Office. Moreover, records of offers and counter-offers made were mostly inadequate and incomplete. Although the NAO did form an understanding of the process of negotiation through reference to other correspondence, the lack of documentation retained by the Negotiation Group detracted from the overall accountability expected in transactions of this nature.

3.2.45 Aside from these shortcomings in the process of negotiation, the Office's attention was drawn to the acquisition of the Properties on a tale quale basis. The NAO established that the Government, guided by the Negotiation Group, initially agreed to acquire the Properties on a tale quale basis for €2,360,000. This agreement in principle was reached on the understanding that, as stated by the Bank, the premises had until recently been occupied and that the M&E services were in good working order. However, the Negotiation Group failed to ascertain the true condition of the

Properties, relying solely on that stated by HSBC. Compounding matters was the fact that the Negotiation Group had at no point indicated the intent to establish the condition of the Properties, and attention to the matter was coincidentally drawn by the Permanent Secretary MFEI in discussing the obligation to restore Property 233 to its original condition on expiry of the temporary emphyteusis. In this Office's opinion, this constituted a major shortcoming in the process of negotiation, gravely and adversely conditioning Government's negotiating position.

3.2.46 This critical shortcoming was reflected in concerns raised by the Permanent Secretary MFEI, who stated that this procedural error would result in an inflated acquisition price and represent an additional expense for Government. The Permanent Secretary MFEI argued that any subsequent negotiations would be burdened by this shortcoming, effectively putting Government in a very weak position. Furthermore, the Permanent Secretary MFEI maintained that 'the understanding that all M&E plant were in good working order' proved more than irrelevant when confronted with the stronger 'tale quale' condition that was agreed to. In a meeting with the NAO, the Permanent Secretary MFEI reiterated that it was in this context of procedural failing that his concerns were to be understood. The Permanent Secretary MFEI was not convinced that Government was paying a fair price for the acquisition and, to this end, felt duty-bound not to recommend this transaction. Providing further clarifications regarding concerns raised, the Permanent Secretary MFEI asserted that the procedure adopted by the Negotiation Group would remain flawed irrespective of whatever corrective measures were subsequently taken.

3.2.47 The NAO deems the concerns expressed by the Permanent Secretary MFEI during negotiations, and subsequently reiterated in meetings held with this Office, as valid. The necessity to determine the state of the Properties prior to agreement on price on a tale quale basis should have been a basic and evident requirement in the conduct of negotiations. Failure in this respect by the Negotiation Group constituted a critical flaw in the process of negotiation, effectively curtailing Government's bargaining power and delaying the conclusion of the acquisition.

Consideration of Expropriation

3.2.48 Based on documentation reviewed, the NAO noted that the possible expropriation of Property 233 was in fact considered, as rendered evident in correspondence exchanged between the DG GPD, the Attorney General and the Permanent Secretary MFEI. This Office established that the option of expropriation was eventually discarded, with several reasons cited in this regard. The DG GPD cited complications arising from the requirement of restoring the Property to its original condition and the possible substantial cost of expropriation, estimated at €3,500,000. The Attorney General remarked that aside from the actual cost of the Property, the direct owners might argue that with expropriation, they would have been deprived not only of the Property in its present state, but also of their right to demand its reconversion to its original state. Hence, this could lead to a scenario where the value of the Property is being based on a reconverted premises. Finally, the Permanent Secretary MFEI expressed reservations regarding whether expropriation represented an appropriate course of action.

3.2.49 The NAO acknowledges the concerns raised, particularly in view of whether the expropriation of Property 233 would have constituted a justifiable public purpose, critically essential in the expropriation of private property. In this Office's opinion, Government's possible justification for the expropriation of this specific property for use as offices remains debatable, as alternative premises serving this purpose may have been identified through a more open and competitive procurement process.

3.2.50 Ultimately, expropriation was not considered further by Government, rendering any discussion of the matter moot. However, in this Office's opinion, Government's acquisition of Properties 236 and 237, the interconnected nature of Property 233 with those acquired by Government, as well as the significant investment in refurbishment undertaken, may condition Government's position in 2023, that is, when the temporary emphyteusis of Property 233 expires.

Issues of Governance

3.2.51 Government's decision to acquire Properties 233, 236 and 237 originated from the OPM and was captured in the memorandum submitted by the PS Revenues and Land to the Prime Minister and the Minister MFEI on 11 March 2011. The NAO was not provided with documentation submitted in reply to this memorandum; however, the Minister MFEI and the PS Revenues and Land indicated that the matter was reportedly brought to the attention of Cabinet. Despite that stated, the NAO was unable to verify whether the acquisition of Properties 233, 236 and 237 was discussed by Cabinet, or otherwise, as this Office did not have access to Cabinet minutes. Notwithstanding this, queries relating to any Cabinet decision taken in this regard were made to the Cabinet Office and to the Permanent Secretary MFEI. In response, Cabinet Office indicated that no record of any decision relating to this acquisition could be traced. This was, to an extent, corroborated by the Permanent Secretary MFEI, who stated that he did not recall receiving any Cabinet decision on the matter.

3.2.52 While the NAO acknowledges that disbursements of this nature would not ordinarily necessitate the approval of Cabinet, this Office is also cognisant of the fact that the direct acquisition by Government of property from the open market, not through expropriation, is atypical and not regulated by specific legislation or procedure except for the broader obligations established through contract law. It is in this context that the NAO considers that referral to and authorisation by Cabinet would have afforded an element of oversight and ensured greater accountability and transparency. In this Office's opinion, this shortcoming, in terms of authorisation by Cabinet, detracted from the expected level of governance, essential in justifying the direct acquisition of these Properties.

3.2.53 Aside from governance-related issues noted in terms of the identification of the Properties, other concerns relating to the process of negotiation were evident. In this context, concerns were expressed in the strongest of terms by the Permanent Secretary MFEI in correspondence submitted to the Minister MFEI, the PS Revenues and Land and the DG GPD. In essence, the Permanent Secretary MFEI maintained that the procedure employed by the Negotiation Group was flawed, and therefore felt duty-bound not to recommend the approval of this acquisition. While these concerns triggered the renegotiation of the agreed price, from €2,360,000 to €2,220,000, the NAO is of the understanding that the concerns expressed with respect to the procedural shortcomings remained unaddressed. According to that stated to the NAO, the Minister MFEI did acknowledge the concerns expressed by the Permanent Secretary MFEI; however, despite these shortcomings, he indicated that the negotiations could not be dismissed and that the acquisition was to be seen through. On the other hand, the focus of the PS Revenues and Land was on securing a reduction in price to account for the required works, effectively disregarding the broader concerns regarding the flawed nature of negotiations.

3.2.54 The NAO deems valid the concerns raised by the Permanent Secretary MFEI that the process of negotiation was effectively flawed; however, this Office also recognises that the possible courses of action open to Government, when such concerns were expressed, were limited. In this context, Government was effectively constrained

to choose between proceeding with negotiations regardless of the shortcomings identified by the Permanent Secretary MFEI or withdraw from negotiations outright. In proceeding with negotiations, doubt will persist as to whether value for money was ensured by Government in this transaction. On the other hand, withdrawal would have possibly bore an impact on plans in connection with the Valletta 2018 European Capital of Culture; however, this Office did not delve into the broader plans in place in this respect and therefore refrains from commenting on the possible adverse implications, or otherwise, that may have resulted in this regard. Had Government opted to withdraw from negotiations with HSBC, this would have necessitated the identification of other suitable premises for the relocation of the entities housed in the President's Palace. The availability of such premises remains subject to debate, yet would certainly have resulted in delays to the relocation of these entities.

3.3 Conclusions

- 3.3.1 In addressing that requested by the PAC, the NAO sought to ascertain whether the principles of good governance, value for money, transparency and accountability were respected and whether any political pressure was exerted with respect to Government's acquisition of the temporary emphyteusis of 233 Republic Street and the purchase of the freehold property at 236 and 237 Republic Street, Valletta.
- 3.3.2 The NAO is of the opinion that the process of identification of the Properties 233, 236 and 237 lacked the transparency that would have been ensured through a more open process of acquisition. Government's plans to relocate the entities housed in the President's Palace were well in anticipation of the broader plans relating to the Valletta 2018 European Capital of Culture and therefore should have been appropriately planned for in this manner. While this Office acknowledges that the Properties adequately met Government's requirements, this does not justify the shortcomings noted in terms of planning and the analysis of suitable alternatives. It is in this context that the NAO considers the role of the OPM as pivotal in the initial identification of the Properties, yet unwarranted as Government could have resorted to a more open procedure for the acquisition of property in Valletta.
- 3.3.3 These concerns are further accentuated by the fact that the acquisition of immovable property by government from the open market is, in this Office's opinion, insufficiently regulated. Although this provides government with a degree of flexibility, this should not be at the expense of public funds. In the NAO's understanding, the risk inherent in such flexibility may be mitigated through scrutiny. In this case, the decision for the possible acquisition of the properties at 233, 236 and 237 Republic Street, Valletta was reportedly raised at Cabinet, yet this could not be verified. Although it could be argued that referral to Cabinet constituted oversight, the NAO maintains that this level of scrutiny was insufficient. This opinion draws on comparisons to oversight exercised in other types of property transactions involving government, captured in specific legislation, parliamentary resolutions or calls for tender. While the principles of good governance provide an element of guidance, these principles ought to be supported by acts of law, parliamentary scrutiny or an open and transparent process of acquisition, respectively.
- 3.3.4 While shortcomings were noted in the process of identification, the NAO deemed the setting up of the Negotiation Group and its reporting arrangements as positive. Notwithstanding the encouraging initial management of the process, the execution of negotiations, as undertaken by the Negotiation Group, was flawed in various aspects. Aside from shortcomings in terms of documentation retained by the Negotiation Group, which detracted from the overall accountability expected in transactions of this nature, this Office's attention was drawn to the Negotiation Group's role in leading

Government to agree to acquire the Properties on a tale quale basis for €2,360,000. This agreement in principle was reached on the understanding that, as stated by the Bank, the premises had until recently been occupied and that the M&E services were in good working order. However, the Negotiation Group failed to establish the true condition of the Properties, relying solely on that stated by HSBC. In this Office's opinion, this constituted a significant shortcoming in the process of negotiation, critically and negatively conditioning Government's negotiating position.

- 3.3.5 This serious shortcoming was reflected in concerns raised by the Permanent Secretary MFEI, who maintained that this procedural error would result in an inflated transaction value. The NAO deemed what was asserted by the Permanent Secretary MFEI, that the procedure adopted by the Negotiation Group would remain flawed irrespective of whatever subsequent corrective measures were taken, as valid. This Office deemed the determination of the condition of the Properties prior to agreement on price on a tale quale basis as a basic and obvious requirement that was to be established in the course of negotiations. Failure in this respect by the Negotiation Group represented a fundamental weakness in the process of negotiation, effectively limiting Government's bargaining power and indirectly impeding the conclusion of the acquisition.
- 3.3.6 Notwithstanding the shortcomings evident throughout the negotiation process, in this Office's opinion, Government acquired the Properties at fair value. While Government paid HSBC €2,220,000, on the basis of advice obtained, the NAO determined the value of the Properties as €2,610,000. Although the value of the transaction was favourable to Government, this does not necessarily imply that value for money was ascertained, which is also contingent on factors other than price. In this case, value for money could have been better ensured through a more open and competitive procurement process. Also bearing impact are the shortcomings noted by the NAO throughout the negotiation process, with Government agreeing to acquire the Properties on a tale quale basis without verifying the actual condition of the Properties. Although provisions in terms of price were later made for this failure, the extent of refurbishment required and the time taken to carry out the required works persisted as an adverse effect in terms of value for money. This consideration assumes greater relevance with respect to Property 233, given that this was acquired by Government for a definite period, up to 2023. It is in this context that the NAO expresses reservations regarding whether value for money was ascertained by Government, for the factors indicated all potentially bore an adverse impact in this regard.
- 3.3.7 In response to the request to determine whether political pressure was exerted, the NAO did not obtain conclusive evidence in this regard. However, the NAO established that political direction was manifested in terms of the identification of the Properties. The role of the OPM was central in this regard, effectively triggering a series of actions that ultimately led to Government's acquisition of the Properties. This initial identification was followed by a memorandum submitted by the PS Revenues and Land to the Prime Minister and the Minister MFEI. While the NAO was informed by the Minister MFEI and the PS Revenues and Land that the matter was discussed at Cabinet, no Cabinet decision on the issue was traced despite requests made to the Cabinet Office and the Permanent Secretary MFEI. Subsequent interventions by the Prime Minister and the PS Revenues and Land made later on in the process, despite the concerns raised by the Permanent Secretary MFEI as to whether Government was paying a fair price, were noted by the NAO. These interventions were intended to see the acquisition through following a reduction in price proposed by HSBC, which reduction was perceived as addressing the concerns raised by the Permanent Secretary MFEI. Although the Permanent Secretary MFEI maintained his position, irrespective of the reductions in price, he acknowledged that disagreement on his part did not preclude the Minister MFEI or the PS Revenues and Land from assuming

responsibility for the endorsement of the acquisition. The NAO considers the decision to overrule the Permanent Secretary MFEI as within the remit of the Minister MFEI and the PS Revenues and Land; however, this Office is also cognisant of the fact that the concerns of the Permanent Secretary MFEI extended beyond the mere reduction in price, but focused on procedural shortcomings in negotiations that could not be rectified.

Appendix

Appendix: PAC Request



MINISTERU GHALL-ĠUSTIZZJA, KULTURA
U GVERN LOKALI
30, TRIQ IT-TEZORERUA, VALLETTA, MALTA

Illum it-23 ta' Ġunju, 2015

Lis-Sur Anthony Mifsud
Awditur Ġenerali
National Audit Office
Notre Dame Ravelin
Floriana

Qed niktbulek b'referenza s'hiha u per konsegwenza tas-seduta tal-bieraħ fil-Kumitat għall-Kontijiet Pubbliċi in segwitu tal-investigazzjoni li ntalbet minn membri tal-Oppożizzjoni dwar l-esproprju ta' proprjeta' fi Strada Zekka, Valletta.

Biex ikun aċċertat li dejjem ġew rispettati l-prinċipji ta' *good governance, value for money, trasparenza, kontabbilita'* u li ma kien hemm ebda pressjoni politika aħna 'l hawn taħt iffirmati Membri Parlamentari u membri tal-Kumitat għall-Kontijiet Pubbliċi nitlobuk tinvestiga każijiet li saru bejn l-2006 u l-2013 fejn fihom kien hemm esproprjazzjoni u permuta da parti tad-Dipartiment tal-Artijiet senjatament - imma mhux limitatament għal u bla preġudizzju għas-senjalizzazzjoni ta' każijiet oħra iktar 'il quddiem – is-segwenti każijiet:

- 1) Il-każ tal-Fekruna fix-Xemxija.
- 2) Il-każ tax-xiri tal-(a) *freehold* ta' 236, 237 u (b) taċ-ċens temporanju ta' 233 Triq ir-Repubblika, Valletta
- 3) Il-każ tal-proprjeta' ta' Spinola Road, fuq ix-Xatt ta' San Giljan proprjeta' ta' eighty two Company Limited;
- 4) Il-każ tal-ex birrerija tal-Lowenbrau f'Hal Qormi.

Insellu għalik,

Owen Bonnici

Edward Zammit Lewis

Chris Agius

Charles Mangion



t + 356 2201 3000 e justice.mjcl@gov.mt www.mjcl.gov.mt

Recent NAO Publications

NAO Audit Reports

| | |
|----------------|---|
| January 2016 | An Investigation of Government's Expropriation of Two One - Fourth Undivided Shares of the Property at 36 Old Mint Street, Valletta |
| February 2016 | Performance Audit: Agreements between Government and Conservatorio Vincenzo Bugeja on Jeanne Antide and Fejda Homes |
| February 2016 | Performance Audit: Service Agreements between Government and INSPIRE Foundation |
| April 2016 | Performance Audit: An Analysis on OHSA's Operations - A Case Study on the Construction Industry |
| May 2016 | Information Technology Audit: Mater Dei Hospital |
| June 2016 | The General Practitioner function - The core of primary health care |
| July 2016 | An Investigation of the 2015 Local Councils' Capital Projects Fund |
| July 2016 | An Investigation of Local Councils Funding Schemes launched between 2008 and 2013 |
| September 2016 | Performance Audit: Service Agreements between Government and Richmond Foundation Malta |
| October 2016 | Performance Audit: Agreements between Government and YMCA Valletta |
| November 2016 | Performance Audit: Managing and Monitoring the State Schools' Transport Services |
| December 2016 | Annual Audit Report of the Auditor General - Public Accounts 2015 |
| December 2016 | Annual Audit Report of the Auditor General - Local Government 2015 |

NAO Work and Activities Report

| | |
|------------|---|
| March 2016 | Work and Activities of the National Audit Office 2015 |
|------------|---|