

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

PART 2 | A REVIEW OF THE CONTRACTUAL FRAMEWORK (ABRIDGED)

A REPORT BY THE AUDITOR GENERAL



DECEMBER 2021



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.

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Auditor General

December 2021



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

Part 2 | A review of the contractual framework [Abridged]

Report by the Auditor General
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List of Abbreviations

AC	agreed costs
CEO	Chief Executive Officer
CPSU	Central Procurement and Supplies Unit
EPC	engineering, procurement and construction
EU	European Union
GGH	Gozo General Hospital
HCC	Health Construction Committee
HMC	Health Management Committee
HR	human resources
HSDA	Health Services Delivery Agreement
IAS	Innovative Architectural Structures
KGRH	Karin Grech Rehabilitation Hospital
KPIs	key performance indicators
LSA	Labour Supply Agreement
MAM	Medical Association of Malta
MDH	Mater Dei Hospital
MEH	Ministry for Energy and Health
MFH	Ministry for Health
MFIN	Ministry for Finance
MIP	Malta Industrial Parks
MMB	Maintenance Monitoring Board
MOT	Ministry for Tourism
MoU	Memorandum of Understanding
NAO	National Audit Office
NSO	National Statistics Office
OPM	Office of the Prime Minister
OPU	Orthotics and Prosthetics Unit
PA	Planning Authority
PAC	Public Accounts Committee
PC	projected costs
PHI	Partners HealthCare International
PMB	Project Monitoring Board
PPP	public-private partnership
PS	Permanent Secretary
QAB	Quality and Assurance Board
QMUL	Queen Mary University of London

RfP	Request for Proposals
SAMB	State Aid Monitoring Board
SCA	Services Concession Agreement
SCH	Superintendent of Cultural Heritage
SLH	St Luke's Hospital
UHM	Union Haddiema Magħqudin – Voice of the Workers
VAT	value-added tax
VGH	Vitals Global Healthcare

1 Request by the Public Accounts Committee

- 1.1 On 21 November 2016, the Union Haddiema Magħqudin – Voice of the Workers (UHM) and the Medical Association of Malta (MAM), submitted a letter to the Chair Public Accounts Committee (PAC) requesting an investigation of the contracts awarded by Government to Vitals Global Healthcare Ltd (VGH). The contracts referred to in this request related to the Gozo General Hospital (GGH), Saint Luke’s Hospital (SLH) and Karin Grech Rehabilitation Hospital (KGRH) (collectively, the sites).
- 1.2 On 16 January 2018, in correspondence addressed to the Chair PAC, the Auditor General submitted the terms of reference that were to guide the National Audit Office (NAO) in its audit of the contracts entered into by Government and the VGH. The terms comprised the following:
- a review the method utilised for the award of the concession to VGH;
 - b determine whether the business model to be employed by the concessionaire is feasible and whether it represents value for money;
 - c analyse the evaluation of submissions leading to the award of the concession;
 - d review the contractual framework regulating the concession:
 - verify whether services provided adhered to contract requirements;
 - verify whether contractual targets relating to the redevelopment, maintenance, management and operation of the sites have been realised;
 - review provisions regulating the labour rights of public officials in relation to the concession; and
 - review what safeguards are in place to ensure that Maltese nationals receive treatment in a timely manner;
 - e review the basis of valuation of the sites granted to the concessionaire, the method of disposal and whether this was in breach of state aid regulations; and
 - f review the process by which the concession was transferred from VGH Ltd and VGH Management Ltd to Steward Health Care.
- 1.3 Due to the extent of the terms of reference set, and their inherent complexity, the NAO decided to segment its report on the concession in three parts. The first part of this Office’s reporting on the matter, which focused on the procurement process leading up to the award to the VGH, therefore addressing terms (a) to (c), was published on 7 July 2020. This was complemented by an addendum, published on 28 July 2020, which focused on a

memorandum of understanding submitted to the NAO by the Office of the Prime Minister (OPM) shortly after the initial publication. The second part of this audit focuses on terms (d) and (e). Therefore, focus in this report is directed towards the period prior to the transfer of the concession by the VGH to Steward Health Care, which transfer took place in February 2018. Part three, yet to be published, will address term (f).

- 1.4 This abridged report presents the salient facts and conclusions arrived at by the NAO regarding the concession awarded by the Government to the VGH in connection with the SLH, the GGH and the KGRH. Although this report provides an overview of the process of negotiation, the contractual framework entered into and its subsequent implementation, a comprehensive account of all aspects relating to the review undertaken by this Office is presented in a separate report titled 'An audit of matters relating to the concession awarded to Vitals Global Healthcare by Government - Part 2 | A review of the contractual framework'.

2 Timeline of key developments

2.1 On 9 September 2015, Projects Malta Ltd gave notice to the VGH of Government’s intention to award it the services concession for the redevelopment, maintenance, management and operation of the sites at the SLH, the KGRH and the GGH. Preceding and following this notification were several developments that allowed Government and the VGH to enter into a contractual framework, thereby regulating the roles, responsibilities and obligations of all parties involved. The key events relating to these developments are highlighted in the following timeline (Figure 1 refers).

Figure 1 | Timeline of key developments

Date	Development
January 2014	A medical brief for the national rehabilitation centre, outlining the envisaged development and expansion of facilities and services, was drawn up.
February 2014	A Memorandum of Understanding (MoU) was signed between the Government and the Queen Mary University of London (QMUL) regarding the development of the GGH as a teaching hospital.
3 March 2014	A memorandum to Cabinet regarding the Gozo Health Campus, outlining the envisaged development and expansion of facilities and services, was presented by the then Minister for Health, the Hon. Godfrey Farrugia.
2 April 2014	The Hon. Konrad Mizzi was appointed Minister for Energy and Health, while the Hon. Chris Fearne was appointed Parliamentary Secretary for Health.
10 October 2014	An MoU was signed between the Government and the developers and operators of the proposed project, the majority of whom would later constitute the VGH. The MoU outlined the investors’ interest in the setting up of a Gozo Medical Complex.
9 December 2014	Bluestone Investments Malta Ltd was registered in Malta and was solely owned by the British Virgin Islands-registered company, Bluestone Special Situations 4 Ltd.
6 January 2015	A letter of engagement was submitted by RSM Malta Consulting Ltd, appointed by Government to assist in the negotiation process.
25 February 2015	An agreement was entered into between QMUL Malta, the QMUL, Malta Enterprise, the Ministry for the Economy and Industry, the Ministry for Energy and Health (MEH) and the Ministry for Education and Employment for the establishment and operation of the Barts and the London School of Medicine and Dentistry in Malta.
27 March 2015	Government published an Request for Proposals (RfP) for the granting of a services concession for the redevelopment, maintenance, management, and operation of the SLH, the GGH and the KGRH.
27 March 2015	Ram Tumuluri was appointed director and legal and judicial representative of Bluestone Investments Malta Ltd.
10 April 2015	The first meeting of the Steering Committee, which Committee was to provide strategic direction to the project, was held. Among other items discussed were the various work streams. These were identified as legal/financial, lands, stakeholder and communications management, technical, permitting and RfP-related. The latter comprised the set-up of various subcommittees, including the Negotiation Committee.

23 April 2015	The second meeting of the Steering Committee was held, during which several of the points raised during the first meeting were discussed.
1 May 2015	A letter of engagement was submitted by BEAT Ltd, appointed by Government to assist in the negotiation process.
11 May 2015	Terms of reference for the various work streams were drafted.
12 May 2015	Bluestone Investments Malta Ltd entered into an agreement with Ashok Rattehalli, previously mentioned as one of the investors who had signed the MoU with the Government, entitling him to five per cent of the shares of the VGH on the day of its entry into the concession agreement.
13 May 2015	VGH Ltd, whose directors and legal and judicial representatives were Mark Edward Pawley and Ram Tumuluri, was registered. VGH Ltd fully owned three other companies, that is, VGH Management Ltd, VGH Assets Ltd and VGH Resources Ltd.
14 May 2015	The third meeting of the Steering Committee was held.
18 May 2015	VGH Management Ltd and VGH Assets Ltd were registered. Mark Edward Pawley and Ram Tumuluri were the directors and legal and judicial representatives of the companies.
19 May 2015	Closing date for the submission of bids, by which date bids by the VGH, Image Hospitals Ltd and BSP Investments Ltd were received.
22 May 2015	Projects Malta Ltd informed the Chief Executive Officer (CEO) KGRH of his required participation in the service level definition team and in the contract drafting and negotiation team.
10 June 2015	The fourth meeting of the Steering Committee was held, during which a minute presented by the CEO BEAT Ltd regarding the appointment of the Negotiation Committee was approved. The Negotiation Committee's terms of reference were set and its members were to be the CEO BEAT Ltd (acting as Chair), a Partner from RSM, the CEO of Malta Enterprise and the Managing Partner at Mifsud Bonnici Advocates.
19 June 2015	The Evaluation Committee concluded its assessment of the bids submitted in reply to the RfP issued by Projects Malta Ltd for the redevelopment, maintenance, management, and operation of the SLH, KGRH and GGH, recommending the VGH as the preferred bidder.
21 June 2015	The Minister for Energy and Health submitted a memorandum to Cabinet titled 'Healthcare Services Concession', wherein Ministers were requested to approve the award of preferred bidder status to the VGH and the commencement of negotiations with the Company.
23 June 2015	Cabinet approved the memorandum put forward by the Minister for Energy and Health.
27 June 2015	Projects Malta Ltd informed the VGH that it was designated the highest-ranking bidder.
10 July 2015	The fifth meeting of the Steering Committee was held. The main elements for negotiation with the VGH, as indicated in a paper presented by the CEO BEAT Ltd, were discussed. Key elements identified in this respect comprised the ownership and corporate structure, the concession agreement, financing, the joint monitoring board, ground rent, the health services delivery agreement, quality standards, medical tourism and termination.
22 July 2015	The Chair Negotiation Committee informed the other stakeholders involved in negotiations and contract drafting that instructions had been received to conclude negotiations by 10 August 2015.

29 July 2015	The sixth meeting of the Steering Committee was held. The focus of this meeting was the concession agreement which, at the time, was being revised with the VGH, resulting in the emergence of several points of discussion.
25 August 2015	Draft copies of the Services Concession Agreement (SCA) were submitted to the Attorney General's Office.
31 August 2015	The seventh meeting of the Steering Committee was held. Updates relating to ongoing actions, primarily concerning the relocation of the National Blood Bank Unit, site preparation and the concession agreement, were provided. Of note was an action item attributed to the CEO BEAT Ltd and the RSM Partner, who were to share the governance structure being proposed and the respective terms of reference with the PS MEH-Health for review.
9 September 2015	Following negotiations, Projects Malta Ltd notified the VGH of Government's intention to award it the services concession for the redevelopment, maintenance, management and operation of the sites at the SLH, the KGRH and the GGH.
13 October 2015	The Minister for Energy and Health provided Cabinet with an update on the public-private partnership (PPP) for the Sites. According to the Minister, the concession agreement, the healthcare services agreement, the agreement regulating labour supply and the emphyteutical deed were finalised. Another agreement dealing with the financial aspects of the concession was yet to be concluded.
14 October 2015	The eighth meeting of the Steering Committee was held. Discussions focused on ongoing actions mainly relating to site preparation and updates relating to the negotiation process. This was the last meeting for which records were provided to the NAO. It remained unclear to this Office whether the Steering Committee continued to operate beyond this date.
27 October 2015	Cabinet again discussed the PPP. The Minister for Energy and Health indicated that the main contracts that were to regulate the PPP had been negotiated. These included the concession agreement, the emphyteutical deed, as well as direct and collateral contracts governing the obligations of the parties in cases of default. It was agreed that the Minister was to sign these contracts with the VGH.
30 November 2015	The Government, represented by the Minister for Energy and Health, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, represented by Ram Tumuluri, entered into the SCA. The SCA provided a framework for the concession granted by Government to the VGH for the redevelopment and improvement of the SLH, the GGH and the KGRH.
30 November 2015	The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into the Health Services Delivery Agreement (HSDA). The Agreement regulated the terms and conditions of the purchase by the Government and the supply by VGH Management Ltd of healthcare/clinical and ancillary non-clinical services.
7 December 2015	The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into the first Addendum to the HSDA. Through this Addendum, the Government agreed to take up 100 additional beds.
7 December 2015	The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into the second Addendum to the HSDA. Through this Addendum, several changes were made to the services, activities and operations that were to be carried out by the VGH as part of the concession.

7 December 2015	The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into an Agreement regarding a possible additional concession fee payable to the Government by VGH Management Ltd. The fee was not to exceed €2,800,000. Noted in the Agreement was that the Government was to refund the paid additional fee to VGH Management Ltd.
15 December 2015	A letter of engagement was submitted by Mifsud Bonnici Advocates in relation to its role of assisting Government in negotiations. The date of this letter followed the conclusion of the negotiation process.
8 January 2016	The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into the Labour Supply Agreement (LSA). The LSA allowed for the supply of Government's employees to VGH Management Ltd for the latter to meet the terms of the Transaction Agreements.
17 February 2016	The VGH Ltd and the VGH Management Ltd entered into an agreement with the engineering, procurement and construction (EPC) contractor Shapoorji Pallonji Mideast LLC. Shapoorji was to provide, furnish, or install all labour, materials, plant and equipment, temporary works, supervisory and other staff, inspection, utilities, supplies, consumable and all other items required for the construction of the SLH, the KGRH and the GGH, and was also to construct the project at these sites.
2 March 2016	VGH Ltd provided the Government with a performance guarantee in accordance with the terms of the SCA. The guarantee presented was issued by Deutsche Bank AG, London on 2 March 2016, for the sum of €9,000,000, and was valid until 31 May 2018.
9 March 2016	The Attorney General provided advice to the Prime Minister in relation to the transfer of the sites. Despite requests to the OPM, the NAO was informed that the advice sought could not be traced.
22 March 2016	The CEO Malta Industrial Parks (MIP) Ltd, appearing for and on behalf of MIP Ltd, in turn appearing for and on behalf of the Commissioner of Land; the Commissioner of Land, in the name and on behalf of the Government and appearing solely for the purposes of the clause relating to the disposal of the sites at the GGH, the SLH and the KGRH; and the Director VGH Assets Ltd, entered into the Emphyteutical Deed. Through this Deed, MIP Ltd granted VGH Assets Ltd the title of temporary emphyteusis for 30 years of the buildings and sites occupied by the SLH, the GGH and the KGRH. On expiry, the grant could be extended for 69 years at the sole discretion of VGH Assets Ltd.
29 March 2016	Concession milestone – the handover plan was to be submitted to Government. The VGH failed to provide the handover plan by the specified date.
29 April 2016	Hon. Konrad Mizzi ceases to be the Minister for Energy and Health and is sworn in as Minister within the OPM. Hon. Chris Fearne is sworn in as Minister for Health.
19 May 2016	The Government, represented by the Minister within the OPM, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into a Side Letter to the Transaction Agreements on 19 May 2016 to confirm the attainment of several conditions specified in the SCA, on the basis of which the rights and obligations in the same Agreement were to be rendered effective under the terms and conditions stipulated in the Letter. Of note was that the VGH's obligation to supply the Government with the Financing Agreements was waived to 19 February 2017.

24 May 2016	VGH Management Ltd submitted a planning application for the restoration of the elevation of the main building within the SLH (PA 03134/16).
1 June 2016	The effective date, triggered by the fulfilment or waiver of stipulated conditions in the SCA, which rendered effective the provisions of the contracts.
June 2016	The handover plan was submitted by the VGH, in fulfilment of the concession milestone. This condition had been waived through the Side Letter to the Transaction Agreements dated 19 May 2016.
August 2016	The Health Construction Committee (HCC), Health Management Committee (HMC) and Project Monitoring Board (PMB) were constituted. The HMC, the HCC and the PMB, in their combined format, met several times between August 2016 and April 2017.
11 August 2016	VGH Management Ltd submitted a planning application for the construction of a medical school (PA 05493/16).
30 August 2016	Concession milestone – the design plans were to be submitted to Government. The VGH failed to achieve this milestone by the indicated date and until the concession was transferred to Steward Health Care.
2 September 2016	PA 03134/16, which related to the restoration of the elevation of the main building within the SLH, was approved by the Planning Commission. A full development permission was issued.
15 September 2016	The Government, represented by the Minister within the OPM, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into a second Side Letter to the Transaction Agreements. In this Side Letter, it was acknowledged that VGH Ltd, VGH Assets Ltd and VGH Management Ltd had computed the accurate value of the charges for deployed employees of Government to the VGH and subcontracted human resources (HR).
16 September 2016	RSM Malta issued a report outlining the details of the list of resources and the charges in relation to the resources.
14 November 2016	VGH Management Ltd submitted the drawings of a master plan for the refurbishment of the GGH for screening, to obtain feedback from the Planning Authority (PA) in preparation for the eventual submission of a planning application (PA 07491/16).
21 November 2016	Request by the UHM and the MAM submitted to the PAC for an investigation of the contracts awarded by the Government to the VGH in relation to the GGH, the SLH and the KGRH.
5 December 2016	Further correspondence submitted by the Government members on the PAC in relation to the request made for investigation.
9 December 2016	The analysis of the statistical treatment of the project, classifying it as on the Government balance sheet, is compiled by the National Statistics Office (NSO). The capital expenditure related to the project was recorded as a gross fixed capital formation for Government, with an impact on the fiscal balance, and a corresponding increase in Government's debt. The impact of this classification for the period 2015 to 2019 was €26,474,000.
12 December 2016	The Minister for Finance submitted correspondence to the Prime Minister informing him about the NSO's findings. Stated was that classification of the project as on-balance sheet changed the cost-benefit fundamentals of the project.
End 2016	For 2016, Government paid the VGH a total fee of €16,022,406.

1 January 2017	Concession milestone – 50 additional beds were to be provided at the KGRH. The VGH failed to achieve this milestone by the indicated date and until the concession was transferred to Steward Health Care.
16 January 2017	The VGH and the Malta College of Arts, Science and Technology entered into an agreement relating to the nursing college, which agreement was valid for three years.
14 February 2017	The Government, represented by the Minister within the OPM, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into the first Side Letter to the SCA. Through this Side Letter, the Government waived the obligation to provide the Financing Agreements by 19 February 2017, subject to a copy being provided by not later than 30 June 2017.
14 February 2017	The Minister for Finance wrote to the Minister within the OPM, outlining that unless there were developments on the agreements, the NSO's comments would continue to hold. On the same day, the Minister within the OPM replied that discussions of clauses had been reopened with the VGH.
15 February 2017	The full development permission for PA 05493/16, which comprised the construction of a medical school, was granted.
7 March 2017	The Minister within the OPM sought Cabinet's ratification of the extension of the long stop date for financial close, which date was to be extended to 30 April 2017.
7 March 2017	Cabinet approved the memorandum submitted by the Minister within the OPM.
23 June 2017	The Government, represented by the Minister for Tourism, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into a second Side Letter to the SCA. Through this Side Letter, the Government waived the obligation to provide the Financing Agreements by 30 June 2017, subject to a copy being provided by not later than 31 December 2017.
24 June 2017	Hon. Konrad Mizzi is sworn in as Minister for Tourism following the 2017 General Election. Hon. Chris Fearne retains his role as Minister for Health.
30 June 2017	The Government, represented by the Minister for Tourism, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into the Addendum to the SCA. Through this Addendum several terms of the SCA were revised, foremost among which was a proviso relating to the deadline for the completion of works, which was revised from a fixed deadline to one that rendered the deadline relative to the attainment of relevant construction permits.
30 June 2017	The Government, represented by the Minister for Tourism, and VGH Management Ltd, represented by Ram Tumuluri, entered into a third Addendum to the HSDA. Through this Addendum, changes were made to amend the first Addendum to the HSDA, whereby it was agreed to extend the date of provision of the additional beds from 1 January 2018 to not later than 1 January 2020.
30 June 2017	The Government, represented by the Minister for Tourism, and VGH Management Ltd, represented by Ram Tumuluri, signed an Addendum to the LSA, which was made effective with retrospective effect from 1 June 2016. The Addendum superseded the Side Letter dated 15 September 2016. Several LSA-related amendments were introduced through this Addendum, foremost among which was the formalisation of the list of resources as corresponding to 1,536 staff.

1 July 2017	Concession milestone – the Barts College in the Gozo Campus was to be completed. The VGH failed to achieve this milestone by the specified date and until the concession was transferred to Steward Health Care.
11 July 2017	Authorisation for entry into the third Addendum to the HSDA – entered into a few weeks prior – was sought from Cabinet through a memorandum submitted by the Minister for Tourism. The memorandum stated that the extension was required due to delays experienced in the issuance of planning permits, which had delayed construction. Also sought through the memorandum was an extension in the long stop date for financial close, now proposed to be 31 December 2017.
11 July 2017	Cabinet approved entry into the third Addendum to the HSDA and the extension of the long stop date for financial close to 31 December 2017.
24 July 2017	VGH Resources Ltd was registered. Ram Tumuluri was appointed as its director and secretary.
7 September 2017	In correspondence sent by the Minister for Finance to the Minister within the OPM, the latter was requested to expedite the review of outstanding matters relating to the concession awarded to the VGH and subject to discussions.
25 September 2017	The first meeting of the Quality and Assurance Board (QAB) was held, wherein the Board was established. Monthly meetings were held from September to December 2017 and recommenced in May 2018.
30 September 2017	Concession milestone – the provision of 80 rehabilitation beds at the SLH. The VGH failed to achieve this milestone by the indicated date and until the concession was transferred to Steward Health Care.
2 October 2017	VGH Management Ltd submitted a planning application for the demolition of part of the GGH and for the building of stores (PA 09895/17).
19 December 2017	The Prime Minister informed Cabinet of the possibility of positive developments in relation to the concession.
27 December 2017	VGH requested the MIP Ltd to provide its consent to and approve the sale by Bluestone Investments Malta Ltd of shares in issue in VGH Ltd to Steward Healthcare International Ltd.
29 December 2017	The Minister for Tourism informed the VGH that the Government consented to the request for and approved the eventual transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to Steward Healthcare International Ltd.
29 December 2017	The Minister for Tourism informed the VGH that, further to the VGH's request for an extension of the deadline to pursue the transfer of shares, Government agreed that the deadline be extended to 5 March 2018 or to one month following the transfer of shares.
End 2017	For 2017, the Government paid the VGH a total fee of €33,555,813.
3 January 2018	The MIP Ltd consented to the request for and approved the eventual transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to Steward Healthcare International Ltd.
8 January 2018	Further correspondence submitted by the Opposition members on the PAC in relation to the request made for investigation.
9 January 2018	In a memorandum submitted by the Minister for Tourism, Cabinet was requested to ratify the extension for financial close up to 5 March 2018, or possibly earlier, and endorse the consent granted by the Government for the eventual transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to Steward Healthcare International Ltd.

9 January 2018	The Prime Minister and the Minister for Tourism discussed the memorandum that had been submitted by the latter during a Cabinet meeting. Cabinet sanctioned that requested through the memorandum.
16 January 2018	The NAO set the terms of reference that were to guide it in its audit.
7 February 2018	The development permission for PA 09895/17, corresponding to the demolition of part of the GGH and the building of stores, was granted.
16 February 2018	The transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to Steward Healthcare International Ltd was finalised. Aside from the other concession milestones that had not been achieved, by this date the milestones relating to the completion of the new build at the GGH, the completion of renovation of the GGH and the completion of the SLH medical tourism beds remained pending as their deadline had not yet occurred.
19 February 2018	The Prime Minister informed Cabinet that the transfer of the shares of the VGH had been concluded. This marks the tail end of the audit period reviewed in the second part of the NAO audit of the concession awarded to the VGH.
9 July 2018	Eurostat provided an assessment confirming the on-balance sheet recording of the project as concluded by the NSO.
7 July 2020	The NAO published the first part of its audit of matters relating to the concession awarded to the VGH. This part focused on the review of the tender process.
28 July 2020	The NAO published an addendum to the first part of its audit. The focus of this publication was a memorandum of understanding that Government had entered into with third parties prior to the issue of the RfP that indicated the process leading to the concession was staged and deceitful.
21 March 2046	Expiry of the 30-year term of the Emphyteutical Deed. While the extension of the term for the SLH was entirely within the control of the VGH, Government could revert the title of the GGH and the KGRH in its favour subject to the payment of €80,000,000 to the VGH.
21 March 2115	Expiry of the additional 69-year term of the Emphyteutical Deed.

3 On the negotiation and authorisation of the contractual framework

- 3.1 Of particular interest to the NAO was establishing who negotiated on behalf of the Government, the review of records retained in this respect, whether the Government kept careful control over changes sought by the VGH, whether the Government regularly reviewed the project during negotiations, and whether there were instances of significant departure from that originally intended in this concession.
- 3.2 The NAO was unable to audit the process of negotiations held between Government and the VGH as information made available was severely limited. As a result, it was not possible for this Office to understand how key changes to the concession came about, the precise role played by those involved in negotiations and whether critical changes were appropriately endorsed.

The role of the Steering Committee

- 3.3 An important element of context to the negotiations was provided by the Steering Committee, which oversaw the concession and gave strategic direction to the project. The NAO's review of the minutes of the Steering Committee indicated the involvement, to varying degrees, of the Minister for Energy and Health and officials from within his Secretariat, the Permanent Secretary (PS) of the Energy division within the MEH, the PS of the Health division within the same Ministry, various officials of Projects Malta Ltd and other outsourced third parties, among others. These third parties included the Director of Innovative Architectural Structures, a Partner at RSM, the Managing Partner and Partner at Mifsud Bonnici Advocates, as well as the CEO and the Chief Operations Officer of BEAT Ltd.
- 3.4 Records of meetings held by the Steering Committee were provided to the NAO, facilitating this Office's visibility over the strategic management of the project. However, of note to this Office were the concerns expressed by the PS Ministry for Health (MFH) (referred to as the PS MEH-Health in the preceding paragraph) regarding his involvement with the Steering Committee. Although minutes retained indicated his attendance at a few meetings, the PS MFH asserted otherwise, claiming that he was only invited once, expressed reservations regarding the project that were not captured in the minutes and was subsequently not invited to any other Steering Committee meeting.
- 3.5 No letters of appointment and declarations of conflict of interest corresponding to the members of the Steering Committee were submitted to the NAO despite requests to this effect. This shortcoming in terms of the governance of the Steering Committee becomes all the more relevant when one considers the importance and materiality of the concession that the Committee was to oversee.

- 3.6 Another key function overseen by the Steering Committee was the establishment of the various work streams associated with the diverse aspects of the project, including, legal/financial, lands and permitting. One of the key sub-committees set up in this regard was the technical workstream, which was assigned responsibility to establish the health service requirements sought by Government through this concession. The members that formed part of this work stream were a Consultant Orthopaedic Surgeon Mater Dei Hospital (MDH), the CEO GGH and the CEO KGRH.
- 3.7 Evident in the Steering Committee meeting held on 23 April 2015 and of concern to the NAO was that Government was not adequately prepared for this concession. Noted in the minutes was that services that were to be procured were still to be defined by the technical work stream, even though the RfP had already been issued a month prior.
- 3.8 As part of the review of the work undertaken by the Steering Committee, the NAO explored whether the process of stakeholder engagement comprehensively captured all key perspectives. The Minister for Health (at the time Parliamentary Secretary for Health) and the PS MFH asserted that the MEH-Health was not appropriately consulted or involved in the decision-making process leading to the entry into the contractual framework regulating the concession. On the other hand, the PS Ministry for Tourism (MOT) (referred to as the PS MEH-Energy in preceding paragraphs) claimed that certain key stakeholders were intentionally reluctant to cooperate so that the project would falter. The PS MFH maintained that the MEH-Health, later the MFH, was exclusively motivated by a deep-rooted ambition to exploit the full potential that the concession agreement presented to the national health service and to ascertain that the public sector derived the maximum value for taxpayers' money that was being invested in the concession.
- 3.9 Despite the disagreement outlined in the preceding paragraph, the PS MOT and the PS MFH were consistent in their views that the dichotomy that characterised the work of the MEH, with the MEH-Health responsible for the health operations side of the concession and the MEH-Energy responsible for the capital element, contributed to implementation failure. It is with concern that the NAO notes that despite the restructuring of ministerial portfolios, which ought to have shifted the project away from the responsibility of the Hon. Konrad Mizzi, in his various roles as Minister for Energy and Health, Minister within the OPM and Minister of Tourism, this never materialised. This resulted in the MEH-Health and later the MFH never assuming complete control over the project. Instead, in the period reviewed, the concession remained an unimplementable project, an insurmountable challenge and irreparable situation for the Government to manage, whose administrative and political weaknesses were all too readily exploited by the VGH.
- 3.10 Notwithstanding the significant materiality of the project and its undoubted impact on public finances, the NAO noted that the Ministry for Finance (MFIN) also remained a conspicuous absence in the Steering Committee's proceedings. The PS MFIN stated that the Ministry was never involved, briefed or consulted in the negotiations process or any aspect of it, neither

before nor after the award of the concession. Notwithstanding attempts by the PS MOT to justify this anomaly, the NAO is of the understanding that failure to consult MFIN regarding a concession conservatively valued at €4,000,000,000 is a gross shortcoming in terms of the financial management of public funds.

The role of the Negotiation Committee

- 3.11** An important development was registered in the Steering Committee meeting held on 10 June 2015, wherein the Negotiation Committee was tasked with compiling the draft contractual framework, negotiating on behalf of the MEH, seeking guidance on critical parameters, reporting on progress, seeking authorisation in case of deviation from that originally determined and making recommendations on the outcome of that agreed. Chairing the Negotiation Committee was the CEO BEAT Ltd, while a Partner RSM and the Managing Partner Mifsud Bonnici Advocates were its other members.
- 3.12** In the NAO's opinion, the Negotiation Committee fulfilled a pivotal and critically important role in the award of the concession. It was against this backdrop that the NAO sought to review the negotiation process, with particular interest in documentation ordinarily generated in a process of such importance and complexity. Documentation sought by the NAO in this regard included the minutes of the negotiation meetings carried out with the VGH and copies of draft transaction agreements. Failure on all counts cited in this respect immediately gave rise to the NAO's gravest concerns.
- 3.13** Although the PS MOT and the Negotiation Committee sought to downplay the utility of such records, the NAO contends otherwise. This Office maintains that its limited visibility over the process of negotiation that led to the concession of three public hospitals may be attributed to two significant failures. First, that the Negotiation Committee failed to retain any documentation relating to its work, a basic premise of governance, central in ensuring transparency and essential in ensuring accountability, particularly in processes of national and economic importance such as this. Second, the Steering Committee was negligent in overseeing the work of the Negotiation Committee, failing to ensure that appropriate records of the latter's involvement in the concession were retained. The NAO deemed these shortcomings as constituting a severe failure in governance.
- 3.14** In view of the dearth of records retained by the Negotiation Committee, the NAO was constrained to develop its understanding of the process of negotiation based on the recollections of those involved. To this end, this Office sought the views of the Negotiation Committee, the CEO GGH and the CEO KGRH. The importance of the role played by the latter two in establishing the Government's health service requirements was highlighted by the Committee.
- 3.15** The Negotiation Committee understood its role as twofold, that is, interfacing with other working groups involved in the negotiation process and assuming lead with respect to the

commercial elements of the concession. Testimony provided by the Negotiation Committee in this sense was corroborated by the NAO through its review of correspondence exchanged by the Committee. Evident was the Negotiation Committee's interfacing with the legal firms engaged to assist in the drafting of the contractual framework, the site preparation team and the technical work stream.

- 3.16 In terms of the Negotiation Committee's role of interfacing with other working groups, several concerns and elements of conflict were noted by the NAO. These divergencies largely stemmed from the differing perspectives of those involved. The first matter of concern related to the involvement of the MEH-Health in the process of negotiations. While the CEO BEAT Ltd – the Chair of the Negotiation Committee – maintained that the MEH-Health was directly involved in the technical work stream, with its members selected and assigned by the MEH-Health, the PS MFH contended otherwise. Although the PS MFH could not exclude that the process of negotiations was supported by officials from the MEH-Health, he asserted that this was limited, did not include the Ministry's senior management in a coordinated manner and certainly failed to source the Ministry's input in terms of the commercial element of the concession. Correspondence reviewed by the NAO indicated that while in most instances the PS MFH was informed of or copied in key developments taking place, there were a few instances wherein he was excluded from important exchanges.
- 3.17 The omission of the MEH-Health from contributing to the negotiation process in a structured, comprehensive, and meaningful manner, particularly in relation to the commercial elements of the contractual framework, was deemed a shortcoming of grave concern to the NAO, one that would have far-reaching impact on the benefits that could be sourced through the concession.
- 3.18 Another matter of concern that relates to the interfacing function of the Negotiation Committee concerns the role of the technical work stream. While the Chair Negotiation Committee asserted that the technical work stream negotiated directly with the VGH, the CEO GGH and the CEO KGRH denied any direct interaction with the Concessionaire and indicated that they were not aware of having formed part of a committee or structure that negotiated the health service requirements of the hospitals they represented. The CEO GGH and the CEO KGRH recalled being requested to provide information on the operations of the hospitals that they led; however, they were not provided with any formal appointment in this respect and were not aware that their input was in any way related to the concession. The NAO noted that the correspondence reviewed contradicted assertions made by the CEO GGH and the CEO KGRH in testimony provided. The correspondence made available to this Office indicated that they were well aware of the fact that their involvement and contributions were directly related to the setting of health service requirements in connection with the concession that the Government had awarded to the VGH.
- 3.19 The NAO noted that the CEO GGH and the CEO KGRH would later be engaged as employees of the VGH, thereby creating the basis for a possible conflict of interest. The CEO GGH and the

CEO KGRH contended that no conflict of interest existed, arguing that they were seconded to the VGH by Government, their involvement within the negotiation process was limited, their role within the VGH remained operational and that they continued to serve the interests of their patients. Nevertheless, the general opacity that characterised the negotiation process limited the verification of that asserted, while the inconsistencies noted in testimonies provided to this Office remained a concern.

- 3.20 The NAO is of the understanding that for Government to secure health services that fit within the requirements of the concession, technical expertise was required on both sides of the negotiation table. According to the Negotiation Committee, the VGH was represented by Ram Tumuluri and his legal counsel. No reference to any technical experts was made. Although the Negotiation Committee indicated that the VGH was to be supported by the Partners HealthCare International (PHI), who were to coordinate with the technical work stream in matters relating to the health services to be delivered, the CEO GGH and the CEO KGRH provided this Office with a contradictory version of events when asserting that they did not negotiate with the VGH prior to entry into the contracts. This was deemed a matter of concern by the NAO.
- 3.21 Aside from the role of interfacing with the several working groups overseeing the multiple facets of the concession, the Negotiation Committee assumed lead in the negotiation of the commercial elements of the concession. The dearth of information made available to the NAO precludes this Office from establishing an understanding of the work of the Negotiation Committee in this regard. As a result, the NAO could not verify the bases of the commercial clauses included in the contractual framework, guidance sought by and provided to the Negotiation Committee in this respect, and positions of compromise reached through the actual negotiation process. All this, and any other aspect of the role played by the Negotiation Committee, remained opaquely concealed.
- 3.22 Noteworthy to the NAO were assertions by the Minister for Health regarding the covert role of the OPM in negotiations held, whereby he maintained that parallel negotiations were held with the VGH by the Minister for Tourism and the Chief of Staff OPM, contending that this situation persisted when he was the Parliamentary Secretary for Health and eventually the Minister for Health. In addition, the Minister for Health noted that contentious issues that arose with the VGH later in the process were at times resolved with the VGH resorting to the intervention of the OPM to push forward its interests, thereby bypassing the MEH-Health and later the MFH. Concerns highlighted by the Minister for Health were corroborated by several other senior MFH officials, including the PS MFH.
- 3.23 While the grave shortcomings outlined in the preceding paragraphs regarding the Negotiation Committee's failure to retain appropriate records precludes the NAO from establishing a basic understanding of the process of negotiation, other more nuanced observations are by consequence similarly excluded. The NAO sought to ascertain whether the negotiated contractual framework reflected a deal that corresponded to the objectives set for the project;

whether Government secured a good price for the quality of services and assets that were to be provided; and whether the contractual framework fairly allocated risk between the public and private sectors. This Office was not provided with any evidence of these important aspects of the concession being considered by the Negotiation Committee.

Authorisation of the negotiated changes

- 3.24 In the Memorandum presented to Cabinet by the Minister for Energy and Health, dated 21 June 2015, the Cabinet was asked, among others, to approve the commencement of the negotiations with the preferred bidder and, eventually, the conclusion of the relative agreements in line with Government's requirements and objectives as outlined in the RfP. The memorandum was approved by Cabinet during meeting 102 held on 23 June 2015.
- 3.25 While the approval to commence negotiations is captured in the endorsement provided by Cabinet, the NAO further enquired as to the process of authorisation that regulated the work of the Negotiation Committee during the process of negotiations with the VGH. It was at this critical juncture in the process that key commercial and technical decisions relating to the concession were being taken and it was in this context that the NAO sought to understand whether the Negotiation Committee sought authorisation in this regard.
- 3.26 The Negotiation Committee maintained that the Committee was not tasked with deciding on matters in relation to the negotiations underway, but merely to ensure consistency between the RfP and that sought by Government through this concession by formulating clauses that both parties agreed on. Furthermore, the Negotiation Committee maintained that it had no technical role and that oversight was provided by the Steering Committee. The NAO objects to the Negotiation Committee's interpretation of its own role, with decisions regarding the commercial elements of the concession certainly required and undertaken throughout the process of negotiation and contract drafting engaged in with the VGH. The several divergencies noted between the RfP and the contractual framework substantiate the understanding of a Committee that was actively engaged in setting and modifying the terms of the contractual relationship between Government and the VGH.
- 3.27 Although the Negotiation Committee maintained that the Steering Committee provided oversight, the NAO maintains that, were this the case, this process was absent in the records retained by the Steering Committee. This Office is of the opinion that this omission on the part of the Steering Committee in terms of scrutiny of the work undertaken by the Negotiation Committee detracts from the expected standard of governance that ought to characterise such a process.
- 3.28 In terms of endorsement, the Negotiation Committee also referred to instances when the advice of the Attorney General was sought with respect to the contractual framework that Government was to enter into with the VGH. Despite requests for information submitted to the Attorney General, limited documentation was provided, precluding the NAO from

understanding the input, if any, of the Office of the Attorney General. The attention of this Office was drawn to legal advice provided by the Office of the Attorney General to the OPM regarding the transfer of the sites to the VGH. Despite requests addressed to the OPM in relation to the advice provided, this Office was informed that the advice sought could not be traced.

- 3.29 On 27 October 2015, Cabinet was then informed by the Minister for Energy and Health that all the main contracts had been negotiated. Noted in the minutes of the meeting was that Cabinet agreed that the Minister for Energy and Health would sign the contracts. The relevance of this Cabinet minute is that it was on this basis that the Hon. Konrad Mizzi was the signatory representing the Government on all subsequent agreements, side letters and addenda entered into by the Government and the VGH, a situation that persisted beyond his tenure as Minister for responsible for health.
- 3.30 While Cabinet provided a high-level political endorsement of the concession, the NAO enquired whether the Parliamentary Secretary for Health, the Minister for Finance or any other senior public official reviewed the negotiated deal immediately prior to the signing of the contract to ensure that the project's objectives were met. Although the NAO was informed that such a review was conducted at Cabinet level and that the Minister for Energy and Health presented the entire negotiated deal to Cabinet, concerns in this respect emerge, as outlined hereunder.
- 3.31 The PS MFIN informed the NAO that the Minister for Finance was only aware of the material that was presented at Cabinet. The negotiated deal was never presented to MFIN for review purposes prior to its approval and the signing of the relevant contracts. Elaborating in this respect, the PS MFIN stated that the Ministry was never consulted on either the drafting of the contracts or to carry out any final checks on these contracts. The classification of the project as on-balance sheet, which was a situation that Government sought to avoid, was one aspect of the concession that would arguably have been part of the review by MFIN.
- 3.32 Similar concerns were raised by the PS MFH, who informed the NAO that there were no consultations on the contract or contract terms with the Parliamentary Secretary for Health or any other senior management representative, hence endorsement in this respect was certainly lacking. This was corroborated by the Minister for Health. The PS MFH lamented that the MEH-Health were only involved when the contracts were finalised, without being provided with an opportunity to contribute to the process. Of note was that recalled by the PS MFH, who indicated that the MEH-Health was entirely uninformed about the contents of the contracts and first became aware of them at the stage when the obligations to pay the VGH became due in June 2016. Correspondence reviewed by the NAO confirmed that stated by the PS MFH insofar as the commercial elements of the concession were concerned, with the Ministry only having some visibility over the health service requirements through exchanges with the CEO GGH and the CEO KGRH.

3.33 In sum, the NAO is of the opinion that although Cabinet's authorisation of the negotiated concession was sought and obtained, notable gaps persisted, arising largely from the omission of key stakeholders in the review process. When one considers the health-related nature of the concession and its financial materiality, the failure to comprehensively consult with the MEH-Health and MFIN assumes greater relevance, more so when bearing in mind that one of the principal objectives sought through this concession, that is, improvement in health infrastructure without burdening public expenditure, was not reached.

4 An analytical review of the contractual framework

Services Concession Agreement

- 4.1 The Government, represented by the Minister for Energy and Health, and VGH Ltd, VGH Assets Ltd, and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into the SCA on 30 November 2015. The scope of the SCA was for the Government to grant VGH Ltd and VGH Management, collectively referred to as the Concessionaire, the concession. The concession was defined in the Agreement as: the exclusive right to develop, design, engineer, monitor, procure, finance, construct, equip, operate, maintain, embellish and manage the sites; and a services concession for the provision of those services that the Concessionaire was obligated to render in line with the SCA and the HSDA on and from the sites.
- 4.2 Aside from the VGH's obligations to redevelop, maintain, manage and operate the SLH, the KGRH and the GGH, supply healthcare services to the Government and develop local service offerings, the grant of the concession necessitated the Concessionaire's achievement of several other objectives. These ancillary objectives included the construction of a medical school to be operated and managed by QMUL Malta; a university-level educational institution offering teaching and qualifications in nursing; a state-of-the-art research and development facility for the healthcare sector; and a health centre at the GGH, to be operated by the VGH.
- 4.3 Following the redevelopment of the sites to the standard required by the SCA, the VGH was required to provide consistent, reliable and uninterrupted healthcare services of the standards outlined in the HSDA. While the SCA stipulated that beds, as well as other facilities and additional services at each of the sites were to be made available to the Government, the capacity not reserved for such use could be offered by the VGH to medical tourists.
- 4.4 The conditions of the SCA became effective on 1 June 2016, following entry into a Side Letter to the Transaction Agreements dated 19 May 2016. The signatories to this Side Letter were Government, represented by the Minister within the OPM and VGH Ltd, VGH Assets Ltd, and VGH Management Ltd, collectively represented by Ram Tumuluri.
- 4.5 The NAO sought to obtain insight into whether the provisions cited in the SCA were complied with. Of relevance in this respect were the entry into the Side Letters and Addendum to the SCA, whether the relevant committees that were to oversee the concession had been set up, whether relevant records of the work undertaken by these committees were retained, whether the agreed concession milestones were delivered, whether financing was secured and whether other conditions stipulated in the SCA were adhered to.

Side Letters and Addendum to the Services Concession Agreement

- 4.6 A noteworthy development was the entry by the Government, represented by the Minister within the OPM, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, into two Side Letters to the SCA. Through the first Side Letter, entered into on 14 February 2017, the Government irrevocably and unconditionally waived the obligation of VGH Assets Ltd, VGH Ltd and VGH Management Ltd to provide a fully executed copy of the Financing Agreements by 19 February 2017, subject to the copy being provided by not later than 30 June 2017. Subsequently, this date was waived and extended to 31 December 2017 through the entry into a second Side Letter to the SCA on 23 June 2017.
- 4.7 On 30 June 2017, the Government, represented by the Minister for Tourism, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into the Addendum to the SCA on 30 June 2017, through which the terms of the SCA were revised. A main change contracted in the Addendum was that relating to the completion of works following the issuance of the relative construction permit. In the SCA, the concession milestones were subject to the licences required by the Concessionaire to fulfil its obligations being obtained by 15 February 2016 for the SLH and the KGRH and 30 May 2016 for the GGH. If the licences were not obtained by these dates, the Concessionaire was not to be deemed in default of the concession milestones, the penalties would not apply and the parties would seek to agree on new concession milestones. The Addendum to the SCA introduced a new proviso in this respect, stipulating that the Concessionaire was, by not later than 36 months from the issuance of any relative construction permit, to complete the works covered by the permit. If the Concessionaire was unable to conclude the relevant works by then, the Concessionaire was to be automatically granted a further extension of 18 months.
- 4.8 Of concern to the NAO was that Cabinet's authorisation for entry into the two Side Letters to the SCA was sought after these were signed. Cabinet's authorisation for the first Side Letter was sought and obtained on 7 March 2017 (entered into on 14 February 2017) while that for the second Side Letter was dated 11 July 2017 (entered into on 23 June 2017). The NAO is of the opinion that entry into these Side Letters prior to the matters being raised for review and endorsement rendered Cabinet's authorisation futile. Also of concern to this Office was that the authorisation provided by Cabinet for the first Side Letter featured a different deadline for the extension of the financial close than the Side Letter. While the authorisation by Cabinet stipulated a 30 April 2017 deadline, the Side Letter extended the financial close to 30 June 2017. In addition, and of grave concern to the NAO was that, the Addendum to the SCA, despite making crucial amendments to the dates by when the concession milestones were to be achieved, was not authorised by Cabinet. Government's failure to refer important contractual changes to Cabinet was a recurring shortcoming identified by the NAO, with the Side Letter to the Transaction Agreements dated 19 May 2016 and that dated 15 September 2016 not referred. The final extension to financial close afforded to the VGH on 29 December 2017 was similarly referred to Cabinet after being granted, that is, on 9 January 2018.

Constitution of the Committees of oversight

- 4.9 Key to understanding progress registered in respect of the concession were the records of meetings held by the HCC, the HMC and the PMB. The NAO established that these three Committees were set up in August 2016. Although this Office was provided with a list of members appointed to these Committees, the relevant letters of appointment and information relating to the basis of their selection were not made available. Based on correspondence reviewed, the NAO understood that the various members appointed to the HCC, the HMC and the PMB were identified by the Minister within the OPM, his Permanent Secretary and the Executive Chair Projects Malta Ltd.
- 4.10 As regards the constitution of the Maintenance Monitoring Board (MMB), despite several enquiries, the NAO has no knowledge as to whether this Committee was set up and, in the affirmative, who its members were. Furthermore, this Office was not provided with any records of meetings held by the MMB, of planned maintenance programmes submitted and of any monthly maintenance reports drawn up. This despite the achievement of the concession milestone relating to the handover of the sites, which ought to have triggered a shift in responsibility for maintenance of the existent facilities from the MFH to the VGH and the resultant contractual obligations arising therefrom.

Developments overseen by the Committees

- 4.11 Immediately evident in the NAO's review of the minutes of meetings held by the HCC and the HMC was that the proceedings of these two Committees were fused. The first three meetings held simultaneously addressed the work overseen by the HCC and that of the HMC. Eventually, this fused structure also assimilated the PMB. The Committees, in their combined format, met several times between August 2016 and April 2017.
- 4.12 During the first meeting of the HMC and the HCC, held on 17 August 2016, it was noted that the concession contracts had not been made available to most of the Committees' members. The Negotiation Committee was to assist in addressing this matter. Also noted in this meeting was that the VGH had started work on the project and that the HCC was lagging in its monitoring function.
- 4.13 In the second meeting, held one month later, an MFH official highlighted the fact that discrepancies existed in terms of the beds available to the Government. Although the Negotiation Committee – engaged to assist the HMC and the HCC in familiarising with the contractual framework – resolved to clarify this discrepancy, the NAO found no evidence that the required clarification was provided.
- 4.14 The next meeting, held on 22 September 2016, witnessed the fusion of the PMB into the HCC and HMC, thereby shifting attention onto project management. Present for this meeting was the VGH contractor Shapoorji, who advised the Committees that the designs for the GGH and

Barts Medical School were at a schematic stage and that works could commence on the latter as soon as permits were available.

- 4.15 Several updates on progress registered in relation to diverse aspects of the project were provided during the meetings that ensued. Of note was the important update provided in the meeting held on 17 November 2016, wherein the VGH consultant Innovative Architectural Structures (IAS) advised the Committees that the full master plan for the GGH and all other reports required had been developed and submitted to the PA and that the permit would likely be issued by April 2017.
- 4.16 Other meetings held by the HCC, the HMC and the PMB largely followed the same format, with discussions gravitating towards site-related developments, particularly in terms of permitting and works, and on tasks associated with the relocation of other departments of Government.
- 4.17 Of interest to the NAO was a development registered on 17 January 2017, whereby a presentation was given by the VGH to the HCC and the HMC. The presentation, delivered by the PHI, focused on the standard of healthcare design that was envisaged by the Concessionaire. In the ensuing meeting held on 26 January 2017, the Chair HMC and HCC noted that the proposed Facilities Guidelines Institute standards were to be accepted and that the VGH was to coordinate the amendment of its contract with the Government in this respect. It was against this backdrop that a PHI representative updated the Committees on several matters, including the PHI's ideas for the project, the way the PHI intended to work on the standards to be achieved, and participating staff.
- 4.18 The last meeting of the Committees for which minutes were provided to the NAO was held on 20 April 2017. During this meeting, the VGH consultant IAS provided a status summary regarding the GGH and the SLH. On the GGH, the VGH consultant IAS noted that the master plan application had been submitted, the SCH had inspected the building, and the terms of reference of the environmental planning statement had been issued. With reference to the SLH, it was noted that the Superintendent of Cultural Heritage (SCH) had agreed on certain aspects of the project while other elements remained pending.
- 4.19 Having reviewed the minutes of meetings held by the HMC, the HCC and the PMB, the NAO noted that gaps emerge in terms of the regularity of meetings held, particularly with respect to the PMB. While the frequency of meetings to be held by the HMC and the HCC was not specified in the SCA, that of the PMB was set as at least every two weeks. The Committees, in their combined form, failed to meet with this periodicity on several occasions between August 2016 and April 2017.
- 4.20 Of greater concern to the NAO was that the Committees ceased to function post 20 April 2017 and only resumed activity, albeit limited to the PMB, in November 2018. This Office arrived at this understanding since no minutes of meetings held between April 2017 and February 2018, the latter being the cut-off date for this part of the audit, were made available

despite requests to this effect. What triggered the abrupt cessation of functioning of the Committees similarly remained unclear to the NAO.

- 4.21 The SCA stipulated several reporting requirements that the VGH was to adhere to in connection with the works that were to be undertaken. Aside from the reporting obligations of the VGH to the Committees, the SCA also stipulated reporting requirements that the PMB was to abide by.
- 4.22 Of grave concern to the NAO was that the requirement for the VGH to submit the designs for all the sites to the HCC for approval by not later than 60 days from the effective date was not adhered to. This situation persisted at the point when the shares of VGH were transferred by Bluestone Investments Malta Ltd to Steward Healthcare International Ltd on 16 February 2018. Therefore, during the period within which the concession was assigned to the VGH, the designs for the sites were not submitted.
- 4.23 Apart from the presentation made to the Committees on 17 January 2017 regarding the Facilities Guidelines Institute standards and the PHI experience, no reports regarding the progress of works were submitted by the VGH to the PMB. This despite the provision in the SCA that allowed the PMB to request appropriate reports from the Concessionaire on various aspects of progress and performance related to its obligations.
- 4.24 In addition, the SCA stipulated the reporting requirements that were to guide the PMB in informing the HCC of progress registered in terms of the concession. Reporting obligations in this regard entailed the submission of monthly, quarterly and final reports that the PMB was to submit to the HCC as a record of progress. Following requests for information submitted by the NAO in this respect, the MOT submitted one report on progress registered. Given the critical importance of the PMB's role in the monitoring of progress and the centrality of its reporting function, the NAO deems this Committee's failure to abide by the terms of the SCA in terms of reporting requirements as cause for concern.

The concession milestones: Smoke and mirrors

- 4.25 Integral to the SCA were the achievement of several concession milestones. These comprised the completion of: the handover plan (that was to be achieved by 29 March 2016), the design plans (30 August 2016), the supply of 50 additional beds for the KGRH at the SLH (1 January 2017), the Barts Medical School (1 July 2017), the supply of 80 rehabilitation beds for the SLH (30 September 2017), a new build at the GGH (31 May 2018), the renovation of the GGH (30 September 2018), and the provision of SLH medical tourism beds (31 December 2018).
- 4.26 The NAO established that, in the period under review, that is, up to end February 2018, the only concession milestone that was achieved, albeit late, was that relating to the submission of the handover plan to the Government, effected in June 2016. Serious reservations regarding the feasibility of the concession milestones were expressed by the MFH, who maintained that it ought to have been evident at the negotiation stage that the milestones

being committed to through the SCA would not be achieved within the required timeline. The MFH representatives contended that it was highly improbable for the hospital building to be completed within the stipulated two-year timeframe, particularly when one considered that the designs were yet to be drawn up, submitted and approved, following which the required permits were to be obtained allowing for the eventual commencement of works. According to the MFH, the main reason for the VGH's failure to achieve the concession milestones was the Concessionaire's inability to secure financing. The concerns expressed by the MFH resonated with the understanding of the NAO, that the milestones as contracted in the SCA were naught but false promises and hollow commitments on the part of the VGH. Responsibility in this respect falls squarely on all Government representatives involved in this dubious concession, in the case of some, evidence of naivety on their part, in the case of others, indicative of gross negligence in fulfilling their responsibilities of office.

4.27 Failure by the VGH to achieve the concession milestones by the stipulated dates was deemed to be a rectifiable concessionaire event of default in the SCA. In this case, the Government was to serve a rectification notice on the Concessionaire specifying the nature of the default and instructions to put forward a rectification programme that would rectify the event within an agreed timeframe. Requests for information were submitted by the NAO to the MFH to ascertain whether any rectifiable concessionaire events of default were registered. This Office was informed that a number of such events of default were identified and addressed through continuous discussions with the aim of seeking a way forward and that guidance from Cabinet was sought in these instances. When requested to provide documentation in relation to rectifiable concessionaire events of default registered with respect to the VGH, the MFH indicated that the Government opted to refrain from registering such events of default to create space for discussion on potential solutions.

4.28 The limited visibility of the nature and outcome of the rectifiable concessionaire events of default curtailed the NAO's ability to establish a comprehensive understanding of the measures, if any, taken by the Government to address the VGH's failure to achieve the concession milestones by the stipulated dates. Assuming that the registered rectifiable concessionaire events of default related to the concession milestones, this should have triggered a series of measures, including the allowance of a period to address the default through a rectification programme and, Government stepping in should the VGH fail to rectify the default. This stepping in of Government would imply that Government would assume direct responsibility for rectification of the default or breach, apply certain penalties, charge a rectification cost that was to be increased by 10 per cent as a penalty, and be entitled to call on the performance guarantee. None of these measures were availed of by the Government despite the VGH's failure to achieve key concession milestones by 30 June 2017. The Minister for Health provided an element of context to the MFH's inaction in this respect, in that it was Cabinet that was simultaneously affording the VGH successive waivers to enter into the financing agreements, which resulted in the delays to works stipulated as part of the concession milestones. Elaborating in this regard, the Minister for Health contended that he was effectively constrained by the decisions being taken by Cabinet.

- 4.29 Concerns regarding the failure to achieve the concession milestones persisted until 30 June 2017, for on this date, the Government and the VGH entered into the Addendum to the SCA, which amended the dates by when the concession milestones were to be achieved. The key change in this respect was that the target dates for completion of the concession milestones were no longer specified but now dependent on the issuance of the relative construction permit. This contractual amendment effectively reversed the default status of the VGH with respect to certain concession milestones and extended the period within which it was to achieve others. The NAO is of the opinion that the design of the concession milestones, as regulated in the SCA and the Addendum to the SCA, rendered Government powerless in ensuring their achievement.
- 4.30 The SCA stipulated that it was the Concessionaire who was to determine milestone achievement failure penalties and incorporate them in its agreement with the EPC contractor. Furthermore, in the case of any milestone failure, the Concessionaire agreed to pay 25 per cent of the penalties received from the EPC contractor to the Government. The NAO noted that the VGH Ltd and the VGH Management Ltd entered into an agreement with the EPC contractor, that is, Shapoorji Pallonji Mideast LLC, on 17 February 2016. Through this contract, the EPC contractor was to provide, furnish, or install all labour, materials, plant and equipment, temporary works, supervisory and other staff, inspection, utilities, supplies, consumable and all other items required for the construction of, and construct the project at the SLH, the KGRH and the GGH. The contract stipulated that if Shapoorji failed to complete the works within the period of completion or any extended period of completion, as agreed in the contract, it would pay the VGH Ltd and the VGH Management Ltd liquidated damages for such default, and not as a penalty, for each week or part of the week of delay in completion, at the rate of 0.25 per cent of the provisional contract value of work. The target dates noted in the contract for the handover of the Barts Medical School, the SLH and the GGH were 1 June 2017, 1 December 2017, and 1 January 2018, respectively. The liquidated damages payable by Shapoorji to the VGH Ltd and the VGH Management Ltd was subject to a maximum of 10 per cent of the final value of the work.
- 4.31 Based on the above paragraphs, the NAO's gravest concerns emerge when considering the provisions stipulated in the SCA as means of redress for circumstances when the concession milestones were not achieved. This Office deemed the provisions of the SCA in this respect as grossly inadequate, failing to safeguard the interests of Government in the all too real scenario of a Concessionaire that failed to deliver that contracted. Although the Addendum to the SCA effectively rendered that which was in default as now in order, the NAO is of the opinion that through this amendment, Government relinquished control over the timely completion of the concession milestones. This Office deemed the necessity of this amendment as indicative of the poor planning of the project on the part of Government and the inadequacy of the VGH in implementing that contracted.

On termination of the concession

- 4.32 While events of non-observance by the VGH of any of its obligations stipulated in the SCA were generally to be considered as rectifiable events of default, the Agreement also defined non-rectifiable events of default by citing the extreme and exceptional circumstances that would characterise such a scenario. The occurrence of a non-rectifiable event of default by the VGH would allow the Government to step in and eventually terminate the concession. The MFH informed the NAO that no non-rectifiable VGH events of default were declared.
- 4.33 The SCA regulated the measures that were to be followed in the event of a termination of the Agreement and applicable termination payments arising therefrom. Several circumstances that allowed for the Government to terminate the SCA prior to the expiry of its term were outlined. Under all cases of termination triggered by the Government, the termination payment was to consist of €100,000,000 and the sum of the lender's debt incurred.
- 4.34 Other scenarios that allowed for termination of the SCA related to non-rectifiable events of default committed by the VGH. Of note to the NAO was that in the event of this kind of termination, the Government would assume the lenders' debt in full and extinguish it. Although the NAO deemed this provision as onerous on the burden of risk to be assumed by the Government, the Negotiation Committee maintained that this clause was a standard inclusion in any project finance initiative with limited recourse finance, to facilitate the securing of financing. Regardless of its standard nature or otherwise, the assumption of this risk by Government heightens the importance of the selection of a concessionaire of sound financial and technical standing and exacerbates the many failures of the VGH to match this standard.

The financing agreements

- 4.35 A key element of the SCA was the inclusion of a list of conditions precedent that were to be met or waived for the attainment of the effective date. One of the conditions was for the VGH to provide evidence that the primary lenders and financing agreements consented to by the Government were in place, by providing a signed copy thereof. During the period under review, the VGH did not satisfy this condition, with Government providing the Concessionaire with successive waivers that allowed this scenario to persist.
- 4.36 Of concern to the NAO was that stated by the Minister for Health, who in submissions to this Office noted that the successive extensions authorised by Cabinet indirectly endorsed the delays in works, which works could only commence when the VGH secured financing. The MFH highlighted that it was evident that the VGH was facing financial difficulties, and at a point in time it became clear that the Concessionaire was insolvent with several garnishee orders issued against it, an accumulation of €12,000,000 in operating losses and €32,000,000 due to creditors, the failure to provide the Ministry with audited accounts and failure to effect payments for tax and National Insurance dues all indicators of its dire situation. Notwithstanding this, the MFH was concerned about the impact that litigation would have

had on the concession, particularly in terms of the anticipated adverse effect such litigation would have had on the service user. In addition, the Ministry highlighted the €100,000,000 liability payment in case of a non-rectifiable event of default as an additional barrier to terminating the contract.

- 4.37 In the NAO's understanding, the VGH's inability to secure financing represents the pivotal shortcoming on which all subsequent failures registered in this concession by Government rested. Without financing, all commitments regarding improvements to be made in terms of infrastructure and services were rendered impossible to achieve, nothing short of empty and unachievable commitments on the part of the VGH. The failure of the VGH to deliver on its commitments was mirrored by Government's lack of necessary action in attending to the evident inadequacies of the Concessionaire. Instead, the Government's representatives provided waiver after waiver with respect to the requirement to secure financing, thereby perpetuating the failure that this concession came to represent. In effect, the origin of this situation can readily be traced to the grossly erroneous selection of the VGH as the concessionaire, whose lack of financing and technical expertise was evident at the selection stage of the concession. Graver still was that the Government's representatives were systematically granting waivers to the VGH of the requirement to secure financing without prior referral to Cabinet for authorisation. In a consistent manner, the Hon. Konrad Mizzi, in his various capacities as a Minister of Government, first entered into agreements or commitments with the VGH to extend financial close, then sought Cabinet's approval.

Securing guarantees

- 4.38 Cited in the SCA were provisions in relation to an unconditional and irrevocable on demand prime bank performance guarantee set at €9,000,000 that the VGH was to provide to the Government in security for the due, proper and punctual performance of all its obligations under the Agreement. The NAO established that VGH Ltd provided the Government with a performance guarantee issued by Deutsche Bank AG, London on 2 March 2016, for the sum of €9,000,000, which guarantee was valid until 31 May 2018.
- 4.39 Another requirement of the SCA related to the parent company guarantee, which guarantee was provided by Bluestone Special Situation 4 Ltd on behalf of the VGH and was dated 19 May 2016. The NAO noted that the parent company guarantee was in accordance with the form and structure set out in the SCA. The maximum amount payable by the VGH to the Government under this guarantee was set at €3,000,000. Of concern to the NAO, which concern was similarly highlighted by the MFH, was the fact that the share capital of Bluestone Special Situation 4 Ltd, that is, the parent company, was a mere €1,200. The MFH rightly contended that this was insufficient to support the parent company guarantee, which matter was compounded by the fact that the parent company of Bluestone Special Situation 4 Ltd was registered in a jurisdiction, the British Virgin Islands, that allowed for little in terms of visibility of standing.

On the engagement of third-party experts and Malta Enterprise's refusal to cooperate

- 4.40 The NAO enquired regarding the appointment of third-party experts and if any reports or findings had been submitted. This Office was informed that the only construction works carried out by the VGH were in relation to the Barts Medical School and that oversight of this aspect of the project was entrusted to Malta Enterprise in view of the contract that it had entered into with QMUL Malta. Malta Enterprise set up a steering committee to project manage the development of the Barts Medical School.
- 4.41 Of concern to the NAO was that requests for information directed to Malta Enterprise relating to the setting up of the aforementioned steering committee and progress registered in relation to the Barts Medical School were not replied to. According to the CEO Malta Enterprise, it was precluded from providing the requested information as this would be in breach of the confidentiality provisions established in the Malta Enterprise Act and the Business Promotion Act. Further noted was that a breach of such provisions would render the Malta Enterprise official in question liable to criminal prosecution. In addition, the CEO Malta Enterprise indicated that he had been legally advised that the information being requested by the NAO was not necessary for the purposes of verifying the accounts of Malta Enterprise.
- 4.42 The stance adopted by Malta Enterprise in this regard was deemed dubious by the NAO for, in this Office's opinion, the nature of the information sought was far from any way in breach of the Malta Enterprise Act and the Business Promotion Act. The NAO questions the lack of cooperation extended by Malta Enterprise, more so when one considers that this audit was mandated by Parliament and that this Office ought to be empowered by the Constitution in the execution of its function.

Health Services Delivery Agreement

- 4.43 The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into the HSDA on 30 November 2015. The Agreement stipulated that all rights and obligations arising from it were to be in force between the parties as of 1 June 2016 (the effective date) and were to continue for a term of 30 years from this date. The HSDA regulated the terms and conditions of the purchase by the Government and the supply by VGH Management Ltd of healthcare/clinical and ancillary non-clinical services. In honouring the obligations set in the Agreement, VGH Management Ltd was to abide with all applicable regulatory requirements, assume responsibility for and bear all costs incurred in the implementation, maintenance and development of services offered, and allocate sufficient resources.
- 4.44 Fundamental to the understanding of the implementation of obligations arising from the HSDA is the completion date. The completion date represented the point when the concession milestones were to be reached and the works carried out. The completion date was to be achieved by 31 December 2018, which date represented the scheduled achievement of the

final concession milestone. This report focuses on the period prior to the transfer of the concession by the VGH to Steward Health Care, which transfer took place in February 2018. Therefore, when the concession was transferred from the VGH to Steward Health Care, the applicable frame of reference was still that prior to the completion date, which consideration limited this Office's enquiries to those obligations in effect within this period. For ease of reference, this period is referred to as the transition period. Further stipulated in the HSDA was that, during the transition period, VGH Management Ltd was to be bound by the service levels in place at the GGH and the KGRH as at the effective date. It must be noted that, although the completion date was to be achieved by 31 December 2018, at the time of reporting, that is, November 2021, this had not yet been realised.

- 4.45 During the first year of the transition period, that is, 2016, the Government was to pay VGH Management Ltd €51,000,000 with respect to the GGH and the KGRH. This sum was also payable in 2017; however, it was subject to an upward revision in accordance with the Government's annual healthcare budget increase applicable in 2017. These payments were to remain in effect until the completion date of the project.
- 4.46 Following the completion date of the project, the Government guaranteed payment to the VGH of a minimum charge. This charge was to be paid for the provision of several services and the take up of at least 712 beds per day throughout the concession period. These beds comprised: 125 acute care beds at the GGH at €600 per bed per day; 175 geriatric care beds at the GGH at €180 per bed per day; 320 geriatric care beds at the KGRH at €180 per bed per day; and 80 rehabilitation beds at the SLH at €300 per bed per day. The aggregation of these charges results in a daily guaranteed fee payable by Government to the VGH of €188,100. Annualised, the guaranteed charge exceeded €68,600,000.
- 4.47 Key service inclusions in the minimum charge were: medical services as outlined in the Agreement; basic pharmaceuticals and medical supplies consumption, capped at €1,800,000 per year at the GGH and €300,000 per year at the KGRH, with additional expenses to be incurred by the Government; inpatient care including physicians, nursing and meals; emergency care including emergency room and ground ambulatory services; rehabilitation area including physiotherapy and hydrotherapy services; inpatient access to consultations with specialty visiting doctors; up to 3,300 surgery hours; magnetic resonance imaging; all services offered at the KGRH; and a state-of-the-art rehabilitation centre at the SLH serving inpatients and outpatients.
- 4.48 The HSDA also stipulated the costs related to the dermatology outpatient centre and the holistic care centre at the SLH. The costs for the former were to be €2,000,000, while the holistic care centre at the SLH was to levy a charge of €20 per visit per patient.
- 4.49 The Government was also to pay €1,200,000 annually for the 30-year period for the lease of the Barts Medical School Campus at the GGH, and €1,000,000 annually for 30 years for air ambulatory services. The latter fee was eventually revised to €1,700,000 on the introduction

of a second air ambulance. Also noted in the HSDA was that the maximum number of yearly airlifts was 200.

- 4.50 In sum, the minimum service delivery fee payable by Government as regulated by the HSDA stood at an annual €72,856,500.
- 4.51 The minimum charge and the other charges outlined in the preceding paragraphs were to be increased annually by an amount equal to the highest of either two per cent or the Consumer Price Index. The parties agreed that the minimum healthcare delivery fee, and subsequent increases to it, were always to be payable by the Government, even in instances when the minimum beds allocated to the Government were not fully occupied.
- 4.52 In instances where the amount of committed beds, as per the minimum guaranteed beds, were fully occupied by end users and the Government required further beds, the Government was to be charged and pay a rate that varied according to bed type. The daily per bed charge for an acute care bed was set at €650, that for rehabilitation set at €300, while that for long-term or geriatric care set for €180.

Addenda to the Health Services Delivery Agreement

- 4.53 The first development of note following entry into the HSDA were the two Addenda that Government and VGH Management Ltd signed on 7 December 2015, that is, a mere one week after entry into the HSDA. Representing the Government in these Addenda was the Minister for Energy and Health, while Ram Tumuluri represented VGH Management Ltd. Of concern to the NAO was the significant nature of the changes being effected. Through the first Addendum, the Government and the VGH agreed to increase the minimum beds service and guarantee by an additional 100 beds. The second Addendum introduced notable changes in the services to be provided by the Concessionaire. The NAO was informed that these Addenda were negotiated prior to entry into the HSDA.
- 4.54 In the NAO's understanding, the Addenda to the HSDA, entered a mere week after the signing of the Agreement, resulted in a significant reduction in services (without any change in the compensation due by the Government) and an increase in the number of beds to be made available to the Government (with a corresponding increase in compensation payable to the VGH). While the Negotiation Committee and the PS MOT maintained that the Addenda served Government's interests, the MFH contended otherwise, claiming that the changes detracted from the value for money that Government was to secure. The NAO concurs with the perspective of the MFH, with Government failing to capitalise on the reduction of services to secure more favourable terms throughout the concession. The net effect of these revisions solely served the interests of the VGH, with the Concessionaire securing more guaranteed revenue. While the NAO noted the consensus that it was reasonable to remove certain services on technical grounds, for the context of the GGH did not allow for their sustainable provision, these required revisions cast doubt on the process employed to identify the health

services sought through this concession.

- 4.55 A third Addendum to the HSDA was entered into by the Government and VGH Management Ltd on 30 June 2017. The signatories to this Addendum were the Minister for Tourism and Ram Tumuluri. Of note to the NAO was that this Addendum was signed by the Minister for Tourism rather than the Minister for Health, despite revisions to ministerial portfolios and the evident health-related nature of the Addendum. Queried in this regard, the Minister for Health informed the NAO that the Minister for Tourism had maintained that it was his responsibility to oversee major projects and that he was granted the authority to enter into such agreements by virtue of Cabinet's authorisation, understood by the NAO as reference to the general authorisation granted in meeting 102. The Minister for Health noted that the Prime Minister supported this arrangement. Nevertheless, this Office deems the representation of Government by the Minister for Tourism in a health-related agreement anomalous.
- 4.56 Of concern to the NAO was that Cabinet's authorisation for entry into the third Addendum to the HSDA was sought after the Addendum was signed. Cabinet's authorisation was sought and obtained on 11 July 2017 through a memorandum presented by the Minister for Tourism, when the Addendum had been entered into on 30 June 2017. The NAO is of the opinion that entry into this Addendum prior to the matter being raised for review and endorsement rendered Cabinet's authorisation futile.

Oversight of service delivery and performance: The Quality and Assurance Board

- 4.57 Key in the overall monitoring of the performance of the VGH in terms of service levels and key performance indicators (KPIs), in relation to the monitoring of charges payable by the Government and other associated responsibilities was the QAB. This Board was to include three representatives of the VGH, one representative of Government and one representative of QMUL Malta.
- 4.58 The NAO established that the QAB was set up and held monthly meetings between September and December 2017. The Board ceased to meet soon after the announcement of talks regarding the transfer of shareholding in the VGH and reconvened shortly after this process was finalised.
- 4.59 Minutes held by the QAB detailed the key elements of work undertaken by this Board. Evident was the QAB's focus on defining its own structure and modus operandi, KPI setting and benchmarking, efforts to address capacity constraints, particularly in relation to the GGH, attention directed towards performance measurement and reporting tools.
- 4.60 Of concern to the NAO was that recorded in the QAB meeting held on 20 November 2017, during which the Consultant MFH stated that Government had noted around 60 breaches of the concession agreement. Further to the NAO seeking additional clarification in this respect, the MFH disputed that recorded in the minutes and claimed that no such breach was ever perceived. Elaborating on the matter of whether breaches occurred or otherwise,

the Consultant MFH acknowledged shortcomings in relation to the health service; however, these did not constitute breaches since they did not impact the service level. The only service failure acknowledged by the MFH related to the unavailability of the helicopter emergency medical service; however, the Ministry referred to arrangements made with the Armed Forces of Malta to address instances of unavailability and later redundancies created with the VGH through the sourcing of a second helicopter. Despite explanations provided, the NAO remains uncertain as to which version of events holds true, that recalled by the MFH post-fact, or that registered in the minutes of the QAB as events occurred. Inclined to consider the latter as a more accurate representation of events, the NAO fails to understand why the provisions of the HSDA regulating the notification of perceived breaches to the QAB by the Government were not adhered to.

Measuring performance

- 4.61 Regulating the services that were to be sourced by Government through the HSDA were a series of KPIs that were to come into effect after the construction period was completed and the granting of the certificate of completion. The KPIs comprised metrics relating to the availability of beds and of medical equipment, the use of lab and imaging services of the MDH, employee satisfaction, training, development and progression, the management of consultants and specialists, inpatient care and various services provided, outpatient care and primary care services, the number of surgeries carried out, the information technology and hospital management system, and patient care and client satisfaction.
- 4.62 Contrasting perspectives were sourced by the NAO regarding the adequacy of the KPIs. While the Negotiation Committee maintained that these metrics were set at the level of the best of either the European norms or those in place at the MDH, the MFH contended otherwise. In this context, the MFH criticised the specification of the KPIs as codified in the HSDA for lacking important indicators such as readmission rates, length of stay and precise personal targets of quality. Inclined to rely on the technical expertise of the MFH in this respect, the NAO views this shortcoming as a matter of concern.
- 4.63 A recurring theme that emerged in submissions made to the NAO by the Minister for Health and several other MFH representatives was that while service quality was generally maintained, and in some instances improved, the improvement envisaged through the concession was effectively stunted due to the lack of progress registered by the VGH in terms of the contracted refurbishment and infrastructural development. The perspective put forward by the Minister for Health and the MFH resonates with that of the Office.
- 4.64 Several analysis reports regarding the clinical outputs of outpatient services at the KGRH and the GGH, as well as analysis of surgical procedures output were submitted to the NAO. Of concern to this Office was that the MFH noted that no KPI reports were compiled for the SLH since it was still a derelict building and did not provide any clinical services beyond gym physiotherapy and hydrotherapy. Similarly of concern was that the MFH also noted that

clinical output had remained essentially of the same quality and quantity as that provided by the Government before the award of the concession.

- 4.65 The NAO sought to ascertain whether the pre-set objectives corresponding to the KPIs set in the HSDA were achieved by the VGH. Generally, progress registered in relation to the KPIs was deemed inadequate by the MFH, with the VGH consistently failing to undertake the investment necessary for the amelioration of services, often carrying out superficial and minor works intended only to portray a veneer of progress. In other instances, the VGH failed to provide the MFH with the information necessary for it to gauge performance, thereby prohibiting the Ministry from ascertaining the extent, if any, of progress registered. The MFH acknowledged pockets of services where improvements were realised, such as in terms of the management of patients at the Intensive Care Unit and in anaesthesia at the GGH, as well as with respect to rehabilitation care services provided at the KGRH.
- 4.66 Of significant concern to the NAO was that stated by the MFH in relation to the requirement stipulated in the HSDA whereby the VGH was to allow the auditor reasonable access to required information. In this regard, the MFH noted that although the VGH was bound by the HSDA to allow Government access to all transactions to ensure that the funding provided was being used only for hospital operations, the VGH withheld information on grounds of the General Data Protection Regulation. This concern assumes further relevance when considered in terms of the NAO's analysis of the VGH's financial statements.

Focus on the Gozo General Hospital

- 4.67 According to the HSDA, VGH Management Ltd was to provide 125 acute beds and 175 long-term care beds, which included beds for rehabilitating patients at the GGH. However, through the first Addendum to the HSDA, dated 7 December 2015, VGH undertook to, as from 1 January 2018, provide 25 additional acute care beds and 25 additional geriatric care beds over and above those agreed in the HSDA. The third Addendum to the HSDA, dated 30 June 2017, extended the date of provision of these additional beds from 1 January 2018 to no later than 1 January 2020. Despite the several deferrals, this obligation on the part of the VGH was not met, for according to the MFH, as at 1 January 2020, only 10 acute care beds were made available at the GGH.
- 4.68 Several concerns regarding health service delivery at the GGH were flagged by the MFH. One such concern related to the increase in the average length of stay of patients at the GGH. Another was that demand with respect to outpatient activities had increased to such an extent, that it validated the MFH's concerns regarding the inadequacy of the capping set in this respect and how in the eventuality of such capping being exceeded, further costs would be incurred by the Government. Also highlighted by the MFH representatives was that the HSDA did not correctly establish the output for each service. The Ministry's representatives explained that the HSDA should have had clear clinical throughput specified, whereby information would be provided for every department on the number of outpatient visits

to be undertaken, on the amount of surgery hours required and on other services deemed necessary, rather than providing a total. It was in this context that the MFH concluded that the Ministry's requirements were not appropriately defined in the HSDA, which situation created difficulties in the implementation of the contract. The MFH representatives attributed the insufficient depth of detail in the HSDA to the short timeframe and excessive haste within which the Agreement was drafted. Similarly, the PS MOT commented that the period between the award of the concession and the signing of the contracts was extremely short, which duration was uncharacteristic of complex concession agreements such as this. Having considered the context of the concession, the NAO deems the concerns flagged by the MFH as valid.

- 4.69 In submissions made to the NAO, the MFH noted that while the achievements of the VGH were to be quantified after the completion date, no major milestones were achieved while the concession was under the control of the VGH. The MFH elaborated that there had been no paradigm shift and that the only significant achievement for the GGH was the development of the Barts Medical School. It must be noted that the Barts Medical School was inaugurated in November 2019. At the time being reported on, that is, until February 2018, progress registered was limited to the completion of excavation works and the commencement of foundation works.
- 4.70 Aside from the provision of new services, the VGH also had to undertake refurbishment works and upgrades to better support the demand for services, particularly in relation to the outpatient consultation rooms. The MFH stated that no major refurbishment was carried out in the outpatient area and noted that while the GGH was aesthetically improved, major development works were lacking. With respect to the imaging department, although the MFH insisted on the early provision of a cardiac catheterization suite and a magnetic resonance imaging machine, these were not provided. Similar failures were noted with respect to the VGH's obligation to build a Regional Health Information and Audit Centre, a childcare centre, staff cafeteria and overnight rooms. Although limited progress was registered with respect to the hospital's pharmacy, the evidence at hand indicated the likelihood that this progress was registered following the transfer of the concession from the VGH to Steward. These instances of failure on the part of the VGH to refurbish existent facilities were deemed a matter of concern by the NAO.
- 4.71 Similar shortcomings in progress were registered in relation to other aspects of health service delivery. The MFH acknowledged that no expansion of surgery suite facilities to encompass local elective and emergency surgical requirements was undertaken by the VGH. With respect to the urology department, where several new treatments were to be provided, the MFH indicated that nothing was delivered except for regular outpatient clinics and a minimal amount of minor and intermediate urology surgery. Stagnation in progress was also noted in connection with the obstetrics and gynaecological ward, with the MFH conceding that no new services had been delivered and that current services continued to be delivered throughout the GGH. No new respiratory ward was set up as part of the department of

respiratory medicine, and no work was undertaken on the new long-term geriatric care and rehabilitation centre that ought to have been established within the GGH. With respect to the neurology services that were to be provided in terms of the second Addendum to the HSDA, the MFH informed the NAO that certain neurology-related services were yet to be delivered. Rendered amply evident in this regard was the consistent failure of the VGH to deliver any form of improvement to the array of existing services at the GGH.

4.72 Furthermore, the MFH conceded that there existed clinical grounds for the removal of the obligation to deliver certain services at the GGH. The MFH noted that the specialisation into allergy and immunodeficiency, which was also to be undertaken as part of the new set up, was not included. The Ministry cast doubt whether these services were best sited in Gozo and noted that these were in fact removed in the second Addendum to the HSDA. Similar doubts with respect to the requirements put forward in the HSDA were also expressed by the MFH with respect to the paediatric ward, for which VGH Management Ltd was bound to provide a dedicated 12-bed unit, including a playroom. The MFH noted that no new unit was set up, but care continued to be provided from the existing 10-bed unit that had an occupancy rate of less than 40 per cent. The obligation to establish a paediatric intensive care and trauma unit as set out in the HSDA was eventually removed from the Agreement through the second Addendum. While the clinical grounds for the removal of certain services was deemed valid by the NAO, as the throughput of patients would be insufficient to justify the deployment and sustain the expertise of the required specialists, this Office contends that such revisions ought to have been balanced with gains by the Government, for instance, through the downward revision of fees payable.

4.73 Another area of concern to the NAO related to service levels that were immediately deemed insufficient for the Government's requirements and the failure to revise cost elements for services no longer rendered. The MFH drew attention to instances where service levels as contracted were deemed insufficient for existent requirements prevalent at the point of entry into the HSDA. Cited in this respect was the new 25 bed long-term psychiatric ward that was to be set up. The Ministry noted that the 25-bed requirement was inadequate since there were already 38 fully occupied beds, therefore at least 40 beds were needed. Another element of concern validly raised by the MFH was how the Government failed to revise the cost element of the HSDA for services no longer rendered. The MFH referred to the removal of several health service obligations, the reversion of primary health care to Government and the waiver of the contractual requirement to have a Health Non-Governmental Organisation Resource Coordination Centre built and run in any GGH building as examples to this effect. Therefore, while reductions were effected in terms of the services to be provided, it is with concern that the NAO notes that no corresponding revisions in costs charged to the Government were made, resulting in a cost structure unaligned to the actual remaining deliverables. In the NAO's understanding, the multiple adjustments, revisions and waivers of contractual obligations all confirm the poor contract design, as well as the failures in contract implementation and management that have come to characterise this flawed health service concession.

Focus on Karin Grech Rehabilitation Hospital and St Luke's Hospital

- 4.74 On a positive note, the MFH noted that certain improvements were undertaken with respect to the KGRH, specifically citing inpatient rehabilitation services, the gym facilities, the stroke unit and in terms of the personnel assigned thereto. The MFH acknowledged that this led to improvements in the Barthel scores of patients utilising the service. The new Orthotics and Prosthetics Unit (OPU) set up was also raised as a point of note by the Ministry.
- 4.75 Less positive was the lack of progress registered at the SLH with respect to the Dermatology and Holistic Care Centre, which did not operate in the period reviewed. The MFH declared that the SLH remained a derelict building that was not used for the provision of any clinical services other than gym physiotherapy and hydrotherapy. This was deemed a matter of concern by the NAO. Apart from this, the VGH failed to provide the envisaged ancillary services, that is, a childcare centre and a cafeteria for staff. Similarly not achieved were developments relating to the patient-relative visiting area and the blood bank.
- 4.76 The NAO noted that a common flaw in the HSDA was the lack of a timeframe for the provision of the deliverables cited therein. The MFH acknowledged this shortcoming and emphasised that a timeline was required for the services that were to be delivered from the SLH. The Ministry noted that it had no indication as to when the dermatology beds were to be provided and similarly lacked visibility of the timing of works that were to be undertaken at the wellness, physiotherapy, hydrotherapy and acupuncture clinics. In addition, the MFH stated that it also lacked visibility as to when the new beds and the medical equipment were to be provided across the three hospitals.

A strained relationship between the Government and Vitals Global Healthcare

- 4.77 Several points of friction emerge in the relationship between the Government and the VGH, concerning aspects as diverse as the actual development and construction of the project, HR-related matters, procurement and others. These concerns were captured in correspondence submitted by the VGH to Projects Malta Ltd in October 2017.
- 4.78 The VGH tenuously claimed that construction works drew to a standstill because either certain entities did not vacate the premises as envisaged or the SCH raised issues regarding the proposed works.
- 4.79 Another battleline drawn was in relation to HR. The VGH highlighted its inability to address staff shortages at the GGH, citing the agreement reached between Government and the Medical Association of Malta as imposing several indirect restrictions on the Concessionaire that were not envisaged or formalised in the Transaction Agreements and that limited the Concessionaire's ability to recruit required personnel. The VGH argued that they were not

being allowed to recruit directly due to Government's commitment to prioritise the transfer of Gozitans and contended that these issues bore impact on its ability to improve healthcare services, to provide additional new services and to provide adequate personnel cover resulting in unsafe operations. Other concerns cited by the VGH related to the failures in coordination and cooperation with the MDH, particularly in terms of the utilisation of shared resources and access to patient data. The MFH dismissed the VGH's claims, maintaining that the Concessionaire had failed to adequately plan for its HR requirements and at times had solicited key Government staff, which was specifically prohibited by the HSDA.

4.80 An additional area of concern highlighted by the VGH related to procurement. The VGH's main points of contention related to the delivery of stock, the reimbursement mechanism in place and the quality of stock provided by the Central Procurement and Supplies Unit (CPSU). In this context, the VGH maintained that: delivery schedules were inconsistently honoured, thereby creating shortfalls in required pharmaceutical supplies; the CPSU lacked clarity as to the reimbursement mechanism stipulated in the Transaction Agreements, therefore impinging on the VGH's procurement plans and financial forecasts; and that the GGH was being provided with stock that was reaching its expiry date, which, the Concessionaire argued, impinged on patient safety and quality of service.

4.81 In submissions to the NAO on the stance adopted by the VGH in respect of aspects of the concession referred to in the preceding paragraphs, the Minister for Health provided an element of context to the October 2017 correspondence, wherein he claimed that the VGH was retaliating to action being taken against it by Government for its failure to pay its VAT and National Insurance dues. In this Office's understanding, this provided further evidence of the strained relationship between the Concessionaire and Government. The MFH noted that the VGH failed to acknowledge that it had not injected adequate capital in the project. In further elaboration, the PS MFH noted that the Ministry could not be blamed for some of the issues highlighted by the VGH as these emerged from the fact that the contractual framework was poorly designed and did not adequately regulate the operative element of the agreement.

4.82 In the NAO's understanding, the complex dynamic at play in the strained relationship between the Government and the VGH may be attributed to several factors. On the Government's part, key shortcomings noted may readily be traced to the poor design at the RfP and contract drafting stages of this project. Moreover, the structural weakness in the dichotomous set up of the MEH provided ideal grounds for the VGH to exploit. On the VGH's part, failure to implement meaningful progress in relation to this concession can be traced to two fundamental weaknesses. First, that the VGH had no relevant expertise in healthcare provision, and second, that the VGH did not have the required resources to undertake a project of such magnitude. Although these two factors are intrinsic to the VGH, in this Office's opinion, this does not detract from Government's ultimate responsibility, particularly in terms of its selection of the VGH, a constant reflection of its grave ineptitude in governance, for the concessionaire was immediately and evidently not fit for purpose.

Verification of payments made

- 4.83 The HSDA stipulated a schedule of payments to be effected until the completion date was reached. The payments due by Government to the VGH during the transition period, exclusive of value-added tax (VAT), were to amount to €51,000,000 in 2016. In 2017, the €51,000,000 was to be augmented by the annual healthcare budget increase. The NAO verified whether payments were effected by the MFH in accordance with the contractual framework.
- 4.84 The MFH representatives argued that the granting to the VGH of a yearly increase in line with the Government's healthcare budget increase for that given year did not make sense, since ordinarily a significant portion of that increase was allocated to fund the Ministry's projects and initiatives, which expenses were entirely unrelated to the work of the Concessionaire. Other increases related to pharmaceuticals that were already being financed by Government or specific services not provided by the VGH. It was in this context that the MFH sought to negotiate with the VGH to accordingly reduce the annual percentage increase payable by Government and to align actual increases with the Concessionaire's work. The MFH informed the NAO that the budgetary increases were eventually halted since the transition period was repeatedly extended.
- 4.85 Of note to the NAO was that the payroll charge that was due by the VGH to the Government for the resources leased from it was set off against the fees due by the Government to the VGH. The MFH informed the NAO that, for the sake of practicality and to reduce the possibility of errors, payments were to be made by means of set-offs against the amounts due by Government to the Concessionaire rather than by the agreed method of settlement from the Concessionaire to the Government. From documentation provided to this Office it was confirmed that the relevant payments were settled throughout the period under review.
- 4.86 With the offsetting of salaries payable by the VGH to Government for resources leased and accounting for relevant adjustments, the net amounts paid by Government to the VGH in 2016, 2017 and 2018 amounted to €16,022,406, €33,555,813 and €5,262,869, respectively. The figure cited for 2018 corresponds to the period January to February. The net amount paid for all 2018 was €37,728,041.
- 4.87 Although no payments were made with respect to the lease of the Barts Medical School during the period under review, the NAO noted that certain provisions in the HSDA were incongruent with the agreement entered into by the Government and the QMUL. While the agreement regulating the Barts Medical School was for a period of 15 years, the HSDA stipulated lease payments to be effected throughout the concession period, that is, for 30 years. Therefore, while Government was to recover lease payments from the QMUL for 15 years, it bore an obligation to pay the VGH for 30 years. The NAO acknowledges that the agreement with the QMUL does provide for a possible extension to the term; however, renewal remained within the control of the QMUL, hence exposing Government to an element of risk in terms of the mismatch of the terms of the agreements. Also noted by the NAO was the difference in

sums payable for the lease of the property. The annual rent charge payable by the QMUL as established in its agreement with Government ranged from €190,200 for the first two years and gradually increased to €943,400 in subsequent years. On the other hand, the amount payable by Government to the VGH for the site amounted to €1,200,000 annually.

- 4.88 Noted by the MFH was that the daily rates for rehabilitation beds were prima facie on the high side and that technical discussions were underway with the Concessionaire. In the NAO's understanding, compounding matters in this respect was that the HSDA failed to define how patients were to be classified in terms of the different bed categories, possibly creating scope for conflict in terms of the determination of applicable rates. The MFH cited this gap as a weakness of note in the contractual framework. Further accentuating this Office's concerns on this matter is the fact that clarifications regarding the definitions of the various bed categories were already sought at RfP clarifications stage by a potential bidder; however, Projects Malta Ltd had replied that these were defined medical terms and did not require any clarification.
- 4.89 A contractual deficiency identified by the NAO when reviewing the HSDA corresponded to instances when the Agreement referred to clauses that were to regulate pricing, which clauses were not included in the Agreement. Such was the case for the rates that were to be charged by the VGH to the Government for new beds introduced before 2018, the additional beds and services required over and above the minimum bed requirement and the details required in the separate monthly consumption report, which report served as the basis for charges to be levied by the VGH in respect of services beyond the minimum requirement. Of concern to the NAO was that the MFH was similarly unable to trace the clauses of the HSDA that were to regulate such matters.
- 4.90 The MFH noted that a contractual gap existed in relation to the transition period of the project, which period ought to have been regulated through the contractual framework. The Ministry's representatives explained that the contract, as drafted, only referred to the effective date and the completion date, and mainly regulated the contractual relationship between Government and the VGH when the buildings were completed. According to the MFH, the contractual framework was conspicuously silent in terms of how the parties were to be regulated until completion of the works and whether an extension to the transition period could be made. The MFH noted that the HSDA did not state which party was to assume financial responsibility for services that were not provided for in the Agreement during the transition period. As an example, the MFH cited the replacement of the helicopter when grounded for maintenance as well as issues relating to orthotics and prosthetics, which were not included in the budget. The MFH indicated that the VGH's understanding was that, during the transition period, Government was to continue honouring its previous obligations; however, the MFH disagreed since, during this period, the VGH was bound to continue to operate the hospitals and therefore contended that it was the Concessionaire's responsibility to at least maintain the existing quality and activity levels. The NAO shares similar concerns with those expressed by the MFH, with the contractual gap regulating the

transition period exacerbated by the VGH's failure to achieve the concession milestones. This flaw in the design of the concession's contractual framework gave rise to disputes, often the result of differing interpretations by the parties of how this period was to be regulated, which frequently resulted in resolution through Government assuming responsibility for the additional costs required to address the contractual anomaly.

4.91 A case in point was the failure of the HSDA to appropriately regulate the incurrence of pharmaceutical costs. During the transition period Government continued to supply and pay for the basic pharmaceuticals and medical supplies consumed at the KGRH and the GGH through the CPSU, while simultaneously reimbursing the VGH for other pharmaceuticals and medical supplies that were purchased directly, including reimbursements for the OPU. Based on documentation provided by the MFH, the NAO established that for the years 2016 and 2017, Government paid a total of €1,438,078 and €3,961,571, respectively, for medical supplies and pharmaceuticals utilised by the GGH and the KGRH. By contrast, the HSDA set the annual consumption for medical supplies and pharmaceuticals to be paid for by the VGH at €1,800,000 as from 2018 onwards. The NAO established that the €1,800,000 cited in the HSDA was incorrect as it did not capture the costs the CPSU allocates to the three hospitals, which consistently exceeded €3,000,000 and increased to €5,000,000 if one considered other supplies provided to the hospitals from other sources. In addition to these costs, the MFH noted that there was an additional €1,400,000 allocated to the OPU that was not included in the HSDA. The MFH argued that since Government was already incurring these extra costs, then these costs would have to continue to be incurred by it, and in effect a supplementary allocation over and above the total annual budget provided to the VGH for the running of the hospitals was provided by the Ministry. Of note to this Office were concerns expressed by the MFH in this regard, whereby the Ministry lamented that these direct costs ought to have featured in the HSDA budget but did not. Government was paying for all medicinal consumption during the transition period while the VGH covered none of the costs incurred. The MFH contended that this situation warranted address, with pharmaceutical consumption registered by the VGH-run hospitals during the transition period to be charged to the Concessionaire. During a meeting held with this Office, the MFH noted that the transition period was originally scheduled to end in January 2018; however, since the VGH failed to achieve any milestones, the concession was suspended in this phase and further delays were inevitable, with this situation persisting well beyond plan. It was in this context that the MFH argued that the clarification and renegotiation of clauses regulating the Government-Concessionaire relationship during the transition period was essential. Notwithstanding the efforts to resolve this matter through post contract negotiations, the NAO is of the understanding that flaws such as this render evident the poor contractual design, how Government's interests were not safeguarded and how value for money was far from secured.

Agreement for the payment of an additional concession fee

- 4.92 On 7 December 2015, the Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into an Agreement regarding a possible additional concession fee payable to the Government by VGH Management Ltd over and above the concession fee of €3,000,000 due in terms of the SCA.
- 4.93 The Agreement provided for a mechanism whereby the Government could claim the payment of an additional concession fee from VGH Management Ltd, which fee was not to exceed €2,800,000. Also noted in the Agreement was that the Government was to refund the paid additional fee to VGH Management Ltd over a period of five years from the date of payment of the additional sum by VGH Management Ltd.
- 4.94 As the Agreement failed to provide any insight pertaining to the nature or requirement for an additional concession fee, the NAO sought to obtain further information in this regard. Despite numerous requests made for details pertaining to the additional concession fee, this Office was not provided with sufficient information to understand the rationale behind the requirement for the additional concession fee and its subsequent refund to the VGH over a period of five years.
- 4.95 Conflicting information was provided to the NAO for each aspect of the agreement, with Projects Malta Ltd informing this Office that the inclusion of the additional concession fee was due to additional costs for the expropriation of land, the Negotiation Committee stating that the agreement served as a safeguard for the Government should it be required to settle any unforeseen costs to access the sites and the PS MOT advising that it was related to the payment of EU-funded equipment that fell outside the scope of the Transaction Agreements. In determining whether a claim was actually made in this regard by the Government, the MFH initially informed this Office that no claims had been made but later stated that no further claims other than the €2,800,000 had been made.
- 4.96 On enquiring about the reasoning behind the agreement to refund the amount claimed by the Government, Projects Malta Ltd advised that this was so due to the additional concession fee being over and above what was originally agreed on in the concession agreement, with the PS MOT and Projects Malta Ltd stating that the refund related to EU-funded equipment still subject to a five year durability period with the possibility of a partial claw back of the sum in question while also stating that the VGH bore no fault in this regard. Moreover, the MFH informed this Office that no refund was applicable in this regard as there was no agreement to increase the concession fee. Notwithstanding the explanations provided, the matter remained ambiguous to the NAO.
- 4.97 In sum, the NAO's concerns gravitate towards the lack of knowledge and understanding of this contract exhibited by key Government stakeholders, and the impact that this had on

its execution and follow through. These gaps cast doubt as to the intention, necessity and execution of the Agreement regulating the payment of an additional concession fee.

Labour Supply Agreement

- 4.98 On 8 January 2016, the Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into the LSA. Through this Agreement, the Government agreed to supply VGH Management Ltd with several of its employees so that the Concessionaire could meet its obligations under the Transaction Agreements. The LSA was to run from the effective date until the end of the 30-year concession term.
- 4.99 The Government was to supply VGH Management Ltd with the staff included in a list of resources, which list had not yet been compiled at the point of entry into the LSA. Aside from the general provisions regarding the supply of resources, noted in the LSA were the obligations that were to be borne by the Government and those assigned to VGH Management Ltd.
- 4.100 The conditions of service of the employees supplied by the Government to VGH Management Ltd were to be those applicable to them as public officers and public servants. Such conditions were to comprise any wage increases payable to all public employees thereafter and arising statutorily or by virtue of a collective agreement. Several other provisions stipulated in the LSA regulated the conditions of service of employees deployed with the VGH. Addressed in this ambit were conditions regulating disciplinary action, the management of employee records and the possible direct recruitment of seconded staff.
- 4.101 VGH Management Ltd was to be charged by the Government the equivalent of any monthly basic salary, any applicable allowances and bonuses of every employee leased by the Government to it at the effective date in terms of the applicable employee contract or conditions of work, together with any tax and/or social security contribution due by the employers. Since the list of resources had not yet been compiled at entry into the LSA, the amount payable by the VGH to the Government for leased employees was consequently not set. Notwithstanding this, the LSA stipulated that in the event of an increase in the employees' salaries and any other benefits, VGH Management Ltd would only bear increases of up to two per cent each year. The Government was to bear the additional charges.
- 4.102 On 19 May 2016, the Government, represented by the Minister within the OPM, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, each represented by Ram Tumuluri, entered into a Side Letter to the Transaction Agreements. Although the Side Letter specified that the value of the originally estimated labour charge at the time of issuance of the RfP amounted to €38,000,000, it was also acknowledged that the Government and the VGH were unable to establish the precise charge due and committed to reach agreement on the accurate labour charge by 15 September 2016. Stipulated in the Side Letter was that any charges on top of those estimated in the RfP were to be borne by the Government, while any downward variation was to be subtracted from the sum due to VGH Management Ltd.

- 4.103 This matter was resolved on 15 September 2016, through entry into a second Side Letter to the Transaction Agreements by the same parties. The cost of resources exceeded that originally estimated and therefore the upward variance was to be covered by the Government. Confirmed through this second Side Letter was that the Government was to bear €6,000,000 in respect of deployed employees supplied to the VGH, which charge was to increase by two per cent annually, and €2,360,000 for additional HR. Also payable by the Government was a charge of €1,282,000 in respect of sub-contracted resources.
- 4.104 The Side Letters to the Transaction Agreements dated 19 May 2016 and 15 September 2016 were incorporated into and superseded by the Addendum to the LSA entered on 30 June 2017. The parties to this Addendum were the Government, represented by the Minister for Tourism, and VGH Management Ltd, represented by Ram Tumuluri. The Addendum to the LSA was made effective with retrospective effect from 1 June 2016.
- 4.105 Critical contractual requirements, absent in previous LSA-related contracts drawn, were captured in the Addendum to the LSA. Most notable in this regard was the inclusion of a list of resources, set at 1,536 members of staff, and the capping of charges payable by the VGH to the Government in respect of such resources, now set at €32,234,637. This charge was subject to a fixed yearly two per cent increase during the concession term.
- 4.106 While the LSA, together with the other Transaction Agreements and the first two Addenda to the HSDA, were authorised by Cabinet on 27 October 2015, the NAO noted with concern that the Addendum to the LSA, despite including important provisions in relation to the capping of the charges and the setting of the list of resources, was never authorised by Cabinet.
- 4.107 Several issues of concern emerge from the NAO's analysis of the contractual framework regulating the resources leased by the Government to the VGH under the LSA and its subsequent side letters and addendum. Most notable were issues relating to the setting of basic contractual requirements, such as the resources to be allocated and payments corresponding thereto, the contestation of invoices and other matters bearing a connection to the LSA.

Establishing basic parameters: Resources and payments

- 4.108 Immediately evident in the review of the LSA, the two Side Letters to the Transaction Agreements and the Addendum to the LSA was that confusion and uncertainty reigned regarding the number of resources Government was making available to the VGH and at what cost. As with several other aspects of this concession, contractual revisions effected to define the resources to be leased and the corresponding payments due to the Government solely served the interests of the VGH.
- 4.109 Key to understanding the extent and root cause of discrepancies in terms of the number of resources to be leased and their value was the report issued by RSM Malta, dated 16

September 2016, that is, a day after the second Side Letter to the Transaction Agreements, wherein the Government assumed responsibility for providing approximately €10,000,000 in resources to the VGH against no payment. The RSM Malta report presented a variance analysis between the headcount and corresponding costs as set in the RfP (referred to as AC) and the projected headcount and costs established at handover stage (referred to as PC). In its analysis of the difference between the AC and the PC, RSM Malta highlighted the omission of certain costs, the incorrect charging of rates for contracted costs, and the omission of certain employees from the computations, among others.

- 4.110 In sum, the AC corresponded to 1,538 resources at a cost of €39,742,964, while the PC accounted for a total headcount of 1,824 employees and resulted in a total cost of €49,110,729. According to the RSM Malta report, were one to consider the 1,536 resources cited in the Addendum to the LSA, the PC equated to an approximate €42,000,000, as opposed to the €32,234,637 capped fee to be reimbursed to the Government by the VGH that was cited in this Addendum. This variance provided further insight as to the intention and reasoning behind the Government's acceptance to bear the additional costs in relation to the leased resources.
- 4.111 Based on that stated in the RSM Malta report, the NAO understood that the final capped value for the resources to be leased by the Government to the VGH was set at €32,234,637 in the Addendum to the LSA following the deduction of the subcontracted resources. This resulted in the deduction of an approximate €6,000,000. The MFH informed the NAO that despite the deduction in the total cost of resources from €38,000,000 to €32,234,637, the Addendum to the LSA failed to effect a corresponding reduction in the headcount of resources from 1,536 to 1,240, to account for the subcontracted resources and dermatology employees removed. The mismatch in resources and corresponding payments due resulted in the Government receiving on an annual basis less in compensation than the actual value of the leased resources.
- 4.112 Furthermore, despite enquiries made, the NAO was not provided with information to explain the reason why the additional computed value of €6,000,000 in relation to the leased resources (which figure differs to the €6,000,000 arising in respect of subcontracted resources) was not taken into account when setting the capped fees to be paid by the VGH for the leased resources. This Office is of the understanding that this omission resulted in the Government receiving less in compensation than the actual value of the leased resources on an annual basis.
- 4.113 The MFH informed the NAO that this mismatch was one of the main reasons for the Ministry's contestation of the amounts claimed by the VGH as payment for the leased resources. Of note to this Office was that although the MFH had expressed its concerns prior to the Government's execution of the Addendum to the LSA, with the Ministry contending that a capped headcount of 1,536 resources should have a fair corresponding payroll cost in accordance with that determined in the RSM Malta report, the MFH's stance was not taken

into consideration. While the Negotiation Committee claimed that the MFH was involved in discussions with the VGH leading to the Addendum to the LSA, the MFH maintained that the detail included in the Addendum did not capture the concerns presented by the Ministry prior to its execution. As at mid-2021, the MFH was still in the process of determining the correct number of leased resources and the corresponding monetary value.

4.114 In the NAO's understanding, the confusion regarding resources leased and amounts payable led to the immediate erosion of the balance of risks and value for money of this concession, with the Government providing resources whose value far exceed that recovered through the VGH. This Office notes that the sequence of events leading to this imbalance was triggered by information provided during the RfP, which information effectively capped the VGH's costs and constrained the Government to assume adverse variances. This understanding was reinforced through the first Side Letter to the Transaction Agreements. During the RfP, the VGH, then a prospective bidder, was provided with information regarding the staff costs incurred by the Government with respect to the GGH and the KGRH, which amounted to €38,000,000. Having considered the basic nature of the omission and its materiality, the NAO is of the opinion that the stakeholders representing Government acted negligently when setting labour cost requirements and failed to safeguard its interests.

4.115 Another matter that drew the NAO's attention was the concern expressed by the MFH regarding the mechanism that was to regulate revisions in salary costs. In submissions made by the MFH, the Ministry noted that the Government's health salary costs increased by eight per cent annually, therefore the agreement for the VGH to bear only two per cent of this increase resulted in an increase in the Government's payroll costs of six per cent. The MFH advised that while Government provided the Concessionaire with a nine per cent increase in payments made, based on increases in the annual healthcare budget and inflation, the VGH only incurred a two per cent increase in salary costs. The MFH informed this Office that the Ministry intended to renegotiate the annual capped charges and the percentage increase in wages to be borne by the VGH as these were not deemed to be an accurate and fair compensation for the actual costs being incurred by the Government. The point raised by the MFH resonates with this Office's understanding. The NAO deemed the contractual mechanism in place regulating revisions to charges payable skewed consistently and heavily in favour of the VGH, and one that failed to accurately and fairly compensate the Government for costs actually incurred.

The subcontracting backtrack

4.116 An issue of concern to the NAO arose with respect to Government's consideration of subcontracted resource expenditure. Stipulated in the HSDA was that the VGH was to, in the provision of several ancillary services, ensure best industry standards. These services included cleaning, security and support. Furthermore, the SCA required the VGH to procure by novation or assignment the substitution of agreements with sub-contractors by the

effective date. In effect, this Office understood that as from the effective date, that is, 1 June 2016, responsibility for the provision of these services shifted from the Government onto the VGH. Notwithstanding this, the NAO noted that Government backtracked on the obligation imposed on the VGH to incur such costs and, through the Side Letter to the Transaction Agreements dated 15 September 2016, conceded to pay for such ancillary services directly.

4.117 The NAO confirmed that €1,305,688 was paid in relation to subcontracted resources through this Side Letter. Government's exposure to these ancillary costs, which ought to have been borne by the VGH, came to a close in June 2017, following entry into the Addendum to the LSA. This Addendum stipulated that the VGH was to bear these costs with effect from 1 January 2017. In sum, the NAO contends that the payment of €1,305,688 by the Government to the VGH was irregular and unwarranted, for the HSDA stipulated that such services were to be provided by the VGH and therefore costs were to be accordingly borne.

Contested invoices relating to the payment of resources

4.118 The LSA catered for an arrangement whereby the Government was to continue paying the leased employees directly with the VGH reimbursing the Government for such wages through the annual fixed fee of €32,234,637. In addition, the LSA provided for the possibility for refunds to be made to the VGH in the case of any overpayments made by the VGH or any direct payments made to employees by the VGH that merited a refund from the Government in accordance with the contractual agreement.

4.119 As part of the review undertaken, the NAO sought to determine whether the MFH contested any invoices issued by the VGH. The MFH informed this Office that several charges levied by the VGH had been contested. Hereunder are the salient concerns that emerge in this respect.

4.120 Invoice 1010 was the first invoice issued by the VGH entirely related to staff movements in terms of the LSA. The invoice, corresponding to the period June 2016 to December 2017, was of €3,832,122. This invoice was contested by the MFH for several reasons including: discrepancies between the list of resources provided in the RSM Malta report and the list of resources as stated in the Addendum to the LSA; issues relating to the SLH staff that had left their employment but were still included in the list of claims; discrepancies in the list of staff movements and figures; the lack of documentation provided by the VGH; the lack of proof provided by the VGH to confirm that the necessary legal requisites and conditions as stipulated under the LSA were adopted; the lack of proper documentation and proof provided by the VGH to confirm that the costs indicated in the claim had been properly incurred; and the invoice being based on estimates of wages rather than accurate figures.

4.121 Of note to the NAO were exchanges of correspondence between the MFH and the VGH regarding the determination of actual salary costs. On request by the MFH to the VGH to provide the bases of calculations leading to the issued invoices, that is, the actual rather than the estimate wage amounts, the VGH requested the Ministry to provide the actual cost

figures as this data was not available to the Concessionaire. In this Office's understanding, this exchange confirmed that the VGH had issued the invoices without verifying the actual costs. In addition, this correspondence highlighted the VGH's failure to access payroll data, despite previous reassurance provided to the Government by the VGH that the new information technology system would cater for the collection of information relevant to this process.

- 4.122 The NAO established that, following correspondence exchanged between the parties, the MFH agreed to settle only two of the claims made in invoice 1010. Of the disputed €3,832,122, the MFH accepted the charges levied by the VGH in relation to GGH and KGRH employees; however, instead of settling the €432,122 and €411,285 sought, the MFH adjusted that payable to the Concessionaire to €110,483 and €358,162, respectively. Although these adjusted amounts were settled by the MFH, the outstanding balance with respect to invoice 1010 was referred for resolution by mediation in terms of the LSA in accordance with the International Chamber of Commerce mediation rules. Of note to the NAO was that, on presenting the documentation for the mediation process, the VGH claim for €3,832,122 was increased to €8,000,000, details pertaining to which ensue.
- 4.123 According to the MFH, a major dispute raised by the VGH related to replacement resources, whereby the VGH claimed that the Government was not honouring its obligations in terms of the LSA, which stipulated that the Government was to promptly provide a replacement resource to cure any shortfall in the agreed number of resources supplied by the Government to the VGH. In submissions to the NAO, the MFH noted that the situation had arisen as a result of the applicable collective and sectoral agreements, which stipulated a procedure for recruitment intended to correct for the double-insularity experienced in Gozo. This Office understood that this procedure results in the prioritisation of Gozitan residents employed at the MDH and other entities and who were eligible for the relevant vacant posts. The MFH's adherence to this procedure resulted in delays in the supply of replacement resources by the Government, causing the VGH to resort to the direct recruitment of staff to cure the shortfall at the GGH rather than following the agreed replacement procedure with the Government. Moreover, the MFH highlighted that the VGH did not always follow the required procedure of requesting replacement resources in accordance with the LSA, thereby creating further issues as the Government could not supply the necessary resources in such circumstances. As a result, the VGH issued a claim amounting to approximately €8,000,000 as compensation for the costs incurred for the employment of these resources.
- 4.124 The Government acknowledged the basis for the claim considering its contractual obligations to reimburse the VGH for the costs of replacement resources. Grant Thornton was appointed as an independent auditor to verify basic payroll data to assist in the quantification of any potential reimbursement due to the Concessionaire for the resources directly employed by it as replacement resources for the period June 2017 to 2018.
- 4.125 The report by Grant Thornton, issued in April 2019, provided details of a list of 128 clinical employees deemed to be unforeseen, critical and necessary in nature, verifying the payroll

costs, clinical certification, contracts of service, designation of employees, professional warrants, engagement, and termination dates, with a total cost of €4,866,431 being quoted as opposed to the VGH claim of approximately €8,000,000. Of concern to the NAO was a note made by Grant Thornton confirming that the requested requirement to provide a list of 'Transferred Resources' was resisted by the Chief Financial Officer VGH and such information could therefore not be provided.

- 4.126 The MFH informed the NAO that in 2019, the Government agreed to pay the cost as established by Grant Thornton, with the understanding that the payment was in full and final settlement of all costs incurred for the replacement of resources between 2017 and 2018. The MFH confirmed that an amount of €3,950,445 was paid, thereby accounting for the deduction of the already paid €110,483 and €358,162. The agreement reached between the Government and the Concessionaire relating to this LSA dispute allowed for an annual payment to be made during the transition period or up to 31 December 2021, whichever was the earliest.
- 4.127 As the VGH had only been reimbursed for the replaced resources employed between 2016 and 2018, it contested that it had also incurred other employee-related costs, such as costs emanating from employee movements, including transfers and terminations, which also required reimbursement from the Government. The Concessionaire therefore issued another invoice in 2020 amounting to €20,266,868, to claim for this shortfall of costs incurred in the period 2016 to 2020. The MFH verified this figure and the related workings and confirmed that an additional payment was to be made by the Government to the Concessionaire for an amount of approximately €19,000,000.
- 4.128 In submissions made by the MFH, the NAO understood that the calculations for this additional payment followed the direction provided by the State Advocate ensuing from the mediation proceedings with respect to invoice 1010. In this context, the Government was advised to perform an annual headcount adjustment to inflate the capped figure of employees supplied by the Government as stated in the RSM Malta report to account for any additional resources deployed at the sites exceeding the agreed capped amount. The annual headcount adjustment provided the Government with the corresponding additional amount to be paid to the VGH as a reimbursement. The NAO requested the advice provided by the State Advocate from the MFH. The State Advocate informed the NAO that after an analysis of the relevant contracts, it was concluded that should the matter be referred for judicial proceedings, the likelihood of a successful outcome for Government was relatively low, implying that Government bore the risk of payment of the international arbitration costs that would be incurred. In addition, the State Advocate noted that the contracts did not provide the Government with a sound legal basis to refuse to pay that claimed by the Concessionaire. Furthermore, the payment allowed the Government to limit the legal interest due.
- 4.129 It is of concern to the NAO that no information was provided to this Office to confirm whether a similar arrangement had been made for the Government to be reimbursed a fair and

more realistic value for the resources being leased to the VGH rather than the capped fee of €32,234,637. It is the NAO's understanding that the annual headcount adjustment inflating the capped figure of employees to determine the additional resources deployed at the sites, used to provide the Government with the corresponding additional amount to be paid to the VGH as a reimbursement, could also be used to calculate the correct value to be reimbursed by the VGH to the Government for the 1,536 resources being leased to the VGH.

Labour supply issues created through the concession agreement

- 4.130 The MFH noted that prior to the entry into the concession, the MDH was considered as the parent hospital of the GGH, with the latter running in tandem with and utilising resources and services from the MDH as required. It was noted that the design of the concession agreement did not take this relationship into consideration, discarding the support previously sourced through the MDH and considering the GGH in isolation. The MFH asserted that this situation created clinical uncertainty due to labour supply issues, with the separation and isolation of the two hospitals considered a major flaw in the design of the LSA that created unnecessary tension between the hospitals and exacerbated labour supply difficulties and constraints. Elaborating on this matter, the Ministry maintained that developing the GGH in isolation without the necessary support and assistance from the MDH was impossible. As the GGH is an isolated general hospital on a small island, the clinical technical expertise available preferred being based in Malta rather than Gozo, causing clinical, strategic and possibly operational problems.
- 4.131 The NAO deemed concerns raised by the MFH regarding the strain on resources created as a result of entry into this concession as valid. Pertinent in this respect was the MFH's observation that although the VGH was responsible for the management of the GGH, together with the other hospitals, it was the Government and the Ministry that ultimately remained responsible for all the public health services provided to Maltese nationals and therefore could not allow any issue arising in the supply of clinical staff to affect the medical services provided. This dynamic created an obligation for the Government to step in and cure any shortfalls in the service created by the VGH to ensure that service users in Gozo were provided with the same medical service as service users at the MDH.
- 4.132 Several other issues relating to the recruitment and management of staff in terms of the LSA and the broader concession agreement were brought to the fore in the review undertaken by the NAO. Highlighted in this respect was how several of the staff-related issues that would later emerge were linked to the design of the concession agreement and how this situation led to far ranging repercussions in relation to staffing requirements.
- 4.133 One of the main issues identified related to the system of dual control of employees introduced by the LSA. The MFH argued that the situation would have been more practical had the employees left Government employment altogether to work directly with the VGH.

The Ministry and the Negotiation Committee indicated that the initial plan was for the GGH to have its own recruitment process independent from the Government. Notwithstanding this, the MFH acknowledged that this option was not possible due to union involvement.

4.134 Although the Negotiation Committee confirmed that that the initial plan was for the VGH to take over the employment of the staff at the sites with no Government involvement; the departure from this plan was portrayed as a loss to the VGH in terms of cost control, thereby necessitating the need to cap staff costs to avoid any unnecessary future costs. The NAO could not verify that stated by the Negotiation Committee, as no documentation was submitted to support that there ever was an intention for the staff at the sites to be recruited directly by the VGH. Regardless of that claimed, the RfP unequivocally stated that the staff employed at all sites were to be deployed to the concessionaire while remaining public service employees, thereby casting doubt on that stated by the Negotiation Committee.

4.135 A further issue highlighted related to the commitment for the Government to replace any shortfall in the number of leased resources to constantly sustain the agreed fixed supply of 1,536 employees at the sites. This requirement implied that the Government would need to either recruit new personnel or, should this not be possible, utilise existing staff from the MDH, which in itself presented labour supply issues affecting the MDH and the GGH. The MFH explained how in circumstances when health services to be delivered at the GGH were deemed to be less urgent than those required at the MDH, then the MDH would not be in a position to accept such a transfer of personnel due to the prevailing circumstances, thereby creating a shortage of staff to be supplied by the Government to the GGH. The MFH argued that such situations highlighted the contractual design flaws, which indicated that the obligations emanating from the LSA were practically impossible to maintain considering the limited labour supply available in such a small economy. In addition, the MFH noted that it was not practical to assume that any shortage of staff occurring at the GGH would automatically be covered by staff from the MDH, as the MDH had its own responsibilities and obligations to uphold independently from the concession agreement. The NAO deemed the concerns highlighted by the MFH regarding the constraints experienced in terms of labour supply as valid. The perspective expressed by the MFH, wherein the Ministry defined the concession agreement as one characterised with critical operational miscalculations due to the lack of a properly functioning HR system with the capabilities of creating a sufficient flow of staff for the GGH, as a matter that warrants attention.

4.136 Also noted by the NAO were the concerns raised by the VGH in relation to the agreements entered into by the Government and the MAM through which several restrictions were imposed on the Concessionaire, particularly in terms of its ability to recruit personnel. The VGH expressed frustration with the fact that these agreements were not envisaged or formalised in the concession agreements and were entered into without any involvement or discussion with the Concessionaire, thereby causing further serious labour supply issues. From correspondence provided, the NAO confirmed that meetings were held between the Government and several unions, wherein human resource-related issues that required

discussion, clarification and negotiation with the VGH were highlighted. Based on the review of this documentation, the NAO established that these meetings were held in August 2015, three months prior to the execution of the concession agreements. Specifically cited in the documentation reviewed was a list of concerns presented by the unions together with a list of suggested principles for discussion with the VGH, as drafted by the Negotiation Committee. It remained unclear to the NAO whether the Government relayed the concerns expressed by the unions to the VGH and whether the Negotiation Committee's proposed course of action for unions to clarify matters directly with the VGH was seen through.

4.137 In reference to the agreement reached with the MAM, the MFH maintained that several problems relating to the recruitment of personnel were created by the VGH, despite the Concessionaire's efforts to deflect responsibility elsewhere. The MFH emphasised that the VGH's claims implying that the Ministry was to blame for the labour supply problems and the shortage of staff experienced at the GGH were incorrect and unfair, and reiterated that these issues were a result of the poor design of the concession agreements and the shortage of labour supply availability within the broader economy. Moreover, the MFH noted that the LSA afforded the VGH the right to employ the required staff directly should the Government fail to cure the shortfall in the required time and that the VGH could have therefore applied this clause to cure shortfalls rather than shifting the blame onto the Government in this regard.

4.138 In this context, a glimpse into the inner workings of the VGH and the possible root cause behind the negative contribution made by the Concessionaire in relation to labour supply management issues was gleaned from the CEO GGH, who claimed that, despite being in the direct employment of the VGH and responsible for the overall management of the hospital's workforce, she did not have access to the LSA. The CEO GGH contended that this situation limited visibility and control over the HR function and led to a lack of clarity as well as several problems. The NAO deemed the lack of access to critical information as a serious shortcoming, with this Office failing to comprehend how the CEO GGH was to oversee the proper functioning of the hospital without access to the agreement that was to regulate its workforce.

4.139 Nevertheless, evident in the submissions by the MFH and in the documentation reviewed was the tense relationship that persisted between the unions and the MFH, aggravating the pressure on an already challenging situation for all involved to manage. The NAO's concern is drawn to the all too evident gaps in stakeholder consultation that emerge as a backdrop to the existing difficulties in implementing the LSA.

Non-payment of social security contributions

4.140 In submissions made to the NAO, the MFH drew this Office's attention to the fact that the VGH had failed to pay the National Insurance and Pay As You Earn contributions for its employees in accordance with the terms of the SCA and the LSA, with contributions remaining in arrears for the year 2018 and prior years. From documentation provided by

the MFH, the NAO understood that several meetings were held by the Ministry with the VGH and the Commissioner for Revenue to resolve this issue; however, this was to no avail, with the VGH claiming that the payments had not been made due to the significant amounts owed to the Concessionaire by the Government in relation to disputes between the parties. Correspondence submitted by the MFH to the VGH on the matter was reviewed by the NAO, wherein concern was expressed regarding suspicions that the budget allocated for the payroll of the KGRH and the GGH employees by the Government was being utilised by the VGH to pay other invoices that were not related to payroll and its associated costs.

- 4.141 In sum, of grave concern to the NAO is the lack of planning, coordination and stakeholder involvement noted in relation to what certainly constitutes a major component of the operations of the hospitals, that is, the workforce required to deliver health services. This resulted in unnecessary conflicts and disagreements, the mismanagement of state resources and ultimately an unnecessary additional financial burden imposed on the Government – albeit by itself – due to agreements hastily concluded without obtaining the necessary advice and relevant information prior to entry into the contractual obligations imposed by the LSA.

Emphyteutical Deed

- 4.142 On 22 March 2016, the CEO MIP Ltd, appearing for and on behalf of MIP Ltd, in turn appearing for and on behalf of the Commissioner of Land; the Commissioner of Land, in the name and on behalf of the Government and appearing solely for the purposes of the clause relating to the disposal of the sites at the GGH, the SLH and the KGRH; and the Director VGH Assets Ltd, entered into the Emphyteutical Deed. The Government further declared that MIP Ltd was authorised to dispose of the sites in terms of the Disposal of Government Land Act.
- 4.143 The granting by emphyteusis of the sites at the GGH, the SLH and the KGRH to VGH Assets Ltd was intended for the Government to achieve various policy objectives, including: the construction of a medical school; the development and creation of state-of-the-art research and development healthcare facilities and of a medical campus in Malta and Gozo; the redevelopment of the GGH; and the refurbishment and upgrading of the SLH, the KGRH and the GGH.
- 4.144 Through the Emphyteutical Deed, MIP Ltd granted VGH Assets Ltd the title of temporary emphyteusis for 30 years of the buildings and sites occupied by the SLH, the KGRH and the GGH, in aggregate having a superficial area of 135,282 square metres. VGH Assets Ltd could request to extend the emphyteutical grant by a single and additional term of 69 years. Although control over renewal of the KGRH and the GGH sites rested with Government, that for the SLH site rested with the VGH. VGH Assets Ltd's right to extend the emphyteutical title over the SLH was tied to its' right to use the sites for medical purposes only. The annual ground rent for the sites was €525,000. This was payable as from 22 March 2017 and was revisable by 30 per cent on the commencement of the extended term and by five per cent every five years thereafter.

Mismatch between the concession period and the extended temporary emphyteusis

- 4.145 The NAO sought to understand the mismatch between the 30-year concession period and the potential 99-year title granted over the sites. The Minister for Health, the PS MOT and the Negotiation Committee provided consistent perspectives regarding this mismatch, stating that the option to extend was intended to allow the VGH to continue to exploit the site at the SLH for medical tourism, this being a niche market deemed desirable for the country's economy. They elaborated that the services concession was granted for 30 years and that, in this context, the Government retained the right to request the reversion of the GGH and the KGRH, which were the sites utilised for the provision of the public health service, following the lapse of 30 years.
- 4.146 The NAO's concerns regarding the mismatch between the concession period and the duration of the temporary emphyteusis are twofold. The first concern relates to the services provided to the public from the SLH site, with uncertainty prevailing as a result of the control exclusively exercised by the VGH over its use of the site in this respect. The second concern is connected to the use of the site for medical tourism within the extended term. Although the Minister for Health, the PS MOT and the Negotiation Committee maintained that use of the site in this manner by the VGH was in the Government's interest, the NAO contends that the provisions of the Emphyteutical Deed are unnecessarily broad. This Office is of the understanding that the restrictions imposed on the VGH in the Deed may be broadly interpreted by a court of law and if that were to happen it would defeat the intended objectives of Government..

Revision of ground rent

- 4.147 The mechanism that was to regulate revisions in ground rent was another aspect of the Emphyteutical Deed deemed of interest to the NAO. This Office's attention was drawn to the fact that the 30 per cent increase in the ground rent applied on the commencement of the extended term, as opposed to applying increases of five per cent every five years also during the initial term. In the NAO's understanding, this provision effectively tied the increase in revenue generation to the fulfilment of an optional condition and resulted in less revenue overall for Government. Although the MIP Ltd and the Negotiation Committee sought to downplay the materiality of revisions in ground rent, the NAO deems the mechanism intended to regulate ground rent revisions as an example of the lack of adequate planning at the RfP stage that resulted in Government failing to maximise revenue generated through the lease of the sites.

On use of the sites as security

- 4.148 4.148 One of the obligations of the MIP Ltd was to accept VGH Assets Ltd and/or its assignees' right to encumber the sites in favour of persons or entities providing debt funding and other credit facilities required by VGH Assets Ltd or the Concessionaire to fulfil its obligations under the Transaction Agreements. Of note is that the sites were encumbered in 2017 by a first

ranking special hypothec and a first general hypothec for a loan facility of €1,000,000 granted by Agribank plc to VGH Ltd. The MIP Ltd maintained that this provision was a standard policy for property granted under title of emphyteusis and was utilised as means to securitise credit facilities.

Regulatory compliance

- 4.149 In its analysis of the Emphyteutical Deed, the NAO sought to establish whether the provisions of the Disposal of Government Land Act were adhered to. Of specific interest in this regard was the method of disposal of the sites at the SLH, the GGH and the KGRH. The disposal was justified in terms of Article 4(b), which focuses on the transfer of land by Government with the intention of use for industrial projects. Although the bid submitted by the VGH did emphasise job creation, whether this project can be classified as an industrial project remains a moot point. While disposal under this Act was deemed regular by the NAO, in this Office' understanding, the basis of this transaction could have been better suited had reference been made to Article 3(1)(a), which addresses circumstances wherein the transfer of land is effected following a tender, in this case, an RfP.
- 4.150 Another aspect of regulatory compliance considered by the NAO related to conformity with state aid regulations. The State Aid Monitoring Board (SAMB) outlined that the concession and the Emphyteutical Deed were not referred to the Board; however, the Board understood that the award of the concession followed an open public tendering procedure that was widely publicised and therefore no state aid implications arose. This Office deemed the position taken by the SAMB as reasonable and considered no breach in terms of state aid regulations.

Valuation of the sites

- 4.151 In line with the terms of reference set, the NAO sought to establish whether the sites were valued by the Government, and in the affirmative, whether such valuation was fair. This Office established that no valuation of the SLH, the GGH and the KGRH sites was undertaken by the Government prior to their transfer through the Emphyteutical Deed. The NAO acknowledges that the Disposal of Government Land Act is silent as regards the determination of value of lands transferred in terms of industrial projects. The only applicable policy relating to the determination of amounts to be charged by the Government for use of its land was that set by the MIP Ltd, which established a rate of €11.65 per square metre for land granted in 2016. This policy was adhered to in this concession.
- 4.152 The NAO compared the contracted ground rent site dimensions and the computed amounts based on footprints provided by the Lands Authority. Although the Lands Authority indicated that the site footprints were estimates limited to the technicians' best judgement analysis of images and could fall short of the more accurate measurements attained through a full site survey, the comparison of the ground rent amounts resulted in a discrepancy adverse to

Government in excess of €30,000, yearly. When considered over the span of the Emphyteutical Deed, this variance amounts to approximately €900,000.

- 4.153 The NAO was unable to determine which entity was responsible for determining the ground rent payable, since the Government entities involved, namely, the MIP Ltd and the Lands Authority, provided conflicting information. The MIP Ltd indicated that their role was restricted to the execution of the Emphyteutical Deed based on information provided to it and that the lands to be granted had been transferred to it a few weeks prior. In turn, the Lands Authority informed the NAO that it was only involved in the initial stages in so far as to ascertain that all the subject properties were all fully owned by the Government. The Lands Authority maintained that all subsequent negotiations, proposed refurbishment plans, valuations and other action taken with respect to the sites were made under the responsibility of the MIP Ltd.

Adherence to contractual obligations

- 4.154 The NAO sought to verify whether payments were made by VGH Assets Ltd according to the conditions stipulated in the Deed. This Office ascertained that the amounts charged were paid in full within a maximum of three months from the invoice date.
- 4.155 In addition, the NAO sought to establish whether the vacant possession of the sites, as specified in the Emphyteutical Deed, was achieved. As at the point when VGH Ltd transferred its shares to Steward Healthcare: the Blood Bank, the Child Development Assessment Unit and the Detox Centre had not relocated; the administration building at the GGH was still occupied by the Ministry for Gozo; and Malta Enterprise had only partially vacated the site within the SLH grounds. Of note to this Office was that the MFH had informed the MIP Ltd that fundamentally important issues relating to the concession remained pending and it was in this context that the Ministry decided that no relocation costs were to be incurred by the Government.

5 Comparison of the contractual framework with the Request for Proposals

5.1 The NAO compared the RfP for the granting of the services concession for the redevelopment, maintenance, management, and operation of the SLH, the GGH and the KGRH with the contractual framework regulating this concession. More specifically, the NAO extracted important clauses from the RfP and matched them with clauses from the contracts that addressed the same matters, making sure to consider any overlaps across contracts. This analysis was undertaken to assess whether the contractual framework was consistent with the provisions of the RfP. In addition, the NAO extracted key clauses from the contracts and matched them with any available provisions in the RfP to assess whether the more elaborate contractual framework was consistent with that originally included in the RfP. The focus was on identifying deviations or inclusions in the contracts that changed the scope of the concession, changed the level of risk retained by either party, or bore impact on the level of operational and financial feasibility, as well as the profitability of the project.

Emphyteutical Deed

5.2 When comparing the provisions of the RfP relating to the temporary emphyteusis to be granted as part of the concession with those of the Emphyteutical Deed entered into as part of the contractual framework for the concession, several deviations were noted by the NAO. These included deviations regarding the possible extensions of the temporary emphyteutical term, ground rents payable and the occupied areas within the sites.

5.3 The NAO noted that, at the RfP stage, potential bidders were not provided with security regarding the longer term, in terms of provisions relating to the extension of the emphyteutical title for an additional 69 years. Such security, mainly in respect of the SLH, was provided in the Emphyteutical Deed. Additionally, while the RfP referred to the fact that the extension could be restricted to specific areas of the sites, the Emphyteutical Deed clearly denoted that only in the case of the SLH was an extension guaranteed, while in the case of the GGH and the KGRH, Government maintained the discretion to withhold an extension. In this Office's understanding, the SLH extension impinged on the financial feasibility and profitability of the project, with the guarantee of another 69-year term for this site exerting a major bearing on these aspects. It is in this context that the NAO maintains that these discrepancies may have impacted on the competitive tension at the RfP stage.

5.4 In terms of the ground rent payable during the 30-year term, while the RfP specified the applicable rate per square meter of built-up area, that is, €11.65, the Emphyteutical Deed stated the total annual ground rent payable for the SLH, the KGRH and the GGH, a cumulative annual charge of €525,000. Though the area of the sites was specified in the Deed, this was not disaggregated for built-up and non-built-up areas. The NAO is of the opinion that the total ground rent payable (or the size of the built-up areas) should have been specified in the

RfP to provide better clarity on the applicable costs and therefore allow for more accurate financial projections.

- 5.5 Deviations were also noted with respect to provisions regulating the extended period of 69 years. In contrast to the Emphyteutical Deed, the RfP did not identify any applicable increases in ground rent throughout the extended term. The NAO is of the opinion that in the interest of transparency, this information ought to have been outlined in the RfP, as such disclosure would have allowed for more accurate financial planning.
- 5.6 Contrary to the Emphyteutical Deed, the RfP failed to mention any specific instances of allowed encumbrances, and Government's obligation to recognise and accept such encumbrances. The NAO is of the opinion that the RfP should have referred to the envisaged allowed encumbrances since this bore impact on the likelihood of obtaining project financing.
- 5.7 Conflicting information was presented in the RfP and the Emphyteutical Deed with respect to occupied areas within the sites and timeframes for their vacant possession. While the NAO noted these deviations, this Office is of the opinion that, had the full information included in the Emphyteutical Deed been provided in the RfP, it was unlikely that it would have impacted the decision of any interested party on whether to bid, or changed the bids submitted so as to affect the evaluation of bids materially. However, this information would have allowed bidders to propose more accurate and realistic implementation timeframes.

Services Concession Agreement

- 5.8 When comparing the SCA and the RfP, the NAO identified several discrepancies of note. These included deviations in terms of the investment risk associated with the concession, the extension of the emphyteutical title, the consideration payable by Government to the VGH on hand-back of the GGH and the KGRH, alterations to the timeframe for the completion of works, and the commencement of the applicability of the concession responsibilities. Other deviations related to provisions regulating the operator of the nursing university-level institution at the SLH and the timeframe for its development, the compensation payable to the Concessionaire for refundable improvements, the performance guarantee, and the added obligations of the Concessionaire. Another significant deviation noted by the NAO related to the capital expenditure to be undertaken by the VGH. Other aspects of inconsistency arising from the comparison of the RfP and the SCA included the cost of building and fitting of the medical school at the GGH, the granting of the title to the medical college and licensing.
- 5.9 In the NAOs opinion, in comparison to the RfP, the contracts provided more favourable provisions to the VGH with respect to the extent of operational risk it was to bear, the financial feasibility of the project and its guaranteed revenue. The SCA's provisions relating to termination payments included Government assuming in its own name the lender's debt in full in the event of a concessionaire event of default, which could be considered as constituting a form of government guarantee. No such provisions were included in the RfP. While the RfP

stated that a fixed amount was to be payable monthly in arrears for services rendered, the HSDA included provisions for the annual minimum healthcare delivery fee, which provided more clarity and assurance to the Concessionaire regarding the revenue guarantee being offered by Government.

- 5.10 The SCA specified that should Government request the reversion of title for the KGRH and the GGH on the lapse of the concession period, a consideration of €80,000,000 would be paid to the VGH. No such provision was included in the RfP, which instead simply provided for a mechanism to determine the compensation payable to the VGH at the end of the concession period for improvements made with useful life beyond the concession term. The NAO is of the opinion that the a priori determination of the €80,000,000 payment should have been provided at the RfP stage since it impinged on the financial feasibility and profitability of the project. This omission is considered by the NAO as a significant one, potentially bearing impact on the competitive tension that ought to have been created at the RfP stage.
- 5.11 Through meetings with stakeholders the NAO understood that the fact that the possible extension of the emphyteutical title in the Emphyteutical Deed was not matched with a possible extension of the concession in the SCA reflected Government's plan to solely extend the emphyteutical title for the parts of the sites that were intended for medical tourism, and not extend the concession itself. However, the NAO strongly contends that this should have been clearly specified at the RfP stage and in the contracts, since this greatly impacted the scope and profitability of the project for the extended period. Moreover, it must be noted that this understanding was inconsistent with the Emphyteutical Deed, which stipulated that the VGH was to request the extension for all sites in their entirety and not in part. In this context, the NAO considers the concern expressed by the MFH, that should Government not request back the GGH and the KGRH at the end of the concession term, then the extension of the emphyteutical term for these sites without an extension of the concession would imply that the VGH could use all sites for other medical purposes, as valid.
- 5.12 Substantial deviations were also noted between the RfP and the SCA with respect to the stipulated timeframes for the completion of works. The PS MOT and the Negotiation Committee indicated that such extensions were necessary in view of delays in the issuance of development permits, the need to seek a full development permit rather than the initially envisaged short development notification order as well as various site issues. The NAO contends that the discrepancy noted between the RfP and the SCA in terms of these timeframes is evidence of the Government representatives' failure to adequately consider the planning requirements associated with a major project comprising the redevelopment and refurbishment of three public hospitals.
- 5.13 With respect to the operator of the nursing university-level institution at the SLH, while the outsourcing to a third-party operator was termed as optional in the SCA, since the VGH was allowed the possibility to operate the nursing college, in the RfP this outsourcing was not

optional. This deviation changed the nature and scope of the operation of the concession, with implications on the operational feasibility, operational risk, revenue streams and revenue levels for the project, and ultimately its profitability. The NAO is of the opinion that this was a significant variation.

- 5.14 A major discrepancy noted related to the required improvements throughout the concession period. The period for which prior authorisation had to be sought by the Concessionaire from Government in respect of these improvements was shortened from the last six years in the RfP to the final four years in the SCA. Moreover, the compensation payable for improvements with useful life beyond the concession term was determined a priori in the SCA, set as €80,000,000 for the GGH and the KGRH, rather than determined through a mechanism in the last few years of the concession term, as originally envisaged in the RfP. Of note to the NAO was that, in its bid for the RfP in terms of its financial estimates, the VGH had indicated that its compensation payments were to be equal to the net book value of the assets for the whole project (and therefore also including the SLH) at the end of the concession term, that is €71,217,000. It is therefore unclear to this Office how a €71,217,000 estimate for the KGRH, the SLH and the GGH translated into a contractual value of €80,000,000 for the KGRH and the GGH. This was considered as constituting a material deviation by the NAO.
- 5.15 Another discrepancy between the RfP and the SCA, also relating to the redevelopment programme, was noted by the NAO. While the RfP specifically stated that the successful bidder was to invest at least €150,000,000 in infrastructure, medical equipment and maintenance, the SCA did not bind the VGH to a minimum investment amount. While the Negotiation Committee argued that the contract was intended to manage outputs and end-user requirements rather than inputs and investment, the NAO is still of the opinion that the omission of such a high-level requirement was a serious weakness in the contractual framework.
- 5.16 Some discrepancies were noted with respect to the required performance guarantees outlined in the RfP and the SCA. While the RfP provided for two concurrent separate performance guarantees to cover the concession and the service delivery aspects, the SCA provided for the new performance guarantee, which was to cover the service delivery aspect that was to come into effect once the original performance guarantee terminated, with only a period of three months of overlap between them. Since the RfP did not include the performance guarantee for the healthcare delivery agreement as a mandatory requirement, and instead indicated that such a guarantee could be requested by the Government, then the SCA cannot be deemed as being inconsistent with the RfP. However, the NAO is of the opinion that the SCA should have provided the design envisaged in the RfP with respect to the performance guarantees since this arrangement provided greater coverage in terms of the secured amount. It is in this context that the NAO deems that the RfP ought to have established mandatory requirements that would have ensured the provision of adequate coverage for a concession of this magnitude.

- 5.17 The specifications of the validity period of performance varied between the RfP and the SCA. The implication of the shortening of the period following the termination of the agreements, from one year in the RfP to thirty days in the SCA, and the change from the release on expiry of the concession period in the RfP to the release on the termination (for whatever reason) in the SCA reduced the security provided to Government through the performance guarantee. This was considered by the NAO as constituting a material variation.
- 5.18 Furthermore, the RfP stipulated that the performance guarantee was to be obtained from a bank holding an A rating by Standard and Poor's rating service or equivalent (except in the case where the bank is present in Malta). This rating requirement for the issuing bank was not included in the SCA. The NAO recognises that while the Government retained authority to accept or refuse a specific bank, this deviation from the requirement specified in the RfP introduced less stringent criteria for the issuing bank and greater discretion for Government to manoeuvre within.
- 5.19 Certain provisions included in the SCA, which comprised an added expense for the VGH, were not mentioned in the RfP. These included the requirement imposed on the Concessionaire to invest the annual sum of two per cent of its yearly profits in environmental enhancement, embellishment or social projects, as well as the requirement to pay a concession fee of €3,000,000 to Government in equal instalments over a period of ten years. The NAO is of the opinion that this information ought to have been included in the RfP since it bore impact on the profitability of the project. Similarly, the RfP failed to provide any details of the operational bodies, reporting structures and expert engagement required for the concession, which details were provided in the SCA. While these details did not alter the nature of the project, or impact its feasibility, participation in these bodies, engagement of experts and the fulfilment of reporting requirements result in the Concessionaire incurring costs and time, and for this reason, the NAO is of the opinion that a brief outline of these requirements ought to have been provided at the RfP stage.
- 5.20 Other deviations related to changes in the responsibility for the procurement of certain items relating to the building and fitting out of the medical school at the GGH, the structure of the transactions for the title of the medical school, the timeframe for the development of the nursing institution at the SLH and details relating to the parties involved in applying for and securing required licences as well as concessions for the commencement of operations. The NAO identified other details that were included in the SCA but were missing in the RfP. In this Office's opinion, in certain cases relevant details should have been included in the RfP as the missing information impacted the operational plan and, potentially, the financing required and the costs to be incurred to implement the project. In some cases, while the RfP did refer to certain provisions, the details included were scant in comparison to that included in the SCA. In the NAO's view, potential bidders should have been provided with additional information at the RfP stage to provide a more informed understanding of the requirements, allow for a better appraisal of the business opportunity and enable more accurate planning in preparation for the bid submission.

Health Services Delivery Agreement

- 5.21 The NAO also carried out a comparison of the HSDA and the RfP. Notable deviations were identified, including in the provisions relating to the beds, fees payable, the description of the services and facilities required and the key inclusions in the minimum charge.
- 5.22 The NAO noted a discrepancy in terms of the number of beds cited with respect to the GGH in different clauses of the HSDA, and in this respect the information included in the HSDA was not consistent with that included in the RfP. The MFH representatives acknowledged the inconsistencies in capacity and noted that the matter was addressed in later developments, with the contracting parties agreeing to revised numbers through subsequent contracts entered into. The NAO also established that the information provided in the RfP and the HSDA regarding the number of beds required within specific areas at the GGH did not tally. It was unclear to the NAO whether the discrepancies in numbers reflected an inconsistency in the labelling of various areas within the GGH or whether this was a real discrepancy in the cited figures for the number of beds required. In either case, such differences were considered evidence of poor planning and a weak contractual framework.
- 5.23 The minimum number of beds specified in the HSDA for the KGRH exceeded that specified in the RfP by 20, which implied an additional annual income of €1,314,000 for the VGH. This deviation was considered material by the NAO since it bore impact on the revenue levels and profitability of the project.
- 5.24 Through the first Addendum to the HSDA, the minimum number of beds was increased by a further 25 acute beds at the GGH, 25 geriatric care beds at the GGH and 50 geriatric care beds at the KGRH. This change was equivalent to an additional annual income of €7,117,500 for the GGH and €3,285,000 for the KGRH, totalling €10,402,500 in revenue for the VGH. Such a substantial change in the revenue levels so close to the original contract date was considered a significant deviation, which deviation had a direct bearing on the revenue and financial viability of the project. In the NAO's opinion, knowledge of such additional income would have significantly impacted the potential bidders' consideration of the investment proposition.
- 5.25 The RfP and the HSDA allowed for the provision of beds to the private market. However, the right of first usage to the Government for extra beds beyond the minimum requirements was introduced in the HSDA, despite no reference in this respect being included in the RfP. While this deviation was considered a positive development, as it secured the possibility of additional beds for the Government without having it compete with the private sector for additional capacity, it is this Office's opinion that potential bidders ought to have been informed of this condition at the RfP stage. The right of first usage had implications on the concessionaire's revenue streams and revenue levels as well as operational implications in terms of security of availability for the private market beds.

- 5.26 In contrast to the RfP, the HSDA provided for a transition period that commenced with the effective date and ended on the completion date, once the redevelopment works were completed. The HSDA stipulated the fees payable to the VGH during this transition period, which fees were distinct from the fees payable post completion date. Notwithstanding the explanation provided by the Negotiation Committee, that a transition period was implied in the RfP and that the nature of a request for proposals allowed for flexibility and discretion to bidders to propose suitable solutions, in the NAO's opinion, the timelines for operation and the applicable payments at each stage of the project should have been clearly outlined at the RfP stage since these bore a significant impact on the operational feasibility and profitability of the project in its early years.
- 5.27 Regarding the periodicity and timing of the concession fees, the RfP stated that the compensation was to be paid monthly in arrears, whereas the Addendum to the HSDA, dated 7 December 2015, provided for payments during the transition period to be effected in advance every three months. The NAO considered this to be a material deviation. This Office is of the opinion that potential bidders ought to have been informed of this provision at the RfP stage since it bore impact on the financial feasibility of the project and the timing of the guaranteed revenue and therefore cash flow for the concessionaire.
- 5.28 Besides discrepancies related to the number of beds, other discrepancies were noted in the description of the services and facilities required and the key inclusions in the minimum charge when comparing the RfP and the HSDA. The HSDA provided much more detail of the services and facilities required than the RfP, and in some cases the missing information in the RfP could be considered as an omission rather than a mere lack of detail. Some of the detail introduced in the HSDA was considered by the NAO as essential information required by potential bidders to consider the investment opportunity and propose competitive and sustainable charges in their bids based on robust financial projections. In other instances, the detail provided in the RfP and the HSDA was inconsistent. Some of the details omitted in the RfP presented the possibility of additional income for the concessionaire for additional services rendered, which in turn bore impact on the profitability and financial feasibility of the project. These omissions were therefore considered significant deviations by the NAO. Similarly, the RfP did not provide the same information as the HSDA in terms of what was included in the minimum charge for services rendered, with implications on the quantum of costs to be incurred by the concessionaire and the revenue earned from additional services. The NAO is of the opinion that potential bidders ought to have been given accurate information with the required level of detail at the RfP stage, and that this was possible had comprehensive research and planning been undertaken and the proper involvement of health experts at the early stages of project design been sought.
- 5.29 Various other provisions included in the HSDA were not mentioned in the RfP, including reporting requirements sought from the VGH, relating to KPIs, annual reports and customer satisfaction surveys, provisions for the conduct of clinical audits of the services and audits of the accuracy of its recording and coding of clinical activity relating to the services, provisions

about key roles as well as provisions for the evidence-based assessment of additional staff requirements. Since these requirements implied effort, time and resources, it is the NAO's opinion that an overview of these requirements should have been included in the RfP.

- 5.30 In certain cases, details included in the RfP were not included in the HSDA, such as for example details of the required data management system. In the NAO's opinion, the Agreement ought to have included more details than the RfP, and not the other way round. Similarly, provisions relating to the use of the SLH as a teaching hospital were included in the RfP but were missing in the HSDA. It was considered essential for the concession contracts to indicate that the SLH would be a teaching hospital, and that faculty members and students were to be given access for their practical training, as this requirement had operational and cost implications. In this respect, the NAO considers this omission significant.

Labour Supply Agreement

- 5.31 The NAO also carried out a comparison of the LSA and its Addendum to the RfP. Notable deviations resulted, consistently favouring the interests of the VGH, including those relating to the financial elements of the Agreement, future salaries, employment and working conditions, training and the number of staff.
- 5.32 Regarding fees payable for the deployment of public sector employees as resources for the concession period, the NAO noted a discrepancy in the total cost cited in the Addendum to the LSA, which stated that the VGH was to pay Government an annual fee capped at €32,234,637 for the resources, and in the documentation provided at the RfP stage, which stated that staff costs totalled €39,700,000. This discrepancy resulted in Government effectively forfeiting approximately €7,500,000 in staff costs. Later developments confirmed that the value of the staff costs cited at the RfP stage was a closer reflection of reality than the amount contracted through the LSA.
- 5.33 In addition, the NAO identified an inconsistency between that stated in the RfP and the LSA with respect to future changes in the salaries of the resources, the extent to which the concessionaire had a say in the negotiations leading to these changes, and the extent to which the concessionaire was to bear extra costs relating to resulting increases in salaries. While the RfP specifically stated that Government was to retain responsibility and control for collective bargaining, and that it was to consult the concessionaire in this process, the LSA made no mention of this. Instead, in the Addendum to the LSA it was clearly stated that in the event of increases in wages (ordinarily the result of a new collective agreement) the VGH would only cover an annual two per cent of that increase. It is only reasonable for the NAO to assume that over the concession period, salary increases will exceed the sum allowed through the capping of annual two per cent increases. It was in this context that the NAO deemed the introduction of a capping as having important implications on the financing and operational costs of the project and, in this regard, potential bidders ought to have been informed of this capping at the RfP stage.

5.34 Certain provisions included in the LSA were not addressed in the RfP. These include a provision relating to the possibility of making changes to working conditions to allow the VGH flexibility to deploy resources, another provision related to VGH reimbursing Government for any expenses it incurred when obtaining employment licences for the resources and provisions relating to VGH's obligation to train resources. Another provision related to the procedure and timing for payment of charges relating to the resources.

6 Comparison of the Vitals Global Healthcare bid with the contractual framework

- 6.1 The contracts did not bind the VGH with respect to the extent of the investment or the replacement capital cost, despite the bid having been considered in its technical and operational evaluation in terms of its level and phasing of investment for the upgrading and expansion of the plant and equipment within the Sites and the cyclical investment in capital. The NAO is of the opinion that the outputs expected in relation to the capital investment ought to have been specified in far greater detail in the contractual framework.
- 6.2 Details of the new developments included in the VGH bid but omitted in the contracts included the footprint for various buildings and areas within the sites. In the NAO's opinion, the site areas were basic specifications that should have been included in the contracts. Also essential yet lacking in the contracts were provisions indicating the extent of the sites to be used for the national health service and for medical tourism, as outlined by the VGH in its bid with respect to the KGRH and the SLH. Additionally, the NAO noted that while the VGH bid included 5,000 square metres for accommodation facilities for first year students and for overnight staff, the contracts did not include clear provisions for the development of these facilities on site.
- 6.3 When comparing the detailed provisions for specific specialities, discrepancies were noted in terms of the amount of detail provided in the bid and the HSDA, and in the specification of obligations, such as the facilities to be provided or the list of services included. In general, the NAO noted that the HSDA, especially in its amended version following the second Addendum to the Agreement, included less obligations than the VGH bid in terms of services and facilities to be provided. This Office observed that the Government forfeited services without adjusting the compensation payable. While the general pattern was for the scope of contracted services, especially in the case of the second Addendum to the HSDA, to be less than the scope of services proposed by the VGH in its bid, there were instances when the contracted services exceeded those proposed by the VGH in its bid, or new services were included at contractual stage.
- 6.4 With respect to the medical tourism aspect, discrepancies were noted between the VGH bid and the contracts in terms of the focus of services to be provided, the bed capacities and the provisions included in these documents, with certain information covered in the VGH bid but not included in the contracts, such as the bed and revenue targets. In the NAO's understanding, to the extent that the VGH included additional beds at the SLH and beds at the GGH for medical tourism, this Office is of the opinion that the contracts should have bound the VGH to fulfil that stipulated in the bid. Medical tourism was to have wide implications on the local economy, and the feasibility of retaining certain specialisations and the required specialised staff within the hospitals. It was therefore in the interest of Government to effect the full scope of medical tourism proposed in the bid.

- 6.5 The contracts do not bind the VGH to specific targets for medical tourism, which targets were amply explained in the VGH bid in terms of revenue and bed nights. Given that, as intended by Government, the concession was only feasible and financially profitable for the VGH when one considered the medical tourism element, the NAO is of the opinion that the absence of performance targets for medical tourism in the contract created an element of uncertainty regarding the sustainability of the project.
- 6.6 With respect to the deadlines for concession milestones, inconsistencies were noted by the NAO. Generally, the NAO noted that the timeframes were extended in the SCA and subsequent revisions of the Agreement compared to the VGH bid.
- 6.7 The analysis of the comparison of fees to be charged to Government for various services as presented in the VGH bid and as contracted in the HSDA flagged several discrepancies. In the case of holistic care outpatient visits, the NAO noted a positive development when comparing the fee per visit proposed in the VGH bid and that stipulated in the HSDA. The fee was decreased from €40 per visit to €20 per visit. While the VGH bid provided a unit cost for each dermatology inpatient bed and outpatient visit and for each helicopter airlift, in the HSDA, the Government committed to provide a total amount per year for dermatology services and airlifts, irrespective of the actual use, up to a capped maximum. It remained unclear to this Office why Government chose to deviate from the fee structure proposed by the VGH in its bid. Other discrepancies related to income from Barts Medical School, particularly in terms of the annual income for the rental of the medical college facilities at the GGH, maintenance of the building and for time spent by medical staff providing practical experience opportunities to Barts' students.
- 6.8 Besides comparing differences in the cost structure for individual elements, the NAO compared the total cost to Government as provided in the HSDA for 2018, which is the first year post completion envisaged in the HSDA, and as proposed in the VGH bid in its detailed financial estimates for 2017, which represented the first year post completion at bidding stage. This analysis indicated that through negotiations, the Government attained a better arrangement than that submitted by the VGH in its bid with respect to minimum charges. However, this comparison did not take into consideration any exclusion in services, or cost or usage capping introduced in the HSDA, which translated into additional costs to Government. For example, while the VGH estimated pharmaceutical costs to be around €16,490,000 in 2017, the HSDA provided for €1,747,341 (based on 2015 estimates). Government was to be billed separately for additional costs above this capped amount. This discrepancy in estimates raises concerns and doubt regarding the accuracy and completeness of Government's figures.
- 6.9 The NAO noted that strategic partnerships specified in the VGH bid were not included in the HSDA or their scope was limited to specific sites in the HSDA. This relates to the partnerships established by the VGH with the Medical Associates of Northern Virginia Incorporated and the Walter Reed Medical Centre of Prosthetics. To the extent that the required bidder healthcare expertise was fulfilled through such strategic partnerships, and that such partnerships were

an essential element of the VGH's technical compliance, the NAO is of the opinion that the contractual framework should have included an obligation to maintain these partnerships (or an equivalent) to the extent set in the bid.

- 6.10 The contractual framework does not include provisions for the staff to be employed directly by the Concessionaire, neither in terms of the quantities/volumes required, possibly contracted in terms of a specified ratio of patients to staff, nor the applicable terms and conditions. While the VGH's bid was assessed in terms of the proposed staffing plan, the contracts did not bind the VGH to its intended recruitment and staffing efforts. The NAO noted that this lacuna in the contractual framework created potential operational problems, such as in the case of the industrial action arising following the recruitment of physiotherapists directly by the VGH at salaries lower than the Government sectoral agreement, resulting in patients being deprived of the service for two months.

7 The classification of the project as on-balance sheet

- 7.1 Aside from the envisaged improvements to the national health service, one of the main objectives of the Government in undertaking this project in the manner that it did was to secure the financing and development of the hospitals through the VGH without immediately impacting the public accounts and instead paying for that sourced over the contract term. Success in this respect would have meant that the project be classified off the Government balance sheet, as its classification as on-balance sheet would mean that project-related expenditure incurred by the VGH would be registered as part of Government's accounts, thereby exerting a direct effect on the Government deficit/surplus and debt figures.
- 7.2 In December 2016, the NSO analysed the concession granted by the Government to the VGH and classified the project as on-balance sheet. Four main contractual issues that shifted the risk that ought to be borne by the VGH onto Government were identified by the NSO in its analysis. The first issue related to the minimum service delivery fee, which was a form of Government guarantee as the VGH was provided with a minimum revenue irrespective of service usage. The second concerned termination payments in the case of termination due to a concessionaire event of default, where if the VGH defaulted, the Government would be responsible for the payment of any concessionaire debt. The NSO noted that these two issues alone were sufficient to classify the project as on-balance sheet on their own merit. The other issues noted related to the Government option to reverse the title of the KGRH and the GGH for a consideration, with the NSO questioning the basis for the €80,000,000 consideration among other matters raised, and the fact that HR were always to be considered as Government's employees, with Government retaining the risk of maintaining the required level of resources and collective agreement negotiations.
- 7.3 An element of context to the on-balance sheet classification arrived at by the NSO was sourced through MFIN. Immediately evident and of concern to the NAO was that the MEH failed to consult with MFIN prior to entry into the concession agreements. MFIN's evaluation of the agreements from a public finance perspective would have undoubtedly contributed to greater awareness of the impact of the project being classified as off-balance sheet and measures intended to prevent such an eventuality. However, for this to be possible, MFIN was to be involved at the contract design stage, when the key elements determining the balance of risks and rewards between the Government and the VGH were determined. In this respect, the NAO attributes responsibility for this shortcoming to the Steering Committee and to the Negotiation Committee, for, to varying extents, the management of the strategic elements and design of the contractual framework rested within their control and competence.

- 7.4 Although the Negotiation Committee contended that the on-balance sheet classification resulted from a change in the applicable regulations following entry into the concession agreements, this assertion was readily dismissed by the NSO when stating that the project's classification remained on-balance sheet irrespective of which version of the regulations were applied. This statement by the NSO only serves to strengthen the cause for MFIN's involvement at the design stage of the concession.
- 7.5 The on-balance sheet classification by the NSO was validated by Eurostat in its assessment of July 2018. Eurostat outlined six elements of relevance leading to this classification, namely: the minimum revenue guarantee; the provision on the termination due to a concessionaire event of default; the open-ended list of force majeure events, which allowed for other possible events not specified in the contract; financing and refinancing clauses, with the contract not mentioning the grounds on which Government could withhold refinancing and how much time was allowed for the process; the fact that the Government bore the risks related to any general changes in law going beyond the contractual provisions, such as environmental and employment laws; and the fact that in case of control step-in due to force majeure, national emergency or non-rectifiable default of the concessionaire, additional costs due to the step-in were to be borne by the Government.
- 7.6 The effect of the classification of the project as on-balance sheet by the NSO and Eurostat was that the capital expenditure incurred by the VGH in relation to this project was recorded as a gross fixed capital formation for Government, with an impact on the fiscal balance and a corresponding increase in Government's debt. Between 2015 and 2019, this amounted to over €42,000,000.
- 7.7 Insofar as the objective of Government was to avoid impacting public accounts through this concession, then it is evident that this was not achieved. However, it is the root cause underlying this failure that draws the NAO's more pressing concern, with the issues highlighted by the NSO and Eurostat confirming an imbalance in risk borne by the parties to this concession. Points raised regarding the guaranteed revenue provided by the Government irrespective of level of use and the provisions regulating concessionaire events of default resonate with the NAO's understanding that the balance of risk and reward was not equitably shared between the parties. In this case, the Government accepted to assume a disproportionate and self-defeating share of the risk, while the VGH benefited from an entirely undeserved reward.

8 On the financial position of the Vitals Global Healthcare group

- 8.1 Of utmost concern to the NAO was that the VGH failed to submit any of its companies' audited financial statements during the period under review. The 2015, 2016 and 2017 financial statements of VGH Ltd, VGH Management Ltd and VGH Assets Ltd were eventually submitted to the Registrar of Companies during the first quarter of 2020, after the change in ownership of the companies. Aside from the fact that the SCA and the HSDA stipulated the submission of statutory financial information as an obligation of the VGH, which obligation the Concessionaire did not comply with, the failure to submit the required records prevented Government from undertaking appropriate and adequate analysis of the VGH's financial situation. The VGH's failure to submit the required financial reports also precluded the Government from ascertaining that the concession was being operated sustainably, that the VGH was financially able to honour its obligations, and that public funds were being put to appropriate use, thereby reducing the risk of fraud and misappropriation.
- 8.2 Another matter of concern to the NAO, also highlighted by the MFH, related to the limited share capital of VGH Ltd, set at a paltry €1,200. The mismatch between the value of the concession and the net asset value of the company granted the concession was stark and cast doubt on the basis of its award.
- 8.3 Aside from these concerns, of note to the NAO was that across the three years under review, VGH Ltd, VGH Management Ltd and VGH Assets Ltd incurred losses. While the total accumulated loss for VGH Ltd stood at €22,052 in 2017, that of VGH Management Ltd and VGH Assets Ltd corresponded to accumulated losses of €26,012,619, and €1,350,972, respectively.
- 8.4 Of interest to this Office was that the total assets of VGH Ltd substantially decreased over the three-year period reviewed, particularly from 2015 to 2016. This was due to a considerable decline in cash and cash equivalents, from €500,170 in 2015 to €140 in 2016 and €110 in 2017. The NAO noted a significant decline in cash and cash equivalents between 2016 and 2017 with respect to VGH Management Ltd as well, particularly in cash held at the bank, which decreased from €1,152,509 to €156,686. On the other hand, VGH Assets Ltd increased its assets. The major component of the total assets of VGH Assets Ltd was a contract asset, which in 2017 amounted to €11,814,763. The amount recognised was equal to the total costs incurred on the project, profit on completed construction and financing revenue.
- 8.5 The NAO ascertained that all three companies registered an increasing negative working capital throughout the period under review, indicating a deteriorating financial position in the short-term. The companies' current ratios were also always less than 1, signifying that their short-term assets were insufficient to cover short-term debt.

- 8.6 This Office noted that most expenses incurred in 2015 by VGH Management Ltd, which was the company receiving the revenues relating to the concession from Government, consisted of other expenses (74 per cent), which were not defined in the financial statements. This category was not the major expense in the following years; however, it is worth noting that it was still of a material value, comprising 27 per cent of the expenses in 2016 and 28 per cent in 2017. Also of note was the expense incurred in terms of the directors' remuneration, particularly for 2017, wherein it exceeded €6,000,000. This was a marked increase from the amount recorded in the previous year and deemed somewhat anomalous by the NAO in view of the negligible progress registered with respect to the concession and the dire financial situation the companies were in.
- 8.7 Of great concern to this Office were the independent auditor's reports for VGH Management Ltd for 2016 and 2017, which indicated a material uncertainty related to a going concern. The auditor drew attention to a note in the financial statements that indicated that VGH Management Ltd incurred a net loss of €5,304,972 during the year ending 31 December 2016 and, as at that date, the company's total liabilities exceeded its total assets by €8,129,619. Indicated in this note was that these events and conditions cast doubt on the ability of VGH Management Ltd to continue as a going concern. However, the auditor's opinion was not modified in this respect. Similarly, the opinion of the financial statements for 2017 was not modified by the auditor; however, attention was drawn to the fact that the total liabilities of VGH Management Ltd exceeded the company's total assets by €26,011,419. This condition, along with the loss for the year of €17,881,800, indicated the existence of a material uncertainty that could cast significant doubt on the ability of VGH Management Ltd to continue as a going concern. Notwithstanding this, the notes to the financial statements reiterated the directors' confirmation that the shareholder had given its undertaking to support the VGH Management Ltd's future operations.
- 8.8 Similar statements were made in the independent auditor's reports for 2016 and 2017 with respect to the consolidated statements for VGH Ltd, which without qualifying the audit opinion, expressed concerns and cast significant doubts on the VGH's ability to continue as a going concern. In the 2016 report, the auditor drew attention to a material uncertainty related to going concern. The consolidated financial statements indicated that the VGH group incurred a net loss of €6,066,750 during the year ending 31 December 2016 and, as at that date, it had a negative working capital of €8,940,817. The auditor noted that these events and conditions indicated that a material weakness existed that could cast a significant doubt on the VGH group's ability to continue as a going concern. In the 2017 report, the auditor drew attention to a note in the financial statements that indicated that the VGH group's total liabilities exceeded its total assets by €27,382,043. This, along with other conditions mentioned in the note, indicated the existence of a material uncertainty which could cast significant doubt on the VGH group's ability to continue as a going concern.
- 8.9 Of interest to the NAO was the perspective provided by the MFH regarding the VGH group's ability to continue as a going concern. The MFH noted that the VGH group's shortfall in

finances was not solely for the capital investment required, but similarly insufficient to finance its operations. The MFH argued that the VGH group's financial shortfall was evident in the accumulation of €12,000,000 in operating losses and the €32,000,000 due to creditors, the failure to provide the Ministry with audited accounts and failure to effect payments for tax and National Insurance dues. The concerns expressed by the MFH resonate with those of this Office.

8.10 8.10 Serious concerns regarding the regularity of use of funds provided by the Government were highlighted by the Advisor MFH, who alleged that funds provided by the Government to the VGH were being channelled outside of the company. This understanding was based on the premise that despite the concession fee paid by Government being sufficient to cover existing operations, the VGH had accumulated significant creditors. Also highlighted by the MFH was that the financial information being requested from the VGH was not being submitted, that the Concessionaire had failed to obtain financing and was late in submitting the obligatory financial statements. The observations made by the MFH drew the NAO's gravest concerns; however, this Office is unable to delve further in ascertaining that alleged, for such verification would require access to the VGH's financial transactions, which analysis falls beyond the mandate of the NAO. Should that alleged by the MFH, lent credence by the dire situation depicted in the VGH's financial statements and the failure to effect the required capital investment, be proven, this may lead to the conclusion that there was the misuse of public funds. This prompts the NAO to recommend further investigation by the competent authorities in terms of any possible financial mismanagement and misuse of public funds in connection with this concession awarded by Government.

9 Overall conclusion

- 9.1 In the period reviewed, the concession was suspended in a transition phase, during which the VGH was obligated to retain service levels in place prior to the concession. It was in this period that the capital investment intended for the project was to be undertaken.
- 9.2 Concerns arise in relation to the process of negotiation between the Government and the VGH, which process remained opaquely concealed to the NAO due to the lack of documentation kept and conflicting accounts provided by those involved. The lack of visibility provided further cause for concern on consideration of the deviations or inclusions in the contracts that changed the scope of the concession, altered the level of risk retained by either party, or bore impact on the level of operational and financial feasibility, as well as the profitability of the project, when compared with the RfP. Graver still was the Government's failure to consult with critical stakeholders. This omission resulted in the concession failing to meet its intended objectives, be it the health-related improvements originally envisaged and the classification of the concession as off-balance sheet, which failure implied that the VGH's capital expenditure on the project was registered on the Government's accounts.
- 9.3 The dichotomy that characterised this project, with the MEH-Energy overseeing the capital investment element and the MEH-Health tasked with operational management created ideal grounds for the VGH to capitalise on Government's weaknesses. This dichotomy allowed for the concession to remain an unimplementable project, an insurmountable challenge and irreparable situation for the Government to manage, whose administrative and political weaknesses were all too readily exploited by the VGH.
- 9.4 9.4 None of the major concession milestones were achieved in the period within which the concession was under the control of the VGH. The VGH's inability to secure financing was, in the NAO's understanding, the crucial shortcoming on which rested all subsequent failures registered in this concession by Government. All the VGH's commitments regarding the envisaged improvements to infrastructure and services were rendered unattainable in view of this failure. The Government's acquiescence to the evident inadequacies of the VGH reflected ineffectiveness, mirroring the failure of the VGH to deliver on its commitments. Instead, the Government's representatives, while bypassing Cabinet, endorsed multiple waivers of the requirement to secure financing, thereby perpetuating the failure that this concession came to represent.
- 9.5 Significant concerns emerged in the NAO's review of the contractual framework that was to regulate the concession. In the case of the SCA, critical departures between that originally stated in the RfP, that subsequently contracted and later amendments effected thereto substantially altered Government's control over completion of the concession milestones. The changes effected consistently and solely favoured the interests of the VGH, with Government

rendered impotent in holding the Concessionaire to account. Other concerns in this respect included deviations in relation to the investment risk associated with the concession and the granting of control to the VGH over the extension to the emphyteutical title for the SLH.

- 9.6 Although the Government established the health deliverables expected of the concession through the HSDA, these were quickly revised. The direction of revisions was consistently adverse to Government, with a significant reduction in services without any change in the compensation due and an increase in the number of beds guaranteed for use by Government coupled with a corresponding increase in the amount payable. Conflicting information was obtained by the NAO regarding whether the VGH honoured its obligation to sustain pre-concession service levels.
- 9.7 The LSA stipulated that the Government employees to be deployed with the VGH as leased resources under this Agreement were to continue benefiting from the same conditions of work as public officers and public servants. However, of note to the NAO in its review of the LSA was evidence of Government's ill-preparedness for this concession. Most glaring in this respect was the mismatch of resources allocated to the VGH by the Government with the charge that was to be recovered. The discrepancy arising from this mismatch was borne by the Government.
- 9.8 As part of the audit request submitted by the PAC to the NAO, this Office was tasked with reviewing whether safeguards were in place to ensure that Maltese nationals received treatment in a timely manner. The NAO understood that this term focused on the possible effect of medical tourism on the contracted services to be delivered in parallel to the services being procured by Government. Since medical tourism has not yet been achieved, it would be premature for the NAO to comment in this respect.
- 9.9 In terms of the NAO's review of the basis of valuation of the sites granted to the VGH, this Office established that no valuation of the SLH, the GGH and the KGRH sites was undertaken by Government prior to their transfer through the Emphyteutical Deed. The NAO acknowledges that the Disposal of Government Land Act is silent as regards the determination of value of lands transferred in terms of industrial projects. The only applicable policy relating to the determination of amounts to be charged by Government for use of its land was that set by the MIP Ltd, which established a rate of €11.65 per square metre for land granted in 2016. This policy was adhered to in this concession. In addition, no concerns of note emerge with respect to the method of disposal of the sites and in relation to state aid regulations. However, concerns do emerge in terms of the mismatch between the 30-year concession period and the potential 99-year title granted over the sites. The concerns relate to the services provided to the public from the SLH site beyond the 30-year term and whether Government will realise the economic benefits envisaged through continued use of the site for medical tourism.
- 9.10 Of grave concern to the NAO were the futile attempts made by this Office to meet with the Hon. Konrad Mizzi. Despite several requests for meetings sent by this Office, these remained

unaddressed. The gravity of this failure was rendered immediately evident in this report through the pivotal role played by Hon. Mizzi in this concession. In the period being reported on, he was the minister responsible for the health portfolio at the point when negotiations with the VGH commenced; was a member of the Steering Committee, which Committee was tasked with overseeing the concession as a whole; and was the signatory representing Government on all contracts entered into with the VGH, bar the Emphyteutical Deed. This latter point assumes greater relevance when one considers that Hon. Mizzi was authorised by Cabinet to keep on representing the Government even when he no longer was responsible for the health portfolio. Aside from constituting a limitation to the audit, Hon. Mizzi's failure to attend to the several requests made by the NAO constituted a serious failure on his part in terms of the level of accountability expected of a former minister of Government and in terms of the standard of good governance that ought to have characterised a project as material and as important to the national health services as was this.

9.11 In conclusion, the NAO is of the opinion that several of the failures that emerged at the implementation stage of the concession may readily be traced to the selection of the VGH as the concessionaire, a poor choice that set the stage for what was to come. The negotiations that quickly followed selection were similarly flawed, conditioned to an extent by the structural anomalies and organisation of the Ministry for Energy and Health and the general ill-preparedness in terms of what was sought by Government through this concession. None of the milestones set were achieved by the VGH. Although responsibility for this failure rests primarily with the VGH, the situation of default was allowed to persist and enabled by the Government representatives' successive waivers through which the Concessionaire's inability to secure financing was condoned. Aside from failing to deliver an improved health infrastructure, this concession fell short of achieving another critical objective set by Government, that is, the shifting of project expenses off the Government's balance sheet. The NAO's concern regarding these key shortcomings is heightened when seen within the context of the multiple failures in good governance, accountability and transparency that characterise this flawed concession.